

ORDINANCE NO.
ST. JOSEPH COUNTY WEED AND RANK VEGETATION CONTROL ORDINANCE

WHEREAS, Indiana Code 36-7-10.1 et seq. allows for the legislative body of a county to pass an ordinance requiring owners of real property located in unincorporated areas of their county to cut and/or remove Weeds and Other Rank Vegetation growing on said property;

WHEREAS, the St. Joseph County Council is the County legislative body and is by law authorized to adopt ordinances for the protection of the public health, safety, and general welfare of its residents;

WHEREAS, Weeds and Other Rank Vegetation, when allowed to grow uncontrolled in unincorporated Residential Areas of St. Joseph County are unsightly, detrimental to property values, a fire hazard, and a hazard to health;

WHEREAS, the purpose of this Ordinance is to regulate and control the growth and require the cutting and/or removal of Weeds and Other Rank Vegetation on all parcels of real estate in unincorporated Residential Areas of St. Joseph County;

NOW, THEREFORE, BE IT ORDAINED by the County Council of St. Joseph County, Indiana, as follows:

Section 1. Title

This Ordinance and all ordinances supplemental or amendatory thereto shall be known as the "St. Joseph County Weed and Rank Vegetation Control Ordinance" (hereinafter this "Ordinance").

Section 2. Definitions

A. "Administrative Costs" shall include the reasonable value for the time of the ~~Department Director~~ in enforcing the provisions of this Ordinance, costs of sending notice under Section 7 of this Ordinance, postage charges, charges for office supplies incurred by the County, and other related charges.

B. "Administrative Review Officer" shall mean and refer to such person as duly designated by the Director, who shall not be involved in the enforcement of this Ordinance, and who shall review all applications for appeal under this Ordinance.

C. "County" shall mean and refer to the County of St. Joseph, State of Indiana.

D. "Department" shall mean and refer to the St. Joseph County ~~Planning and Development Department~~Department of Infrastructure, Planning & Growth.

E. "Director" shall mean and refer to the St. Joseph County Area Plan Commission Director and his or her Duly Authorized Representatives.

F. "Duly Authorized Representatives" shall mean and refer to staff or other departments designated by the Director.

G. "Removal Costs" shall include the reasonable value of the labor incurred by the County in travel to and from the subject property and in cutting or removing Weeds and Other Rank Vegetation, reasonable charges for the equipment used, repair costs for damage to equipment used, mileage costs incurred in driving to and from the subject property, disposal costs, administrative expenses including the reasonable value of time spent in scheduling and dispatching personnel to perform removal, and other related expenses incurred in cutting or removing Weeds and Other Rank Vegetation.

H. "Residential Area" shall mean and refer to any parcel of real estate, used or intended to be used for residential purposes, whether platted or unplatted, whether zoned residential or otherwise, which does not exceed two (2) acres in size.

- I. ~~I.~~ "Weeds and Other Rank Vegetation" shall mean unmaintained and non-cultivated grasses, forbs, vines, and shrubs ~~refer to any and all plant life~~ exceeding a height of nine (9) inches located in the minimum front yard or in the buildable area of a lot located between the front line of the primary building and the minimum front yard. For the purpose of this ordinance, the following are not to be considered weed or other rank vegetation:
- a. Landscaped areas and gardens containing trees, ornamental grasses, native grasses, flowers, wildflowers, of maintained landscaping which have been planted or cultivated by the owner or occupant of the property;
 - b. Agricultural and food crops; ~~bushes and shrubberies exceeding a height of nine (9) inches are not to be considered Weeds and Other Rank Vegetation, unless they constitute an extreme deviation from the aesthetic appearance of the surrounding neighborhood.~~
 - c. Filter or buffer strips within riparian zones and edges of ponds or lakes within thirty (30) feet of the water's edge;
 - d. Vegetation within a wetland recognized by the US Fish and Wildlife National Wetlands Inventory; ~~shall not be considered Weeds and Other Rank Vegetation.~~
 - e. Rain gardens, pollinators, and other cultivated native plant gardens;
 - f. Naturalized wooded areas.

J. "Zoning Administrator" shall mean and refer to the St. Joseph County Zoning Administrator and his or her Duly Authorized Representatives.

Section 3. Administration and Enforcement

The Department shall be the executive department that is authorized to administer the terms and provisions of this Ordinance. The Zoning Administrator shall enforce the terms and provisions of this Ordinance. The Department and the Zoning Administrator are hereby granted all powers reasonable and necessary for the performance of their responsibilities under this Ordinance.

Section 4. Enforcement Discretion

The Department shall have all rights and authorities as are provided under Indiana Code 36-7-10.1 et seq. as the executive department authorized to administer and enforce this Ordinance. It is hereby acknowledged, understood, and declared by the St. Joseph County Council that the Zoning Administrator is required to exercise and is vested with the authority to exercise his or her discretion and judgment in order to protect and preserve the public health, safety, and general welfare of the citizens of St. Joseph County, Indiana in administering and enforcing this Ordinance. The authority of the Zoning Administrator to issue or revoke, or fail or refuse to issue or revoke any notice, approval, order, or similar action under this Ordinance is hereby declared to be discretionary.

Section 5. Required Action

It is a violation of this Ordinance to have Weeds and Other Rank Vegetation on parcels of real estate in unincorporated Residential Areas of the County. All landowners of parcels of real estate in unincorporated Residential Areas of the County are hereby required to cut and/or remove from such real estate all Weeds and Other Rank Vegetation growing thereon. If the Zoning Administrator determines that a violation of this Ordinance exists, the Zoning Administrator may take action in accordance with the procedures set forth in this Ordinance to abate or remove any Weeds and Other Rank Vegetation.

Section 6. Violation Notice

If Weeds and Other Rank Vegetation are found to be growing in violation of the provisions of this Ordinance, the Zoning Administrator shall give written notice to the landowner upon whose property such Weeds and Other Rank Vegetation are growing, identifying the violation and stating that such landowner is required to cut and/or remove such Weeds and Other Rank Vegetation growing on such property. The notice shall also state the office information of the Zoning Administrator. The landowner shall have ten (10) business days from the date of service of such notice to abate the violation on such property or to contact the Department to propose a plan of action and expected timeline for Department staff approval, which approval shall not be unreasonably withheld. Such Notice shall refer to this Ordinance and shall also state that, if such landowner does not comply with the requirements of such Notice, the Department may cause such Weeds and Other Rank Vegetation to be cut and/or removed and that the Removal Costs thereof incurred by the County, plus any Administrative Costs, shall be paid by the landowner. Such Notice shall further state that if the landowner fails to pay the Removal Costs for subject Weeds and Other Rank Vegetation, plus any Administrative Costs, within ten (10) business days after the Zoning Administrator serves the landowner with an invoice of the Removal Costs thereof, plus Administrative Costs, the amount claimed shall be placed on the tax duplicate against such property affected by the work, and the amount shall be collected as delinquent taxes are collected.

Prior to the sending of official notice under this Section 6 for properties which have been identified for the first time as containing Weeds and Other Rank Vegetation, the Department may place a hangtag on the door of the property where Weeds and Other Rank Vegetation have been identified, to notify the landowner of the existence of a possible violation of this Ordinance. This hangtag notice shall not be considered the "Violation Notice" as described above and shall be merely informational to the landowner. For further enforcement, the Department must proceed to issue the Violation Notice as described above.

Section 7. Service of Notice

The notices required to be given under Section 6 Section 11 of this Ordinance shall be adequate if given to the landowner of the property in person or sent by Certified U.S. mail, return receipt requested, postage prepaid, to the landowner at the address as listed on the real estate records of the St. Joseph County Auditor's office, or as otherwise provided in I.C. 1-1-7-1, I.C. 36-7-10.1, or other applicable Indiana law. Date of service shall be the date of delivery if given in person or the date of mailing if given by Certified U.S. mail, postage prepaid.

Section 8. Cutting and Removal by County

If the landowner has been notified under the provisions of Section 6 and 7 of this Ordinance but has failed to comply with the requirements of this Ordinance within the time specified or agreed to between the landowner and Department staff, the landowner shall be deemed to have granted permission to the Department and/or its representatives to enter upon the landowner's property for the purpose of causing such Weeds and Other Rank Vegetation to be cut and/or removed.

Section 9. Continuous Abatement

In the event that the Zoning Administrator gives notice under Section 7 of this Ordinance that a three violations of this Ordinance have occurred, the Zoning Administrator may post at the subject property at the time of the third abatement a continuous abatement notice. Such continuous abatement notice shall provide notice to the landowner that the Zoning Administrator may abate each subsequent violation of this Ordinance during the same calendar year in which the Zoning Administrator served notice of an initial violation.

Section 10. Appeal

Any person who receives a Notice issued under Section 6 of this Ordinance, or is cited for a civil penalty for violation of this Ordinance, or receives a statement of costs pursuant to Section 11 of this Ordinance, shall have the right to appeal such Notice, citation, or cost statement to the Administrative Review Officer. Such appeal shall be made in writing, on a form determined by the Director, and must be submitted to the Director current office of the Zoning Administrator, as stated on the violation notice at their office located at 227 W. Jefferson Blvd., 11th Fl., South Bend, IN 46601, within ten (10) business days of the Notice, citation, or cost statement being appealed. The appellant should attach all evidence they believe relevant to their appeal to the appeal form upon submittal, and describe in detail the reason(s) they believe the decision of the enforcing authority should be reversed. The Administrative Review Officer shall review the appellant's appeal and submitted documents, and the file provided by the Zoning Administrator relevant to the appeal. The Administrative Review Officer shall issue their decision in writing within thirty (30) days of receiving the appeal from the Director, upholding, reversing, or modifying the Notice, citation, or cost statement at issue.

The appellant may appeal the decision of the Administrative Review Officer to the circuit court located in Mishawaka of St. Joseph County, Indiana, in the manner prescribed for appeals pursuant to Ind. Code § 36-1-6-9, and must be brought within sixty (60) days after the date on which the Administrative Review Officer issues their decision.

While a Notice or citation is in the appeal process, all enforcement actions are stayed. This stay continues until the expiration of ten days after the last opportunity for appeal has expired.

Section 11. Collection of Costs

In the event the Department is forced to cut and/or remove Weeds and Other Rank Vegetation from property, the Director shall make a certified statement of the County's Removal Costs, plus Administrative Costs incurred by the County for the cutting and/or removal of such Weeds and Other Rank Vegetation under the provisions of Section 8 of this Ordinance. Such statement shall be delivered to the landowner in the same manner as a violation notice under Sections 7 of this Ordinance, and the landowner shall pay such amount to the Department within ten (10) business days after the landowner has been served with the statement. If the landowner fails to pay such amount within ten (10) business days after being served with such statement the Department may collect the bill in any manner available at law. The Director may also certify a copy of such statement, and include in such certification any additional Administrative Costs incurred in the making of such certification, to the St. Joseph County Auditor and the St. Joseph County Auditor shall place the total amount certified on the tax duplicate of the property affected by such work, and such amount, including any accrued interest, shall be collected as delinquent taxes are collected and shall be disbursed to a special non-reverting Weeds and Other Rank Vegetation control fund in St. Joseph County as provided by Indiana Code 36-7-10.1-5, if one has been established by the County; if such a fund has not been established, the funds collected must be deposited in the County general fund.

Section 12. Penalty Provisions

A. Repeat Offender Penalty: Fines. ~~Any person found to be in violation of this Ordinance shall be guilty of an ordinance violation and shall be subject to a civil penalty of up to Two Thousand Five Hundred Dollars (\$2,500.00) for each violation. Each day that a violation continues shall constitute a separate violation. Any failure to comply with any of the terms and provisions of this Ordinance shall constitute a violation. The assessment of a civil penalty shall in no way limit the operation of any other enforcement remedies provided elsewhere in this Ordinance. Should any property be subject to more than one abatement under this ordinance, said property shall be subject to a Repeat Offender Penalty as outlined in Appendix: Schedule of Fines and Fees on a cumulative basis. Any penalty collected under this provision shall be applied to any abatement costs incurred under this ordinance.~~

B. Expenses. The Department may recover reasonable attorney fees, court costs, and other expenses associated with the enforcement of this Ordinance from any person found to be in violation of this Ordinance.

C. Agreed Order. The Zoning Administrator, in the name of the Department, may enter into an agreed order with the approval of the Director which order may include the payment of a civil penalty and other expenses associated with the enforcement of this Ordinance by the Department.

D. Enforcement of Agreed Order, Fines, Expenses. The Zoning Administrator, in the name of the Department, may file a complaint in the circuit court of St. Joseph County, Indiana located in Mishawaka seeking to enforce the terms of an agreed order, seeking to collect fines assessed, or expenses allowed under this Ordinance.

E. Other Action. Nothing contained herein shall prevent the Department, Director, or Zoning Administrator from taking any other lawful action as is necessary to prevent or remedy any violation of this Ordinance.

Section 153. Appendix: Schedule of Fines and Fees is hereby amended to include:

- 1) The First violation post abatement - \$100.00
- 2) Second violation post abatement - \$200.00
- 3) Third violation post abatement - \$500.00

Section ~~13~~4. Severability

Each provision of this Ordinance shall be construed as separate. If any part of this Ordinance shall be held invalid or unenforceable by a court of competent jurisdiction, such part shall be deemed severable and the invalidity thereof shall not affect the remaining parts of this Ordinance. In the event that any provision of this Ordinance is determined by a court of competent jurisdiction to be pre-empted by a state or federal law or regulation, the applicable provision shall automatically be deemed amended by eliminating the pre-empted provision and incorporating in its place the applicable provision of the pre-empting state or federal law or regulation.

Section ~~14~~5. Construction and Effective Date

All ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed upon the effectiveness of this Ordinance.

The expressed repeal by this Ordinance and any implied repeal by this Ordinance of any other ordinance or part of any other ordinance does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this Ordinance. These rights, liabilities, and other proceedings are continued and penalties shall be imposed and enforced under the repealed ordinance as if this Ordinance had not been adopted.

This Ordinance shall be in full force and effect from and after its passage and adoption by the St. Joseph County Council, approval by the Board of Commissioners, and publication in accordance with the requirements of Indiana law.

~~Section 15. Appendix: Schedule of Fines and Fees is hereby amended to include:~~

- ~~1) The First violation post abatement - \$100.00~~
- ~~1) Second violation post abatement - \$200.00~~
- ~~1) Third violation post abatement - \$500.00~~

Passed and adopted this _____ day of _____, 2022.

Member, St. Joseph County Council