

GREENWOOD COMMON COUNCIL

ORDINANCE NO. 16-14

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 6 OF THE GREENWOOD MUNICIPAL CODE (1993), AS AMENDED, TO CLARIFY CERTAIN PROVISIONS OF NUISANCE LAW

WHEREAS, Ind. Code § 36-8-2-4 provides the City with the power to regulate conduct endangering the public health, safety, and welfare;

WHEREAS, certain provisions currently contained in Chapter 6, Article 10 of the Greenwood Municipal Code are more appropriately located in the Chapter 6, Article 6, Nuisances, and/or Chapter 6, Article 7, Property Maintenance Code; and

WHEREAS, certain provisions of the City's laws relating to Nuisance and Property Maintenance require clarification or amendment.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF GREENWOOD, INDIANA, THAT:

Section 1. The text of Greenwood Municipal Code (1993), as amended, Chapter 6, Article 6, Section 6-270 is hereby deleted in its entirety and replaced with language to read:

Sec. 6-270 Definitions.

(a) For the purposes of this Article, **NUISANCE** as the doing of an unlawful act, or the omitting to perform a duty, or the suffering or permitting of any condition or thing to be or exist, which act, omission, condition, or thing either:

- (1) Injures or endangers the comfort, repose, health or safety of others; or
- (2) Offends decency; or
- (3) Is offensive to the senses; or
- (4) Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage; or
- (5) In any way renders other Persons insecure in life or the use of property; or
- (6) Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others.

(b) The following definitions shall also apply throughout this Article:

(1) **AGRICULTURAL PROPERTY.** Any parcel, lot, plot, or portion of a parcel, lot, or plot on which agricultural activities are conducted, including but not limited to the production of crops, livestock, poultry, or horticultural products. Portions of parcels or lots used for residential purposes shall not be considered Agricultural Properties, even if a portion of a larger parcel or lot that would be properly classified as an Agricultural Property.

(2) **ATTRACTIVE NUISANCE.** Any condition maintenance or permitted on a Premises that is particularly dangerous to children, of such a nature that children may not immediately comprehend the danger, and particularly attractive to children. Attractive Nuisances include, but are not limited to, discarded iceboxes or refrigerators, Abandoned Vehicles, and unsecured trampolines or swimming pools.

(3) **BUILDING.** A Structure having a roof supported by columns or walls, for the shelter, support, enclosure or protection of Persons, animals, chattels, or property. When

separated by firewalls, each portion of such a Building shall be considered a separate Structure. See also Structure.

(4) CODE ENFORCEMENT OFFICIAL. The official who is charged with the administration and enforcement of this Article, or any of his or her duly authorized representatives, including, but not limited to, the Greenwood City Code Enforcement Officers or their designees, and authorized members of the Greenwood Police, Fire, and Community Development Services Departments.

(5) EMERGENCY OR SAFETY CONCERN. The presence of a condition, regardless of cause, which poses an immediate risk of injury or death if not promptly abated or remedied. This includes, but is not limited to, the presence of obstructions in rights-of-way, sidewalks, or streets; the presence of an unsecured Attractive Nuisance; and other extremely Hazardous Conditions.

(6) HAZARDOUS CONDITION. Any condition likely to cause injury to any Person. It shall not mean a temporary condition caused by weather such as rain, snow or ice.

(7) JUNK. Any articles in any form composed of or consisting of any secondhand, discarded, abandoned or cast-off metals or materials, including, iron, brass, bronze, copper, tin, zinc, lead, any other metals or compounds thereof, broken glass, rags, clothing, rubber, plastics, and synthetic substances and fabrics, bottles, papers, feathers or any other waste material or any compound or by-product of the foregoing enumerated materials; Junk shall also include and mean wrecked, abandoned or dismantled automobile or parts thereof.

(8) OCCUPANCY. The purpose for which a Building or portion thereof is utilized or occupied.

(9) OCCUPANT. Any individual living or sleeping in a Building, or having possession of a space within a Building.

(10) OWNER. Any Person, agent, Operator, firm or corporation having a legal or equitable interest in the property; or recorded in the office of the Johnson County Recorder holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such Person, and the executor or administrator of the estate of such Person if ordered to take possession of real property by a court.

(11) PERSON. An individual, corporation, partnership or any other group acting as a unit.

(12) PEST. An injurious or destructive insect, animal, rodent, reptile, or invasive species of plant which poses a substantial risk to human, domestic animal, or native plant species health and welfare.

(13) PREMISES. A lot, plot, or parcel of land or groups of lots, plots, or parcels of land, whether residential, commercial or industrial, including any Structures thereon or for which Improvements are to be installed and/or benefit from the existence of these Improvements.

(14) REFUSE. All solid waste products which are composed wholly or partly of such materials as Garbage, sweepings, cleanings, trash, Rubbish, litter, industrial solid wastes or domestic solid wastes including organic wastes or residues of animals, meat, fruit, vegetables, grains or fish; animal excreta or carcasses of animals; Rubbish including wood, leaves, vegetation, tree trimmings, dead trees and shrubs, branches, sawdust, shavings, grass, paper products, straw, rags, clothing and all other combustibles; waste matter composed of soil, clay, sand, earth, gravel, fill, stones, bricks, plaster, glass, glassware, crockery, ashes, cinders, shells, metal and other non-combustibles; waste debris resulting from the construction, demolition, repair, or alteration of Structures or Buildings; accumulated waste materials composed of cans, containers, tires, Junk, vehicle parts or other substances which may become a Nuisance.

(15) RESPONSIBLE PARTY. Person, agent, Operator, firm, corporation, or federal, state, or local governmental agency having responsibility for maintenance of Improvements located on the Premises, rights-of-way, or easements. Said party shall be the Owner unless

responsibility for such maintenance is provided in other Codes, restrictive covenants, or is legally established to be the responsibility of another Person, agent, Operator, firm, corporation, or federal, state, or local governmental agency. In some cases, more than one Person, agent, Operator, firm, corporation, or federal, state, or local governmental agency may be concurrently classified as a Responsible Party. For violations existing on property for which more than one Responsible Party exists, any liability imposed shall be joint and several between all Responsible Parties.

(16) **STRICT LIABILITY OFFENSE.** An offense in which the prosecution in a legal proceeding is not required to prove criminal intent as a part of its case. It is enough to prove that the defendant either did an act which was prohibited, or failed to do an act which the defendant was legally required to do.

(17) **STRUCTURE.** Anything constructed or installed, the use of which requires a location on a parcel of land. It includes a moveable Structure, which is located on land, which can be used for housing, commercial, business, and agricultural or office purposes, either temporarily or permanently. The term also includes recreational vehicles to be installed on a site for more than 180 days.

(18) **TENANT.** A Person, corporation, partnership or group, whether or not the legal Owner of record, occupying a Building or portion thereof as a unit.

Section 2. The formatting of Greenwood Municipal Code (1993), as amended, Chapter 6, Article 6, shall be amended such that any time a defined term appearing in Section 6-270 above appears it shall be capitalized.

Section 3. The text of Greenwood Municipal Code (1993), as amended, Chapter 6, Article 6, Section 6-271(g) is hereby amended by adding the phrase “which violate the noise regulations contained in Section 6-277” to its conclusion.

Section 4. The text of Greenwood Municipal Code (1993), as amended, Chapter 6, Article 6, Section 6-271(o) is hereby amended by deleting its current text in its entirety and replacing it with language to read: “(o) Any Abandoned or Junk Vehicle as those terms are defined in Article 8 of this Chapter.”

Section 5. The text of Greenwood Municipal Code (1993), as amended, Chapter 6, Article 6, Section 6-271 is hereby amended by adding subsection (q) to read: “(p) Any violation of the Greenwood Fire Code found in Article 4 of this Chapter.”

Section 6. The text of Greenwood Municipal Code (1993), as amended, Chapter 6, Article 6, Section 6-271 is hereby amended by adding subsection (r) to read: “(r) Any violations of the following sections of the Greenwood Zoning Code, as codified in Chapter 10, Article 6:

1. Section 10-89, 6.05.03 Swimming Pool Fences
2. Section 10-97 Home Occupations
3. Section 10-103, 6.20.06 Paved Surface Requirements
4. Section 10-103, 6.20.11(E) Off-Street Parking Lots in or Abutting Residential Districts or Uses
5. Section 10-103, 6.20.13 Visibility at Street Intersections
6. Section 10-116, 6.33.01 Storage of Travel Trailer or RV
7. Section 10-116, 6.33.05 Storage of Equipment or Materials

Section 7. The text of Greenwood Municipal Code (1993), as amended, Chapter 6, Article 6, Section 6-272 is hereby deleted in its entirety and replaced with language to read:

Sec. 6-272 Nuisances Prohibited

(a) It shall be unlawful for any property Owner, Occupant, Responsible Party, or other Person to allow a Nuisance to exist.

(b) *Exceptions on Agricultural Properties.*

(1) Crops located on Agricultural Properties, including but not limited to hay and pasture, shall not be considered Weeds and Rank Vegetation under this Article unless said crops obstruct lines of sight necessary for the safe use of public streets and rights-of-way. A Code Enforcement Official must provide the Owner or Responsible Party of Agricultural Property a warning before issuing a Notice of Correction Order based upon the height and/or location of crops.

(2) Unless created through the negligent operation of an agricultural operation or its appurtenances, changed conditions of an agricultural operation do not qualify as a Nuisance, public or private, provided that the following conditions are met:

- a. The agricultural operation has been operating continuously for more than one (1) year.
- b. There is no significant change in the type of operation. A conversion from one type of agricultural operation to another type of agricultural operation, a change in the size or Ownership of the operation, or the entry of the operation into or cessation of participation in a governmental program shall not qualify as a significant change.
- c. At the time that agricultural operations began on the Premises, the Premises were properly considered Agricultural Property and the operations did not present a Nuisance.

(3) Portions of parcels or lots used for residential purposes shall not be considered Agricultural Properties and shall be subject to all limitations set forth in this Article applicable to residential properties.

(c) *Attractive Nuisances.*

(1) The City recognizes that Attractive Nuisances pose a particular and increased danger to citizen's health, safety, and welfare by their very nature, and in particular to the health, safety, and welfare of children. The presence of any Attractive Nuisance on a Premises shall warrant designation as an Emergency or Safety Concern and shall allow the Code Enforcement Official to require abatement in a period of time less than ten (10) days under Section 6-273(d).

(2) Due to the danger represented by such an Attractive Nuisance to children, no Person shall leave or permit to remain outside of any dwelling or other Building, or within any unoccupied or abandoned dwelling or other Structure under his control, or in any place accessible to children, any abandoned, unattended, or discarded icebox, refrigerator, or other container which has an airtight door or lid which cannot be opened easily by pushing from the inside.

(3) Any Owner or Responsible Party of property on which an Attractive Nuisance is located shall take all reasonable steps to ensure that the Attractive Nuisance is either removed from the property or properly secured to prevent children from encountering the same.

Section 8. The text of Greenwood Municipal Code (1993), as amended, Chapter 6, Article 6, Section 6-273 is hereby amended by adding subsections (d) and (e) to read:

(d) *Emergency or Safety Concerns.* When a Code Enforcement Official finds that a condition existing on a property qualifies as an Emergency or Safety Concern as defined in Section 6-270(b)(3) above, the Code Enforcement shall include on the Notice of Correction Order a statement indicating such a finding and allowing a period of time of not less than twenty-four (24) hours to abate the Nuisance.

(e) *Duplicate Notice to Property Maintenance Company.* When a Code Enforcement Official has reason to believe that there is a property maintenance or servicing company monitoring a given property on behalf of the Owner, a bank holding mortgage rights to the property, or a corporate Operator, the Code Enforcement Official may provide duplicate Notice to said property maintenance or servicing company. Provision of additional Notice under this subsection shall not eliminate any Notice requirement for the Owner or Responsible Party of the

property and shall not render the property maintenance or servicing company liable for failure to abate unless otherwise provided in this Code.

Subsections following those appearing above shall be renumbered accordingly.

Section 9. The text of Greenwood Municipal Code (1993), as amended, Chapter 6, Article 6, Section 6-273(g) (as renumbered above) relating to Continuous Abatement shall be amended by replacing “with subsection (d)” to “this Chapter” and replacing “Owner” with “Owner and/or Responsible Party.”

Section 10. The text of Greenwood Municipal Code (1993), as amended, Chapter 6, Article 6, Section 6-27(h)(4)(a) (as renumbered above) relating to Means of Appeal shall be amended by replacing the internal cite reference to “Section 6-273(d)” to “Section 6-273(e).”

Section 11. The text of Greenwood Municipal Code (1993), as amended, Chapter 6, Article 6, Section 6-277 is hereby amended by adding subsection (13) to read as follows:

(13) Sounds associated with the operations of trash collection services when conducted in accordance with Section 4-112 of the Code.

Section 12. The text of Greenwood Municipal Code (1993), as amended, Chapter 6, Article 6, Section 6-278 is hereby amended by replacing internal references to “ordinance” and “Section 6-278” with the word “Section.”

Section 13. The sections, paragraphs, sentences, clauses, phrases and words of this Ordinance are separable, and if any section, paragraph, sentence, clause, phrase or word shall be declared unconstitutional, invalid or unenforceable by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality, invalidity or unenforceability shall not affect any of the remaining phrases, clauses, sentences or words of this Ordinance.

Section 14. This ordinance shall be in full force and effect from and after its passage, approval and publication according to law.

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PASSED AND ADOPTED by the Common Council of the City of Greenwood, Indiana,
this 4th day of April, 2016.

Michael Campbell

Michael Campbell, President
Greenwood Common Council

FOR:

Linda S. Gibson

SJH

BAS

Ronald Bates

WJH

Michael Campbell

Brent Corey

ATTEST:

Jeannine Myers

Jeannine Myers, Clerk

The foregoing within and attached Ordinance passed by the Common Council of the City of Greenwood, Indiana, on the 4th day of April, 2016, is presented by me this 8th day of April, 2016, at 11:00 O'Clock P.M., to the Mayor of the City of Greenwood, Indiana.

Jeannine Myers

Jeannine Myers, Clerk

The foregoing within and attached Ordinance passed by the Common Council of the City of Greenwood, Indiana, on the 4th day of April, 2016, is signed and approved by me this 8th day of April, 2016, at 11:15 O'Clock A.M.

Mark W. Myers

MARK W. MYERS, Mayor of
the City of Greenwood, Indiana