

DeKalb County Commissioners

August 28, 2023

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Meeting Schedule:

- 8:30 Dotty Miller –Human Resources
- 9:00 Jason Meek – Homeland Security
Re: Approval to adopt the DeKalb Co Emergency
Operations Plan
- 9:30 Nellie Peffley: LARE grant advertisement
- 10:00 Pledge
- 10:15 Chris Gaumer- Development Services
Re: Code Compliance Official Introduction – Zak Kashmer;
Public Nuisance Ordinance – Revisions
- 10:30 Cheryl Lynch & Alyssa-Health Department
Re: Health First Indiana Funding Budget

Discussion Topics and Action Items

Claims

Minutes

DCCC: Johnson Controls

Misc. Topics

RESOLUTION NO. 2023-R

DEKALB COUNTY CODE 16-7-2

**AN RESOLUTION OF PUBLIC NUISANCE FOR PROPERTIES LOCATED
WITHIN THE UNINCORPORATED JURISDICTION OF DEKALB COUNTY,
INDIANA**

WHEREAS, the DeKalb County Commissioners desire to protect the citizens of DeKalb County from conditions which are considered detrimental to public health, safety and general welfare; and

WHEREAS, the Commissioners have determined that the best interests of the citizens can be protected by adopting an ordinance to regulate, control and make it unlawful for residential and commercial property owners and occupants to allow public nuisance as defined in I.C. 32-30-6-6 to exist on any real property located within unincorporated DeKalb County that are negatively impacting property owners; and

WHEREAS, the ordinance provides an opportunity for property owners to correct public nuisance conditions before the County pursues abatement activities.

WHEREAS, the Commissioners adopted Resolution No. 2008-R6 on July 21, 2008 of which Resolution 2021-R-1 replaced.

WHEREAS, the Commissioners adopted Resolution No. 2021-R-1 on February 8, 2021 of which this Resolution will replace.

NOW THEREFORE BE IT ORDAINED BY THE DEKALB COUNTY COMMISSIONERS THAT the following language be adopted:

SECTION 1: PURPOSE AND INTENT.

It is hereby declared to be the purpose of this Ordinance is to protect the public health, safety and welfare, and enhance the environment for the people of DeKalb County by regulating, controlling and making it unlawful for residential and commercial property owners and occupants to allow a public nuisance as defined in I.C. 32-30-6-6 to exist on any real property located within DeKalb County.

SECTION 2: DEFINITIONS.

As used in this chapter, the following terms shall have the following meanings unless otherwise designated.

ABANDONED VEHICLES. Shall have the same meaning as I.C. 9-13-2-1 as any motor vehicle that is at least three model years old, is mechanically inoperable, and is left on private property continuously in a location visible from public property for more than 20 days. Abandoned vehicles do not include farm equipment, farm implements, or machinery parts that are, or may be, used in agricultural operations, or may be considered antique farming implements.

CODE COMPLIANCE OFFICIAL. The Board of Commissioners, the employee holding the title of Code Compliance Official, or other employee of DeKalb County as specifically designated by the Board of Commissioners of DeKalb County in their discretion. The Code Compliance Official shall be part of the Department of Development Services office and under the direction of the Director of the Department.

GARBAGE. Includes putrescible animal and vegetable wastes, resulting from the handling, preparation, cooking and consumption of food, and any **REFUSE, RUBBISH, and YARD WASTE** as defined herein.

HEARING AUTHORITY. The Board of Commissioners or their designee who is responsible for hearing appeals for a notice of violation and/or appeals on abatement costs.

JUNK. Shall include, without limitation, abandoned vehicles, parts of vehicles, scrap iron and/or other metals, wood, paper, rags, rubber tires, bottles, and/or any dismantled household appliances or parts thereof, whether inoperable or operable.

OWNER. A person holding legal or equitable title to real property used for residential or commercial purposes within the unincorporated limits of DeKalb County, Indiana.

PERSON. An individual, partnership, limited liability company, corporation, trust or any commercial association or venture, however defined.

PUTRESCIBLE. Substances which are subject to organic decomposition.

REFUSE. All putrescible and nonputrescible solid wastes, including animal wastes, and ashes.

RUBBISH. Nonputrescible solid wastes consisting of both combustible and noncombustible wastes, such as paper, cardboard, tin cans, wood, glass, bedding, crockery, construction debris, and similar materials.

YARD WASTE. Any yard or landscaping waste, or land-clearing waste, including leaves, grass, brush, limbs, and branches.

SECTION 3: ABANDONED VEHICLES, GARBAGE, AND JUNK PROHIBITED.

(A) *Abandoned vehicles, garbage, and junk declared public nuisances.* Abandoned vehicles, garbage, and junk as herein defined that constitute violations of this chapter are declared to be public nuisances due to the danger to the public health, safety and welfare of the citizens of DeKalb County.

(B) *Violation.* It is a violation of this chapter for an owner to allow abandoned vehicles, garbage and/or junk to accumulate on real property located within DeKalb County used for residential or

commercial purposes, thereby creating a public nuisance affecting a neighborhood or community as may be determined by the Code Compliance Official.

(C) *Prevention of public nuisances.* All owners shall keep their real property clear of abandoned vehicles, garbage, and junk.

(D) *Violation report and violation notice.* All alleged violations of this chapter shall be subject to the following:

(1) *Violation reports.* Violations of this chapter shall be reported on forms to be provided by and submitted to the Code Compliance Official ("Violation Report"). A violation report may be submitted by any resident of DeKalb County in the same neighborhood or community of the alleged nuisance.

(2) *Inspections.* Following the submission of a violation report by neighbors or community members that allege a violation of this chapter, the Code Compliance Official shall inspect the real property that is the subject of the violation report and file an inspection report which shall include the following determinations:

- (a) Whether the owner has violated this chapter;
- (b) If any of the violation reports were filed for purposes other than to report a violation under this chapter; and
- (c) If the violation reports were submitted by neighbors or community members.

(3) *Violation notices.* Upon determination that the owner has committed a violation of this chapter, the Code Compliance Official, or its designee, shall issue a written notice ("Violation Notice") to the owner and any occupants of the property. The violation notice shall identify the violation(s) and order the owner to mitigate the public nuisance within ten business days from the date on which the owner has been served the violation notice ("Abatement Period"). Personal service, service by U.S. certified mail, or any other manner of service recognized in the Indiana Rules of Trial Procedure shall constitute proper service upon the owner and any occupants of the property for the purposes of this chapter. Additionally, a copy of the violation notice shall be conspicuously posted on the property by the Code Compliance Official, or its designee.

(4) In the event the violation complaint, as confirmed by the inspection of the Code Compliance Official, identifies one or more abandoned vehicles on the subject property, the county shall comply with all due process requirements for notice and abatements of those abandoned vehicles as specified under Indiana law including I.C. 9-22-1 *et seq.*

(E) *Violation notice appeal.* Any violation notice issued pursuant to this chapter may be appealed to the Hearing Authority if written notice of appeal is served on the Hearing Authority by the owner prior to the expiration of the abatement period. The timely appeal of a violation notice shall toll the abatement period pending the issuance of a decision thereon by the Hearing Authority.

(F) *Abatement of public nuisance.* If the owner fails to timely abate each violation set forth in a violation notice within the abatement period, the Code Compliance Official may authorize the County Attorney to file an action for an ordinance violation in the DeKalb County Superior or Circuit Courts seeking an order of abatement of said nuisance. Said order of abatement shall grant the county or its designee's permission to abate the public nuisance, including the removal of abandoned vehicles, garbage, and/or junk identified in the violation notice. Upon completion of the abatement, the Code Compliance Official, or its designee, shall prepare a certified statement as to the actual administrative and other costs incurred by DeKalb County in taking such action in addition to any penalties provided herein ("Abatement Costs"), and shall serve a copy of the invoice on the owner. The owner shall, within ten calendar days from the date on which the owner is served with such invoice ("Payment Period"), pay in full the amount stated thereon payable to the DeKalb County Board of Commissioners.

(G) *Appeal of costs.* Any invoice for abatement costs issued pursuant to this chapter may be appealed to the Hearing Authority if written notice of appeal is served by the owner on the Hearing Authority within ten calendar days from the date on which the invoice is served on the owner. The timely appeal of an invoice shall toll the payment period pending the issuance of a decision thereon by the Hearing Authority.

(H) *Failure to pay.* If the owner fails to timely pay an invoice for abatement costs issued pursuant to this chapter, the Code Compliance Official, or his or her designee, shall certify to the DeKalb County Auditor the amount of the invoice for abatement costs, plus any additional administrative costs incurred in the certification of the same. The DeKalb County Auditor shall place the total amount so certified on the tax duplicate for the property at issue, and the total amount, including any accrued interest, shall be due and payable with the parcel's real estate tax bill.

(I) *Time of appeals.* The Hearing Authority shall hear any timely requested appeal of notice of violation or invoice for abatement costs within 30 calendar days following receipt of the same, and shall thereafter promptly issue a decision granting or denying, in whole or in part, the appeal. The date on which the Hearing Authority's decision is served on the owner shall thereafter become the first calendar day of the abatement period or payment period, as applicable.

(J) *Miscellaneous.*

(1) *Venue.* The DeKalb County Superior or Circuit Court shall be the court of proper venue and jurisdiction for the enforcement of this chapter.

(2) *Cumulative remedy.* This chapter supplements and does not limit any other remedy or action available in law or equity regarding the subject matter hereof.

(3) *Applicability.* This chapter shall not apply to the following:

- (a) Agricultural and industrial operations as described in I.C. 32-30-6-9;
- (b) Forestry operations as described in I.C. 32-30-6-11;
- (c) Destruction of Detrimental Plants in I.C. 15-16-8;

(d) Real property upon which agricultural crops are cultivated, including hay and pasture, as described in I.C. 36-7-10.1-3(a); and

(e) DeKalb County municipal corporations as defined in I.C. 36-1-2-10, and DeKalb County governmental units, departments, and school corporations.

(4) *Abatement vendors.* The Board of County Commissioners may invite and accept no less than two reasonable bids for abatement vendors who shall be private businesses and not any department of the county. Said vendors shall provide abatement services as independent contractors for violations of this chapter including the abatement of weeds and rank vegetation, garbage and junk, and the bids may be renewed and updated at various times when deemed appropriate by the Board of Commissioners.

(5) *Unsafe Building Fund.* Any and all abatement fees, penalties and fines collected as a result of violations of and pursuant to this chapter shall be deposited into the Unsafe Building Fund. In addition to collecting fees, penalties and fines, the fund shall also be used to collect any damages recovered as a result of violations of this chapter. Furthermore, the Commissioners may use the fund to reimburse the county for costs incurred by the county in the abatement of properties in violation of this chapter in the discretion of the Board of Commissioners. Collections deposited in this Fund shall not revert, but the Fund shall instead be perpetual until terminated by the terms of this Ordinance or by enactment of a subsequent ordinance or amendment. In the event the Unsafe Building Fund is terminated for any reason, the disposition of the fund balance, if any, shall be determined by the Board of Commissioners of DeKalb County.

SECTION 4: PENALTY.

Any person who violates a provision of this chapter shall incur a penalty which shall be part of the abatement costs and which may include the following at the discretion of the Code Compliance Official:

(A) The actual administrative costs incurred by DeKalb County, or its designee, in issuing the violation notice;

(B) The actual filing fees incurred in filing the ordinance violation in court plus the actual attorney fees up to what is capped by State Statute;

(C) The actual administrative and other costs incurred by DeKalb County in abating a public nuisance;

(D) The actual administrative costs of DeKalb County certifying the abatement costs to the County Auditor; and

(E) A fine, as follows:

(1) First violation: \$100 per day, per violation.

SECTION 5: SEVERABILITY.

- (A) If any provision or term of this ordinance, or any application thereof, is held invalid, the invalidity shall not affect other applications of the provisions or terms of this ordinance which reasonable accommodation can be given effect without the invalid provision or term or application thereof.
- (B) Notwithstanding any provisions of this ordinance, this ordinance shall not be construed to repeal any former ordinance as to any offense committed against such former ordinance or as to any act done, any penalty, forfeiture, or punishment so incurred or any right accrues or claim arising under the former ordinance.
- (C) This ordinance shall be in full effect from and after its passage by necessary approval procedures of the DeKalb County Board of Commissioners.

This ordinance is hereby passed and adopted this _____ day of _____ 2023 and shall be effective as of the execution of this ordinance.

DEKALB COUNTY COMMISSIONERS

William L. Hartman, President

Michael Watson, Vice President

Todd Sanderson, Vice President

ATTEST:

Susan Sleeper, DeKalb County Auditor

Prepared by: Chris Gaumer "I affirm under the penalties of perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law."