

**RESTATEMENT OF AND AMENDED ELKHART 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 Board of Commissioners of the County of Elkhart, Indiana is the County executive and 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 Elkhart County are unsightly, detrimental to property values, 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 Elkhart County;

WHEREAS, this Ordinance is a restatement and revision of Elkhart County Ordinance No. 2008-370;

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the County of Elkhart, Indiana, as follows:

Section 1. Title

This Ordinance and all ordinances supplemental or amendatory thereto shall be known as the "Elkhart 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 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. "County" shall mean and refer to the County of Elkhart, State of Indiana.

C. "Department" shall mean and refer to the Elkhart County Planning and Development Department.

D. "Director" shall mean and refer to the Elkhart County Plan Director and his or her Duly Authorized Representatives.

E. "Duly Authorized Representatives" shall mean and refer to all employees of the Elkhart County Planning and Development Department holding positions identified within the budget classifications for the Planning Division and Code Enforcement Division of the annual budget as approved and as amended by the Elkhart County Council from time to time.

F. "Hearing Officer" shall mean and refer to the hearing officer as appointed by the Elkhart County Plan Commission from time to time as the person to serve as the Hearing Authority for the purposes of conducting hearings in accordance with Indiana Code 36-7-9-7, as amended from time to time.

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 three (3) acres in size.

I. "Weeds and Other Rank Vegetation" shall mean and refer to any and all plant life exceeding a height of eight (8) inches. Landscaped areas and gardens containing trees, ornamental grasses, flowers, agricultural crops, bushes and shrubberies exceeding a height of eight (8) 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.

J. "Zoning Administrator" shall mean and refer to the Elkhart 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 Board of Commissioners of Elkhart County, Indiana 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 Elkhart 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 landowner shall have ten (10) business days from the date of service of such notice to abate the violation on such property. 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) 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.

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 Elkhart 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, 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 violation of this Ordinance has occurred, the Zoning Administrator may post at the subject property at the time of 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

A. A person receiving a notice of violation issued pursuant to this Ordinance or a bill issued pursuant to this Ordinance may request, in writing, a hearing before the Hearing Officer to dispute the existence of a violation on his or her real estate or dispute the accuracy of a bill issued. The request must be received by the Department within ten (10) business days of the date of service of the violation notice, or within ten (10) days of the date that the bill was served. A hearing will be held within thirty (30) days of the Department's receipt of a timely written request for such hearing.

B. At the hearing before the Hearing Officer, the person receiving a violation notice will be given the opportunity to appear, with or without counsel, to present such evidence to the Hearing Officer. Each person appearing shall have the opportunity to cross-examine those persons establishing the violation for the Department, and testify on their own behalf.

C. At the hearing, the Hearing Officer shall enter a finding determining whether the party notified is the owner of the real estate; and whether the condition of the real estate is in violation of this Ordinance or whether the bill issued is accurate. The Hearing Officer may affirm or modify the violation notice or the bill consistent with the Hearing Officer's findings.

D. Any appeal from the findings and order of the Hearing Officer shall be taken in accordance with the provisions of Indiana Code 36-1-6-9.

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) days after the landowner has been served with the statement. If the landowner fails to pay such amount within ten (10) 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 Elkhart County Auditor and the Elkhart 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 Elkhart 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. 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.

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. Suit for Civil Penalties. The Zoning Administrator, in the name of the Department, may file a complaint in a court of competent jurisdiction within Elkhart County seeking a judicial determination that this Ordinance has been violated and requesting the imposition of civil penalties.

E. Enforcement of Agreed Order. The Zoning Administrator, in the name of the Department, may file a complaint in a court of competent jurisdiction within Elkhart County seeking to enforce the terms of an agreed order.

F. 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 13. 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. 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.

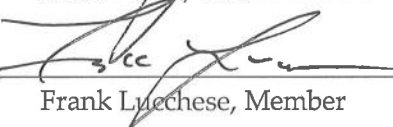
This Ordinance shall be in full force and effect from and after its passage and adoption by the Board of Commissioners of the County of Elkhart, Indiana and publication in accordance with the requirements of Indiana law.

ORDAINED AND ADOPTED this 6 day of May, 2013.

BOARD OF COMMISSIONERS OF THE
COUNTY OF ELKHART, INDIANA

By: 
Terry Rodino, President

By: 
Mike Yoder, Vice President

By: 
Frank Lucchese, Member

ATTEST:


Pauline Graff, Auditor