

TOWN COUNCIL OF KIRKLIN, INDIANA

ORDINANCE NO. 2024-7-6

AN ORDINANCE AMENDING AND RE-STATING ORDINANCE SECTION 92.05 OF THE KIRKLIN CODE OF ORDINANCES DECLARING WEEDS AND TALL GRASSES TO BE A NUISANCE AND PROVIDING FOR AND PAYING THE COST OF THE REMOVAL OF SAID WEEDS AND TALL GRASSES

WHEREAS, it is in the best interest of the citizens of the Town of Kirklín, Indiana (“Town”) that property owners keep and maintain their property in a safe and healthy manner; and

WHEREAS, it is in the best interest of the citizens of Kirklín that the Town prevents weeds and grasses from growing on a property owner’s property in a height exceeding eight (8) inches;

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Kirklín, Indiana that § 92.05 is amended and restated as follows:

§92.05 WEEDS, TALL GRASSES, AND DEBRIS.

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DEPARTMENT. The Town Police Department, which shall have the responsibility of administering this section.

ENFORCEMENT AUTHORITY. The Town Marshall of the Department authorized to enforce the removal of weeds, tall grasses, and rank vegetation, a duly appointed Deputy Town Marshall, or other designee of the Town Marshall.

HABITUALLY UNMAINTAINED PROPERTY. A parcel of land from which the Department has removed weeds or rank vegetation three (3) or more times in a calendar year.

HEARING AUTHORITY. The Ordinance Violations Bureau.

OWNER. The owner of record of real property, as found in the records of the County Auditor’s office.

OWNER’S ADDRESS. The most recently known or public records mailing address of the owner and that address to which the County Treasurer sends tax duplicates.

PERSON RESPONSIBLE. Owner, or a tenant or occupant of the premises who has in writing agreed to be responsible for cutting the weeds, tall grasses, or removal of the rank vegetation.

RANK VEGITATION. Any plant growth which is or may be harmful to the senses, health, or well-being of the citizens of the jurisdiction. The definition of rank vegetation does not include prairie land or agricultural crops such as hay and pasture.

TALL GRASSES. Any grasses which have grown to height in excess of eight (8) inches, except prairie and other agricultural grasses used for landscaping and ornamental purposes.

WEEDS. Any growth of vegetation other than trees, bushes, shrubs, ornamental plants, or agricultural plants cultivated in an orderly manner for the purpose of producing food. Notwithstanding the foregoing, trees, bushes, shrubs, or agricultural plants which have spouted as volunteers and are growing along fence lines and public rights-of-way shall be considered to be Weeds. The definition of Weeds does not include crops such as hay and pasture.

(B) Prohibitions.

(1) No Owner shall allow any growth of grass or Weeds in excess of eight (8) inches in height upon his or her property, except prairie and other ornamental grasses used for landscaping or ornamental purposes.

(2) No Owner shall allow the growth of Rank Vegetation upon his or her property.

(3) When a complaint alleging a violation of this section is received by the Department from any person, or through its own employees, the Department may seek court order to enter onto any occupied property and make an inspection if the Owner or other person in control of the property does not voluntarily give permission to enter the property to make the inspection. The search shall be limited to the places pertinent to the complaint or as outlined in the inspection warrant. No such administrative search warrant or other court approval shall be necessary if the inspection can be made from a public sidewalk, street, alley, other public place, adjoining property with that Owner's permission, or if the premises is abandoned.

(C) Notice of violation.

(1) The Department shall document any violation of this section and issue a notice to the Owner to cut the Weeds or Tall Grasses or cut or remove the Rank Vegetation within seven (7) calendar days. The notice becomes final seven (7) days after notice is given unless the Owner or another person holding a substantial property interest of public record requests a hearing, in writing, before the Hearing Authority and the written request is delivered to the Department before the end of the seven (7) day period. If a hearing is held, the Owner or other interested party may appeal the decision of the Hearing Authority to the Circuit or Superior Court of the county within

the time limits provided by I.C. § 36-7-9-8. If this matter is taken to a court, the Town may recover its costs and expenses, a fine, as well as any and all amounts allowed by law and this municipal code.

(2) For any property found to be in violation of section (B) above, the Department shall issue a notice to cut or remove Tall Grasses, Weeds, and/or Rank Vegetation to the Owner. The notice shall advise the Owner of the violation and advise them of the following:

- (a) He or she has seven (7) days to abate the violation;
- (b) The amount of the penalty if the violation is not abated within the seven (7) days;
- (c) If the violation is corrected by the Owner or other Person Responsible within seven (7) days, no further action will be taken and no penalty imposed;
- (d) The Owner or other Person Responsible shall correct the violation or request a hearing before the Hearing Authority within seven (7) days of the date of service;
- (e) The request for a hearing must be in writing, addressed to the Department, and delivered in person or by certified mail; and
- (f) If the violation is abated by the Department or its agent, the Owner will be liable in the sum of Three Hundred Dollars (\$300.00) for the cost incurred by the Department in abating the violation, the processing cost incurred by the Department in processing the matter, plus monetary penalty as outlined in § 92.99 for Owners who violate section (B) above.

(D) *Manner of service.*

(1) The notice to cut or remove Tall Grasses, Weeds, and/or Rank Vegetation shall be in writing and shall be served on the Owner of the property, and shall be delivered by personal service by an officer of the Town Police Department, sent by first class mail, or an equivalent service as permitted under I.C. § 1-1-7-1, to:

- (a) The Owner of real property with a single Owner; or
- (b) At least one of the Owners of real property with multiple Owners at the last address of the Owner for the property as indicated in the records of the County Auditor on the date of the notice.

(2) Any notices to be given hereunder by first class mail shall be deemed sufficiently given when placed in an envelope directed to the Owner at the Owner's Address and deposited in a United States Post Office mailbox, postage prepaid. If an initial notice of the

violation is provided by certified mail, first class mail, or equivalent service under section (D)(1) above, a continuous abatement notice may be posted at the property at the time of abatement. A continuous abatement notice serves as notice to the Owner that each subsequent violation during the same year for which the initial notice of the violation was provided may be abated by the municipality or county, or its contractors.

(E) *Abatement by Department.* If the violation has not been abated by the Owner as noticed, the Department shall enter the property and abate the violation utilizing the Town's own employees and equipment or a contractor engaged by the Department. When a violation of section (B) above is abated by action of the Department or its contractor, the Owner(s) of record at the time the notice to cut or remove Weeds, Tall Grasses, and/or Rank Vegetation was served is/are jointly and severally liable for the costs in abating the violation;

(1) A charge of Three Hundred Dollars (\$300.00) for work performed by the Department or the work accomplished by a contractor which sum gives consideration to the additional wear and damage to equipment used to abate Weeds, Tall Grasses, and/or Rank Vegetation, and which also includes the average processing expense that will be incurred by the Department in taking the technical, administrative, and legal actions concerning typical Weed and/or Rank Vegetation violations that are necessary for work to be performed by the Department or by a contractor. In determining the average processing expense, the following costs have been considered:

- (a) The cost of obtaining reliable information about identity and location of the Owner of the property;
- (b) The cost of preparing and mailing notices;
- (c) The salaries and fringe benefits of employees;
- (d) The prorated cost of motor vehicle operating costs for Department-owned vehicles or the cost of mileage for the use of employee's private vehicles;
- (e) The cost of supplies, equipment, and office space;
- (f) The expense incurred for the services of the Town Attorney.
- (g) The costs incurred in collecting unpaid billings.

(F) *Bill for costs incurred in abating the violation.*

(1) The Department shall issue a bill to the Owner for the costs incurred by the Department in bringing the property into compliance with this section, including administrative costs, monetary penalty, and abatement costs. The person to whom the bill is issued may appeal

that determination to the Hearing Authority within ten (10) days of receiving a bill. The only basis for appeal which the Hearing Authority may consider are:

(a) The work was not performed on the noticed property or was performed before the seven (7) days' required by section (C) above;

(b) The amount of charges is unreasonable based on the size of the property; or

(c) The Owner was not served legal notice of the violation. The Hearing Authority shall consider such appeals and may adjust or waive said costs as individual circumstances may warrant. The decision of the Hearing Authority may be appealed to the Circuit or Superior Court of the county according to law.

(2) If the Owner fails to pay such bill as issued or appeals as provided herein, the Department or the office of the Clerk-Treasurer shall, after thirty (30) days, certify to the County Auditor the amount of the bill, plus any additional administrative costs incurred in the certification. The Auditor shall place the total amount certified on the tax duplicate for the property affected, and the total amount, including any accrued interest, shall be collected as delinquent taxes are collected and shall be disbursed to the Municipal Fund from which such costs were made.

(G) *Statutory authority.*

(1) Authority of the Town to adopt procedures for the cut or removal of Weeds, Tall Grasses, and/or Rank Vegetation, see I.C. § 36-7-10.1 *et seq.*

(H) Money collected under this section shall be deposited in the General Fund.

(I) This section was in full force and effect from and after its passage by the Town Council and publication in accordance with I.C. § 36-4-6-14(b).
Penalty, see § 92.99

Enacted this 8th day of July, 2024.

TOWN COUNCIL
TOWN OF KIRKLIN, INDIANA

By: [Signature]
President

By: [Signature]
Member

By: [Signature]
Member

By: [Signature]
Member

By: _____
Member

ATTEST:

[Signature]
Town Clerk-Treasurer

