

TITLE IX: GENERAL REGULATIONS

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§ 90.01 POLICY.

It shall be the policy of the Town of Fortville to provide, within constitutional limitation, for fair housing throughout its corporate limits as provided for under the Federal Civil Rights Act of 1968, as amended, the Federal Housing and Community Development Act of 1974, as amended, and I.C. 22-9.5-1 *et seq.*

(Ord. 1994-9A, passed 9-13-94)

§ 90.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AGGRIEVED PERSON. Any person who:

(1) Claims to have been injured by a discriminatory housing practice; or

(2) Believes that such person will be injured by a discriminatory housing practice that is about to occur.

(I.C. 22-9.5-2-2)

COMMISSION. The Indiana Civil Rights Commission created pursuant to I.C. 22-9.5-4 *et seq.*
(I.C. 22-9.5-2-3)

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COMPLAINT. A written grievance filed with the Town of Fortville, either by a complainant or another party, which meets all the requirements of § 90.10(B) and (C).

COMPLAINANT. A person, including the Commission, who files a complaint under I.C. 22-9.5-6. (I.C. 22-9.5-2-4)

COVERED MULTI-FAMILY DWELLINGS. This term means:

- (1) Buildings consisting of four or more units if the buildings have one or more elevators;
- and
- (2) Ground-floor units in other buildings consisting of four or more units.

DISABILITY. With respect to a person:

- (1) A physical or mental impairment which substantially limits one or more of such person's major life activities;
- (2) A record of having such an impairment; or
- (3) An impairment described or defined pursuant to the Federal Americans with Disabilities Act of 1990;
- (4) Any other impairment defined under I.C. 22-9.5-2-10.
- (5) The term **DISABILITY** shall not include current illegal use of or addiction to a controlled substance, as defined in 21 USC 802 (I.C. 22-9.5-2-10(b)) or psychoactive substance use disorders resulting from current illegal use of drugs;
- (6) An individual shall not be considered handicapped or disabled solely on the basis of the following:
 - (a) Homosexuality;
 - (b) Bisexuality;
 - (c) Transvestism (I.C. 22-9-5-6(d)(3)), transsexualism, edophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments or other sexual behavior disorders; or
 - (d) Compulsive gambling, kleptomania or pyromania.

DWELLING. Any:

- (1) Building, structure or part of a building or structure that is occupied as, or designed or intended for occupancy as, a residence by one or more families; or

(2) Vacant land which is offered for sale or lease for the construction or location of a building, structure or part of a building or structure that is occupied as, or designed or intended for occupancy as, a residence by one or more families.

(I.C. 22-9.5-2-8)

FAMILIAL STATUS. Discrimination on the basis of familial status means discrimination because the person is (1) pregnant; (2) domiciled with an individual under the age of 18 years of age in regard to whom the person is (a) the parent or legal custodian; or (b) has the written permission of the parent or legal custodian for domicile with that person; or (3) in the process of obtaining legal custody of an individual younger than 18 years of age.

FAMILY. An individual (I.C. § 22-9.5-2-9) or individuals having familial status as that term is defined in this section.

OWNER. The person holding legal or equitable title to property or his or her legal representative.

OWNER OCCUPIED. Any individual who:

(1) Is a titleholder of record or contract purchaser of the real property in question, and, in addition;

(2) Continued to occupy and reside in the property as his or her principal dwelling place at the time the alleged discriminatory act occurs.

PERSON. Includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, non-incorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers and fiduciaries.

(I.C. 22-9.5-2-11)

TO RENT. To lease, to sublease, to let and otherwise to grant for a consideration the right to occupy the premises not owned by the occupant.

(I.C. 22-9.5-2-13)

(Ord. 1994-9A, passed 9-15-94)

§ 90.03 UNLAWFUL PRACTICE.

Subject to the provisions of division (B) of this section, § 90.09 and I.C. 22-9.5-3, the prohibitions against discrimination in the sale or rental of housing set forth in I.C. 22-9.5-5-1 and in § 90.04 shall apply to:

(A) All dwellings except as exempted by division (B) of this section and I.C. 22-9.5-3;

(B) Other than the provisions of division (C) of this section, nothing in § 90.04 shall apply to:

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(1) Any single-family house sold or rented by an owner where the private individual owner does not own more than three such single-family houses at any one time, provided that in the sale of such single-family house by a private individual owner not residing in the house at the time of sale or who was not the most recent resident of such house prior to the sale; the exemption shall apply only to one such sale within any 24-month period. The private individual owner may not own any interest in, nor have owned or reserved on his or her behalf, title to or any right to all or a portion of the proceeds from the sale or rental of three or more such single-family houses at any one time. The sale or rental of any such single-family house shall be excepted from application of this section only if such house is sold or rented:

(a) Without the use in any manner of the sales or rental facilities or services of any real estate broker, agent or salesperson or any person in the business of selling or renting dwellings or of any employee or agent of any such broker, agent or salesperson or person; and

(b) Without the publication, posting or mailing, after notice of advertisement or written notice in violation of § 90.04(C), but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstracters, title companies and other such professional assistance as necessary to perfect or transfer this title; or

(2) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his or her residence.

(C) For the purposes of division (B) of this section, a person shall be deemed to be in the business of selling or renting dwellings if:

(1) He or she has, within the preceding 12 months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein; or

(2) He or she has, within the preceding 12 months, participated as agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or

(3) He or she is the owner of any dwelling unit designed or intended for occupancy by, or occupied by, five or more families.

(Ord. 1994-9A, passed 9-15-94)

§ 90.04 DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING.

As made applicable by § 90.03 and except as exempted by § 90.03(B) or § 90.09, it shall be unlawful:

(A) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status or national origin;

(B) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status or national origin;

(C) To make, print or publish, or cause to be made, printed or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin or an intention to make any such preference, limitation or discrimination;

(D) To represent to any person because of race, color, religion, sex, handicap, familial status or national origin that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available;

(E) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or perspective entry into the neighborhood of a person or persons or a particular race, color, religion, sex, handicap, familial status or national origin;

(F) (1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of:

(a) That buyer or renter;

(b) A person residing in or intending to reside in that dwelling after it is so sold, rented or made available; or

(c) Any person with that person;

(2) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of:

(a) That buyer or renter;

(b) A person residing in or intending to reside in that dwelling after it is so sold, rented or made available; or

(c) Any person with that person.

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(3) For purposes of this division, *DISCRIMINATION* includes:

(a) A refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(b) A refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(c) In connection with the design and construction of covered multi-family dwellings for first occupancy after the date that is 30 months after September 13, 1988, a failure to design and construct those dwellings in such a manner that:

1. The public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

2. All doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

3. All premises within such dwellings contain the following features of adaptive design:

a. An accessible route into and through the dwelling;

b. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations;

c. Reinforcements in bathroom walls to allow later installation of grab bars; and

d. Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(4) Compliance with the appropriate requirements the Americans With Disabilities Act of 1990 and of the American National Standards Institute (ANSI) standards for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of (F)(3)(c)3.

(5) Nothing in this division requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.
(Ord. 1994-9A, passed 9-15-94)

§ 90.05 DISCRIMINATION IN RESIDENTIAL REAL ESTATE-RELATED TRANSACTIONS.

(A) It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status or national origin.

(B) As used in this section, the phrase *RESIDENTIAL REAL ESTATE-RELATED TRANSACTION* means any of the following:

- (1) The making or purchasing of loans or providing other financial assistance:
 - (a) For purchasing, constructing, improving, repairing or maintaining a dwelling; or
 - (b) Secured by residential real estate.
- (2) The selling, brokering or appraising of residential real property.

(C) Nothing in this chapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap or familial status.

(Ord. 1994-9A, passed 9-15-94) Penalty, see § 10.99

§ 90.06 DISCRIMINATION IN THE PROVISION OF BROKERAGE SERVICES.

It shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings or to discriminate against him or her in the terms or conditions of such access, membership or participation on account of race, color, religion, sex, handicap, familial status or national origin.

(Ord. 1994-9A, passed 9-15-94) Penalty, see § 10.99

§ 90.07 INTERFERENCE, COERCION OR INTIMIDATION.

It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of or on account of his or her having exercised or enjoyed or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by §§ 90.03 through 90.06.

(Ord. 1994-9A, passed 9-15-94) Penalty, see § 10.99

Fortville - General Regulations**§ 90.08 PREVENTION OF INTIMIDATION IN FAIR HOUSING CASES.**

Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with or attempts to injure, intimidate or interfere with:

(A) Any person because of his or her race, color, religion, sex, handicap, familial status or national origin and because he or she is or has been selling, purchasing, renting, financing, occupying or contracting or negotiating for the sale, purchase, renting, financing or occupation of any dwelling or applying for or participating in any service, organization or facility relating to the business of selling or renting dwellings; or

(B) Any person because he or she is or has been or in order to intimidate such person or any other person or any class of persons from:

(1) Participating, without discrimination on account of race, color, religion, sex, handicap, familial status or national origin in any of the activities, services, organizations or facilities described in division (A) of this section; or

(2) Affording another person or class of persons opportunity or protection so to participate;
or

(C) Any citizen because he or she is or has been or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex, handicap, familial status or national origin, in any of the activities, services, organizations or facilities described in division (A) of this section or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to participate shall be fined not more than \$1,000 or, if bodily injury, results shall be fined not more than \$2,500.
(Ord. 1994-9A, passed 9-15-94)

§ 90.09 EXEMPTIONS.

(A) Exemptions defined or set forth under I.C. 22-9.5-3 *et seq.* shall be exempt from the provisions of this chapter to include those activities or organizations set forth under divisions (B) and (C) of this section.

(B) Nothing in this chapter shall prohibit a religious organization, association or society or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to membership in such religion restricted on account of race, color or national origin. Nor shall anything in this chapter prohibit a private club not in fact open to the public, which has an incident to its primary purpose or purposes from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(C) (1) Nothing in this chapter regarding familial status shall apply with respect to housing for older persons.

(2) As used in this section, the phrase *HOUSING FOR OLDER PERSONS* means housing:

(a) Provided under any state or federal program that the Secretary of the Federal Department of Housing and Urban Development or the State Civil Rights Commission determines is specifically designed and operated to assist elderly persons (as defined in the state or federal program); or

(b) Intended for, and solely occupied by, persons 62 years of age or older; or

(c) Intended and operated for occupancy by at least one person 55 years of age or older per unit.

(3) Housing that includes units that are unoccupied or that are occupied by persons who do not meet the age requirement of divisions (B) or (C) does not fail to meet the requirements for housing older persons if:

(a) The unoccupied units are reserved for persons who meet the age requirements of divisions (B) or (C); or

(b) The occupants who do not meet the age requirements of divisions (B) or (C) have resided in the housing since September 13, 1988 or an earlier date, and the persons who become occupants after September 13, 1988 meet the age requirements of divisions (B) or (C).

(4) The Town of Fortville shall adopt rules under I.C. 4-22-2 to establish criteria for matching determinations under subsection (2). These rules must include at least the following provisions:

(a) Except as provided in the following subsection (b), the housing must provide significant facilities and services specifically designed to meet the physical or social needs of older persons;

(b) If the provision of the facilities and services described in subsection (a) is not practicable, the housing must be necessary to provide important housing opportunities for older persons.

(c) At least 80% of the units must be occupied by at least one person who is at least 55 years of age.

(d) The owner or manager of the housing must publish and adhere to provide housing for persons who are at least 55 years of age.

(Ord. 1994-9A, passed 9-15-94)

§ 90.10 ENFORCEMENT.

(A) The authority and responsibility for properly administering this chapter and referral of complaints hereunder to the Commission as set forth in division (B) of this section shall be vested in the chief executive officer of the Town of Fortville, Indiana.

(B) A complaint concerning an alleged discriminatory housing practice must be:

- (1) In writing;
- (2) Under oath; and
- (3) Addressed to the Town Manager of Fortville.

(C) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, whichever is later, file a complaint with the Commission (as delineated in division (D)) alleging the discriminatory housing practice.

(D) Notwithstanding the provisions of I.C. 22-9.5-4-8, the Town of Fortville, Indiana, because of a lack of financial and other resources necessary to fully administer enforcement proceedings and possible civil actions under this chapter, herein elects to refer all formal complaints of violation of the this chapter by complainants to the Indiana Civil Rights Commission (“Commission”) for administrative enforcement actions pursuant to I.C. 22-9.5-6; the chief elected officer of the Town of Fortville, Indiana, shall refer all the complaints to the Commission as provided for under division (A) of this section to the Commission for purposes of investigation, resolution and appropriate relief as provided for under I.C. 22-9.5-6.

(E) Not later than one year after an alleged discriminatory housing practice has occurred or terminated, whichever is later, the Commission may file the Commission’s own complaint.

(F) A complaint under this section may be amended at any time.

(G) When a complaint is filed under this section, the Town of Fortville shall do the following:

- (1) Give the aggrieved person notice that the complaint has been received;
- (2) Advise the aggrieved person of the time limit and choice of forums under this section;
- (3) The chief executive officer of the Town of Fortville, Indiana, or the chief executive officer’s designee, shall provide information on remedies available to any aggrieved person or complainant requesting such information;

(4) Not later than 20 days after filing of the complaint or the identification of an additional respondent under this section, serve on each respondent:

(a) A notice identifying the alleged discriminatory practice and advising the respondent of the procedural rights and obligations of a respondent under this section; and

(b) A copy of the original complaint.

(H) All executive departments and agencies of the Town of Fortville, Indiana, shall administer their departments, programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this chapter and shall cooperate with the chief executive officer and the Commission to further such purposes.

(Ord. 1994-9A, passed 9-15-94)

Section

- 91.01 Authority to operate
- 91.02 Reserved
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CHAPTER 91: PARKS AND RECREATION

§ 91.01 AUTHORITY TO OPERATE.

The town may establish, aid, maintain and operate public parks, playgrounds and recreation facilities and programs.

(¹87 Code, § 5-1)

Statutory reference:

Recreation facilities and programs, see I.C. 36-10-2-2

§ 91.02 RESERVED.

§ 91.03 ALCOHOLIC BEVERAGES PROHIBITED.

No person shall consume or possess alcoholic beverages in a town park.

(¹87 Code, § 5-12) (Ord. 1976-6D, passed 6-22-76; Am. Ord. 1993-1C, passed 2-9-93) Penalty, see § 10.99

§ 91.04 SPEED LIMITS.

No person driving a motor vehicle shall exceed the speed of 15 mph while traveling on Church Street in the Fortville Town Park.

(¹87 Code, § 5-13) (Ord. 1976-6D, passed 6-22-76) Penalty, see § 10.99

§ 91.05 PARK CLOSING TIME.

No person may enter a town park between 11:00 p.m. and sunrise without the permission of the Fortville Park and Recreation Board or the Town Manager.

(Am. Ord. 1993-1C, passed 2-9-93) Penalty, see § 10.99

§ 91.06 NO CAMPING.

No person may camp in a town park without the permission of the Fortville Park and Recreation Board or the Town Manager.

(Am. Ord. 1993-1C, passed 2-9-93) Penalty, see § 10.99

§ 91.07 DOMESTIC ANIMALS.

No person may permit a domestic animal in a town park unless the animal is on a leash.

(Am. Ord. 1993-1C, passed 2-9-93) Penalty, see § 10.99

§ 91.08 DANGEROUS WEAPONS.

No person may use a weapon that is dangerous to others within a town park.

(Am. Ord. 1993-1C, passed 2-9-93) Penalty, see § 10.99

§ 91.09 SHELTER HOUSE AND COMMUNITY CENTER RENTAL.

(A) The Town Council has acquired ownership of certain structures within the town including a structure referred to as the Shelter House and an additional structure referred to as the Community Center.

(B) The Town Council believes it is in the best interest of the health and safety and welfare of the citizens of the town that public access and use of said structures be made available for a fair and reasonable charge and under terms and conditions to be established by ordinance.

(C) The Town Council adopts the Facilities Rental Application, attached as Exhibit A to Ord. 2018-7A, incorporated herein by reference, as the official application form to rent a municipally owned facility, including the terms and conditions and rental rates included in the form.

(Ord. 2010-6B, passed 7-6-10; Am. Ord. 2018-7A, passed 8-6-2018)

Section

CHAPTER 92: ~~HEALTH AND SAFETY~~ *General Provisions*; NUISANCES

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*GENERAL PROVISIONS***§ 92.01 BURNING REGULATIONS; OPEN BURNING.**

(A) Only dry, easily combustible material that burns cleanly may be burned within the town limits and then only under the following conditions:

- (1) All burning must occur between the hours of 8:00 a.m. and 5:00 p.m.;
- (2) All burning, except for leaves, must be done in a container that is capable of being closed;
- (3) No burning may occur on paved streets or alleys;

(4) The burning of leaves that are not in a container must be supervised continuously until the fire is completely out.

(⁸⁷ Code, § 6-27) (Ord. 1984-11A, passed 11-13-84)

(B) No person shall openly burn any material, except that wood products may be burned under the following conditions:

- (1) Only between 8:00 a.m. and 5:00 p.m.;

(2) In a noncombustible container with enclosed sides, a bottom and a mesh covering with openings no larger than ¼ inch square;

- (3) Fires shall be attended at all times until completely extinguished;

(4) If fires create an air pollution problem, a nuisance or a fire hazard, they shall be extinguished;

(5) No burning shall be conducted during unfavorable meteorological conditions such as temperature inversions, high wind or air stagnation.

(C) Notwithstanding the provisions of divisions (A) and (B) above, easily combustible material that burns cleanly and wood products may be burned outside the confines of a noncombustible container for the sole purpose of maintaining a campfire and/or for cookout purposes on the specific conditions set forth below:

(1) That the area within which the material is to be burned shall not exceed 48 inches in diameter;

- (2) That the material to be burned shall not exceed a height of 24 inches at any time;

(3) That said fires shall be attended at all times until completely extinguished with no lingering smoke present;

(4) That no such burning shall be conducted during unfavorable meteorological conditions, such as temperature inversions, high winds or air stagnation;

(5) That such burning shall not be conducted after 11:00 p.m or prior to 8:00 a.m.
(Am. Ord. 1993-1C, passed 2-9-93; Am. Ord. 2009-9B, passed 10-19-09) Penalty, see § 92.99

§ 92.02 NOISE REGULATIONS.

(A) *Public nuisance declared.*

(1) The making and creation of loud, unnecessary or unusual noises of various kinds and by various kinds and by various means within the limits of this town have so increased as to constitute a public nuisance.

(2) The making, creation or maintenance of such loud, unnecessary, unnatural or unusual noises which are prolonged in their time, place and use, affect and are a detriment to public health, comfort, convenience, safety, welfare and prosperity of the residents of this town.

(3) The necessity in the public interest for the provisions and prohibitions hereinafter contained and ordained is declared, as a matter of legislative determination for this declaration of public policy, to be designed to secure and promote the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the inhabitants and visitors in this town.
(^87 Code, § 6-48)

(B) *Noise prohibited.* It shall be unlawful for any person to make, continue or cause to be made or continued any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the town. (^87 Code, § 6-49)
(Ord. passed 4-4-61) Penalty, see § 92.99

Statutory reference:

Authorizing a town to regulate noises, see I.C. 36-8-2-8

§ 92.03 CUTTING WEEDS AND RANK VEGETATION.

(A) No property owner may permit weeds or rank vegetation to grow to a height greater than six inches.

(B) The Town Manager or his or her designated representative shall notify any property owner in violation of division (A) of this section that he or she has five days after receipt of the notice to comply. Notice may be served by certified mail or the Town Marshal may personally serve the property owner or post the notice at the entranceway to the structure or property.

(C) If the property owner fails to comply within five days after service, the town may enter the property between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, and cut and remove weeds and rank vegetation by contract or with town employees and bill the property owner for the cost thereof, including administrative costs.

(D) The bill shall be served on the property owner in the same manner as the original notice and shall be paid by him or her to the Clerk-Treasurer within ten days after service. Upon failure to make timely payment, the Clerk-Treasurer shall certify to the Hancock County Auditor the amount of the bill and, pursuant to I.C. 36-7-10.1-4, request that such amount be placed on the tax duplicate of the affected property and be collected in the same manner as delinquent taxes.

(E) If the Town Manager or his or her designated representative shall serve a subsequent notice of violation, the property owner shall be deemed a repeat offender and the property will be maintained by contract or with town employees and bill the property owner for the cost thereof including administrative fees.

(F) A property owner may appeal a notice of violation under division (A) of this section within five days of receipt and may appeal the billing under divisions (C) and (D) within ten days of receipt. All appeals shall be to the Circuit, Superior or Superior II Courts of Hancock County.

(G) Weeds and rank vegetation include all plant life except:

(1) Trees;

(2) Bushes; and

(3) Flowers, vegetables, and ornamental grasses or plants that are cultivated and separated from other plant life.

(Ord. 1992-5A, passed 5-12-92; Am. Ord. 2002-6C, passed 6-25-02)

§ 92.04 VEHICLE EQUIPMENT VIOLATION.

It shall be a violation of this section to operate a vehicle with improper muffler or no muffler.
(Ord. 2014-4A, passed 4-21-14)

LITTER**§ 92.15 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ABANDONED AND/OR JUNK VEHICLES.

- (1) A vehicle located on public property illegally;
- (2) A vehicle left on public property continuously without being moved for three days;
- (3) A vehicle located on public property in such a manner as to constitute a hazard or obstruction to the movement of pedestrian or vehicular traffic on a public right-of-way;
- (4) A vehicle that has remained on private property without the consent of the property owner or person in control of the property without the consent of the property owners or persons in control of the property for more than 48 hours;
- (5) A vehicle from which there has been removed the engine, transmission, or differential or that is otherwise partially dismantled or inoperative and left on public property;
- (6) A vehicle that has been removed by a towing service or a public agency upon request of the Town Marshal and/or Deputy Town Marshals enforcing a statute or ordinance other than this chapter, if the vehicle once impounded is not claimed or deemed by the owner or his or her agent within 15 days of its removal; or
- (7) A vehicle that is six or more model years old and mechanically inoperable, and is left on private property continuously in a location visible from public property for more than 30 days.

AIRCRAFT. Any contrivance not known or hereafter invented, used or designed for navigation or for flight in the air, and includes but is not limited to helicopters and lighter-than-air dirigibles and balloons.

AUTHORIZED PRIVATE RECEPTACLE. A litter storage and collection receptacle as required and authorized in this subchapter.

COMMERCIAL HANDBILL. Any newspaper or similar publication containing substantial amounts of matter advertising articles or things for sale or any businesses or services for profit which newspaper or similar publication is in normal course distributed without charge and without subscription therefore by the recipients, and includes, but is not limited to, any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, booklet, paper or any other printed or otherwise reproduced original and copies of any matter or literature which:

- (1) Advertises for sale any merchandise, product, commodity or things;
- (2) Directs attention to any business or mercantile or commercial establishment or activity for the purpose of either directly or indirectly promoting the interest thereof by sales;
- (3) Directs attention to or advertises any meeting, theatrical performance, exhibition or event of any kind, for which an admission fee is charged for the purpose of profit; or
- (4) While containing reading matter other than advertising matter, is predominantly and essentially an advertisement and is distributed or circulated for advertising purposes or for private benefit and gain for any person so engaged as advertiser or distributor.

LITTER. Garbage, refuse, and rubbish and all other waste material which, if thrown or deposited in a manner prohibited by this subchapter, tends to create a danger to public health, safety and welfare or significantly reduces the aesthetic appearance of public or private property or the public right-of-way.

LITTER RECEPTACLE. A dumpster, trash can, trash bin, garbage can or similar container in which litter is deposited for removal.

NEWSPAPER. Any newspaper of general circulation as defined by general law, any newspaper duly entered with the Post Office Department of the United States, in accordance with the federal statute or regulation, any newspaper filed and recorded with any recording officer as provided by general law and includes but is not limited to any newspaper, periodical or current magazine regularly published and sold to the public by subscription.

NONCOMMERCIAL HANDBILL. Any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, newspaper, magazine, paper booklet or any other printed or otherwise reproduced original or copies of any matter of literature not included in the definitions of a commercial handbill.

PARK. A park, reservation, playground, recreation center or any other public area in the town owned or used by the town and devoted to recreation.

PERSON. Any person, firm, partnership, association, corporation, company or organization of any kind.

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PRIVATE PREMISES. Any dwelling, house, building, multi-family structure or other structure designed or used either wholly or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and includes but is not limited to any yard, grounds, walk, driveway, porch, steps, vestibule or mailbox belonging or appurtenant to such dwelling, house building or other structure.

PUBLIC PLACE. Any and all streets, sidewalks, boulevards, alleys or other public ways and any and all public parks, squares, spaces, grounds and buildings.

REFUSE. All putrescible and non-putrescible solid wastes except body wastes, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned, wrecked or junked vehicles or parts thereof and solid market and industrial wastes.

RIGHT-OF-WAY. The entire width between the boundary lines of every way publicly-maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

RUBBISH. Non-putrescible solid wastes consisting of both combustible and noncombustible wastes, such as paper, wrappings, cigarettes, cardboard, tin cans, yard clippings, leaves, metal, wood, glass, crockery, bedding and similar materials.

VEHICLE. Every device in, upon or by which any person or property is or may be transported or drawn upon a highway.
(Ord. 2002-5A, passed 5-28-02; Am. Ord. 2008-2A, passed 3-17-08)

§ 92.16 LITTER IN PUBLIC PLACES.

No person shall throw or deposit litter in or upon any street, sidewalk or other public place including freshwater streams, lakes, and ponds within the town except in public receptacles, or in authorized private receptacles for refuse, recycling or yard waste collection or leaf service or other town sponsored collection service.

(Ord. 2002-5A, passed 5-28-02) Penalty, see § 92.99

§ 92.17 PLACEMENT OF LITTER IN RECEPTACLES.

Persons placing litter in public receptacles or in authorized private receptacles shall do so in such a manner as to prevent it from being carried, or deposited by the elements upon any street, sidewalk or other public place or upon private property.

(Ord. 2002-5A, passed 5-28-02)

§ 92.18 DEPOSITING LITTER IN GUTTERS.

No person shall sweep into or deposit in any gutter, street or other public place within the town the accumulation of litter from any public or private sidewalk or driveway or any building or lot. Persons

owning or occupying property or places of business shall keep the sidewalk and parkway in front of their premises free of litter.

(Ord. 2002-5A, passed 5-28-02) Penalty, see § 92.99

§ 92.19 LITTER FROM A VEHICLE.

No person, while a driver or passenger in a vehicle, shall throw or deposit litter upon any street or other public place within the town, or upon private property.

(Ord. 2002-5A, passed 5-28-02) Penalty, see § 92.99

§ 92.20 LITTERING IN PARKS.

No person shall throw or deposit litter in any park within the town except in public receptacles and in such manner that the litter will be prevented from being carried or deposited by the elements upon any part of the park or upon any street or other public place. Where public receptacles are not provided, all litter shall be carried away from the park by the person responsible for its presence and properly disposed of elsewhere as provided in this subchapter or as prescribed by other sections of the town's codified ordinances.

(Ord. 2002-5A, passed 5-28-02) Penalty, see § 92.99

§ 92.21 HANDBILLS.

(A) *Deposit of commercial handbills on public property.* No person shall throw or deposit any commercial or noncommercial handbill in or upon any sidewalk, street or other public place within the town, nor shall any person hand out or distribute or sell any commercial handbill in any public place, but nothing in this section shall be deemed to prohibit any person from handing out or distributing on any sidewalk, street, or other public place within the town, without charge to the receiver thereof, any commercial handbill to any person willing to accept it.

(B) *Placing on vehicles.* No person shall throw or deposit any commercial or noncommercial handbill in or upon any vehicle, but it is not unlawful in any public place for a person to hand out or distribute without charge to the receiver thereof, a noncommercial handbill to any occupant of a vehicle who is willing to accept it.

(C) *Deposited on posted property.* No person shall throw, deposit or distribute any commercial or noncommercial handbill upon any private premises, if requested in writing by anyone thereon not to do so, or if there is placed on the premises in a conspicuous position near the entrance thereof, a sign bearing the words, "No Trespassing," "No Peddlers or Agents," "No Advertisement," or any similar notice, indicating in any manner that the occupants of said premises do not desire to have their right of privacy disturbed, or to have any handbill left upon such premises.

(D) *Depositing handbill at inhabited premises; mail and newspapers.* No person shall throw, deposit or distribute any commercial or noncommercial handbill in or upon private premises which are inhabited unless the handbill is so placed or deposited as to secure or prevent the handbill from being blown or

drifted about the premises or sidewalks, streets or other public places, and except that mailboxes may not be so used when so prohibited by federal postal law or regulations. The provisions of this section shall not apply to the distribution of mail by the United States nor of newspapers as defined by this subchapter.

(Ord. 2002-5A, passed 5-28-02) Penalty, see § 92.99

§ 92.22 DROPPING LITTER FROM AIRCRAFT.

No person in an aircraft shall throw out, drop or deposit within the town any litter, handbill or any other object.

(Ord. 2002-5A, passed 5-28-02) Penalty, see § 92.99

§ 92.23 DEPOSIT OF LITTER ON OCCUPIED PRIVATE PROPERTY.

No person shall throw or deposit litter on any occupied private property within the town, whether owned by such person or not, except that the owner or person in control of private property may maintain authorized private receptacles or collection in such a manner that litter will be prevented from being carried or deposited by the elements upon any street, sidewalk, or other public place or upon any private property.

(Ord. 2002-5A, passed 5-28-02) Penalty, see § 92.99

§ 92.24 MAINTENANCE OF LITTER-FREE PREMISES.

The owner or person in control of any private property shall at all times maintain the premises free of litter; but this section shall not prohibit the storage of litter in authorized private receptacles for collection, or within any building when not in violation of any health, fire, building code or other regulation, order, ordinance or statute.

(Ord. 2002-5A, passed 5-28-02)

§ 92.25 VACANT LOTS.

No person shall throw or deposit litter on any open or vacant private property within the town whether owned by such person or not. Vacant lots shall be kept free of litter at all times by the person responsible for the property.

(Ord. 2002-5A, passed 5-28-02) Penalty, see § 92.99

§ 92.26 RECEPTACLES.

(A) *Business establishments.* Every person owning, or managing, or having charge, control or occupancy of any real property in the town, who maintains a receptacle designated for their use, shall dispose of refuse in such a way that said receptacle shall not overflow and the refuse so deposited shall not circulate freely in the environment.

(B) *Sanitary conditions.* Every person owning, or managing, or having charge, control or occupancy of any real property in the town who maintain litter receptacles shall maintain such containers and receptacles in good condition. No receptacle may have ragged or sharp edges or any other defect liable to hamper or injure the person depositing or collecting the contents thereof. (Ord. 2002-5A, passed 5-28-02) Penalty, see § 92.99

§ 92.27 UNSIGHTLY PREMISES.

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

DANGEROUS DILAPIDATED OR UNSAFE STRUCTURES. Any building or structure, permanent or mobile, which by reason of age or condition, or any other reason, is unsightly, unsafe, dangerous or detrimental such that it poses a substantial risk to the health, safety or welfare of the citizens of the town.

DERELICT VEHICLE/VESSEL/EQUIPMENT/MACHINERY. A derelict vehicle, vessel, item of equipment or machinery refers to such items that is left on a property, with or without lawful authority, and appears to be disused or abandoned by reason of its age, appearance, mechanical condition, or, where required by law to be licensed or registered, lacks the same.

GARBAGE. Encompasses all terms such as trash, litter, rubbish, refuse (organic or inorganic), debris and waste material.

HEAVY TRASH. Any discarded matter which cannot be adequately placed or wrapped in commercially manufactured plastic garbage or trash bags because of its size or weight, and shall include but not necessarily limited to appliances, water heaters, furniture, mattresses, box springs, tires, bricks, concrete blocks, bicycles, lumber, furnace or air conditioning units, metal duct or pipe, large tree limbs, dismantled, disabled or abandoned automobiles, trailers, other vehicles, automotive, trailers, and other vehicle parts and all other items which are either too large or too heavy to be securely wrapped in bags as described above herein.

JUNK. Old, unsightly, or deteriorated material of any kind, including but not limited to, metals, cloth, paper, trash, garbage, glass, plastics, rubber, tires, waste, or wrecked, dismantled, disabled, junked or abandoned motor vehicles, trailers or other vehicles or any parts thereof.

NOXIOUS OR UNSIGHTLY WEEDS. Noxious or unsightly weeds shall mean any vegetation which, by reason of its nature, type, or failure to maintain, mow, trim or cultivate to unreasonable heights; or is unsightly, dangerous or detrimental such that it poses a substantial risk to the health, safety or welfare of the citizens of said town.

OWNER. Owner shall refer to the person holding title to a property subject to this section as reflected on the last recorded deed maintained by the Hancock County Recorder’s Office, and shall include a part owner, joint owner. In the case of the absence or incapacity of the title holder, the

definition includes: an executor, trustee or guardian, an agent, mortgagee having control or care of the land or building, and in the absence of proof of ownership, the person assessed for the property is considered as the owner.

PREMISES/PROPERTY. Includes any dwelling, house, building, multi-family structure or other structure, whether inhabited or whether temporarily or continuously uninhabited or vacant, and includes but is not limited to, any yard, grounds, walk, driveway, porch, steps, vestibule or mailbox belonging or appurtenant to such dwelling, house building, or structure.

RESPONSIBLE PARTY. Includes owner, landlord, lessee, renter, and/or occupant of premises.

UNSIGHTLY. Includes partially demolished, decayed, deteriorated or in a state of disrepair so as to be dangerous, unhealthy or substantially detract from the appearance of the immediate neighborhood or adjoining properties. Included in the definition is a broad list of conditions that could cause a property to be determined unsightly, such as property containing:

- (a) An excessive accumulation of ashes, junk, other rubbish or refuse;
- (b) The storage or accumulation of a derelict vehicle, vessel, or item of equipment or machinery, or bodies or parts of such items;
- (c) An excessive accumulation of wood shavings, paper, sawdust, dry and inflammable grass or weeds or other combustible materials;
- (d) An excessive accumulation of building material, unless the owner or occupier of the parcel is:
 1. In possession of a valid building permit in respect of the materials or it is stored in a closed building or structure such that the accumulation is not visible from another property or the road; or
 2. Taking part in active construction/repairs, which shall be subject to review by the town to ensure that the owner or occupier is continuing the construction/repairs in a timely manner;
- (e) The storage or accumulation of all or part of a vehicle, as defined in the Motor Vehicle Act, which is not validly registered and licensed in accordance with the Motor Vehicle Act or capable of movement under its own power, unless stored in a closed building or structure such that the vehicle, or any portion of the vehicle, is not visible from another property or the road;
- (f) An excessive accumulation of filth, discarded materials or rubbish of any kind, whether or not for commercial purposes or as part of a trade, including but not limited to dead animals, paper, glass, metal, plastics, wire, ropes, machinery, tires, appliances, and any other scrap or salvage; an excessive accumulation or deposit of discarded or fallen building materials, including the surface, covering, or coating of a building or structure, or the building or structure itself or part of it which is missing all or a portion of its surface, covering, or coating materials;

(g) The use of any premises, other than a parcel properly zoned for such use, for the storage, repair, cleaning, maintenance, or servicing of mechanical equipment including bulldozers, graders, backhoes, or other similar equipment;

(h) The presence of graffiti, whether in the form of pictures or words, on real property or on the surface of a premises located on the real property;

(i) An excessive accumulation of garbage not contained in a covered receptacle;

(j) A property, a building or structure that is in a ruinous or dilapidated condition;

(k) A property, a building or structure that the condition of which seriously depreciates the value of land or buildings in the vicinity;

(l) Property, a building or structure that is in such a state of non-repair as to be no longer suitable for human habitation or business purposes or which poses a substantial risk to the health and safety of the citizens of the town;

(m) Property, a building or structure that is an allurement to children who may play there to their danger;

(n) Property, a building or structure that is unsightly in relation to neighboring properties because the exterior finish of the building or structure is not maintained (e.g., missing or severely decayed/damaged cladding and/or veneer (brick, stone, siding));

(o) Property, a building or structure that is a fire hazard to itself or to surrounding lands or buildings;

(p) Property, a building or structure that has been excavated without installing a silt fence and a protective warning tape around the excavation area or had fill placed on it in a manner that results in a hazard; or

(q) Property, a building or structure that has for more than 14 calendar days had plywood or other boarding material secured to windows or doors. Notwithstanding this definition, in order to protect a building against unlawful entry or vandalism while it is vacant, an owner may secure the windows and doors of the building by the use of boarding as follows:

1. Windows shall be framed by two-inch by four-inch boards secured with plywood to the frame by using six, seven-inch lag bolts into king studs in all corners and in the center of the vertical boards. The plywood must be four-ply CDX sheathing or approved equivalent material, no less than one-half inch in thickness and attached by tamper proof screws no less than three inches in length. The screws must be type W for wood and type S for steel, and must be applied to a maximum of eight inches on center.

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2. Boarding of a vacant structure is to be considered a temporary and not a long-term method of securing the building. Any boards applied to secure doors and windows for more than 30 days must be surface coated with exterior grade paint so as to reduce the blighting effect on the immediate neighborhood.

3. After six months/ all plywood must be removed and replaced with secure doors or glazed windows.

(B) *Violation.* Every responsible party, as defined herein, owning, managing, having charge, having control or having occupancy of any real property, premises, lot or building in the town shall not allow such property, building or structure to accumulate junk, garbage, noxious or unsightly weeds; heavy equipment, a derelict vehicle, vessel, equipment or machinery, or otherwise permit such property to become dangerous, dilapidated or unsafe, or permit such property to become visibly unsightly from the street or from the adjoining premises.

(1) It shall be unlawful, and a violation of this section, for any responsible parties of any property, lot or parcel of real estate within the town to maintain thereon a dangerous, dilapidated or unsafe structure as defined herein.

(2) It shall be unlawful, and a violation of this section, for any responsible parties of any property, lot or parcel of real estate within the town, to maintain junk, garbage, noxious or unsightly weeds, or heavy trash, as defined herein, to be deposited on, grown on, or remain on any such lot or parcel of real estate, or permit the existence of any condition on such premises.

(3) It shall be unlawful, and a violation of this section, for any responsible parties of any property, lot or parcel of real estate within the town to allow any part of such property, visible from the street or adjoining premises to become unsightly.

(4) It shall be unlawful, and a violation of this section, to deposit and/or leave garbage (rubbish, refuse (organic or inorganic), debris or waste) material in a location or condition where it is exposed to, scattered by, and/or otherwise dispersed by the elements; also not located or stored in such a manner where it creates a cloud of particles, unsightly conditions or health hazards.

(5) It shall be unlawful, and a violation of this section, to maintain or leave a derelict vehicle, vessel, item of equipment or machinery on any property, lot or parcel of real estate within the town, visible from the street or adjoining premises.

(6) It shall be unlawful for any person to cast, place, or deposit any garbage or junk upon any premises not their own, unless given permission by the responsible party. It shall however be the responsible party's duty to ensure the property, premises, lot, building or structure complies with this section.

(7) The responsible parties shall be jointly and severally liable for any such violation(s).

(C) *Enforcement.*

(1) *General procedures.* There shall be a minimum of a three step procedure for the prosecution of violations of this chapter. Intermediate steps, including additional notices of violation and extensions of time limits for compliance may be used by the Town Manager at his/her sole and unlimited discretion. However, the general procedure for all violations shall follow the minimum steps set forth below. The minimum steps are as follows:

(a) *Notice of violation.* The Town Manager or her or his designee (hereafter, "Town Manager") shall issue a notice of violation to the person(s) committing, in whole or in part, a violation. The notice of violation is a warning to the violator(s) that a violation has been observed and that it must be corrected within a specified time frame from the date of the mailing.

(b) *Notice of penalty for violation.* The Town Manager shall issue a notice of penalty for violation to the person(s) committing, in whole or in part, a violation. The notice of penalty for violations is a citation that states the penalty for the violation. The notice of penalty for violation shall be mailed via certified mail, return receipt requested by the Town Manager. The person(s) in violation will have a specified number of days from the date of the mailing to pay all applicable penalty, and must correct the violation within the time period specified by the Town Manager or face additional penalty and/ or any other enforcement action authorized by this chapter.

(c) *Legal action.* If the person(s) in violation refuses to pay the penalty, attorney's fees, court costs, and/ or correct the violation within the time frame specified by the notice of penalty for violation, the Town Manager may refer the violation to the town's attorney in order to pursue court action through the Circuit of Superior Court of Hancock County. Additional penalty and liens against the property may also be pursued until the matter is resolved.

(2) *Monetary fines.* Monetary fines may be imposed at the discretion of the Town Manager by issuance of the notice of fines for violations as set forth above.

(a) *Multiple violations.* Each day a violation exists shall constitute a separate offense.

(b) *Fine amount.* Each separate offense shall be subject to a maximum fine specified by the adopted fee schedule assessed on a per day basis from the date of compliance requested by the Town Manager in the notice of violation.

1. In addition to any fine imposed, any person who initiates any activity that requires an improvement location permit without first obtaining such permit may be required to pay two times the normal amount of the permit fee as an additional fine, consistent with the adopted fee schedule.

2. The amount of any fine shall be as determined by the Town Manager.

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(c) *Payment.* The payment of any violation shall be by cash or cashier's check and shall be delivered to the Town Manager who shall forward the funds to the Clerk-Treasurer for deposit in the appropriate fund.

1. The Town Manager shall issue a receipt to the person making the payment.

2. The Town Manager may, at his/her discretion, waive the assessed fine for the timely correction of the violation.

(3) *Appeals.* Any person receiving a notice of violation and/or fine(s) for violation may appeal the violation and/or fine to the Circuit or Superior Court of Hancock County. Such person desiring to appeal the violation shall appear in person before the Town Clerk-Treasurer or submit a written statement denying the ordinance violation and requesting an appeal hearing shall be submitted to the Town Clerk-Treasurer at least three days prior to the date any fine and/or compliance is due.

(a) *Fines.* No additional fines shall accrue from the date of the appeal until the court has made a ruling as to the violation and/or fine.

(b) *Additional notices.* No additional notices will be issued by the Town Manager if the person(s) in violation has (have) submitted an appeal.

(4) *Legal remedies.* The Town Manager via the town's attorney may bring an action in the Circuit or Superior Court of Hancock County to invoke any legal, equitable, or special remedy, for the enforcement of any town ordinance or regulation.

(a) *Injunction.* The Town Manager may bring an action in the Circuit or Superior Court of Hancock County to enjoin a person(s) from violating this section.

(b) *Abatement of violation.* The Town Manager may also bring an action in the Circuit or Superior Court of the county for a mandatory injunction, directing the property owner to abate a violation of this section.

(c) *Responsibility for prosecution expenses.*

1. A defendant/respondent shall reimburse the town all expenses associated with the prosecution of a violation of any provision of this chapter, including but not limited to any fines, attorney's fees, photocopying charges, mileage, hours, or portions thereof, devoted to said prosecution by the Town Manager or any employee of the town and any other cost incurred directly or indirectly by any employee or elected official of the town related to said prosecution.

2. *Documentation.* Only those costs of enforcement that are documented by the Town Manager, and that have a relationship to the enforcement action shall be paid by the defendant/respondent.

(5) *Conflict with enforcement of county zoning ordinances.* Nothing in this section shall be construed to take the place of any Hancock County Ordinances governing the enforcement of Hancock

County Zoning Ordinances as applied to and enforced in the town. This enforcement procedures set forth in this section shall only apply to the enforcement of this § 92.27 of the Town Code.

(D) *Demolition.* Before the town can direct or authorize demolition of a building or structure for violation of this section, the following must occur:

(1) The owner must be given not less than ten days' notice of the time, date and place of a meeting at which a demolition order shall be considered.

(2) The owner must be given an opportunity to appear and be heard before any demolition order can be made.

(3) The town must make application to a court for a declaration that a property is dangerous and/or unsightly, and for an order specifying that the condition be remedied by demolition.

(4) Efforts to remedy the violation by lesser means shall have been exhausted or otherwise established as ineffective to remedy the violation.

(E) *Failure to abate.*

(1) If a responsible party of any lot or parcel of real estate shall fail and/or refuse to remove or abate such violation(s) after receiving notice for compliance, as provided in division (C) above, the Town Council shall have the authority to cause the same to be removed or otherwise abated.

(2) Where the Town Council does order a removal, the town by its officers, employees, contractors, or agents may enter on the property and effect the removal or clearance at the expense of the owner of record of the property. The cost of the removal is due and payable immediately.

(3) When the town has effected the removal or abatement of the violation, the Town Manager shall prepare a written and itemized statement showing the actual cost of the work performed and the same shall be billed to the property owner of record. The cost of the work shall include all administrative costs, including but not limited to providing notice and attorneys' fees, incurred by the town in regards to such violation(s) and shall be payable at the time of receiving statement of costs.

(4) When the full amount due is not paid by the owner within 30 days after the receipt of the billing statement, the Town Manager shall cause to be recorded in the County Recorder's Office a sworn statement showing the cost and expense incurred for the work, the date the work was done, and the location of the property on which the work was done.

(a) The recordation of such sworn statement shall constitute a lien and privilege on the property, and shall remain in full force and effect for the amount due on principal and interest, plus costs of court, if any, for collection, until final payment has been made.

(b) The costs and expenses shall be collected in the manner fixed by law for the collection of real estate taxes and further shall be subject to a delinquency penalty the same as real estate taxes in the event same is not paid in full on or before the date the tax bill on which the charges appear becomes delinquent.

(c) Sworn statements recorded in accordance with the provisions hereof shall be prima facie evidence that all legal formalities have been complied with and that the work has been done properly and satisfactorily, and shall be full notice to every person concerned of the property designated or described in the statement and that the same is due and collectible as provided by law.

(d) The Town Council may also pursue collection through any other lawful means, including court proceedings, if it so desires, if the full amount is not paid within 30 days. (Ord. 2002-5A, passed 5-28-02; Am. Ord. 2012-3B, passed 4-16-12; Am. Ord. 2017-5B, passed 6-5-17)

§ 92.28 ABATEMENT.

(A) *Generally.* All persons, firms, or corporations owning, leasing or occupying buildings, grounds, or lots are hereby required to remove rubbish, trash, weeds, or other accumulation of filth or debris which constitutes a hazard to the public health, safety and welfare, from buildings, grounds, lots, contiguous sidewalks, streets, and alleys.

(B) *Procedure.* Any person, whether as principle, manager, agent or employee of the owner, lessee or occupant of any building, grounds or lots who receive notice to abate from the Town Manager or his authorized representative will have five working days from the receipt of the notice to abate to abate litter as described in this section.

(C) *Copy of resolution to be served or published.* A copy of the notice to abate adopted under this subchapter may be served personally or at the usual place of residence of such owner, occupant or person in charge of such land or by registered mail, or in lieu of such service, may be published for two consecutive weeks in a newspaper of general circulation in the town.

(D) *Enforcement.* In case of failure or refusal to comply with any such notice of abatement, the work required thereby may be done at the expense of the town and the amount of money expended therefore shall be a valid claim against the owner, occupant or person in charge and a lien upon such land which may be enforced by suit in any court of competent jurisdiction. Proceedings under this division shall not relieve any party defendant from criminal prosecution or punishment for violation of any other criminal law or ordinance in force within the town.

(Ord. 2002-5A, passed 5-28-02)

*ABANDONED VEHICLES***§ 92.35 ABANDONED AND/OR JUNK VEHICLES EXPOSED TO THE PUBLIC.**

(A) The keeping, parking or storing of any wrecked, junked or abandoned vehicle or parts thereof, on private or public property, exposed to public view, except as provided in this subchapter, is hereby declared to be a nuisance.

(B) It shall be unlawful for any person to keep, park or store any wrecked junked or abandoned automobile or other vehicle, or parts thereof on public or private property within the town, not kept in a garage or other enclosure so as not to be exposed to public view, except as otherwise set forth herein.

(C) Any vehicle shall be deemed to be included in the terms of this subchapter if such vehicle does not have attached thereto a valid and current license plate, but, such license plate shall not be in the sole factor in determining the status of such vehicle.

(D) Nothing contained in this subsection shall be constructed to apply to any person, firm or corporation lawfully engaged in the junk business, the garage body shop or other vehicle repair business, auto sales business or other lawful business in a properly zoned area, in which automobiles or other vehicles are kept, stored or parked as an incident to the conducting of such business.

(E) For the purposes of this subchapter, the following definitions shall apply.

(1) A business organized for the purpose of scrap metal processing, automobile wrecking, or operating a junkyard.

(2) The Indiana Bureau of Motor Vehicles.

(3) A regular member of the Town Marshal's office of the Town of Fortville, Hancock County, Indiana.

(4) The last known record title holder of a vehicle, according to the records of the Indiana Bureau of Motor Vehicles, or any other comparable bureau or agency of any other state.

(5) Refers to all components of a vehicle that as assembled do not constitute a complete vehicle.

(6) An individual, firm, corporation, association, fiduciary, or governmental entity.

(7) All property other than public property.

(8) A public right-of-way, street, highway, alley, sidewalk, park, or other municipal property.

(9) A business that engages in moving, removing, storing and impounding disabled vehicles.

(10) An automobile, motorcycle, truck, trailer, semitrailer, tractor, bus, school bus, recreational vehicle, camper or motorized bicycle.

(11) A vehicle which can be seen from public property and includes vehicles which have been covered by a temporary covering that allows the form and outline of the vehicle to remain visible from public property.

(Ord. 2008-2A, passed 3-17-08)

§ 92.36 CITATION, REMOVAL, DISPOSAL OR ABANDONED VEHICLES.

(A) No person shall abandon a vehicle or parts on any public or private property.

(B) The owner of an abandoned vehicle or parts is responsible for the abandonment and is liable for all of the costs incidental to the removal, storage, and disposal of the vehicle or its parts.

(C) In accordance with I.C. 9-22-1-1, if, in the opinion of the Town Marshal and/or Deputy Town Marshals, the market value of an abandoned vehicle or parts is less than \$750, according to the Official Kelley Blue Book, the Town Marshal and/or Deputy Town Marshals shall attach thereto in a prominent place a citation containing the following information.

(1) The date, time, Town Marshal and/or Deputy Town Marshal's name, public agency, address, and telephone number to contact for information.

(2) The vehicle or parts is considered abandoned.

(3) The vehicle or parts will be removed after 72 hours.

(4) The owner will be held responsible for all costs incidental to removal, storage, and disposal, and if not paid the owner's registration privileges will be suspended on that car.

(5) The owner may avoid costs by removal of the vehicle or parts within 72 hours.

(D) If the tagged vehicle or parts, which, in the opinion of the Town Marshal and/or Deputy Town Marshals, has a market value of less than \$750, according to the Official Kelley Blue Book, is not removed within 72 hours the Town Marshal and/or Deputy Town Marshals shall, in accordance with I.C. 9-9-1.1-5 and I.C. 9-22-1-13:

(1) Prepare a written abandoned vehicle report of the vehicle or parts including information on the condition, missing parts, and other facts that substantiate that the market value is less than \$750, according to the Official Kelley Blue Book.

(2) Take photographs to illustrate the condition of the vehicle or parts.

(3) Immediately order the removal of the vehicle or parts to an automobile scrapyard or holding area.

(E) In accordance with I.C. 9-22-1-14, if, in the opinion of the Town Marshal and/or Deputy Town Marshals, the market value of an abandoned vehicle or parts is \$750 or more, according to the Official Kelley Blue Book, the Town Marshal and/or Deputy Town Marshals shall make reasonable effort to

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ascertain the owner or persons who may be in control of the vehicle or parts. Thereafter, the office shall attach to the vehicle or parts in a prominent place a citation containing the following information:

- (1) The date, time, Town Marshal and/or Deputy Town Marshal's name, public agency, address, and telephone number to contact for information.
- (2) The vehicle or parts is considered abandoned.
- (3) The vehicle or parts will be removed after 72 hours.
- (4) The owner will be held responsible for all costs incidental to removal, storage, and disposal, and if not paid the owner's registration privileges will be suspended on that car.
- (5) The owner may avoid costs by removal of the vehicle or parts within 72 hours.

(F) If the tagged vehicle or parts, which in the opinion of the Town Marshal and/or Deputy Town Marshals, has a market value of \$750 or more, according to the Official Kelley Blue Book, is not removed within the 72 hour period, the Town Marshal and/or Deputy Town Marshals shall in accordance with I.C. 9-22-1-14:

- (1) Take photographs to illustration the condition of the vehicle or parts and require the vehicle or parts to be moved to a storage area.

- (2) Immediately order the removal of the vehicle or parts to a storage area.

- (3) In accordance with I.C. 9-22-1-19, within 72 hours after the removal of an abandoned vehicle or parts to the storage area, the public agency or the towing operator shall prepare and forward to the Indiana Bureau of Motor Vehicles an abandoned vehicle report, including the make, model, if any, identification number and number of the license plate (and engine number if applicable), and request that the Indiana Bureau of Motor Vehicles advise the agency of the name and most recent mailing address of the owner and of any lien holder.

- (4) Upon receipt of the required information from the Indiana Bureau of Motor Vehicles, the public agency or the towing operator shall mail notice to the owner of any lien holder that the vehicle or parts have been impounded at a certain location, that the vehicle or parts must be claimed within 15 days of the date of the mailing notice, and that the vehicle or parts will be disposed of after that time. The notice shall also advise the owner that all costs incurred in removing and storing the vehicle or parts are the owners legal responsibility, all in accordance with I.C. 9-22-1-20(3)(B),

- (5) If the owner or lien holder appears to claim the vehicle before the 15 day time period, he shall be entitled to claim the impounded vehicle. The costs of the towing, storing and keeping of the impounded vehicle must be paid to the service holding the vehicle before the vehicle may be released. If the owner or lien holder does not appear within 15 days after the mailing of notice, the Indiana Bureau of Motor Vehicles shall sell the vehicle or parts to the highest bidder at a public sale conducted after notice under I.C. 5-3-1, except only one newspaper insertion one week before the public sale is required.

(6) If the vehicle is in such condition that the vehicle identification numbers or other means of identification are not available to determine the owner of record with the Indiana Bureau of Motor Vehicles, the vehicle may be disposed of without notice as permitted by I.C. 9-22-1-21.

(7) Upon complaint of a private property owner or persons in control of the property upon which a vehicle has been left for more than 48 hours without the consent of the owner or persons in control, the private property owner shall follow the procedure set forth in this subchapter.

(8) Neither the owner, lessee, or occupant of the property from which an abandoned vehicle is removed, unless they are the owner of the abandoned and/or junk vehicle, nor any public agency, towing service, or automobile scrapyard, is liable for any loss or damage to the vehicle or parts occurring during its remove, storage, or disposition.
(Ord. 2008-2A, passed 3-17-08) Penalty, see § 92.99

§ 92.37 VEHICLE ABANDONED ON RENTAL PROPERTY.

A person who finds a vehicle believed to be abandoned on the person's rental property shall do the following:

(A) Attach in a prominent place a notice tag containing the following information:

(1) The date, time, name, and address of the person who owns the rental property and a telephone number to contact for information.

(2) That the vehicle is considered to be abandoned.

(3) That the vehicle will be removed after 72 hours.

(4) That the person who owns the vehicle will be responsible for all cost incidental to the removal, storage, and disposal of the vehicle.

(5) That person who owns the vehicle may avoid costs by removal of the vehicle or parts within 72 hours.

(B) Contact the Indiana Bureau of Motor Vehicles to obtain the name and address of the person who owns the vehicle.

(C) Deliver by certified mail, a copy of the information contained in the notice required under division (A) above to the person who owns the vehicle.

(D) If after 72 hours the person who owns a vehicle believed to be abandoned on rental property has not remove the vehicle form the rental property, the person who owns the rental property may have the vehicle towed from the rental property. The person who owns the rental property shall give the towing operator a copy of the certified letter required under division (C) above as proof that notice of the towing has been given.

(Ord. 2008-2A, passed 3-17-08)

§ 92.38 EXEMPTIONS.

This subchapter does not apply to the following vehicles:

(A) A vehicle in operable condition specifically adapted or constructed for operation on privately-owned raceways.

(B) A vehicle stored as the property of a member of the armed forces of the United States who is on active duty assignment.

(C) A vehicle located on a designated vehicle sales lot or at a commercial servicing facility.

(D) A vehicle located upon property licensed or zoned as an automobile scrapyard.

(E) A vehicle registered and licensed under I.C. 9-18-12 as an antique motor vehicle.
(Ord. 2008-2A, passed 3-17-08)

§ 92.39 COST CHARGED TO ABANDONED VEHICLE ACCOUNT.

The cost for removal and storage of an abandoned vehicle or parts not claimed by owner or lien holder shall be paid from the Abandoned Vehicle Account. The charge payable by the owner or lien holder for towing, storage, or removing an abandoned vehicle or parts not exceed the limits established by ordinance from time to time.

(Ord. 2008-2A, passed 3-17-08)

§ 92.40 DISPOSITION OF PROCEEDS OF SALE.

The proceeds of sale of an abandoned vehicle or parts in accordance with this subchapter shall be credited against all cost incident to the removal, storage, and disposal of the vehicle.

(Ord. 2008-2A, passed 3-17-08)

§ 92.41 USE OF ABANDONED VEHICLE ACCOUNT.

All cost incurred by the public agency in administering this subchapter shall be paid from the Abandoned Vehicle Account. The Fortville Town Council shall annually appropriate sufficient monies to that account for the purpose of this subchapter. All monies remaining in the account at the end of each year remain in the account and do not revert to the general fund.

(Ord. 2008-2A, passed 3-17-08)

§ 92.42 CHARGES FOR TOWING, STORING OR REMOVING ABANDONED VEHICLES.

The following charges are established as maximum charges for towing, storing, or removing abandoned vehicles, and are payable by the owner or lien holder.

(A) The charge for towing the abandoned vehicle or parts shall not exceed \$125.

(B) The charge for removing abandoned vehicles or parts shall not exceed \$125.

(C) The charge for storing abandoned vehicles or abandoned parts shall not exceed \$25 per day of storage.

(Ord. 2008-2A, passed 3-17-08)

§ 92.99 PENALTY.

(A) Any person violating any provisions of this chapter will be subject to penalty as a violation of § 10.99.

(B) Each day such violation is committed or permitted to continue after the initial five working days to abate shall constitute a separate offense and shall be punishable as such.

(C) Any person violating any provision of §§ 92.35 through 92.42 shall, on conviction, be fined in any sum not less than \$10 nor more than \$100. In addition, any person violating the provision would also be responsible for any related court cost, reasonable attorney fees, and for the charges and costs of towing, storing or removing the subject vehicles.

(D) In addition to the remedies provided in § 92.27, any person violating the provisions of § 92.27 shall be subject to a penalty of \$100. In addition, there shall be an additional penalty of \$10 per day for each day of non-compliance after the period for compliance has expired, up to a maximum fine of \$2,500 payable to the Town of Fortville, Clerk. Such penalty shall bear interest at 18% a.p.r. from the due date.

(Ord. 2002-5A, passed 5-28-02; Am. Ord. 2008-2A, passed 3-17-08; Am. Ord. 2012-3B, passed 4-16-12)

Section

~~General Provisions~~
CHAPTER 93: ANIMALS

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GENERAL PROVISIONS

§ 93.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ABANDONMENT. The voluntary relinquishment of possession by the owner with the intention of his or her ownership, but without vesting possession in any other person. The failure to make adequate provisions of food, water and/or shelter shall be prima facie evidence of abandonment.

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ANIMAL CONTROL OFFICER. Any person who has been appointed as such by the City of Greenfield.

ANIMAL SHELTER - ANIMAL POUND. Any facility operated by a humane society or Greenfield city agency, or its authorized agents, or operated under contract or agreement with the Greenfield Board of Public Works for the purpose of impounding or caring for animals held under the authority of this chapter.

AT LARGE. Off the premises of the owner while not under the control of the owner or other person by leash, cord, chain or other device of actual physical restraint or under the control of the accompanying owner or other person who has the ability to control the dog by voice command.

BIRDS OF PREY. Members of the Accipitridae, Aquila, Haliaeetus, Falconiformes, Accipiter and Butco family.

DANGEROUS. Able or apt to harm.

EXOTIC. Any animal not naturally found in the State of Indiana.

IDENTIFIED COMPLAINT. A complaint in which the identity of the complainant is known to the Animal Control Officer and whose identity will not be made public but held confidential.

KENNEL, COMMERCIAL. Any facility wherein any person engages in the business of boarding, breeding, buying, letting for hire, training for a fee or selling dogs or cats.

NUISANCE. Any one or more of the following conditions:

(1) A condition which arises by a dog, cat or other animal chasing persons, bicycles, automobiles or other moving vehicles on the streets or sidewalks or any other public area of the city;

(2) A condition which arises by a dog, cat or other animal destroying, defacing or damaging shrubbery, lawns or flowers which results in the general nuisance of citizens in the neighborhood where such dog, cat or other animals are harbored;

(3) A condition which arises by a dog barking consistently so as to disturb the peace of the neighborhood;

(4) A condition which arises from the accumulation of animal excreta on the property of the owner, public or any other citizen so as to cause an obnoxious odor, create a situation which could draw or breed insects, attract vermin or cause a health nuisance;

(5) Any dog on which the tax has not been paid on and after the fifteenth day of June of each year.

OFFICIAL WARNING. A written notice or warning based upon an identified complaint and given to the owner of a dog, cat or other animal by the Animal Control Officer.

OWNER. Any person owning, keeping or harboring a dog, cat or other animal for a period of 48 hours or longer.

PET SHOP. Any person, partnership, corporation or any other business entity other than a licensed kennel, that buys or sells any species of animal.

REPTILE. Any member of a large group of air-breathing scaly vertebrates, including but not limited to snakes, alligators and turtles.

RUNNING IN PACK. Three or more dogs, cats or other animals at large together, which, by repeated or continual presence, constitute a physical danger to a neighborhood, livestock, personal or real property.

VICIOUS ANIMAL. Any animal that has been known to have bitten or otherwise physically molested or inflicted a personal injury upon a human being without provocation, or placed a human being in fear without provocation; an animal who promiscuously attacks other animals; or any animal otherwise defined in the Indiana Code.

WARM-BLOODED ANIMAL. Any animal that maintains a constant body temperature; all mammals, including dogs, cats and rabbits.
(Ord. 1997-7A, passed 7-15-97; Am. Ord. 2006-5B, passed 8-4-06)

§ 93.02 LICENSING.

[Intentionally omitted.]

(Ord. 1997-7A, passed 7-15-97; Am. Ord. 2012-5B, passed 6-4-12)

§ 93.03 RESTRAINT.

(A) *Animals at large.* It shall be unlawful for an owner or person having custody or control of an animal to allow such animal to repeatedly run at large throughout the town so as to create a public nuisance.

(B) *Enclosure of animal in heat.* All owners or persons having custody or control shall confine within a completely enclosed building or secure enclosure with no means of escape any dog, cat or other animal when in heat or rutting. However, an owner or person having custody or control of an animal in heat may walk the animal provided that person is with the animal at all times and the person controls the animal and prevents it from walking or running freely by using a leash that is no more than eight feet long. A person who intentionally or negligently allows an animal in heat to escape his or her control while walking the animal violates this provision.

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(C) *Possession of a vicious animal.* It is a violation of this chapter for anyone to own, possess, harbor, maintain or have custody or control over a vicious animal as defined in this chapter at any location within the Town of Fortville, Indiana, other than the Animal Control Officer for purposes of rabies control and/or for the protection of the general public.

(D) *Annoyance or disturbance created by animal.* It shall be unlawful for any person to keep or harbor within the town an animal that creates a nuisance or which by loud, frequent or habitual barking, howling or yelping causes annoyance or disturbance to the area within which said barking, howling or yelping may be heard.

(E) *Enclosure of suspected rabid animal.* All owners or person(s) having custody of such animal shall confine within a completely enclosed building or secure enclosure with no means of escape, or as otherwise directed by the County Health Department, any warm-blooded animal which has bitten, scratched or caused an abrasion of the skin of any human being, or any warm-blooded animal that is known or suspected of being rabid, in accordance with I.C. 15-17-5-11(2011) and 345 IAC 1-5.

(F) *Trespassing of animal and controller.* It shall be unlawful for any owner or person then having custody or control of any dog, cat or other animal to enter upon the private property of another person without consent.

(G) *Damage or injury to person or property.* It shall be unlawful for any owner or person having custody or control of any dog, cat or other animal to allow such dog, cat or other animal to scratch, bite or otherwise injure any person or other animal or to cause any damage or injury to the personal or real property of another person.

(H) *Keeping dangerous reptiles and animals.* It shall be unlawful for any person to keep, maintain or have in his or her possession, or under his or her control within the town, any such dangerous reptiles, exotic animals and birds of prey. It shall be unlawful for any person to display or walk about with any type of snake, birds of prey, dangerous reptiles and exotic animals in a public place. This provision shall not apply to reptiles, exotic animals or birds of prey which can be found and legally purchased in a local pet shop within the State of Indiana.

(Ord. 1997-7A, passed 7-15-97; Am. Ord. 2012-5B, passed 6-4-12) Penalty, see § 10.99

§ 93.04 ANIMAL CARE.

(A) *Provision of care.* No owner or person having custody of such animal shall fail to provide his or her animal with sufficient and wholesome food and water, protection from the weather and reasonable care, including veterinary treatment, as may be necessary to prevent suffering. This division shall also apply to animals kept at an animal shelter operated by Animal Control, Humane Society or by anyone in the town.

(B) *Non-commercial and commercial kennels.* The existence of more than four dogs and/or cats at a residence shall constitute a non-commercial kennel requiring the owner or person possessing said animals to obtain a non-commercial kennel license from the Animal Control Officer. It shall be unlawful for any person to keep or maintain a commercial kennel at a residence or in a residential area.

Commercial kennels as defined under § 93.01 are permitted in commercial or industrial districts per the Zoning Code governing the Town of Fortville, Indiana. The user fee for a commercial and non-commercial kennel is hereby established in the amount of \$100. Both commercial and non-commercial kennels must comply with Federal Register 9 CFR Part 2 February 15, 1991, Animal Welfare.

(C) *Ill treatment.* No person shall beat, cruelly ill-treat, torment, overload, overwork or otherwise abuse an animal, or cause, instigate or permit a dogfight, cockfight, bullfight or other combat between animals or between animals and humans.

(D) *Abandonment.* It shall be unlawful for any owner or person having custody of any dog, cat or other animal to abandon the same within the town.

(E) *Public disposal of poison liable to be possibly consumed by animals.* It shall be unlawful for any person to throw or deposit any poisonous substance in any area of the roads, parks, common yards or other places, whether public or private, within the town so that the same may possibly be consumed by any animal.

(F) *Removal of dead animals.* Any person who shall become apprized of the death of any dog, cat or other animal owned by him or her or under his or her control shall, immediately thereafter, cause the dog, cat or animal to be either properly buried (the entire body of the animal is at least two feet below the natural surface of the ground with every part of the animal's body covered by at least two feet of earth or other substance that may be used as cover) on the owner's premises within 24 hours of knowledge of the animal's death or shall call the animal shelter to remove the animal from the town. Should the animal be removed by the animal shelter and/or Animal Control Officer, the charge for the removal shall be \$2 for a cat, \$5 for a dog and \$5 for any other animal.

(G) *Removal of animal waste.* All animal waste on public property or the private property of others shall be immediately removed by the owner of the animal.
(Ord. 1997-7A, passed 7-15-97; Am. Ord. 2012-5B, passed 6-4-12)

§ 93.05 RABIES CONTROL.

All actions taken in connection with all animals suspected of suffering from rabies shall be in accordance with I.C. 15-17-6 (2011) and 345 IAC 1-5 (2011) and all acts amendatory or supplemental thereto.

(Ord. 1997-7A, passed 7-15-97; Am. Ord. 2012-5B, passed 6-4-12)

*REGULATIONS***§ 93.20 CERTAIN DOMESTIC ANIMALS PROHIBITED WITHIN INCORPORATED LIMITS.**

(A) *Prohibited.* It shall be illegal to own, board, keep or maintain one or more of the following animals within the legal boundaries of the town and further declares anyone violating this section shall be cited as maintaining a nuisance within said boundaries:

- (1) Cattle, including cows, bulls, steers, and calves;
- (2) Horses, including mares, stallions, geldings, and ponies;
- (3) Mules;
- (4) Donkeys or burros;
- (5) Sheep or lambs;
- (6) Goats;
- (7) Rabbits for the purpose of commercial sale for their meat or pelts;
- (8) Swine, including pigs, hogs, boars, sows, or piglets;
- (9) Poultry, including but not limited to chickens, turkeys, ducks, geese, guinea fowl, peafowl, pigeons and pheasants;
- (10) Exotic animal, being defined as a wild animal that is non-native to the state;
- (11) Wild animals, being defined as one that lives in the wild or is not domesticated;
- (12) An intended accumulation of bees;
- (13) Birds of prey, including but not limited to, members of the Accipitridae, Aquila, Haliaeetus, Falconiformes, Accipiter and Butco family, unless the same can be found and legally purchased at a local pet shop within the State of Indiana;
- (14) Reptiles, including but not limited to, snakes, alligators and turtles, or any other member of a large group of air-breathing, scaly vertebrates, unless the same can be found and legally purchased at a local pet shop within the State of Indiana; and
- (15) Any other animal kept, owned, maintained, or raised for the commercial purpose of selling it for meat, pelts, or other product.

(B) *Exceptions.*

(1) *Procedure for issuance.* Exceptions to these provisions may be issued by the Town Council.

(a) Persons wishing such expectations must submit to the Town Council a written application setting forth the reason such exception should be issued.

(b) The Town Council shall consider the request at its next regularly-scheduled public meeting, but not less than 30 days after request has been made.

(c) The party making the request for the exception shall provide written notice of the request at least five days before the public meeting at which the Town Council will consider the request to all property owners within 100 feet of the property for which the exception is being requested. The notice shall be by certified mail or personal service and include a description of the exception requested and the date of the Town Council meeting at which the request will be considered. The person making the request shall provide verification of this notice to the Town council at the hearing on the request for exception. The Town Council may either postpone the consideration of the request or deny it for failure to provide verification of notice in accordance with this division (B).

(d) The Town Council, by majority vote, may grant or deny an exception to any of the prohibitions against owning, boarding, keeping or maintaining an animal as otherwise prescribed herein. The Town Council shall issue a written finding of its decision stating that the request is denied or approved and include any limitations or conditions imposed by the Council.

(e) The Town Council shall consider the following factors in determining whether or not an exception should be issued:

1. The size of the applicant's lot;
2. The nature of the neighborhood and surrounding zoning;
3. The physical conditions and standard of care given the animals by the applicant;
4. The wishes and concerns of those owning property or living in the general vicinity of the applicant;
5. The length of time such exception would be applicable;
6. Whether the exception is mandated, necessary, or reasonable for medical, health, or religious reasons; and
7. Any other factor deemed relevant by the Town Council.

(f) If the Town Council denies the request, the Town Council shall not consider the request again sooner than 12 months after the date of the denial unless the person making the request can

demonstrate a significant and substantial change in circumstances which would warrant reconsideration of the request within the 12-month period.

(⁸⁷ Code, § 6-1) (Ord. 1984-4A, passed 4-10-84; Am. Ord. 2008-8B, passed 10-20-08; Am. Ord. 2012-5B, passed 6-4-12)

§ 93.21 NOISE.

No person may keep an animal which makes noise with sufficient loudness and frequency so as to be a nuisance to other persons.

(⁸⁷ Code, § 6-2) (Ord. 1984-4A, passed 4-10-84)

§ 93.22 ODOR.

No person may keep an animal on property where the sanitary conditions result in order or appearance that is so offensive as to be a nuisance to other persons.

(⁸⁷ Code, § 6-3) (Ord. 1984-4A, passed 4-10-84)

§ 93.23 ANIMALS WITHIN AGRICULTURAL DISTRICTS.

(A) *Intent.* It is the intent of the Town Council to clarify those ordinances of the Town of Fortville which are or appear to be inconsistent with respect to the permitted use of agricultural land for the keeping and raising of livestock. It is the further intent of the Town Council that no ordinance of the Town of Fortville prohibit the keeping and raising of livestock, including without limitation, horses and cattle, on any land within the town limits of the Town of Fortville zoned or otherwise legally used for agricultural purposes. (⁸⁷ Code, § 6-15)

(B) *Horse regulations.* Persons shall be permitted to keep, raise, ride or otherwise use horses upon any land within the town limits now or hereafter zoned Agricultural District (A) under the permanent zoning ordinance and Master Plan of this town. (⁸⁷ Code, § 6-16)

(C) *Livestock regulations.* No ordinance of the Town of Fortville shall prohibit or be construed to prohibit the keeping and raising of livestock upon any land within the town limits now or hereafter zoned Agricultural District (A) under the permanent zoning ordinance and Master Plan of this town.

(⁸⁷ Code, § 6-17)

(Ord. 1979-2D, passed 2-27-79)

ADMINISTRATION AND ENFORCEMENT**§ 93.35 IMPOUNDMENT.**

(A) *Establishment of pound or shelter.* The City of Greenfield has arranged for use of an animal pound or shelter, as provided in Indiana law.

(B) *Cause for impoundment.* Upon notification by the Town Manager, Fortville Police Department, or otherwise, the Animal Control Officer shall apprehend and impound in such animal shelter any dog, cat or any other animal found doing any of the following acts or being kept or maintained in any of the following conditions, unless provided herein:

(1) Running at large, not conforming to § 93.03(A);

(2) Not confined, as provided in § 93.03(B), (C) and (D);

(3) Kept in violation of § 93.03(A) and § 93.04(B);

(4) Abandoned, as provided in § 93.04(D);

(5) Entering private property causing injury to person or property in violation of § 93.03(F) and (G);

(6) Upon all identified, valid, written complaints, which specify the alleged violation of this chapter and made to the Animal Control Officer;

(7) Upon order of the court following a conviction of any person for violating any provision of this chapter.

(C) *Official warning in lieu of impoundment.* The provisions of the above, notwithstanding, in lieu of impounding any animal under division (B) above, the Animal Control Officer shall, whenever possible and under such circumstances as may warrant the same, first issue an official warning to the owner or person having custody of the dog, cat or other animal, and provide the owner with reasonable time and opportunity to remedy the violation.

(D) *Notification of impoundment.* Notification of the impoundment shall be made upon the owner or person having custody of such animal under the policies and procedures of the impounding agency.

(E) *Notification and redemption of impounded animal.* Whether any animal that has been impounded may not be redeemed or reclaimed is within the discretion of the Animal Control Officer.

(F) *Fees for redemption of impounded animal.* An owner or person having custody of an impounded dog, cat or other animal who has been notified that such dog, cat or other animal may be reclaimed or redeemed, may reclaim or redeem the same upon payment of the following fees and upon fulfillment of the following obligations:

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- (1) Any fees assessed by the impounding agency; and
- (2) Any fees assessed for violations of the town ordinances.

(G) *Policies and procedures of impounding agency to be followed.* Notwithstanding any other provisions of this chapter, no dog or cat or animal which has been impounded shall be released, except as set forth under the policies and procedures of the impounding agency.

(H) *Failure to reclaim or redeem impounded animal.* It shall be unlawful for an owner or person having custody of an impounded dog, cat or other animal who has been notified that such dog, cat or other animal may be reclaimed or redeemed to fail to reclaim or redeem the same on or before the last day of impoundment before the disposition of such dog, cat or other animal under division (I) of this section.

(I) *Impounded animal not registered, licensed, tagged or redeemed.* All dogs, cats or other animals impounded under this chapter and not registered, licensed, tagged and redeemed shall be disposed of in a humane manner, as set forth under the policies and procedures of the impounding agency.

(J) *Extermination of vicious animals.* Whenever the Animal Control Department shall find any dog, cat or other animal running in packs, vicious or in such condition as to be too dangerous to capture, then the Animal Control Officer is authorized to dispose of the animal where it may be found.

(K) *Prohibition of experimentation on impounded animals.* No impounded animal shall be sold or given to any person, procurer or agent for the purpose of experimentation.
(Ord. 1997-7A, passed 7-15-97; Am. Ord. 2012-5B, passed 6-4-12)

§ 93.36 ADOPTION RULES AND PROCEDURES.

(A) *Adoption.* Adoption restrictions are as follows:

- (1) Animals to be adopted must meet state requirements for vaccination and taxation;
- (2) Animals that have not been neutered will not be adopted until arrangements for neutering have been made;
- (3) Persons adopting give assurance that the animal will be kept on their property and not be allowed to run at large;
- (4) No animal will be adopted to a person convicted of cruelty to an animal or known to be a repeat offender of allowing an animal to run at large;
- (5) No adoption by a minor will be allowed;
- (6) Any person living in an apartment, mobile home or rental property must get consent from the owner before adoption;

(7) If at any time the new owner becomes unable to care for the animal, a new responsible owner must be found or the animal returned to the shelter;

(8) Injured or sick animals are not available for adoption;

(9) The person adopting acknowledges Animal Control personnel are not veterinarians and therefore cannot guarantee the health of adopted animals;

(10) All fees are nonrefundable;

(11) Any animal that is known to have bitten an individual will not be available for adoption; and

(12) Animal Control, the Town of Fortville and the City of Greenfield are not responsible for the actions of animals adopted out of the shelter.

(13) If the application is accepted, placement can take place as soon as fees and other required certification is completed. Animal Control reserves the right of refusal on any adoption. The applicant has the right of appeal to the Director of Animal Control within 24 hours of refusal.

(B) *Fees.*

(1) Fees for adoption are set by the City of Greenfield.

(2) Fees set forth in subsection (1) shall be paid to any participating veterinarian of the applicant's choice. The animal will be released when proof of receipt from a participating veterinarian has been shown.

(Ord. 1997-7A, passed 7-15-97)

§ 93.37 ENFORCEMENT.

(A) *Enforcement.* The Animal Control Officer and authorized members of this Department will have the full and unrestricted authority to enforce this chapter.

(B) *Interference with official.* It shall be a violation of this chapter to interfere with the Animal Control Officer or any Deputy Animal Control Officer in the performance of his or her duties thereunder which shall be punishable in accordance with division (G) of this section.

(C) *Record of impound animals.* The Animal Control Officer shall keep a record of all dogs, cats or other animals impounded in the Animal Shelter, which record shall show the date of impoundment, the reason thereof, name of the person bringing the animal to the pound and the kind, sex, color, breed and any identifying collars, tags, tattoos or marks of the animal impounded.

(D) *Official warning and notice of code violation.* Upon information sufficient to establish a violation of the provisions of this chapter, the Animal Control Officer or authorized deputy may issue

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to the person committing such violation, or to the owner or person having custody or control of any animal involved in such violation, either:

(1) An official warning stating the name of the person to whom the warning is being issued, the nature of the violation, the date of the violation and any other pertinent information concerning the violation. Such official warning shall also state that it is only a warning and is neither a notice of code violation nor a notice to appear to answer to any such violation; or

(2) A notice of code violation stating the name of the person to whom the notice is being issued, the nature of the violation, the fine imposed for such violation in accordance with division (E) of this section, the specific section of this chapter which has been violated and any other information which is pertinent to the violation and necessary for a thorough understanding of the circumstances surrounding such violation. Such violation notice shall instruct the person to whom the violation is being issued that he or she shall appear before the Fortville Ordinance Violations Bureau to answer to such violation.

(E) *Fines.*

(1) Any person who violates the provisions of this chapter within five business days of the date of the notice of the chapter violation, such violator shall pay a fine as follows:

<i>Violation Section/Subsection</i>	<i>Fine, as Provided by Ordinance First Offense, Second Offense, Subsequent Offenses</i>
93.03(A)	\$25, \$50, \$100
93.03(B)	\$25, \$50, \$100
93.03(C)	\$100, \$200, \$400
93.03(D)	\$25, \$50, \$100
93.03(E)	\$25, \$50, \$100
93.03(F)	\$25, \$50, \$100
93.03(G)	\$25, \$50, \$100
93.03(H)	\$25, \$50, \$100
93.04(A)	\$25, \$50, \$100
93.04(B)	\$25, \$50, \$100
93.04(C)	\$25, \$50, \$100
93.04(D)	\$25, \$50, \$100
93.04(E)	\$25, \$50, \$100
93.05	\$25, \$50, \$100
93.20	\$25, \$50, \$100
93.21	\$25, \$50, \$100
93.22	\$25, \$50, \$100
93.35(G)	\$25, \$50, \$100

(2) The fines will be collected by the Town Clerk-Treasurer and transferred to the General Fund.

(F) *Failure to pay fines.* If a violator fails to pay fines or appear at the Clerk-Treasurer's office within five business days of the date of notice of code violation, such violation may be filed with Hancock Superior Court II, and such violator may be summoned to appear before the court.

(G) *Penalties.* Any person found to be in violation of any provision of this chapter, other than the licensing provision of § 93.02 or the sections listed in division (E) of this section shall be fined an amount as determined by § 10.99. Each day a violation occurs shall be deemed a separate violation, unless otherwise provided by Indiana law.

(H) *Restitution.* In addition to the fines set forth herein, any person who violates the provisions of § 93.03(G) shall make full restitution for any damages or injury to persons or property as a result of such violation, including, but not limited to, medical expenses, the value of any real or personal property which has been destroyed or the cost of returning any damage to real or personal property. (Ord. 1997-7A, passed 7-15-97; Am. Ord. 2006-5B, passed 8-4-06; Am. Ord. 2012-5B, passed 6-4-12)

Section

CHAPTER 94. ~~General Provisions~~ STREETS AND SIDEWALKS

- 94.01 Street renumbering
- 94.02 Utility and Street Construction Standards
- 94.03 Location of utility structures

Sidewalk Regulations

- 94.15 Construction standards
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- 94.17 Signs and obstructions

Digging Regulations Along Streets and Alleys

- 94.30 Permit required
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Standards for Streets, Curbs and Gutters in New Subdivisions

- 94.45 Standards for streets in new subdivisions
- 94.46 Standard specifications for streets
- 94.47 Preparation of subgrade for street pavements
- 94.48 Rigid (plain concrete) pavement construction
- 94.49 Flexible pavement construction
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GENERAL PROVISIONS

§ 94.01 STREET RENUMBERING.

All of the streets in the Town of Fortville, Indiana, are renumbered and the renumbering of the streets shall be as contained on a plot now located in the office of the Clerk-Treasurer of the town, and the plot and instructions thereon are incorporated and made a part of this chapter.
(⁸⁷ Code, § 7-22) (Ord. 1953-, passed 7-14-53)

§ 94.02 UTILITY AND STREET CONSTRUCTION STANDARDS.

(A) There is hereby adopted the utility and street construction standards in the form attached to Ordinance 2016-10A, which may be from time to time amended by Town Council meeting in regular or special session. Any amendment to the construction standards shall be in writing and adopted by vote of a majority of the Town Council pursuant to written ordinance, which shall thereafter be incorporated into the written utility and construction standards following its adoption.

(B) The utility and street construction standards adopted pursuant to this section shall be the exclusive statement of construction standards of the town applying to the construction and changes made to and of streets and utilities.

(C) The utility and street construction standards apply to all persons or firms involved in the construction and/or repair and/or modification of streets and utilities under the jurisdiction of the town unless otherwise provided by applicable law.

(Ord. 2001-12B, passed 12-20-01; Ord. 2016-10A, passed 11-7-16)

§ 94.03 LOCATION OF UTILITY STRUCTURES.

(A) All new utility structures (e.g., utility poles, utility lines, cellular towers, etc.) proposed to be placed in a public right of way, or in an area along, under, upon, or across a street, highway, alley, or other public property within the town's corporate boundaries (collectively, "right-of-way") shall first receive approval by the town.

(B) Applications for placement of proposed utility structure(s) in right-of-way shall be submitted to the Town Manager no less than 30 days before the proposed construction or installation of the utility structure(s).

(C) The Town Manager shall review and approve or deny the application based on public safety, location of existing utility lines and structures, and compliance with the town's comprehensive plan and other development and utility standards adopted by the town. The Town Manager shall complete the review and issue an approval or denial of the application within 30 days of receiving the application.

(D) An applicant may appeal the denial of an application by notifying the Town Council, in writing, within 15 days of the Town Manager's denial. The Town Council shall notify the applicant of the date it will hear the appeal, which shall be at the first Town Council meeting following the receipt of the notice of appeal, if possible.

(E) The Town Manager may issue a stop work order and seek injunctive relief for failure to comply with this section.

(Ord. 2016-11B, passed 11-21-16)

SIDEWALK REGULATIONS

§ 94.15 CONSTRUCTION STANDARDS.

Hereafter all sidewalks being newly constructed or replaced shall meet the following standards:

- (A) They shall be made of concrete that is not less than 4,000 pound test strength;
- (B) They shall not be less than four inches thick and not less than four feet wide;
- (C) The top of the sidewalk shall not be more than four inches higher than the crown of the street;
- (D) They shall be sloped, but not more than one-half inch, from property to street;
- (E) No step-downs are permitted.

(^87 Code, § 7-10) (Ord. 1977-11A, passed 11-8-77)

§ 94.16 HIGHWAY SUPERINTENDENT’S RULE.

In special circumstances requiring special construction needs, the Highway Superintendent may grant a variance for one or more of the requirements set out in § 94.15.

(^87 Code, § 7-11) (Ord. 1977-11A, passed 11-8-77)

§ 94.17 SIGNS AND OBSTRUCTIONS.

It shall hereafter be unlawful for any person, firm or corporation to erect and operate signs and obstructions of any description on or along the sidewalks and curbs in the Town of Fortville, Indiana, without first obtaining the consent of the Town Council in regular session; exceptions are made of state, county and municipal signs pertaining to traffic and parking markers.

(^87 Code, § 7-12) (Ord. 1-1936, passed 7-1-36) Penalty, see § 10.99

DIGGING REGULATIONS ALONG STREETS AND ALLEYS

§ 94.30 PERMIT REQUIRED.

(A) *Driveway cut permits.* No person shall construct a driveway connecting to any road, street, or alley in the town without a permit from the Town Manager. No permit for the construction of a driveway

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onto a street for commercial or residential use, or the habitual use of any other than the owner or occupant of the premises served, shall be issued except after the approval of the plans by the Town Manager and the payment of \$250 fee for the permit.

(B) *Excavations in streets.*

(1) *Permit.* Any person wishing to make any cut into the pavement or into any other portion of any street, sidewalk, curb, right-of-way, or public place, or to excavate therein, or to excavate beneath the surface for the construction, alteration or repair of any driveway, sewer, sidewalk, or water line or other buried facility, or for the installation of any such work, shall obtain a permit from the Town Manager prior to beginning any such work.

(2) *Indemnity.* Any person performing any work described in this section and pursuant to a permit from the Town, shall agree to indemnify the town and any other party interested in such work or its performance against all claims, demands, actions, judgments, losses and expenses which may arise from any injuries to any person or damage to any property resulting from such work, or from any conditions created by such work in the street or any public place.

(3) *Deposit.*

(a) Every applicant for a permit shall post a cash deposit of \$200 or a bond in the amount of \$2,000 with the Town Clerk-Treasurer, which cash or bond will remain with the town until the completion and acceptance of the work performed.

(b) In the event that a cut in a street runs lengthwise on such street, the applicant wishing to proceed with such work shall be required to post a bond on the basis of \$20 per lineal foot; provided however that said bond shall be in an amount of not less than \$2,000.

(4) *Restoration of surface.* Said cash deposit shall be returned and/or the bond cancelled only after the completion of the work and inspection and approval by the Town Manager. Such approval shall be based on the requirement that the public property disturbed be replaced in as good or better condition that was its condition prior to the beginning of said work, and upon the further requirement that the work shall be in conformance with the stated conditions of the work permit. In the event that the public property has not been restored to a condition as good or better than it had existed prior to the beginning of the work, the town may keep sufficient of the cash deposit to perform the necessary repairs or may call upon the bonding company to perform such work.

(5) *Public utilities.* The following public utilities shall not be required to post bond or other surety pursuant to this section, but such public utilities shall notify the Town Manager prior to making any street or curb cut, and shall meet all other requirements of this section.

([^]87 Code, § 7-17) (Ord. 10-1930, passed 10-17-30; Am. Ord. 2014-4A, passed 4-21-14) Penalty, see § 10.99

§ 94.31 APPLICATION AND BOND REQUIREMENTS.

Before the Clerk-Treasurer of the town shall issue any such permit the person, firm or corporation desiring to dig in and along any of the streets or alleys of the Town of Fortville, Indiana, and for the purpose aforesaid shall apply to the Clerk-Treasurer in writing for such permit stating specifically in such application the nature of the work to be done, the location where the digging is to be done and approximately the time that will be required to do the work and shall file with the Clerk-Treasurer a bond with sufficient security thereon for the proper repairing or adjust any damages done to the street or alley occasioned by such digging, which bond shall be for the purpose of covering the cost of repairing such street or alley in case the person, firm or corporation securing such permit fails to do so. ('87 Code, § 7-18) (Ord. 10-1930, passed 10-17-30)

STANDARDS FOR STREETS, CURBS AND GUTTERS IN NEW SUBDIVISIONS**§ 94.45 STANDARDS FOR STREETS IN NEW SUBDIVISIONS.**

(A) Where local streets are designed to serve two and one-half dwelling units or less per acre of ground, the minimum width pavement, including curbs and gutters, shall be 27 feet measured back to back of curbs. Parking is permitted on one side only; add ten feet to permit parking on both sides.

(B) Where local streets are designed to serve for more than two and one-half dwelling units per acre of ground, the minimum width of pavement, including curbs and gutters, shall be 30 feet measured back to back of curbs. Parking is permitted on one side only; add ten feet to permit parking on both sides.

(C) Rolled curbs and gutters shall be required for all streets unless a waiver is granted by the Town of Fortville.

(D) Sidewalks are required and will be constructed of plain concrete, four inches thick, with four-foot minimum width and located as shown on typical local street section, as depicted in Exhibit A to the ordinance set forth in this section and made a part hereof, copies of which are kept on file in the office of the Clerk-Treasurer.

(E) The width of street requirement as set out in this section may be reduced upon the recommendation of the Street Superintendent and approval by the Town Council.
('87 Code, § 7-25) (Ord. 1978-8A, passed 8-8-78; Ord. 1979-4A, passed 4-10-79)

§ 94.46 STANDARD SPECIFICATIONS FOR STREETS.

Minimum requirements for street construction shall be in accordance with Standard Specifications of the State Highway Commission of Indiana, 1974 Edition, or subsequent superseding editions,

thereafter referred to as the “Standard Specifications,” unless otherwise required by the article. Copies of said “Standard Specifications” are on file in the office of the Utility Superintendent.

(⁸⁷ Code, § 7-26) (Ord. 1979-4A, passed 4-10-79)

§ 94.47 PREPARATION OF SUBGRADE FOR STREET PAVEMENTS.

(A) After all earth work is substantially complete and all drains installed, the subgrade shall be brought to the lies and grades shown on the plans or as may be otherwise approved in accordance with these standards. Such portions shall be known as subgrades.

(B) Unless otherwise provided, the upper six inches of all subgrade shall be uniformly compacted to at least 95% standard density as determined by the provisions of AASHO, T99, (American Association State Highway Offices), “Compaction and Density of Soils.” A six-inch subgrade fill next to concrete shall be two-inch stone or its equal, then rolled with not less than a ten-ton roller. During

subgrade preparation and after its completion, adequate drainage shall be provided at all times to prevent water from standing on the subgrade. Subgrades shall be so constructed that it will have as nearly as possible uniform density throughout. After compaction and final grading, the subgrade shall be finished with a three-wheel roller weighing not less than ten tons. At areas not accessible to the roller, the required compaction shall be obtained with mechanical tamps and vibrators. All soft yielding or otherwise unsuitable material which will not compact properly shall be removed. All rock encountered shall either be removed or broken off to conform with the required cross section. Any holes or depressions resulting from the removal of such unsuitable material shall be filled with satisfactory material and compacted to conform with the surrounding subgrade surface. No placement of pavement shall be permitted on uninspected or unapproved subgrade and at no time when the subgrade is frozen or muddy. No hauling shall be done nor equipment moved over the subgrade when its condition is such that undue distortion results. If these conditions are present, the subgrade shall be protected with adequate plant runways, mats or other satisfactory means if hauling is done thereon. The subgrade shall be prepared sufficiently in advance to permit proper inspection so that the final elevation may be checked with a scratch template and compaction checked. All utility excavations under the pavement shall be backfilled with Grade "B" borrow, and construction shall conform to Section 211 of the "Standard Specifications" or compacted thoroughly by other means.

(87 Code, § 7-27) (Ord. 1979-4A, passed 4-10-79; Ord. 1978-8A, passed 8-8-78)

§ 94.48 RIGID (PLAIN CONCRETE) PAVEMENT CONSTRUCTION.

(A) At the time of placement of the concrete, the subgrade shall be properly dampened just prior to the placement where it has become dry, where the surface has been removed by final grading or for any other reason it has not been removed by final grading or for any other reason it has not been properly dampened. Plain cement pavement shall be in accordance with Section 501 of the "Standard Specifications" or any subsequent amendments thereto.

(B) Materials shall comply with requirements of the "Standard Specifications." Minimum cement content shall be 6.0 bags per cubic yards of concrete mixture. No cement reduction below the minimum shall be allowed for mixtures to increase workability or control setting time. Concrete pavement is to be six inches in thickness. Concrete is to be mixed with air entrained cement of at least 6% air. Center of street bulkheads is to be keywayed by 2-inch x 4-inch keyway in center of form. Construction joints are to be doweled by one inch bars 14" long every two feet. (At all bulkheads where pour ends and starts again. Concrete shall be finished by machine or vibratory screed except on widened portions, intersections or other places where hand-finishing will be permitted.)

(C) Weakened plane or dummy, transverse, contraction joints shall be placed not to exceed 20-foot spacing. Closer spacing to average 15 feet will be encouraged. Transverse contraction joints may either be formed or sawed dummy groove, ribbon or pro-molded strip type and shall be one-fourth the pavement depth.

(D) When transverse joints are to be formed by sawing, care must be taken to saw the grooves soon after placing the concrete to prevent the formation of cracks due to contraction of the slab. All transverse joints shall be sawed within eight hours after the placing of the concrete unless authorization is given

for sawing at a later time. One of the above-named joints shall be placed at every catch basin and manhole in line of pavement. The location of manholes and the like in the pavement shall determine the exact location of the joints. All joints shall extend throughout curbs to full width of pavement.

(E) Transverse expansion joints shall be placed at Tee intersections and wherever else shown on the plans.

(F) Whenever the width between forms of the pavement under construction is greater than 13½ feet, longitudinal joints shall be constructed so as to divide the pavement into strips not to exceed 13½ feet each. This may be accomplished by sawing or constructing a slot or groove as herein described for dummy construction joints or by a deformed key plate installed prior to the depositing of the concrete.

(G) Curing with white membrane curing compound AASHTO Number type 2 - M - 14B will be properly applied to give complete coverage.

(`87 Code, § 7-28) (Ord. 1978-8A, passed 8-8-78; Ord. 1979-4A, passed 4-10-79)

§ 94.49 FLEXIBLE PAVEMENT CONSTRUCTION.

(A) Pavement shall be constructed in accordance with the requirements of Section 401 of the "Standard Specifications." Pavement shall be full-depth hot asphaltic concrete unless otherwise approved by the Town Council on the recommendation of the Utility Superintendent.

(B) Where the Town Council allows collector streets or local streets to be constructed with compacted aggregate base, the base shall be placed on the prepared subgrade, compacted, primed and covered with binder before being contaminated by construction traffic.

(C) Materials and construction procedures shall comply with the requirements of Sections 303 and 403 of the "Standard Specifications."

(`87 Code, § 7-29) (Ord. 1978-8A, passed 8-8-78)

§ 94.50 ADDITIONAL REGULATIONS.

(A) Material shall comply with the requirements for Class A concrete of the "Standard Specifications."

(B) Slipforming will be permissible.

(`87 Code, § 7-30) (Ord. 1978-8A, passed 8-8-78)

Section

		CHAPTER 95: TREES
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§ 95.01 TITLE.

This chapter shall be known as the “Town of Fortville Tree and Flora Ordinance.”
(Ord. 2002-7A, passed 9-24-02)

§ 95.02 PURPOSE AND INTENT.

(A) This chapter establishes policies, regulations, and standards necessary to ensure that the town will continue to realize the benefits provided by its trees and plants.

(B) The provisions of this chapter are enacted to regulate the planting, maintenance, protection and removal of trees and shrubs on public streets, parks and other town-owned property. It shall also provide for the issuing of permits for the planting, maintenance, protection and removal of trees and shrubs in town-owned areas.

(Ord. 2002-7A, passed 9-24-02)

§ 95.03 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CONSULTING ARBORIST. An individual who is trained and certified by the International Society of Arboriculture, in the art and science of planting, caring for and maintaining individual trees and forests.

FLORA. Any and all trees, shrubbery and other plants, which grow to a height of greater than 12 inches, but excludes weeds.

OWNER(S). Any one or more of the following:

- (1) In fee simple of a parcel of real estate, including the life tenant(s).
- (2) As reflected by the most current records in the town assessor's office.
- (3) The purchaser(s) of such real estate under any contract for the conditional sale thereof.

PLANTS. All trees, shrubbery and other plants that grow to a height of greater than 12 inches, but excludes weeds.

SHRUBS. Any woody, perennial plant with multiple stems that grows to a height of less than ten feet. This may include ornamental grasses.

TOPPING. The indiscriminate cutting back of tree branches to stubs or lateral branches that are not large enough to assume the terminal role. Other names for topping include "heading," "tipping," "hat-racking," and "rounding over."

TREE. Any woody, perennial plant and includes those having a single stem or multiple stems that grows to a height of over ten feet.

(Ord. 2002-7A, passed 9-24-02)

§ 95.04 JURISDICTION.

The town shall have control of all trees, shrubs, and other plantings now or hereafter in any street, park, public right-of-way or easement, or other public place within the town limits, and shall have the power to plant, maintain, remove, and replace such trees, shrubs and other plantings.
(Ord. 2002-7A, passed 9-24-02)

§ 95.05 TREE PROGRAM SUPERVISOR.

The Street and Utilities Superintendent shall be established as the Tree Program Supervisor. The Tree Program Supervisor shall assist in the management of the natural resources within the town by enforcement of the sections within this chapter and evaluation of the overall tree management program.
(Ord. 2002-7A, passed 9-24-02)

§ 95.06 APPEALS.

Any action of the Tree Program Supervisor and/or Park Superintendent may be appealed to and heard by the Town Council. To be effective, an appeal must be filed within ten days after the decision of the Tree Program Supervisor and/or Park Superintendent. The appeal shall be in writing and shall be filed with the President of the Town Council for placement on the Council's agenda. The appeal shall clearly specify the reasons for which a hearing is requested. To be effective, an appeal to the Town Council must be in writing, state the reasons for the appeal, and must be filed with the Town Clerk within ten days after notice of the decision of Tree Program Supervisor and/or Park Superintendent is mailed to the applicant. The decision of the Town Council shall be final.
(Ord. 2002-7A, passed 9-24-02)

§ 95.07 ENFORCEMENT.

The Tree Program Supervisor, under the auspices of the Town Council and the Town Manager is hereby charged with the responsibility for the enforcement of this chapter and may serve notice to any person in violation thereof or institute legal proceedings as may be required, and the Town Legal Counsel is hereby authorized to institute appropriate proceedings to that end.
(Ord. 2002-7A, passed 9-24-02)

§ 95.08 PERFORMANCE EVALUATION.

The Tree Program Supervisor shall collect and maintain all records and data necessary to objectively evaluate whether progress is being made toward the stated goals of this chapter. An annual summary and, analysis of the evaluation, and recommendations for action shall be prepared at the direction of the Tree Program Supervisor and the consulting arborist and presented to the Town

Council. The Town Council shall consider the report and recommendations and take all actions deemed necessary to accomplish the goals of this chapter. These actions may include, but are not limited to, revision or amendment of this chapter or the adoption of other resolutions or ordinances.

(Ord. 2002-7A, passed 9-24-02)

§ 95.09 LOCAL GOVERNMENT DISCLAIMS LIABILITY.

Nothing contained in this chapter shall be deemed to impose any liability upon the town, its officers or employees, nor to relieve the owner of any private property from the duty to keep any tree, shrub or plant upon any street tree area on his or her property or under his or her control in such condition as to prevent it from constituting a hazard or an impediment to travel or vision upon any street, park, pleasure ground, boulevard, alley or public place within the town.

(Ord. 2002-7A, passed 9-24-02)

§ 95.10 RESPONSIBILITY OF PROPERTY OWNERS.

It shall be the duty and responsibility of every person owning or occupying any real property within the town to keep all trees and plants on that property trimmed in such a manner that there is a clearance of at least 14 feet above any street or alley, and a clearance of at least seven feet over any sidewalk. It shall also be the duty and responsibility of every person owning or occupying any real property within the town to keep all trees on that property trimmed in such a manner that they do not obstruct the view of any traffic sign or device for vehicle traffic in the direction controlled by that traffic sign or device.

(Ord. 2002-7A, passed 9-24-02)

§ 95.11 TOPPING PROHIBITED.

The practice of topping and/or other especially destructive maintenance practices such as severely trimming trees in public trees is strictly forbidden. "Severely trimmed" shall mean the cutting of the branches and/or trunk of a tree in a manner which will substantially reduce the overall size of the tree area so as to destroy the existing symmetrical appearance or natural shape of the tree in a manner which

results in the removal of main lateral branches leaving the trunk of the tree in a stub appearances. The standards identified in the ANSI A300 standards describe trimming methods, which will give maximum benefits to both trees and people. These specifications and methods are available from the Tree Program Supervisor.

(Ord. 2002-7A, passed 9-24-02) Penalty, see § 95.99

§ 95.12 ACTION ON FAILURE TO ABATE.

If upon re-inspection of the offending real estate, and, where notice has been given by publication, after the lapse of the ten-day notice period, it is determined by the Tree Program Supervisor that

abatement has not occurred, and shall be allowed to enter upon such private property or right-of-way and proceed with corrective action.

(Ord. 2002-7A, passed 9-24-02)

§ 95.13 PROCEDURAL AND LABOR CHARGES.

Services rendered in the enforcement of this chapter to any owners(s) shall pay to the town the following fees and charges:

(A) Fifty dollars for each inspection to determine compliance.

(B) Twenty-five dollars for property ownership determination.

(C) All costs for notice publication.

(D) Twenty dollars for services performed in perfecting a lien.

(E) Ten dollars for certified mail preparation and sending.

(F) Forty dollars per man-hour plus equipment charges, as determined by the Tree Program Supervisor, for services rendered in violation abatement.

(Ord. 2002-7A, passed 9-24-02)

§ 95.14 RESOLUTION OF CONFLICTS BETWEEN TREES AND STRUCTURES.

Where sidewalk or curb damage due to tree roots occurs, every effort shall be made to correct the problem without removing or damaging the tree. The Tree Program Supervisor, in conjunction with the consulting arborist shall be responsible for developing or approving corrective measures. Corrective action may include alteration of sidewalk and/or curb construction.

(Ord. 2002-7A, passed 9-24-02)

§ 95.15 PUBLIC NUISANCES.

Any tree, shrub or groundcover, or plant growing or standing on private property in such a manner that any portion thereof interferes with any public street, sidewalk, alley or restricts the flow of traffic or visibility of such street, sidewalk, alley or intersection thereof to any person or persons lawfully using such streets, sidewalks, alleys or intersections shall constitute a public nuisance.

(Ord. 2002-7A, passed 9-24-02) Penalty, see § 95.99

§ 95.16 DISEASED OR HAZARDOUS TREES AND PLANTS.

The town shall have the exclusive authority to destroy any plants in or on public streets, alleys, ways, places and parks if infected by disease or injurious insects, or if in the judgment of the Tree Program Supervisor, represents a dangerous condition or hazard to the public. Such destruction may also be effected when necessary for the protection of other flora or in any other case when the public safety, health or welfare is or may be adversely affected.

(Ord. 2002-7A, passed 9-24-02)

§ 95.17 ABATEMENT OF HAZARDOUS AND PUBLIC NUISANCES.

The town may remove or trim such tree, may permit any public utility to do so, or may require the property owner to remove or trim such tree on private property or on a public parking area abutting upon the property of the owner. The failure of the property owner, or his or her duly authorized agent, to remove such tree or perform specified maintenance on the tree, after 15 days notice by the Tree Program Supervisor shall be deemed a violation of the provisions of this chapter, and the Tree Program Supervisor may then remove or trim such tree and assess the cost thereof against the property.

(Ord. 2002-7A, passed 9-24-02) Penalty, see § 95.99

§ 95.18 PERMIT REQUIRED FOR PLANTING WITHIN TOWN RIGHT-OF-WAY.

No person shall plant any street tree except according to policies, regulations and specifications established pursuant to this section:

(A) All trees or plant material planted on or in the public street, sidewalk area, alley or parks shall be required by this code to have the approval of the Tree Program Supervisor or the consulting arborist and be granted a special permit for such planting.

(B) Plants shall be located and planted under the supervision of the Tree Program Supervisor or designee, who shall supervise such planting and locating. In the performance of such work, consideration shall be given to the following factors; provided, that setbacks permit and considerations of safety do not interfere. No tree shall be planted in any public street, alley, place or park in the town less than 30 feet away from any other tree planted along the same area or at a distance of less than 3 feet from any established sidewalk or curb bordering any public right-of-way, except by written permission by the Tree Program Supervisor.

(C) The Tree Program Supervisor shall have the power to set forth any further specifications required and may alter methods of planting, reject any tree or tree species, or suspend the right of a permit holder to plant, for any reason and without advance notice.

(D) Trees that must be removed shall be replaced by new planting, except in unusual circumstances or where construction or space is prohibitive.

(E) Plant material selected may vary, depending on location; however, they must be of high quality and of suitable species, and not of the prohibited species prescribed. All plant materials must conform to the specifications set forth by the American Association of Nurserymen Plant Standards.

(F) Planting procedures shall comply with ANSI A300 standards for the installation of nursery stock. Suitable maintenance plans and procedures must be submitted prior to installation and shall be subject to the approval of the Tree Program Supervisor and the consulting arborist.

(G) Permit holder shall guarantee survival of each tree for a minimum of one year after planting date. Any tree not surviving the minimum shall be replaced either by the permit holder or the department at the permit holder's expense. After a period of one year, all plant materials shall become property of the town and becomes the responsibility of the town.

(H) The coordination of tree planting on public ways with landscaping on private property so as to achieve the above purposes is deemed desirable.

(Ord. 2002-7A, passed 9-24-02) Penalty, see § 95.99

§ 95.19 HARMING PUBLIC TREES PROHIBITED.

It shall be a violation of the provisions of this chapter for any person to abuse, destroy or mutilate any tree, plant or shrub in the right-of-way or any other public place, or to attach or place any rope, wire (other than one used to support a young or broken tree), chain, sign, poster, handbill or other things to or on any tree growing in a public place, or to cause or permit any wire charged with electricity to be placed or attached to any such tree, or allow any gaseous, liquid or solid substance which is harmful to such trees to come in contact with their roots, trunks, or leaves. No person shall perform any arboricultural work on any plant material on town property unless first granted a special permit indicating the approved activity on each designated plant. All work on town trees including pruning, protecting, bracing, relocating, cultivating, spraying or removing will be allowed only when permitted by the Tree Program Supervisor.

(Ord. 2002-7A, passed 9-24-02) Penalty, see § 95.99

§ 95.20 LICENSING OF PRIVATE TREE CARE FIRMS.

It is unlawful for any person or business to perform tree pruning and/or repair work on public trees for hire within the town without a valid tree care license issued by the Tree Program Supervisor.

(A) Each tree pruned or otherwise modified in violation of this provision shall constitute a separate offense. The first such offense is punishable by a fine not to exceed \$500; each subsequent offense is punishable by a fine not to exceed \$1,000. A single person or business establishes no maximum fine for multiple violations.

(B) The Tree Program Supervisor is authorized to issue tree care licenses to persons or businesses that meet the following minimum requirements: The person or at least one person on the staff of a business must be designated as a qualified arborist by the town. To be designated as a qualified

arborist, a tree service employee shall demonstrate knowledge of proper arboricultural techniques by providing documentation of professional certification, education, and/or experience acceptable to the town arborist.

(C) The licensee must sign an affidavit to certify that all tree work will be performed under the direct supervision of the qualified arborist and will comply with all town standards and ordinances.

(D) The Tree Program Supervisor is authorized to suspend or revoke the tree care license of any person or business that performs work which does not comply with tree care standards as specified in ANSI A300, in this chapter and in the tree management plan. License suspensions and revocations may be appealed to the Town Council within ten days of notification. The decision of the Town Council shall be final and is not subject to appeal.

(E) The Tree Program Supervisor, under the guidance of the consulting arborist, may reissue any tree care business license previously revoked subject to the above minimum requirements and any additional requirements as may be prescribed by the consulting arborist and approved by the Town Council.

(Ord. 2002-7A, passed 9-24-02) Penalty, see § 95.99

§ 95.21 CONSERVATION OF FOREST AND WOODLAND RESOURCES DURING DEVELOPMENT.

No person, business or corporation shall destroy or significantly alter any forest or woodland through tree damage or removal, clearing, grading, tilling, burning, application of chemicals, or any other means unless they apply for special permitting. No person, business or corporation shall be granted a permit for subdivision, grading, building or the construction of any improvement on wooded or forested lands unless they possess a valid permit. Any alteration of wooded or forested lands shall conform to the conditions and specifications of the Tree Management Program.

(Ord. 2002-7A, passed 9-24-02) Penalty, see § 95.99

§ 95.22 PROHIBITED SPECIES LIST.

The following tree species shall not be used by anyone for planting along any public street, alley, right-of-way or park. The town shall not place, nor permit to be placed, any tree or shrub, which will cause or tend to cause a hazardous or unsafe condition either for motorists or pedestrians. Other species of trees and plants may be added at any time and subject to revision.

Acer negundo	Box Elder
Acer sacharrinum	Silver Maple
Ailanthus altissima	Tree of Heaven
Betula papyrifera	Paper Birch
Betula pendula	European White Birch
Catalpa bignoides	Southern Catalpa
Morus species	Mulberry
Populus nigra	Lombardy Poplar
Populus deltoides	Cottonwood
Salix species	Willows, all
Ulmus species	Elms, all
Robinia pseudoacacia	Black Locust
Gingko species	Gingko, except seedless cultivars.
Juglans nigra	Black Walnut
Pyrus callefyana "Bradford"	Bradford Pear

(Ord. 2002-7A, passed 9-24-02) Penalty, see § 95.99

§ 95.99 PENALTY.

(A) *Tree removal and damage violations.* Any person who neglects or refuses to comply with, or assists in the violation of, any of the provisions of this chapter, or any order, permit, or notice issued

pursuant thereto, shall be fined not more than \$1,000 for each such violation and shall pay in addition the cost of replacement as provided in this section. Each day any such violation continues shall constitute a separate offense, and each tree removed or damaged shall also constitute a separate offense. Any person who causes a tree to be removed or damaged in violation of this chapter, or any order, permit, or notice issued pursuant thereto, shall repair or replace any such tree at the violator's sole cost and expense pursuant to the tree replacement requirements set forth in sections of this chapter. The cost of replacement shall be \$100 for each DBH inch of the removed or damaged tree. If the precise DBH cannot be determined, the cost of replacement shall be determined by the Tree Program Supervisor based on the consulting arborist's estimate of the DBH of the removed or damaged tree. The person responsible for the violation shall pay the replacement cost of the tree to the town. The location, species, and planting specification for replacement trees shall be approved prior to replanting by the Tree Program Supervisor pursuant to the requirements of sections in this chapter.

(B) *Planting, arboricultural work or encroachment violations.* If the Tree Program Supervisor determines that a violation exists regarding planting, maintenance or encroachment of trees or flora upon property within the right-of-way the following shall occur:

(1) A preliminary notice shall be given to the owner or occupant of such property, either verbally or by posting the notice on the property. The notice shall state the nature of the alleged violation, corrective action necessary and a date, not less than two weeks, when the property will be re-inspected to determine if compliance has been effected. After re-inspection, if it is determined that the violation has been corrected, the owner or occupant shall not be liable for any charges by reason of the preliminary notice procedure.

(2) If any violation is not corrected as a result of the preliminary notice, or no preliminary notice is given, or the condition exists on a vacant lot or unoccupied, unimproved real estate, the Tree Program Supervisor shall give to the owner of such real estate written notice of the existing condition. Such notice shall be given by certified mail, stating the nature of the violation, describe the real estate upon which the condition exists and demand abatement of the condition and set a date, not sooner than two weeks after the date of such notice. The property shall then be re-inspected to determine if abatement has been effected. If the certified mail is not returned within 30 calendar days or if the address of the owner is unknown and cannot be ascertained after due diligence, it shall be sufficient to give notice by publication in the town newspaper circulation. The owner(s) notified by publication shall have ten days from the date of the published notice in which to abate the offending condition. (Ord. 2002-7A, passed 9-24-02)

Section

96.01 Grievance procedures

96.02 ADA Transition Plan adopted

CHAPTER 96: ADA COMPLIANCE

§ 96.01 GRIEVANCE PROCEDURES.

(A) In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 (“ADA”), the Town of Fortville will not discriminate against qualified individuals with disabilities on the basis of disability in its access to services, programs or activities.

(B) *Employment.* The Town of Fortville does not discriminate on the basis of disability in its hiring or employment practices and complies with all regulations as outlined by the U.S. Equal Employment Opportunity Commission under Title I of the ADA.

(C) *Effective communication.* The Town of Fortville will, upon request, provide appropriate aids and services leading to effective participation for people with disabilities to participate equally in the Town of Fortville’s programs, services and activities. Anyone who requires an auxiliary aid or service for effective participation or modification of policies or procedures to participate in a service, program, or activity, contact the office of the ADA Coordinator as soon as possible but no later than 48 hours before the scheduled event.

(D) *Modifications to policies and procedures.*

(1) The Town of Fortville will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all of its programs, services and activities. The Americans with Disabilities Act does not require the Town of Fortville to take any action that would fundamentally alter the nature of its services or programs or impose an undue financial or administrative burden to the Town of Fortville. Complaints regarding a service, program or activity of the Town of Fortville that is not accessible to persons with disabilities should be directed to the ADA Coordinator.

(2) The Town of Fortville will not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids/services or reasonable modifications of policy, such as retrieving items from locations that are open to the public but are not accessible to persons who use wheelchairs.

(E) *Procedures.* The Town of Fortville has adopted an internal grievance procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by the U.S. Department of

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Justice regulations implementing Title II of the Americans with Disabilities Act (“ADA”). Title II states, in part, that “no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in programs, services or activities sponsored by a public entity.”

(1) *Step One: File the grievance.*

(a) Complete the Town of Fortville grievance form. Grievance form can be found on the Town of Fortville, Indiana website (www.fortvilleindiana.org) or in the ADA Coordinator’s office. A grievance may be communicated in writing, by e-mail, by fax or by telephone, but must follow the format of the Town of Fortville grievance form.

(b) A grievance concerning the accessibility of the Town of Fortville’s services, programs or activities should be addressed to:

ADA Coordinator
714 East Broadway
Fortville, IN 46040

(2) *Step Two: Acknowledgment.* A grievance should be filed within 90 days after the grievant party becomes aware of the alleged violation. The ADA Coordinator will send an acknowledgment of receipt of the grievance within 12 working days.

(3) *Step Three: Informal resolution.* Following the filing of a grievance, the ADA Coordinator shall determine whether, and to what extent, an investigation of the grievance is warranted. Any resulting investigation shall be conducted by the ADA Coordinator or his or her designee. In the case of a property or access issue, the grievance will also be investigated by the Town of Fortville Property Manager. A thorough investigation affords all interested persons and their representatives an opportunity to submit evidence relevant to a grievance. The ADA Coordinator will complete the investigation within 60 calendar days of receipt of the grievance. If appropriate, the ADA Coordinator will arrange to meet with the grievant to discuss the matter and attempt to reach an informal resolution of the grievance. Any informal resolution of the grievance shall be documented in the ADA Coordinator file and the case will be closed.

(4) *Step Four: Written determination.* If an informal resolution of the grievance is not reached in Step 3, within 60 calendar days of receipt of the grievance, a written determination as to the validity of the complaint, and description of the resolution, if appropriate, shall be forwarded by the ADA Coordinator to the Executive Officer for approval.

(5) *Step Five: Final determination and resolution.*

(a) The ADA Coordinator shall communicate the determination and resolution to the grievant within 90 calendar days of receipt of the grievance, unless the Executive Officer authorizes additional time for further consideration of the grievance. Any authorized extension of time will be communicated to the grievant. Any request for reconsideration of the response to the grievance shall be at the discretion of the Executive Officer.

(b) If the grievant is not satisfied with the Town of Fortville's handling of the grievance at any stage of the process, or does not wish to file a grievance through the Town of Fortville's ADA Title II Grievance Procedures, the grievant may file a complaint directly with the U.S. Department of Justice or other appropriate state or federal agency. Use of the Town of Fortville's grievance procedure is not a prerequisite to the pursuit of other remedies.

(c) The resolution of any specific grievance will require consideration of varying circumstances, such as the specific nature of the disability; the nature of the access to services, programs, or facilities at issue, the essential eligibility requirements for participation; the health and safety of others; and the degree to which an accommodation would constitute a fundamental alteration to the service, program or facility, or cause an undue hardship to the Town of Fortville. Accordingly, the resolution by the Town of Fortville of any one grievance does not constitute a precedent upon which the Town of Fortville is bound or upon which other complaining parties may rely.

(F) *File maintenance.* The Town of Fortville's ADA Coordinator shall maintain ADA grievance files for three years.

(Ord. 2012-6B, passed 7-2-12)

§ 96.02 ADA TRANSITION PLAN ADOPTED.

(A) The ADA requires the town to evaluate municipal infrastructure, buildings, and programs (e.g., Town Council meetings) to identify any modifications that may be necessary to comply with the ADA and to develop a Transition Plan to take any necessary actions to attain compliance.

(B) The town utilized the Madison County Council of Governments to evaluate the municipal buildings and properties and develop the Transition Plan for the town ("Plan").

(C) The Town Council has reviewed the proposed Transition Plan and also taken public comment on the same.

(D) The Town Council adopts the Plan as presented. A copy of the Plan is available for public inspection during normal business hours at the offices of the town.

(Res. 2013-2B, passed 2-19-13)

CHAPTER 97: ALARM SYSTEM REGULATIONS

Section

- 97.01 Alarm system permit required
- 97.02 Application for permit
- 97.03 Issuance
- 97.04 Permit fee; term
- 97.05 Location of permit
- 97.06 Number of false alarms permitted during calendar year
- 97.07 Notice of violations to be given
- 97.08 Service of notice; contents

- 97.99 Penalty

§ 97.01 ALARM SYSTEM PERMIT REQUIRED.

(A) It shall be unlawful for a person in control of property to operate, cause to be operated, or permit the operation of an alarm system on that property unless a current alarm system permit has been obtained from the Police Department, provided, however, no permit shall be required for an alarm system located on a private residence if so equipped that any externally sounding alarm is automatically disconnected within 15 minutes after activation.

(B) Any person who operates an alarm system at the time this chapter becomes effective shall have 30 days after the effective date of the chapter to apply for an alarm system permit if one is required by this chapter.

(Ord. 2014-4A, passed 4-21-14)

§ 97.02 APPLICATION FOR PERMIT.

Application for a permit for the operation of an alarm system shall be made by a person or legal entity having control over the property on which the alarm system is to be installed and operated. Such application shall be made in writing to the Police Department on a form designated by the town for that purpose. The application shall include the following information:

(A) The name, address and telephone number of each person in control of the property;

(B) The street address of the property on which the alarm system is to be installed and operated;

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(C) Any business name used for the premises on which the alarm system is to be installed and operated;

(D) Whether the alarm system or systems are or are not local alarms and whether the alarm system or systems are designed to give notice of a burglary, hold-up or other type of emergency;

(E) The name of the person or alarm system business who will install the alarm system;

(F) The names and telephone numbers of two representatives who are able to and have agreed:

(1) To receive notification at any time;

(2) To come to the alarm site within 30 minutes after receiving a request from the Fortville Police Department or Vernon Township Fire Department to do so; and

(3) To grant access to the alarm site and to deactivate the alarm system if such becomes necessary.

(Ord. 2014-4A, passed 4-21-14)

§ 97.03 ISSUANCE.

(A) The Police Department shall issue an alarm system permit to the person or other legal entity in control of the property upon submission of an application in accordance with this section and payment of the permit fee, unless the Police Department finds that any statement made in the application was incomplete or false.

(B) All information on such application shall be protected as confidential information, provided, however, nothing in this section shall prohibit the use of such information for legitimate law enforcement purposes and for enforcement of this chapter.

(C) The permit holder shall promptly notify the Police Department in writing of any change in the information contained in the permit application.

(Ord. 2014-4A, passed 4-21-14)

§ 97.04 PERMIT FEE; TERM.

(A) The fee for an alarm system permit shall be \$25.

(B) An alarm system permit issued pursuant to this chapter shall be valid for a term of two years commencing from the date of issuance.

(C) An alarm system permit issued pursuant to this chapter shall be personal to the permit holder and is not transferrable.

(D) An alarm system permit issued pursuant to this chapter may be suspended or revoked pursuant to the conditions and procedures established by § 97.99 of this chapter.
(Ord. 2014-4A, passed 4-21-14)

§ 97.05 LOCATION OF PERMIT.

The permit holder for an alarm system shall keep such permit at the alarm site in a location which is visible to any law enforcement official who responds to an alarm.
(Ord. 2014-4A, passed 4-21-14)

§ 97.06 NUMBER OF FALSE ALARMS PERMITTED DURING CALENDAR YEAR.

It shall be unlawful for a person who controls property on which an alarm system is installed to issue, cause to be issued or permit the issuance of more than three false alarms in a calendar year. Provided, however, this section shall not apply to an alarm system which emits a false alarm within 30 days after installation of the alarm system.
(Ord. 2014-4A, passed 4-21-14)

§ 97.07 NOTICE OF VIOLATIONS TO BE GIVEN.

If an alarm system issues more than three false alarms in a calendar year, the person who controls the property on which such alarm system is installed shall receive notice of violation of § 97.06 in the manner directed in this chapter.
(Ord. 2014-4A, passed 4-21-14)

§ 97.08 SERVICE OF NOTICE; CONTENTS.

(A) A law enforcement officer or fire department officer shall notify the owner or operator of an alarm system, or his or her representative, of a violation of § 97.07 by presenting such person found in possession or in charge of the alarm system with a written notice. If the officer shall not find any such person in possession or in charge of the premises, or if the person is a child or incapable of receiving the notice, the officer shall notify such owner or operator either by mail or by posting or attaching a written notice of the violation in a conspicuous place upon the premises and such person shall be bound thereby.

(B) All notices of violations, as required to be served by this chapter, shall be executed by the law enforcement officer or other authorized person. A copy shall be served upon the violator.

(C) All notices provided for in this chapter shall contain the following information:

- (1) The specific violation with which the violator is charged;

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- (2) The date and time of the violation.
- (3) The current number of the violation.

(D) The copy of the notice served upon the violator or his or her representative, or the owner of the premises, shall also state that the violator or such other person shall appear in person or by attorney or agent, at the office of the Ordinance Violations Bureau to plead guilty or not guilty within seven days of the hour of 12:00 noon of the date of the violation appearing upon the notice. However, if the period of seven days shall expire upon a Sunday or a legal holiday, then the period of time in which the violator must appear shall be extended to the next business day. A violator may plead guilty and pay his or her fine within seven days of the mailing of a copy of the notice of the violation by mailing a copy of his or her citation and appropriate payment by first class mail, postage prepaid, to the Ordinance Violations Bureau.
(Ord. 2014-4A, passed 4-21-14)

§ 97.99 PENALTY.

(A) Any person who violates this chapter shall be subject to a \$50 fine unless an alarm system permit is obtained within ten days after receiving notification of the violation.

(B) The penalties payable upon such compromises, not including any costs specifically required by statute to be added thereto, shall be as follows:

(1) For the violations of § 97.07, the penalty shall be \$25 for the fourth violation within each calendar year the penalty shall be \$50 for the fifth violation; and \$100 for every other violation within the same calendar year.

(2) Such additional costs shall be assessed and paid as may be required by statute or this chapter.

(C) Any duly appointed officer or employee of the Ordinance Violations Bureau is authorized and empowered to accept on behalf of the town any such offer of compromise of any violator, when the required amount of the penalty is properly tendered pursuant to this section.
(Ord. 2014-4A, passed 4-21-14)

CHAPTER 98: FIREWORKS

Section

- 98.01 Definition of consumer firework
- 98.02 Use of consumer fireworks within the town
- 98.03 Supervised public displays
- 98.04 Enforcement

- 98.99 Penalty

§ 98.01 DEFINITION OF CONSUMER FIREWORK.

For purposes of this chapter the following definition shall apply unless the context clearly indicates or requires a different meaning.

CONSUMER FIREWORK.

(1) A small firework that is designed primarily to produce visible effects by combustion, and that is required to comply with the construction, chemical composition, and labeling regulations promulgated by the United States Consumer Product Safety Commission under 16 CFR 1507. The term also includes some small devices designed to produce an audible effect, such as whistling devices, ground devices containing 50 milligrams or less of explosive composition, and aerial devices containing 130 milligrams or less of explosive composition. Propelling or expelling charges consisting of a mixture of charcoal, sulfur, and potassium nitrate are not considered as designed to produce an audible effect.

CONSUMER FIREWORK includes but may not be limited to the following:

- (a) Aerial devices, which include sky rockets, missile type rockets, helicopter or aerial spinners, roman candles, mines, and shells;
- (b) Ground audible devices, which include firecrackers, salutes, and chasers; and
- (c) Firework devices containing combinations of the effects described in divisions (1)(a) and (b) above.

(2) The following items are specifically excluded from the definition of ***CONSUMER FIREWORK***:

- (a) Model rockets;

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- (b) Toy pistol caps;
- (c) Emergency signal flares;
- (d) Matches;
- (e) Fixed ammunition for firearms;
- (f) Ammunition components intended for use in firearms, muzzle loading cannons, or small arms;
- (g) Shells, cartridges, and primers for use in firearms, muzzle loading cannons, or small arms;
- (h) Indoor pyrotechnics special effects material; or
- (i) M-80s, cherry bombs, silver salutes, and any device banned by the federal government.

(3) In addition, the following items are excluded from the definition of **CONSUMER FIREWORK** but are and shall continue to be subject to applicable permitting requirements and state statutes governing fireworks:

- (a) Dipped sticks or wire sparklers;
- (b) Cylindrical fountains;
- (c) Cone fountains;
- (d) Illuminating torches;
- (e) Wheels;
- (f) Ground spinners;
- (g) Flitter sparklers;
- (h) Snakes or glow worms;
- (i) Smoke devices; and
- (j) Trick noisemakers, which include:
 - 1. Party poppers;

2. Booby traps;
3. Snappers;
4. Trick matches;
5. Cigarette loads; and
6. Auto burglar alarms.

(Ord. 2018-6C, passed 7-2-18)

§ 98.02 USE OF CONSUMER FIREWORKS WITHIN THE TOWN.

It shall be unlawful to use or display or permit to be used or displayed within the municipal boundaries of the town any type of consumer firework on any day or time other than the following:

(A) Between the hours of 5:00 p.m. and two hours after sunset on June 29, June 30, July 1, July 2, July 3, July 5, July 6, July 7, July 8, and July 9;

(B) Between the hours of 10:00 a.m. and 12:00 midnight on July 4;

(C) Between the hours of 5:00 p.m and 11:00 p.m. beginning on the Friday before Memorial Day and continuing through Memorial Day;

(D) Between the hours of 5:00 p.m and 11:00 p.m. beginning on the Friday before Labor Day and continuing through Labor Day; and

(E) Between the hours of 10:00 a.m. on December 31 and 1:00 a.m. on January 1.
(Ord. 2018-6C, passed 7-2-18)

§ 98.03 SUPERVISED PUBLIC DISPLAYS.

This chapter shall not apply to supervised public displays of fireworks by municipalities, fair associations, amusement parks, and other organizations or groups of individuals, all of which are and shall continue to be subject to applicable permitting requirements and state statutes.

(Ord. 2018-6C, passed 7-2-18)

§ 98.04 ENFORCEMENT.

The Fortville Metropolitan Police Department shall be charged with enforcing the provisions of this chapter.

(Ord. 2018-6C, passed 7-2-18)

§ 98.99 PENALTY.

Any person, firm or corporation who violates this chapter shall be subject to a fine of \$150 for the first offense and \$250 for each subsequent offense. A separate offense shall be deemed committed upon each day during which a violation occurs or continues.
(Ord. 2018-6C, passed 7-2-18)