

ORDINANCE 15, 2010

AN ORDINANCE PROHIBITING PUBLIC NUISANCES  
IN THE CIVIL TOWN OF MOORESVILLE

WHEREAS, the Town Council for the Civil Town of Mooresville (the "Town") is responsible for the health, safety and general welfare of the residents;

WHEREAS, the Town Council now enacts the following Public Nuisance Ordinance:

DIVISION I

PUBLIC NUISANCES

I. Public Nuisances Prohibited.

(a) No person shall erect, contrive, cause, continue, maintain or permit to exist any public nuisance within the Town.

(b) An agricultural operation or any of its appurtenances is not and does not become a nuisance, private or public, by any changed conditions in the vicinity of the locality after the agricultural operation has been continuous for more than one (1) year if there is no significant change in the hours of operation, there is no significant change in the types of operation and the operation would not have been a nuisance at the time the agricultural operation began on that locality.

II. Public Nuisances Defined.

A public nuisance is a thing, act, occupation, condition or use of property which shall continue for such length of time as

to:

(a) Substantially interfere, injure or endanger the comfort, health, repose or safety of the public; or

(b) In any way render the public insecure in life or in the use of property; or

(c) Greatly offend the public morals or decency; or

(d) Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway, navigable body of water or other public way; or

(e) Is injurious to health, or indecent, or offensive to the senses of a reasonable person, or an obstruction to the full use of property so as essentially to interfere with the comfortable enjoyment of life or property.

### III. Public Health Nuisances.

The following acts, omissions, places, conditions and things are specifically declared to be public health nuisances but shall not be construed to exclude other health nuisances coming within the definition of Section II:

(a) All decayed, harmfully adulterated or unwholesome food or drink sold or offered for sale to the public;

(b) Carcasses of animals, birds or fowl not buried or otherwise disposed of in a sanitary manner within twenty-four (24) hours after death;

(c) Accumulations of decayed animal or vegetable matter, trash, rubbish, rotting lumber, bedding, packing material, junk vehicles, scrap metal or any material in which flies, mosquitoes, disease-carrying insects, rats or other vermin may breed, or may be a fire hazard;

(d) All stagnant water in which mosquitoes, flies or other insects can multiply;

(e) Garbage cans which are not fly-tight or not kept clean;

(f) The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash or industrial dust within the Town limits in such quantities as to endanger the health of persons of ordinary sensibilities or threaten or cause substantial injury to property;

(g) The pollution of any public well or cistern, stream, river, lake, canal or body of water by sewage, creamery or industrial wastes or other substances;

(h) Any use of property, substances or things within the Town emitting or causing foul, offensive, noisome, nauseous, noxious, or disagreeable odors, effluvia or stenches extremely repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health or any appreciable number of persons within the Town;

(i) All abandoned wells not securely covered or secured from public use;

(j) All detrimental plants as defined in IC 15-16-8-1 or noxious weeds as defined in IC 15-16-7-2;

(k) Any accumulation of junk, rubbish, scrap metal, automotive parts, building materials, machinery, dead trees, or parts thereof, (excluding cut and stacked firewood) upon any premises in a residential area;

(l) Any structure used for the collection or deposit of trash or garbage that has an open door allowing access into said structure, except when the door is open to allow the structure to be used for the deposit or removal of trash or garbage, or to allow the structure to be cleaned or repaired.

#### IV. Public Nuisances Offending Morals and Decency.

(a) The following acts, omissions, places, conditions and things are specifically declared to be public nuisances offending public morals and decency, but such enumeration shall not be construed to exclude other nuisances offending public morals and decency coming within the definition of Section II:

(i) All disorderly houses, bawdy houses, houses of ill fame, gambling houses and buildings or structures kept or resorted to for the purpose of prostitution or gambling;

(ii) All gambling devices and slot machines;

(iii) All places where intoxicating liquor or fermented malt beverages are sold, brewed, bottled, manufactured or rectified without a permit or license as provided for by this Code or State law;

(iv) Any place or premises within the Town where Town Ordinances or State laws relating to public health, safety, peace, morals or welfare are openly, continuously, repeatedly and intentionally violated;

(v) Any place or premises resorted to for the purpose of drinking intoxicating liquor or fermented malt beverages in violation of the laws of the State of Indiana or the Ordinances of the Town.

(b) Public nuisances offending morals and decency shall also mean:

(i) Any place in or upon which prostitution (as described in IC 35-45-4);

(ii) Any public place in or upon which deviate sexual conduct (as defined in IC 35-41-1) or sexual intercourse (as defined in IC 35-41-1);

(iii) Any public place in or upon which the fondling of the genitals of a person;

is conducted, permitted, continued or exists and the personal property and contents used in conducting and maintaining the place for such a purpose.

V. Public Nuisances Affecting Peace and Safety.

The following acts, omissions, places, conditions and things are declared to be public nuisances affecting peace and safety but such enumeration shall not be construed to exclude other nuisances affecting public peace or safety coming within the provisions of Section II:

(a) All buildings erected, repaired or altered within the Town in violation of the provisions of the Ordinances of the Town relating to materials and manner of construction of buildings and structures.

(b) All unauthorized signs, signals, markings or devices which purport to be or may be mistaken as official traffic control devices placed or maintained upon or in view of any public highway or railway crossing.

(c) All trees, hedges, billboards or other obstructions which prevent persons driving vehicles on public streets, alleys or highways from obtaining a clear view of traffic when approaching an intersection or pedestrian crosswalk.

(d) All limbs of trees which project over a public sidewalk less than eight feet (8') above the surface thereof or less than ten feet (10') above the surface of a public street.

(e) All use of display of fireworks except as provided by the laws of the State of Indiana and Ordinances of the Town.

(f) All buildings or structures so old, dilapidated or out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human use; or shall be an invitation to children and endanger the lives of such children, or which, because of its condition has become a fire hazard.

(g) All wires over streets, alleys or public grounds which are strung less than fifteen feet (15') above the surface of the street or ground.

(h) All loud and discordant noises or vibrations of any kind, except as may be permitted under a Zoning Ordinance or Ordinance 4, 2000 and all Amendments thereto.

(i) All obstructions of streets, alleys, sidewalks or crosswalks and all excavations in or under the same, except as permitted by the Ordinances of the Town of which, although made in accordance with such Ordinances, are kept or maintained for an unreasonable length of time after the purpose thereof has been accomplished.

(j) All open and unguarded pits, wells, excavations or unused basements freely accessible from any public street, alley or sidewalks.

(k) All abandoned refrigerators, iceboxes or similar containers from which the doors and other covers have not been removed or which are not equipped with a device for opening from the inside by pushing only with the strength of a small child.

(l) Any unauthorized or unlawful use of property abutting on a public street, alley or sidewalk or of a public street, alley or sidewalk which causes large crowds of people to gather, obstructing traffic and free use of the streets or sidewalks.

(m) Any sign, marquee or awning which is in an unsafe condition, or which overhangs any roadway, or which overhangs any sidewalks less than eight feet (8') above the sidewalk surface.

(n) Any nuisance so defined by the Indiana Code.

#### VI. Abatement of Public Nuisances.

(a) Inspection of premises. Whenever complaint is made to the Police or Town Clerk that a public nuisance exists or has existed within the Town, they shall promptly notify the Building Inspector, Clerk, Police Department, or some other Town official whom the Town Council shall designate, who shall forthwith inspect or cause to be inspected the premises and shall make a written report of their findings to the Building Inspector or Police Department. Whenever practicable, the Inspection Officer

shall cause photographs to be made of the premises and shall file the same in the office of the Town Clerk/Treasurer or the Building Inspector.

(b) Summary abatement.

(i) Notice to owner. If the Inspection Officer shall determine that a public nuisance exists on private property and that there is a great and immediate danger to the public health, safety, peace, morals or decency, the Town Council or the officials appointed by the Town Council may direct the Chief of Police to serve a notice on the owner, or, if the owner cannot be found, on the occupant or person causing, permitting or maintaining such nuisance and to post a copy of the notice on the premises. Such notice shall direct the owner, occupant or person causing, permitting or maintaining such nuisance to abate or remove such nuisance with twenty-four (24) hours and shall state that unless such nuisance is so abated, the Town will cause the same to be abated and will charge the cost thereof to the owner, occupant or person causing, permitting or maintaining the same, as the case may be.

(ii) Abatement by Town. If the nuisance is not abated within the time provided, or if the owner, occupant or person causing the nuisance cannot be found, the Building Inspector, or some other Town official whom the Town

Council shall designate, shall cause the abatement or removal of such public nuisance.

(iii) Abatement by Court action. If the Inspection Officer (Police Officer or Building Inspector) shall determine that a public nuisance exists on private premises but that the nature of such nuisance is not such as to threaten great and immediate danger to the public health, safety, peace, morals or decency, he shall file a written complaint of his findings with the Town Court who shall cause an action to abate such nuisance to be commenced in the name of the Town against the alleged violating entity.

#### VII. Cost of Abatement.

In addition to any other penalty imposed by this Section for the erection, contrivance, creation, continuance or maintenance of a public nuisance, the cost of abating a public nuisance by the Town shall be collected as a debt from the owner, occupant or person causing, permitting or maintaining the nuisance, and if notice to abate the nuisance has been given to the owner, such cost shall be assessed against the real estate as other special taxes.

## DIVISION II

### WEEDS, DEBRIS AND OTHER SUCH RANK VEGETATION

#### I. Removal of Weeds, Debris and Other Such Rank Vegetation.

##### (a) Definitions.

Debris shall include the remains of something broken down or destroyed.

Rank Vegetation shall include those weeds and growing vegetation which are excessively vigorous in growth, shockingly conspicuous, malodorous and/or flagrant.

Weeds shall include any plant that is not valued where it is growing, and is of rank growth, tends to overgrow or choke out more desirable plants and/or is listed as a weed in the U.S. Department of Agricultural publication entitled "Common Weeds of the United States" or in any similar government publication or those defined in Division I, Section III, Paragraph (j) of this Ordinance.

(b) Violation. It is a violation of this Section to have weeds, rank vegetation and/or debris on any real property (the "property") located within the Town's corporate limits.

(c) Requirement to cut. All owners of property located within the Town shall cut and remove weeds and other rank vegetation growing thereon that exceeds an average height of six inches (6") and shall keep their property clear of debris.

(d) Violation Notice. In the event of a violation of this Section, an Officer of the Mooresville Police Department shall issue a written notice (the "Violation Notice") to the violating landowner. The Violation Notice shall identify the violation and order the landowner to correct the same within seven (7) calendar days from the date on which the Violation Notice is served on the landowner (the "Abatement Period"). Personal service, service by U.S. certified mail or any other manner of service recognized in the Indiana Rules of Trial Procedure shall constitute proper service upon the landowner for purposes of this Section.

(e) Appeal. Any Violation Notice issued pursuant to this Section may be appealed to the Mooresville Town Court if written notice of appeal is served by the landowner to the Town Clerk/Treasurer. The timely appeal of a Violation Notice shall toll the Abatement Period pending the issuance of a decision thereon by the Town Court.

(f) Town to abate. If the landowner fails to timely abate each violation set forth in a Violation Notice, the landowner shall be deemed to have granted permission to the Town to enter the landowner's property for the limited purpose of cutting and/or removing such debris, weeds or rank vegetation located thereon and identified in the Violation Notice. In such case, the Town Council or their designee, shall prepare a certified

statement as to the actual administrative and other costs incurred by the Town in taking such action and serve a copy of the invoice on the landowner. The landowner shall, within seven (7) calendar days from the date on which the landowner is served with such invoice (the "Payment Period"), pay in full the amount stated thereon to the Clerk/Treasurer's Office.

(g) Failure to pay. If the landowner fails to timely pay an invoice issued pursuant to this Section, the Town Council or ~~their designee, shall certify to the County Auditor the amount of the invoice, plus any additional administrative costs~~ incurred in the certification of the same. The Auditor shall place the total amount so certified on the tax duplicate for the property at issue, and the total amount, including any accrued interest, shall be collected as delinquent taxes are collected and shall be disbursed to the General Fund of the Town.

(h) Time of appeals. The Town Court shall hear any timely requested appeal of a Notice of Violation or invoice within thirty (30) calendar days following receipt of the same and shall thereafter promptly issue a written decision granting or denying, in whole or in part, the appeal. The date on which the Town Court's decision is served on the landowner shall thereafter become the first calendar day of the Abatement Period or Payment Period, as applicable.

(i) Penalty. Any person who violates any provision of this Section shall be subject to the General Penalties set forth herein. Each day that a violation continues shall constitute a separate offense.

(j) The Town Court shall be the Court of proper venue and jurisdiction for the enforcement of this Section.

(k) This Section supplements and does not limit any other remedy or action available in law or in equity regarding the subject matter hereof.

(l) This Section shall not apply to an Agricultural District.

## II. Collection of Monies from Property Owners.

If the owner fails to pay said sum assessed for the removal and/or cutting of the debris, weeds or rank vegetation within the time prescribed, the Clerk/Treasurer shall file a certified copy of the statement of costs in the Auditor's Office of Morgan County and the Auditor shall place the amount so claims on the tax duplicate against the lands of the landowner affected by the lien and the same shall be collected as taxes disbursed to the General Fund of the Town.

## DIVISION III

### JUNK AND JUNK CARS

#### I. Definition of Junk and Junk Cars.

(a) The work ~~junk~~ used in this Division shall mean any

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

(b) For the purpose of this Division, a junk car shall mean any motor vehicle which does not bear a currently valid license plate and is not kept in a garage or building.

## II. Junk and Junk Cars Declared Nuisances.

Because of the danger of health by vermin and insects and because of the danger of the safety of children attracted by junk or junk cars, abandoned junked motor vehicles are declared to be nuisances except in lawfully operated junk yards or in enclosed buildings.

## III. Storage Prohibited.

It shall be unlawful for any person to store or to allow to remain in the open upon public or private property within the Town, any disassembled and/or non-operative and unlicensed or junked, wrecked or abandoned motor vehicle for a period of five (5) days or more on public property, or a period of fifteen (15)

days or more on private property unless it is in connection with an automobile sale or repair business or junk yard that is in zoning compliance.

#### DIVISION IV

#### ABANDONED VEHICLES

##### I. Abandoned Vehicles Declared Public Nuisances.

Because of the danger to the health from vermin, the danger of personal injury to children attracted by such vehicles, danger of fire by the storage of gasoline and oil thereon, any abandoned, unlicensed, inoperable, disassembled, wrecked or junked motor vehicle on any street or public property for more than five (5) days or upon any private property for more than fifteen (15) days, except as hereinafter provided, is declared to be a nuisance and unlawful.

##### II. Abandoned Vehicle Defined.

(a) Abandoned Vehicle means:

(i) A vehicle located on public property illegally, or a vehicle left on public property continuously without being moved for more than five (5) days:

(ii) A vehicle mechanically inoperable located on public property in such a manner as to constitute a hazard or obstruction to the movement of pedestrian or vehicle traffic on a public right-of-way;

(iii) A vehicle that has remained on private property without the consent of the owner or person in control of that property for more than fifteen (15) days;

(iv) A vehicle from which there has been removed the engine, transmission or differential or that is otherwise partially dismantled or inoperable and left on public property for more than five (5) days;

(v) A vehicle that has been removed by a towing service or a public agency upon request of an Officer enforcing a Statute or Ordinance other than in IC 9-22-1-1 et seq. if the vehicle once impounded is not claimed or redeemed by the owner or his agent within fifteen (15) days of its removal;

(vi) A vehicle that is six (6) 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 thirty (30) days.

(b) All other terms defined in IC 9-22-1-1 et seq. as amended are incorporated herein by reference.

### III. Time Limits.

It shall be unlawful for any person to store or allow to remain in the open upon any public street, public property or private property within the Town any disassembled or inoperable and unlicensed, or any junked, wrecked or abandoned motor

vehicle for a period of five (5) days or more on such public street or other public property, or for a period of fifteen (15) days or more on any private property, unless it is in connection with an automotive sales or repair enterprise, which is operated under a duly issued and exhibited store license and is located in a properly zoned area.

#### IV. Removal Procedures on Public and Private Property.

##### (a) Public property.

(i) Whenever the Chief of Police or his designee shall find an abandoned vehicle placed or stored in the open upon a public highway alley or thoroughfare, or other public property within the Town, he shall issue an order to the owner of such vehicle, if known, to remove such vehicle within five (5) days.

(ii) Notice of such order shall be given to such owner, if known, in writing, but if such owner shall be unknown, such written notice shall be placed in plain view upon the vehicle.

(iii) If such vehicle is not removed within five (5) days after such notice, the Chief of Police or his designee shall cause said vehicle to be removed by a junk or salvage yard or wrecker service, the cost and expense of such removal by a junk or salvage yard or by a wrecker service to be paid by the owner of the vehicle.

(iv) Impounded vehicles shall be released either upon payment by the owner, operator or authorized representative of same of the fees charged for towing and storage, or upon order of the Chief of Police or his designee, or upon the order of the Judge of the Mooresville Town Court.

(v) The form of all notices shall be issued pursuant to the provisions of IC 9-22-1-11.

(b) Private property.

(i) Whenever the Chief of Police or his designee shall find an abandoned vehicle placed or stored in the open upon private property, within the Town, he shall issue an order to the owner of such vehicle, if known, or the person who owns or controls the private property upon which such vehicle is placed or stored according to the procedures set forth in IC 9-22-1-11 through 9-22-1-14, using the time periods for removal set out herein of fifteen (15) days.

(ii) Impounded vehicles shall be released either upon payment by the owner, operator or authorized representative of same of the fees charged for towing and storage, or upon order of the Chief of Police or his designee, or upon the order of the Judge of the Mooresville Town Court.

V. Enforcement.

(a) If such vehicle is not removed within five (5) days

from public property and fifteen (15) days from private property after such notice, the Chief of Police or his designee shall issue a written order of violation of Division III, Section IV subject to civil penalties of this Ordinance and enforcement shall be by the Town Attorney or his designee and appropriate action by the Mooresville Town Court.

(b) The form of all notices shall be issued pursuant to the provisions of IC 9-22-1-11.

(c) Any person who is judged to have violated the provisions of this Ordinance is subject to a fine of up to Five Hundred Dollars (\$500.00) in addition to towing and storage charges.

(d) All provisions and respective civil penalties are designed for enforcement through the Mooresville Town Court.

#### VI. Disposing and Sale of Stored Vehicles.

The provisions of IC 9-22-1-27 et seq. and IC 9-22-5 et seq. shall govern the disposition and sale of stored vehicles.

#### VII. Abandoned Vehicle Fund.

The Abandoned Vehicle Fund as established in Division I, Section VIII(b) (iii) of this Ordinance shall be governed by the provisions of IC 9-22-1-30.

#### VIII. Exempt Vehicles.

This Division does not apply to:

(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 vehicle sale lot or at a commercial vehicle servicing facility;

(d) A vehicle located upon property licensed or zoned as an automobile scrap yard;

(e) A vehicle registered and licensed under IC 9-18-12 as an antique vehicle.

#### IX. Towing and Storage Charges of Abandoned Vehicles.

An owner or lien holder who claims a vehicle impounded and declared abandoned by the Department shall be charged a towing fee and a per day storage fee which shall be paid before the vehicle is released. If not timely paid, the vehicle will be considered unclaimed and subject to sale pursuant to IC 9-22-5 et seq.

#### X. General Penalties.

Penalties upon a finding by the Mooresville Town Court or other Court of competent jurisdiction that a violation has occurred under this Ordinance the violating party shall pay a fine of up to Five Hundred Dollars (\$500.00) with each day that

the violation occurs to be an additional violation. In addition, all costs associated with the enforcement of this Ordinance shall to the maximum extent possible be assessed to the violating party.

**XI. Severability.**

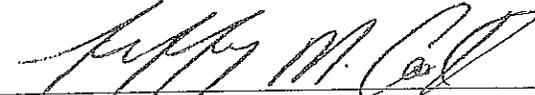
If any Section, Subsection, Paragraph, sentence, clause or phrase of this Division is declared for any reason to be declared unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance so long as enforcement of the same can be given the same affect.

This Ordinance shall be in full force and effect after date of passage and publication.

This Ordinance specifically vacates all provisions of Abandoned Vehicle Ordinance 14, 1995 excepting Paragraph 1, Section I establishing the Abandoned Vehicle Account and Fund; Ordinance 9, 1968; Ordinance 5, 2000; and, Ordinance 2, 1993.

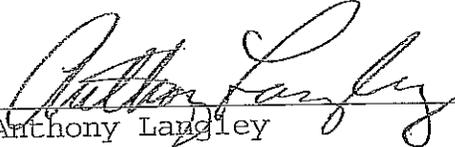
MOORESVILLE TOWN COUNCIL

  
\_\_\_\_\_  
John L. Clark

  
\_\_\_\_\_  
Jeffrey M. Cook

  
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Ryan Goodwin

  
\_\_\_\_\_  
Mark Harris

  
\_\_\_\_\_  
Anthony Langley

Attest:

  
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Sandra Perry, Clerk-Treasurer