

GENERAL ORDINANCE #8 \_\_\_\_\_, 2011

AN ORDINANCE AMENDING ARTICLE I (“DEFINING AND ABATING NUISANCES”) CHAPTER XIII (“NUISANCES”) OF TITLE III (“PUBLIC HEALTH AND SAFETY”) OF THE MUNICIPAL CODE OF THE TOWN OF NORTH MANCHESTER

WHEAREAS, Title III Chapter XIII Article I of the Town of North Manchester Municipal Code deals with the policies and procedures to be used in determining nuisances and the procedures for abating nuisances; and

WHEAREAS, said ordinances are deemed to need amending.

IT IS THEREFORE ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF NORTH MANCHESTER as follows:

1. The text of Title III Chapter XIII Article I of the Town of North Manchester Municipal Code as it exists is hereby repealed in its entirety.

2. Title III Chapter XIII Article I of the Town of North Manchester Municipal Code shall now read as follows:

SECTION 1. TITLE: This chapter shall be known as the “Town of North Manchester Nuisance Ordinance.”

SECTION 2. DEFINITIONS:

- 2.1 “*Dirt*” means natural soil, earth and stone.
- 2.2 “*Garbage*” means putrescible animal solid, vegetable solid and semi-solid wastes resulting from the handling, preparation, cooking and consumption of food, excluding human excreta.
- 2.3 “*Groundwater*” means any supply of water beneath the undisturbed surface of the earth in any natural geological formation.
- 2.4 “*Incineration*” means a process of reducing combustible wastes to inert residue by high temperature burning.
- 2.5 “*Keep Livestock*” means the keeping or harboring any domestic animals, except dogs and cats, upon any unit of real estate; provided, however, the keeping or harboring of livestock in secured cages, in enclosed buildings, for scientific or educational purposes shall not be construed as being within the phrase “keeping livestock.”
- 2.6 “*Litter*” means garbage, refuse and trash, and all other waste material, which, if thrown or deposited, tends to create a danger to public health, safety or welfare or tends to reduce the quality of life aesthetically for surrounding residents.

- 2.7 “*Motor Vehicle*” Means any self-propelled land or water vehicle which can be used for transporting a person or people or materials.
- 2.8 “*Person*” means cities, villages, townships, counties and other governmental agencies, corporations, companies and both municipal and private associations, partnerships, individuals and authorities.
- 2.9 “*Public or Private Parking Area*” means an area paved with concrete, bituminous or gravel materials, designed for the temporary or permanent parking or storage of motor vehicles, not including a public street or alley.
- 2.10 “*Residential refuse*” means refuse generated by or emanating from single-family dwellings and/or multifamily dwellings containing a maximum of four (4) separate living or apartment units per dwelling; provided, however, that this term shall not include refuse generated by a multifamily dwelling that is physically a part of a larger commercial apartment complex.
- 2.11 “*Refuse*” means garbage, trash, yard waste or any combination thereof.
- 2.12 “*Sanitary landfill*” means a controlled method of refuse disposal providing compaction and covering daily of the refuse.
- 2.13 “*Specialized collection services*” means the collection of residential refuse from other than the curbside or alleyside.
- 2.14 “*Surface water*” means any body of water whose top surface is exposed to daylight including flowing bodies as well as ponds and lakes.
- 2.15 “*Transport vehicle*” means all vehicles designed or used for the transport of persons, property or both persons and property.
- 2.16 “*Trash*” means nonputrescible solid waste consisting of both combustible and noncombustible waste such as paper, cardboard, tin cans, wood, glass, ashes, bedding, crockery, metal and similar materials, but excluding dirt, stones, plaster, concrete, building materials, dangerous materials such as poisons, acids, caustic or infected materials and animal offal.
- 2.17 “*Yard waste*” means leaves, grass or shrubbery cuttings, tree limbs of a diameter less than six (6) inches, and other organic refuse arising from the care of lawns and yards.

SECTION 3. MAINTAINING NUISANCES PROHIBITED. No person shall erect, construct, cause, permit, keep or maintain within the Town of North Manchester anything whatsoever which is injurious to the public health or safety, or offensive to the senses of inhabitants, or an obstacle to the free use of property by such inhabitants. The existence of any of the above is declared to be a nuisance and shall be regulated as set forth in this chapter.

SECTION 4. CERTAIN NUISANCES DESIGNATED. The following are declared to be nuisances, but shall not be construed to prevent any other thing from being declared a nuisance pursuant to the standards of Section 3 of this chapter:

- 4.1 Use of any structure, building or other place for the exercise of any trade, employment or manufacture, which, by occasioning noxious exhalations, dense

smoke or ash or other annoyances, becomes harmful to the health, safety or property of individuals or the public.

- 4.2 Obstructing or encumbering by any means whatsoever the private ways and the public streets, alleys and places so as to create a physical threat to the public, except as permitted by the Town after completing any required request forms.
- 4.3 Permanent and temporary billboards, signboards and advertising signs which so obstruct and impair the view of any portion of a public street or alley, including pedestrian walkways, of the Town as to render dangerous the use thereof
- 4.4 More than two non-motor vehicles or transport vehicles, including but not limited to campers, trailers and boats, outside a carport or enclosed building, or public or private parking area, for a time period exceeding seven (7) consecutive days.
- 4.5 Litter.
- 4.6 Fallen trees, dead trees, cut brush, fallen or cut limbs.
- 4.7 Boxes, appliances, household items and tires.
- 4.8 Demolition remains.
- 4.9 Open excavations, uncovered or improperly covered holes, whether lined or unlined, and dirt piles on any open or unfenced real property within the Town, or placed upon public streets, alleys, and places.
- 4.10 Accumulated garbage and trash.
- 4.11 Automobile parts, disassembled automobiles, automobiles without engines, plumbing and piping materials and parts, scrap metal, unseaworthy or dilapidated boats, dilapidated, deteriorated, or nonoperable jet skis, snowmobile, motorcycles, bicycles, trailers or mopeds.
- 4.12 Structures defaced with paint or wording, including but not limited to, painting or wording that appears to be graffiti.
- 4.13 Any portion of real property or any personal property which emits an unwholesome odor.
- 4.14 Any waste water, filth, offal, garbage, rubbish, animal waste, human excrement, which is deposited, allowed or caused to be upon any public or private property.
- 4.15 Any water or any other substance which is caused or permitted to flow onto or be deposited upon any public property or public way, except natural surface water drainage.
- 4.16 Any dead animal or animal parts.
- 4.17 The erection of a dam or any other obstruction by a private party which prevents the natural flow of water and causes it to collect in pool upon any public property.

- 4.18 Any real or personal property which is infected with contagious disease or is likely to cause an immediate health hazard.
- 4.19 The placing or accumulating on or within any real or personal property or the permitting of same, of any matter which attracts or may attract rodents, insects, domestic or wild animals in such a manner as to create a health hazard or unsanitary or dangerous condition.
- 4.20 The storage of any explosive, combustible or other materials, which create a safety or health hazard.
- 4.21 Trees, shrubbery, weeds, snow or other matter obstructing public ways, or causing visual barriers which create vehicular traffic or pedestrian safety hazards.
- 4.22 Trash or garbage containers left upon the sidewalk, the area between a street and sidewalk or the front or side yard, except as permitted by this Code for trash and garbage collection purposes.
- 4.23 Building materials stored on any lot in violation of Section 11 below.
- 4.24 Any furniture, not originally designed or manufactured solely for outdoor use; or any furniture which was originally designed or manufactured for outdoor use, which is now dilapidated or deteriorated.
- 4.25 A structure in danger of sudden collapse or any condition existing on property which poses an unreasonable risk of physical injury to persons in or near the structure or condition.
- 4.26 To own, use, maintain or permit to exist a privy or outhouse for the disposal of human bodily wastes with the Town.
- 4.27 To keep livestock within the Town
- 4.28 To keep more than three dogs or cats.
- 4.29 Using, maintaining or perpetuating the existence of a use of property, as defined by the North Manchester Zoning Ordinance, which is neither permitted nor authorized under the Zoning Ordinance by the Board of Zoning Appeals or Plan Commission of the Town of North Manchester.

SECTION 5. NOTICE TO ABATE NUISANCE PRIOR TO ABATEMENT BY TOWN. North Manchester police officers, or designees of the Town Marshall, shall investigate the existence within the Town of conditions constituting a nuisance under this ordinance. Private persons may request, in writing, that an investigation be done. Whenever a police officer or person designated by the Marshall, after investigation, finds that a nuisance exists, the police officer or person designated by the Marshall shall cause to be served upon the record owner and any tenant or occupant of the property where the nuisance exists, a written notice to abate the nuisance within a reasonable specified date. If not served personally upon the owner, occupant or an adult person at the location, as attested by the police officer or other designated person's return of service, such notice shall be sent to the property tenant or occupant by certified mail, return receipt requested. In addition to mailing a copy to the tenant or occupant a copy of the notice may be given by posting same in a prominent place upon the premises where the nuisance is located. Posted notice shall meet this notice requirement. The notice sent to the record owner, if

different than the tenant or occupant, may be by standard first class mail to their last known address.

SECTION 6. CONTENTS OF NOTICE TO ABATE. The notice to abate shall contain:

- 6.1 The name of the owner, and the name of the tenant or occupant, if known, to be operating, creating, continuing or otherwise responsible for the nuisance.
- 6.2 A narrative description of what constitutes the nuisance. (In suitable fact situations, digital pictures shall be retained for printing and use, if required, for proof of the violation.)
- 6.3 The location of the nuisance.
- 6.4 A statement of the act or acts necessary to abate the nuisance.
- 6.5 A specified date by which to complete the abatement. (The date shall not exceed ten days from the notice date, however the person receiving the notice may request in writing for a longer period of time and may be granted an extension in writing if the Town Marshall determines that an extension is reasonable.)
- 6.6 A statement that if the nuisance is not abated as directed and no request for hearing is made within three (3) days after service of notice, the Town may abate the nuisance and assess the costs thereof against the property occupant, owner or owner and occupant.

SECTION 7. REQUEST FOR HEARING.

- 7.1 Any person ordered to abate a nuisance may request a hearing with the Town Marshall who shall determine whether or not reasonable cause exists to conclude that the nuisance charged does exist. The request for a hearing must be made in writing and delivered to the office of the Town Marshall within three (3) days of the date of the notice, not counting Saturdays and Sundays. If a hearing is not requested it will be conclusively presumed that a nuisance exists that must be abated as ordered.
- 7.2 At the conclusion of the hearing, the Town Marshall shall render the decision in writing. If the Town Marshall confirms that a nuisance does exist, the Town Marshall shall determine the reasonable time period allowed for its abatement, such time period shall not exceed ten (10) days without written documentation or a reason for a longer period. If the Town Marshall determines that a nuisance does not exist, the original notice shall be dismissed. The written decision shall include the specific date upon which the nuisance shall be fully abated.

SECTION 8. FAILURE TO ABATE. If the owner, tenant, or occupant, notified to abate a nuisance, fails, neglects or refuses to abate, as directed in the notice, or after the written decision, after hearing in Section 7 above, they violate this Article. Each day's failure, neglect or

refusal to abate the nuisance following notice pursuant to Section 5 shall constitute a separate offense under this Article.

SECTION 9. ABATEMENT BY TOWN. Upon failure, neglect or refusal to abate the nuisance under Section 5, or after the written decision, after hearing in Section 7 above, or whenever a nuisance exists which creates a health or safety hazard requiring immediate abatement in order to protect public health or safety, the Town, or its designee, may perform the action required to abate the nuisance, and shall keep an accurate account of the expenses incurred. The expenses incurred will be billed and sent to the record owner and the tenant or occupant that is shown to have exclusive possession of the property. An itemized expense account shall be certified and filed with the Clerk-Treasurer or officer designated by the Clerk-Treasurer. Appropriate legal action may be taken to collect such costs if they remain unpaid forty-five (45) days after the billing date. Unpaid costs may be made a lien against the property.

SECTION 10. PENALTIES. Except as otherwise provided, any person violating a provision of this Article shall be deemed guilty of an offense and fined not less than fifty dollars (\$50.00) for a first offense, not less than one hundred dollars (\$100.00) for a second offense and not less than two hundred dollars (\$200.00) for all subsequent offenses, but no fine for any individual offense shall exceed twenty-five hundred dollars (\$2,500.00). Each day after the expiration date of the time limit ordered for abating a nuisance condition under this Article shall constitute a distinct and separate offense.

SECTION 11. BUILDING MATERIALS. Building materials and equipment may be placed or stored on lots zoned as residential or commercial only during the process of building on said lot or for a period of no longer than one (1) month prior to a commencement of building and no longer than ten (10) days after the completion of building on said lot.

SECTION 12. In addition to the abatement remedies available herein, failure to abate a nuisance shall be a civil violation of the North Manchester Municipal Code.

SECTION 13. This ordinance shall neither limit nor otherwise curtail the right of the Town or of any private person from commencing and maintaining an action in a court of requisite jurisdiction for legal or equitable relief against a public or private nuisance, including, but not limited to, those specific nuisances identified in this ordinance.

PASSES AND ADOPTED by the Town Council of the Town of North Manchester, Indiana, this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Town Council President/Presiding Officer

FIRST READING: \_\_\_\_\_

Yes Votes: \_\_\_\_ No Votes: \_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk-Treasurer

SECOND READING: \_\_\_\_\_

Yes Votes: \_\_\_\_ No Votes: \_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk-Treasurer

THIRD READING: \_\_\_\_\_ Yes Votes: \_\_\_\_\_ No Votes: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk-Treasurer

Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2011, at \_\_\_\_\_ P.M.

\_\_\_\_\_  
Town Council President/Presiding Officer