

**ORDINANCE NO. 2017-08**

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF LEBANON,  
BOONE COUNTY, INDIANA CONCERNING PUBLIC NUISANCES (JUNK, TRASH  
AND DEBRIS ON PRIVATE PROPERTY)**

**WHEREAS**, the City of Lebanon (the “City”) is a duly formed municipal corporation within the State of Indiana governed by its duly elected Mayor and Common Council (“Common Council”); and

**WHEREAS**, the Mayor and Common Council are the executive and legislative bodies and are by law authorized to adopt ordinances for the protection of the public health, safety, and general welfare of its residents; and

**WHEREAS**, public nuisances, when existing unregulated within the corporate limits of the City, are unsightly, detrimental to property values, and a hazard to health and safety; and

**WHEREAS**, the purpose of this Ordinance is to regulate, prohibit and require the abatement and/or removal of public nuisances, specifically junk, trash and debris on private property, on all parcels of real estate within the corporate limits of the City;

**WHEREAS**, the Ordinance amends previously approved Ordinance 2010-01 and Ordinance 2011-12.

**NOW, THEREFORE, BE IT ORDAINED** by the Common Council of the City of Lebanon, Boone County, Indiana, meeting in regular session, as follows:

**Section 1.** The foregoing recitals are incorporated herein by this reference.

**Section 2.** As of the effective date of this Ordinance, Chapter 96: Health and Sanitation of the City Code of Ordinances shall be amended in accordance with **Exhibit A.**

**Section 3.** This Ordinance shall be in full force and effect in accordance with Indiana Law, upon passage of any applicable waiting periods, all as provided by the laws of the State of Indiana. All ordinances or parts thereof in conflict herewith are hereby ordered amended or repealed. All acts pursuant to the adoption of this Ordinance are hereby ratified.

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PASSED AND ADOPTED THIS 24 day of July, 2017.

**LEBANON COMMON COUNCIL**

**Voting For**

**Voting Against**

**Abstain**

Keith Campbell  
Keith Campbell

\_\_\_\_\_  
Keith Campbell

\_\_\_\_\_  
Keith Campbell

John Copeland  
John Copeland

\_\_\_\_\_  
John Copeland

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John Copeland

ABSENT  
Dan Fleming

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Dan Fleming

\_\_\_\_\_  
Dan Fleming

ABSENT  
Mike Kincaid

\_\_\_\_\_  
Mike Kincaid

\_\_\_\_\_  
Mike Kincaid

Corey Kutz  
Corey Kutz

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Corey Kutz

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Corey Kutz

Jeremy Lamar  
Jeremy Lamar

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Jeremy Lamar

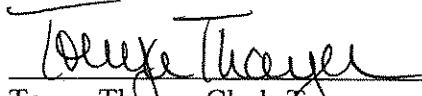
\_\_\_\_\_  
Jeremy Lamar

Dick Robertson  
Dick Robertson

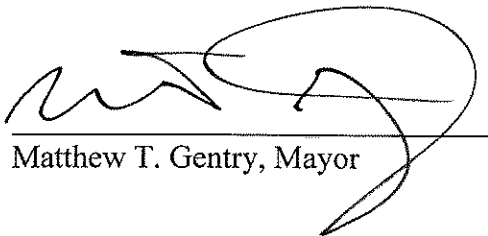
\_\_\_\_\_  
Dick Robertson

\_\_\_\_\_  
Dick Robertson

I hereby certify that ORDINANCE 2017-08 was delivered to the Mayor of Lebanon on the 24  
day of July, 2017, at 8 30 p. m.

  
\_\_\_\_\_  
Tonya Thayer, Clerk-Treasurer

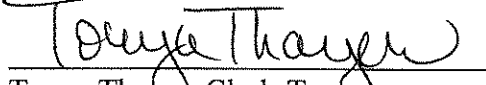
I hereby APPROVE ORDINANCE 2017-08  
this 24 day of July, 2017

  
\_\_\_\_\_  
Matthew T. Gentry, Mayor

I hereby VETO ORDINANCE 2017-08  
this \_\_\_ day of \_\_\_\_\_, 2017

\_\_\_\_\_  
Matthew T. Gentry, Mayor

ATTEST:

  
\_\_\_\_\_  
Tonya Thayer, Clerk-Treasurer

This document prepared by:  
Robert S. Schein, Esq.  
KRIEG DEVAULT, LLP  
(317) 238-6276

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EXHIBIT A

**CHAPTER 96: HEALTH AND SANITATION**

*Nuisances*

96.01 Unlawful growth of weeds and grass

96.02 Junk

96.03 Removal of violation

96.04 Collection of fines and costs

96.05 Appeals

96.99 Penalty

**NUISANCES**

**§ 96.01 UNLAWFUL GROWTH OF WEEDS AND GRASS.**

(A) *Policy.* Because the unrestricted growth of weeds, grass or noxious plants leads to increased presence of insects and vermin, can conceal dangerous conditions on the land, adversely affects the property and adjacent properties and otherwise adversely affects the public health, safety and welfare, it is the policy of the city to prohibit these conditions and to take all necessary permitted action to remove the conditions.

(B) *Mowing required.* All owners and tenants of real property located within the city shall cut and remove weeds and rank vegetation, as defined herein, growing on the property.

(C) *Weeds and rank vegetation.* For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**WEEDS** and **RANK VEGETATION.** Include all weeds, grasses and growing plants which exceed a height of eight inches, except agricultural crops, hay and pasture, garden plants, ornamental grasses and plants used for landscape purposes, trees, flowers and wetland or drainage vegetation.

(D) *Administration.* The City Planning and Zoning Department (hereinafter “the Department” or “the city”) shall be responsible for administering this chapter.

(E) *Notice.* Any notice required to be given under this chapter by the city to the owner of a property shall be delivered to the address provided to the County Auditor for tax purposes. If the owner cannot be found using the address from the County Auditor, the owner shall be deemed to have received the notice two days after it was mailed.

(Ord. 2010-01, passed 2-8-2010)

**§ 96.02 JUNK.**

(A) *Policy.* Because of the danger to health by providing places for vermin and insects and/or creating a fire hazard by the accumulation of discarded materials and the risk caused by the attraction of children to it, junk is hereby declared to be a nuisance.

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

**COMPOST PILE.** A pile, mound, or heap (whether on the ground or in a container or structure) consisting solely of organic materials that are intentionally collected in order to create a compost material for gardening purposes.

**DEBRIS.** Remains of something broken down or destroyed, rough broken bits and pieces of stone, glass, wood, concrete building materials after demolition, bits and pieces of rubbish or litter, or a heap of rock fragments.

**JUNK.** Any article in any form composed of or consisting of any of the following enumerated: discarded, abandoned, or cast-off materials. The term shall include, but not be limited to, paper, rags, tin, metals, residue from burning, broken glass, clothing, rubber, plastics, synthetic substances and fabrics, bottles, feathers, automobile parts detached from the vehicle as a whole, and household items not intended for exposure to rain and other inclement weather (includes furniture, mattress, and major appliances).

**LUMBER.** Wooden materials that are not in good usable condition or are not kept in an orderly fashion or are not actively being used in a construction process on the parcel where the materials are being kept.

**PUBLIC PLACES.** Any and all streets, sidewalks, boulevards, avenues, lanes, alleys, or other public ways, and parks, squares, plazas, grounds, and buildings frequented by the general public whether publicly or privately owned, including but not limited to, restaurants, shopping centers, stores, hotels, motels, industrial establishments, office buildings, apartment buildings, gas stations, hospitals, and clinics.

**TRASH.** Waste such as feathers, coffee grounds, ashes, tin cans, paper boxes, glass, wood, shrubs, yard clippings, leaves, tree trimmings, and other similar materials.

(C) It shall be unlawful for any person to permit the accumulation of junk, trash, or debris upon any property unless located in a properly zoned and established landfill or junkyard. This shall include any of the following:

- (1) Junk, trash, litter, refuse, debris, lumber, wood, and brush;
- (2) Abandoned, discarded, or unused objects or equipment such as automobiles, mobile homes, trailers, campers, furniture, stoves, refrigerators, freezers, appliances, cans, or containers;
- (3) Automobile parts, including tires and any other portion or parts of any motor vehicle detached from the vehicle as a whole; and

(4) Scrap metal or pieces or parts of steel, iron, tin, zinc, copper, aluminum, or any alloy thereof, whether covered with porcelain, plastic, rubber, or any other materials and whether intact or in parts.

(D) Notwithstanding any other provisions of this section to the contrary, it shall not be a violation of this section to create and maintain a residential compost pile provided:

(1) The compost pile does not occupy an area greater than 100 square feet; and

(2) The compost pile is either 100 feet from any other parcel or completely screened by a fence or other man made or natural screen such that the compost pile is not visible from any other parcel.

(E) Maintenance of property.

(1) It shall be the duty of any person owning or controlling any private premises to maintain such private premises in a clean and orderly manner. It shall be a violation of this ordinance to abandon, neglect, or disregard the condition or appearance of any premises so as to permit the accumulation of junk and trash thereon.

(2) It shall be the duty of any person owning or controlling any public place to keep the premises clean of all junk, trash, litter, refuse, and debris and to take measures, including daily cleanup of the premises, to prevent the accumulation of the above listed materials or movement by the elements to adjoining properties.

(3) The property owners and contractors in charge of any construction site shall maintain the construction site in such manner as to avoid the accumulation of junk and trash, and no junk or trash shall be allowed to be carried by the elements to adjoining properties. All junk, trash, and litter from construction or related activities shall be picked up at the end of each work day and placed in a container for regular removal.

(F) Such nuisances shall be subject to abatement in accordance with § 96.03.

### **§ 96.03 REMOVAL OF VIOLATION.**

(A) *Notice to correct.*

(1) If the Department finds a violation of this chapter, it shall mail to the property owner and/or tenant a notice to correct the violation. The notice to correct shall be delivered either by personal delivery by a representative of the Department or an officer of the City Police Department, or by certified mail.

(2) The notice to correct shall advise the owner/tenant of the following: the nature of the violation; the corrective action required; that the owner/tenant is to correct the violation within seven days after mailing or personal delivery of the notice; the city's remedies if the person fails to correct the violation; and, that if the condition is not timely corrected a fine will be assessed (without further action) the day following the time allowed for correction.

(B) *Remedies if violation not timely corrected.* If the violator fails to timely correct a violation as provided in a notice to correct, the city shall have the following remedies.

(1) *Fine.* The city may fine the violator the sum identified in § 96.99 if the violation is not corrected within the seven-day cure period identified in the notice to correct. The city is not required to provide to the violator any further notice or document as a precondition to assessing the fine. The city shall notify the violator of the amount of the fine assessed and other costs as provided in § 96.04.

(2) *Correction by city; costs and administrative fee.*

(a) If the violator fails to correct the violation within the time allowed, the city and/or a contractor hired by the city may enter upon the property and correct the violation.

(b) If the city, or a contractor hired by the city, corrects the violation, the violator shall be liable for:

1. The city's actual costs of correcting the violation; and
2. An administrative fee in the amount of \$250.

(c) Correction of the violation by the city does not relieve the violator from liability for any applicable fine.

(d) If deemed necessary, the city may obtain an order from any court of competent jurisdiction authorizing the city and its agents to enter upon the property for purposes of correcting the violation. However, the city is not required to obtain an order and may enter upon property to enforce this chapter under the authority granted herein.

(3) *Non-exclusive remedies.* The city may exercise one or more of these remedies without waiving other available remedies. The city may also pursue any other remedy provided for by state law or city ordinance.

(C) *Enforcement of repeated violations; continuous enforcement.* If a second violation of this chapter is discovered within 30 days after a notice to correct was issued for a violation on the same property, the Department may issue a notice to correct which includes a notice of continuous enforcement providing for ongoing enforcement of this chapter without further notice.

(1) This notice shall be delivered in the same manner and provide the same advisements as provided in division (A) above. In addition, this notice shall clearly and conspicuously delineate it as a notice of continuous enforcement, shall identify the length of time the notice remains in effect, and shall advise the violator that further violations shall be subject to additional fines and remedies provided in this chapter without additional notice.

(2) If the owner fails to correct the violation within seven days after delivery of this notice, the Department can issue fines, take corrective action and levy all costs and other remedies provided herein. Thereafter, upon discovery of additional violations the Department can invoke all remedies without providing additional notice. Upon taking any action the Department shall deliver to the violator a statement identifying the date of each violation; the corrective action taken; the amount of fine(s), fees and costs due; and the time in which payment is due.

(3) A notice of continuous enforcement may remain in effect for the remainder of the calendar year in which it is issued.

(Ord. 2010-01, passed 2-8-2010)

**§ 96.04 COLLECTION OF FINES AND COSTS.**

(A) The Department shall send to the violator written notice of the amount due for the fine, costs of correction and administrative fee within five business days of the accrual of the fine or completion of the corrective action, The notice shall advise the violator where and in what manner payment may be made, and that payment is due within ten days of issuance of the notice.

(B) (1) If an owner fails to pay the amount due within the time allowed, the Department shall certify to the County Auditor the unpaid amount, along with any additional administrative costs incurred in the certification. The County Auditor shall place the total amount certified on the real estate tax duplicate for the property affected, to be collected as delinquent taxes are collected. The funds collected shall be disbursed to the non-reverting code enforcement fund of the Department.

(2) In the alternative, the city may initiate an action in court to collect the amounts due. The violator shall be responsible for the city's costs and reasonable attorney's fees in an action.

(C) After correction of a violation and upon request by the violator, the Department may, in its sole discretion, reduce or waive any fine or administrative costs levied under this chapter.

(Ord. 2010-01, passed 2-8-2010; Ord. 2011-12, passed 8-8-2011)

**§ 96.05 APPEALS.**

(A) If the violator contests the city's determination of a violation or the amount of fines, fees and costs due, the violator may appeal the determination to the County Superior Court within 30 days after issuance of the city's notice identifying the fines and costs due. Review of the city's determination shall be de novo. Failure to file legal action within the designated time constitutes a waiver of the review.

(B) On review, the city shall have the burden of proving the violation and/or the amount of the fine, fees and costs by a preponderance of the evidence.

(C) (1) If the court determines that a violation existed, or if the review is only of the amount of fines and costs due, the court shall determine the total amount of the fine(s), costs of correction and administrative fee due. In addition, the owner shall also be liable for the city's costs and reasonable attorney's fees. The Court shall set the time in which the amount due shall be paid. If the amount due is not paid within the time specified, the city may collect it from the owner as provided in § 96.04.

(2) If the Court determines that no violation existed, the notice to correct shall be deemed void and the owner shall not be liable for a fine, administrative fee or costs of correction.

(Ord. 2010-01, passed 2-8-2010)

**§ 96.99 PENALTY.**

Owners found to be in violation of this chapter shall be subject to a fine in the following amounts:



<i>Violation</i>	<i>Fine</i>
First violation	\$100
Second violation within same calendar year	\$200
Third violation within same calendar year	\$300
Each additional violation within same calendar year	\$500

(Ord. 2010-01, passed 2-8-2010)