

ORDINANCE NO. 2004-16

Litter Control

SECTION 1. Repeal:

This Ordinance is intended to replace and supplant Ordinance Nos. 2001-12, 2002-2, 2002-3 and 2002-4 which are now hereby repealed.

SECTION II. Purpose:

An ordinance to establish requirements to control littering in the county, to prescribe penalties for the failure to comply, and to provide for recovery by the county of the expenses of litter removal.

SECTION III. Definitions:

For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meanings stated herein unless their use in the text of this chapter clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- (a) *Automobile Litter* shall mean automotive vehicles or trailers of any type without plates in an inoperable condition so as to be deemed dead storage.
- (b) *County* shall mean and include the County of Boone.
- (c) *Construction site* shall mean and include any private or public property upon which repairs to an existing building, construction of a new building, or demolition of an existing structure is taking place.
- (d) *Elements* shall mean and include any element or mechanism, animate or inanimate, which is a reasonably foreseeable means of carrying litter from one place to another. Elements shall include, but not limited to, wind, rain, water current and animals.
- (e) *Hearing Board* shall consist of the Board members of the Enforcement Authority issuing any citation according to the terms established in this ordinance.
- (e) *Litter* shall mean and include any uncontainerized man-made or man-used waste, which, if deposited within the county in any manner or location other than in a litter receptacle, tends to create a public nuisance or a danger to public health, safety and welfare, or to impair the environment of the people of the county. Litter may include, but is not limited to, any garbage, trash, refuse, confetti, debris, rubbish, grass clippings or other lawn or garden waste, newspaper, magazine, glass, metal, plastic or paper container or other construction material, motor vehicle part, furniture, oil, carcass of a dead animal, obnoxious or offensive matter of any kind, or any object likely to injure any person or create a nuisance condition or a traffic hazard.
- (f) *Loading or unloading dock* shall mean and include any dock space or area used by any moving vehicle for the purpose of receiving, shipping, and transporting goods, wares, commodities and persons.

- (g) *Newspaper* shall mean and include any newspaper of general circulation, as defined by general law, any newspaper duly entered with the United States Postal Service in accordance with federal statute or regulation, and any newspaper filed and recorded with any recording officer, as provided by general law; and, in addition thereto, shall mean and include any periodical or current magazine regularly published with not less than four (4) issues per year and sold or distributed to the public.
- (h) *Person* shall mean and include any natural person, firm, partnership, association, corporation, company, not-for-profit organization, or any governmental entity.
- (i) *Private Premises* shall mean and include any dwelling house, building or other structure designed to be used, either wholly or in part, for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant and shall include any yard, grounds, walk, driveway, porch, steps, vestibule, mailbox, or other structure belonging or appurtenant to such dwelling house, building or other structure.
- (j) *Public way or place* shall mean and include any and all streets, 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.
- (k) *Violations clerk* shall mean the Clerk of Boone County.

SECTION IV. Enforcement

This ordinance shall be enforced by the authorized employee(s) of the following (hereinafter collectively referred to as “Enforcement Personnel”):

- (a) Boone County Health Department; and
- (d) Boone County Area Plan Commission.

SECTION V. Prohibited acts and regulated activities:

- (a) Littering the premises of another:
 - (1) It shall be unlawful for any person to cast, place or deposit any litter upon real property owned by another, without the consent of the owner or lessee of such real property.
 - (2) Whenever any person shall be charged with a violation of this section, it shall be a sufficient allegation of an ordinance violation to state that such person deposited litter upon property of which he was not then the owner or lessee. It shall be an affirmative defense to such an alleged violation for the person to show that he had permission of the owner or lessee to so deposit such litter.

(b) Maintenance of Property:

- (1) Every owner, lessee, or occupant of a residential, business or commercial building or real estate shall maintain litter collection and storage areas in a clean condition and ensure that all litter is containerized. Failure to so maintain clean litter collection and storage areas shall constitute a violation of this section.
- (2) All litter that is subject to movement by the elements shall be secured by the owner, lessee, or occupant of a residential, business or commercial building where it is found before the same is removed or carried by the elements to adjoining premises.
- (3) It shall be the duty of any person owning, leasing or occupying a house or other building or premises, including vacant lots visible from any public place or private premises, to maintain such house, building or premises in a reasonably clean and orderly manner. It shall be unlawful to abandon, neglect or disregard the condition or appearance of any premises so as to permit the accumulation of litter thereon or the dispersion of litter therefrom.
- (4) The owner or person in control of any public place, including, but not limited to, restaurants, shopping centers, fast-food outlets, stores, hotels, motels, industrial establishments, office buildings, apartment buildings, housing projects, gas stations and hospitals and clinics, shall at all times keep the premises clean of all litter and shall take measures, including daily cleanup of the premises, to prevent litter from being carried by the elements to adjoining premises. It shall be unlawful to abandon, neglect or disregard the condition or appearance of such premises so as to permit the accumulation of litter thereon or the dispersion of litter therefrom.
- (5) The owner or operator of any public establishment which provides off-street customer parking and dispenses food or beverages intended for human consumption outside the establishment or off its premises shall maintain litter receptacles in the off-street parking area as follows: a minimum of one (1) receptacle shall be provided for nine (9) or fewer parking spaces and one (1) additional receptacle for each additional nine (9) parking spaces.
- (6) The person owning, operating or in control of a loading or unloading dock shall at all times maintain the dock area free of litter in such a manner that litter will be prevented from being carried by the elements to adjoining premises.
- (7) The property owners and the prime contractors in charge of any construction site shall maintain the construction site in such a manner that litter will be prevented from being carried by the elements to adjoining premises. All litter from construction activities or any related activities shall be picked up at the end of each workday and placed in containers which will prevent litter from being carried by the elements to adjoining premises.
- (8) Persons owning, occupying or in control of any premises shall keep the sidewalks and alleys adjacent thereto free of litter. In residential areas, owners or occupants shall sweep or rinse off the sidewalks abutting their premises as often as may be required to keep the walk reasonably free from dirt, paper and waste.

- (9) It shall be unlawful for any person who is in control of the premises upon which is located or on whose behalf there is maintained any container of refuse, water or garbage to allow that refuse, waste or garbage to remain uncollected or to allow that container to remain unemptied (a) more than fifteen (15) days or (b) until the refuse, waste or garbage creates any condition which is offensive to persons upon any private premises or public place.
- (10) It shall be unlawful for any person who has contracted to collect and remove refuse, waste or garbage from any residential, business or commercial building to allow that refuse, waste or garbage to remain uncollected or to allow a refuse container to remain unemptied (a) more than fifteen (15) days or (b) until that refuse, waste or garbage creates any condition which is offensive to persons upon any private premises or public place. A violation of this subdivision may be abated by the county in accordance with this chapter; provided also, however, that the container in question may be impounded and a lien may be executed against any property held in connection with the business of collecting refuse, waste or garbage by the person alleged to be in violation of this subdivision.
- (11) Automobile Litter shall be prohibited unless such automotive vehicle or trailer is in a completely enclosed building.

SECTION VI. Penalties

- (a) **Littering the Premises of Another and/or Litter From Transport or Travel on Public Ways:**
 1. Any person found to violate Section V (a) of this Ordinance in any manner shall be subject to a fine in the following amounts:
 - (i) Fifty Dollars (\$50.00) for first violation;
 - (ii) One Hundred Dollars (\$100.00) for second violation; and
 - (iii) Two Hundred Fifty Dollars (\$250.00) for third or greater violation within a twelve month time period
 2. The Enforcement Personnel citing such violation shall issue a citation in the form set forth in Attachment "A." The citation shall include notice that the recipient may admit or deny the alleged violation subject to the provisions in Sections VI(a)(2)(i) and VI(a)(2)(ii) of this Ordinance. Any person receiving such a citation shall appear in person before the violation clerk to either admit or deny the violation within seven (7) days of the date of the issuance of the citation.
 - (i) If the recipient admits the violation, he or she shall be subject to payment of the penalty as provided above. All such payments shall be made within seven (7) days of the date of the citation.
 - (ii) If the recipient denies the violation, he or she shall request a hearing in front of the Hearing Board. Such hearing shall be conducted at the next regular meeting of the Board. Notice of the date and time of such hearing shall be provided to recipient.

- (iii) The Hearing Board conducting a hearing under this section shall determine whether a violation of this Ordinance has been proven by a preponderance of the evidence. Upon a finding that a violation of the Ordinance has been committed, the Board shall enter an Order requiring the alleged violator to pay the fine provided in VI (a) (1).
- 3. A citation issued under this section shall be provided to the recipient and a copy of the citation shall be forwarded to all other Enforcement Authorities. The issuing Enforcement Authority shall notify the remaining Enforcement Authority as to all actions taken with regard to the cited violation.

(b) Maintenance of Property

- 1. Any person found to violate Section V (b) of this Ordinance in any manner shall be subject to a fine of not more than two thousand five hundred dollars (\$2,500.00). Each day any such violation is committed or permitted to continue may constitute a separate offense and shall be punishable as such hereafter.
- 2. In addition to the penalties described in Section VI(b)(1) of this Ordinance, the County, by appropriate action, may seek injunctive relief, requesting the court to enjoin or order the abatement of any violation of this Ordinance.
- 3. The Enforcement Personnel citing a violation under Section V (b) of this Ordinance shall issue a notice in the form set forth in Attachment "B."
The notice shall include a description of the alleged violation and notice to the recipient that failure to abate the violation within fifteen (15) days may result in the pursuit of an action by the County in a court of appropriate jurisdiction as well as the imposition of additional fines up to two thousand five hundred dollars (\$2,500.00) for each violation.
- 4. The notice shall also include notice that the recipient may deny the alleged violation. Any person receiving such a notice shall appear in person before the violation clerk to deny the violation within seven (7) days of the date of the issuance of the citation.
 - (i) If the recipient denies the violation, he or she shall request a hearing in front of the Hearing Board. Such hearing shall be conducted at the next regular meeting of the Board. Notice of the date and time of such hearing shall be provided to recipient.

- (ii) The Hearing Board conducting a hearing under this section shall determine whether a violation of this Ordinance has been proven by a preponderance of the evidence. Upon a finding that a violation of the Ordinance has been committed, the Board shall enter an Order requiring the alleged violator to abate the violation within fifteen (15) days of the issuance of the Board's Order and shall impose a fine in an amount to be determined by the Board but not to exceed two thousand five hundred dollars (\$2,500.00) for each day a violation is found to have occurred.
5. A notice issued under this section shall be provided to the recipient and a copy of the notice shall be forwarded to all other Enforcement Authorities. The issuing Enforcement Authority shall notify the remaining Enforcement Authority as to all actions taken with regard to the cited violation.
 6. Should any individual fail to comply with the Board's order to remove the violation within the time period provided, the County, in its sole discretion, may undertake the work necessary to abate the violation, and may either seek reimbursement for the cost of work performed by filing an action in a court of appropriate jurisdiction or file a lien against the subject real estate for the cost of the work performed, until such cost is paid by the party on whose behalf the abatement work was performed.
 7. Failure by the recipient to abate the violation or pay the assessed fine may result in the pursuit of an action by the County in a court of appropriate jurisdiction. The County may recover the cost of removal of such item(s) constituting the violation, the amount of penalty imposed, attorney fees, and costs of bringing the action.

SECTION VII. Litter Enforcement Fund

- (a) There is hereby created a special fund to be designated as the "Litter Ordinance Enforcement Fund of Boone County, Indiana."
- (b) This fund shall be a continuing fund, with all balances remaining therein at the end of each fiscal year, and no such balances shall lapse into the county general funds or ever be diverted, directly or indirectly, in any manner, to any other uses than for the purpose of enforcement and administration in connection with the Boone County Litter Ordinance.
- (c) This fund shall be comprised of revenue derived from the collection of fines and penalties levied pursuant to the Boone County Litter Ordinance.
- (d) Moneys from this fund shall be appropriate in accordance with procedures for expenditures of public funds.
- (e) The fund shall be administered by the Auditor of Boone County, Indiana.

SECTION VIII. Authority of County Counsel

The County may use such attorney(s), including but not limited to the designated County attorney, as it deems fit, in its sole discretion, for the prosecution of any claim hereunder, whether appearing before the Court or otherwise.

SECTION IX. Severability:

Each section, subsection, sentence, clause and phrase of this Ordinance is declared to be independent section, subsection, sentence, clause, and phrase, and the finding or holding of any such portion of this Ordinance to be unconstitutional, void, or ineffective for any cause, or reason, shall not affect any other portion of this Ordinance.

SECTION X. Effective date:

This Ordinance shall be in full force and effect from and after its adoption and any publication as may be required by law.

ALL OF WHICH IS ADOPTED this 8th day of November, 2004, by the Board of Commissioners of Boone County.

Betty Lee Cooper, Commissioner

Byron Loveless, Commissioner

Harold Lewis

ATTEST:

Gretchen Smith, Auditor