

**TOWN OF GREENVILLE
ORDINANCE NO. 2009-T-008**

**ORDINANCE CONCERNING THE REGULATING OF UNLAWFUL
ASSEMBLY, VANDALISM, DAMAGE TO BUILDINGS AND GRAFFITI
WITHIN THE TOWN OF GREENVILLE, INDIANA**

WHEREAS, the town council for the Town of Greenville, Indiana, in the interest of public safety and nuisance and to protect buildings and facilities from vandalism and damage, has deemed it necessary that the Town develop an Ordinance which forbids unlawful assembly, vandalism, damage to buildings and graffiti within the Corporate limits of the Town of Greenville;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF GREENVILLE, INDIANA, AS FOLLOWS:

Loitering and Unlawful Assembly:

- (a) **Loitering** No person shall loiter or prowl in a place, at a time or in a manner not usual for law abiding citizens, under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity, in any public place, public way, street, highway, or alley and refuse to obey the lawful command of a Greenville Marshal Department Member to move on or provide to such Greenville Marshal Department Member a lawful reason for remaining on such public way, street, highway, place or alley if the alleged loitering by such person would create or cause to be created any of the following:
- (1) Danger of a breach of the peace;
 - (2) The unreasonable danger of a disturbance to the comfort and repose of any person acting lawfully on or in a public way, street, highway, place or alley reserved for pedestrians;
 - (3) The obstruction or attempted obstruction of the free normal flow of vehicular traffic or the normal passage of pedestrian traffic upon any public way, street, highway, place or alley;
 - (4) The obstruction, molestation or interference or attempt to obstruct, molest or interfere with any person lawfully on or in a public way, street, highway, place or alley, in a manner that would cause a reasonable person or pedestrian of a public way, street, highway, place or alley to fear for his or her safety.

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(b) Unlawful assembly. No person who is a member of a group of three (3) or more persons who are loitering or prowling in a place, at a time or in a manner not usual for law abiding citizens, under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity, in a public way, street, highway, place or alley, shall refuse the lawful command of a Greenville Marshal Department Member to move or provide to the Greenville Marshal Department Member a lawful reason for remaining in a public way, street, highway, place or alley, whether such group is stationary or in transit, if the alleged loitering would create or cause to be created any of the following:

- (1) Danger of a breach of the peace;
- (2) The unreasonable danger of a disturbance to the comfort and repose of any person acting lawfully on or in a public way, street, highway, place or alley reserved for pedestrians;
- (3) The obstruction or attempted obstruction of the free normal flow of vehicular traffic or the normal passage of pedestrian traffic upon any public way, street, highway, place or alley;
- {4} The obstruction, molestation or interference or attempt to obstruct, molest or interfere with any person lawfully on or in a public way, street, highway, place or alley, in a manner that would cause a reasonable person or pedestrian of a public way, street, highway, place or alley to fear for his or her safety.

(c) Failure of Greenville Marshal Department Member to comply with proper procedure

No person shall be convicted under this section if the Greenville Marshal Department Member failed to comply with the procedure outlined herein.

(d) Person's explanation deemed true at trial. No person shall be convicted under this section if it appears at trial that the explanation given by the person is true and, if believed by the Greenville Marshal Department Member, would:

- (1) Have dispelled the fear for human safety;
- (2) Have dispelled the concern for safety of property;
- (3) Have dispelled the fear of a breach of the peace;
- (4) Have provided a justifiable reason for obstructing vehicular or pedestrian traffic, subject to the discretion of the court.

(e) Probable cause to assume violation. If a person takes flight upon appearance of a Greenville Marshal Department Member who identifies himself as such, or refuses to identify himself, or attempts to conceal himself, such Greenville Marshal Department Member has probable cause to believe a violation of this section has occurred.

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- (f) **Fines.** The first violation in any calendar year shall be subject to admission of violation and payment of a fine of \$50.00. All second and subsequent violations in the calendar year are subject to fines not less than \$100.00 or more than \$1000.00.

Possession of Paint or Marker with Intent to Deface Unlawful:

- (a) It shall be unlawful for any person to possess a spray paint container, liquid paint or any marker containing a fluid which is not water soluble and has a point, brush, applicator or other writing surface of three-eighths of an inch or greater, etching equipment or etching materials, in any public building or upon any public facility. It shall be a defense to an action for violation of this subsection that the owner, manager or other person having control of the property, building or facility consented to the presence of the paint, marker or etching equipment or material.
- (b) It shall be unlawful for any person to possess a spray paint container, liquid paint or any marker containing a fluid which is not water soluble and has a point, brush, applicator or other writing surface of three-eighths of an inch or greater, or any etching equipment or etching materials, on the public way with intent to use the same to deface any building, structure or property.
- (c) For purposes of this section, "etching equipment" and "etching materials" include any tool, device, equipment or substance that can be used to make permanent marks on metal, glass, plastic, concrete or stone.
- (d) Any person who violates any provision of this section shall be subject to a fine of not more than \$1000.00.

Graffiti Definition and Removal:

- (a) **Definition.** The term "graffiti" for purposes of this section, shall mean any unauthorized inscription or representation, on a building, structure, wall, sign, fence, sidewalk, pavement, post, stone, tree or other object or structure, of any symbol, diagram, letter, word, numeral, emblem, picture, character or combination thereof by carving, application of paint or other substance other than as permitted by this code.
- (b) **Removal required.** It shall be the duty of the owner or occupant of the building, structure, wall, dumpster, or other personal property upon which any graffiti has been placed to remove, cover or eradicate the graffiti. When graffiti is found to be on private property, the Greenville Marshal's Department shall notify the property owner, with a copy to the occupant if applicable, in writing of the graffiti and request its removal within fifteen (15) days. For good cause shown, the owner or occupant may be given additional time to meet the removal requirements without being charged with a violation of this section.

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(c) Removal by town authorized. In addition to any fine which may be imposed, if the owner or occupant fails to remove, cover or otherwise eradicate the graffiti within fifteen (15) days from the issuance of the notice, or such later date as the owner or occupant may be allowed, the town or its authorized agent may enter upon the property and remove such graffiti by any means necessary, and the cost of removal shall be collected from the owner or occupant of the property.

(d) Lien for costs of removal incurred by town. Within 10 days, following the removal by the town of any graffiti from private property, the town shall send the property owner a Notice of Intent To Assess Costs detailing the cost remaining unpaid by the property owner, and within thirty (30) days of the date of the removal of the graffiti, said cost shall become a lien upon the real estate affected, unless modified in the Appeals Process provided in section (e). A town representative or agent shall report the costs to the Town Clerk, who shall certify the costs to the County Auditor. The Auditor shall place the same on the tax duplicate as a charge against the owner of the real estate, to be collected by the County Treasurer with the state, county and municipal taxes assessed against the owner's real estate at the regular time for paying the taxes in accordance with I.C. 36-1-6-2.

(e) Appeal Rights. The owner or occupant of the property may seek relief from the cost of the removal and abatement of the graffiti as provided in sections (c) and (d) by making a written request to the Marshal, or his designee if the Marshal is unavailable, providing all reasons and explanations justifying any modification or waiver of those costs. Each written request must be made within 10 days after receiving the Notice of Intent to Assess Cost. The Marshal shall within 5 days of the receipt of an appeal; either waive, modify or reaffirm those costs and provide a written statement of said determination to the property owner with a copy to the Greenville Town Clerk. The property owner may request a hearing and review of the Marshal's decision by filing a written request with the Greenville Town Board on or before 10 days after receiving the Marshal's determination. The Greenville Town Board shall at their next scheduled meeting make a final determination of the assessment of cost and placement of lien.

(f) Recovery of cost from person responsible for placing graffiti. The town's exercise of the remedies provided in this Ordinance shall not prevent the owner or occupant from recovery, through civil suit or otherwise, the cost of removal or other reparation from the person responsible for placing the graffiti on his property.

(g) Penalty. Whoever violates any provision of this chapter may, in addition to payment of the costs incurred by the town to remove the graffiti, be fined not more than fifty dollars (\$50.00). A separate offence shall be deemed committed on each day that a violation occurs or continues.

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ADOPTED BY THE TOWN COUNCIL OF GREENVILLE, INDIANA, ON THE 4th
DAY OF MAY, 2009.

PRESIDENT OF THE TOWN
COUNCIL OF GREENVILLE,
INDIANA



TALBOTTE RICHARDSON,



JACK TRAVILLIAN,
CLERK/TREASURER

PREPARED BY:
RANDAL JOINES

IC 36-1-6-1 Application of chapter

Sec. 1. This chapter applies to all municipal corporations having the power to adopt ordinances. *As added by Acts 1980, P.L.211, SEC. 1.*

IC 36-1-6-2

Real property; action to bring compliance; expense as lien against property

Sec. 2. (a) If a condition violating an ordinance of a municipal corporation exists on real property, employees or contractors of a municipal corporation may enter onto that property and take appropriate action to bring the property into compliance with the ordinance. However, before action to bring compliance may be taken, all persons holding a substantial interest in the property must be given a reasonable opportunity of at least ten (10) days but not more than sixty (60) days to bring the property into compliance. If the municipal corporation takes action to bring compliance, the expenses incurred by the municipal corporation to bring compliance constitute a lien against the property. The lien attaches when notice of the lien is recorded in the office of the county recorder in which the property is located. The lien is superior to all other liens except liens for taxes, in an amount that does not exceed:

(1) ten thousand dollars (\$10,000) for real property that:

(A) contains one (1) or more occupied or unoccupied single or double family dwellings or the appurtenances or additions to those dwellings; or

(B) is unimproved; or

(2) twenty thousand dollars (\$20,000) for all other real property not described in subdivision (1).

(b) The municipal corporation may issue a bill to the owner of the real property for the costs incurred

by the municipal corporation in bringing the property into compliance with the ordinance, including administrative costs and removal costs.

(c) A bill issued under subsection (b) is delinquent if the owner of the real property fails to pay the bill

within thirty (30) days after the date of the issuance of the bill.

(d) Whenever a municipal corporation determines it necessary, the officer charged with the collection

of fees and penalties for the municipal corporation shall prepare:

(1) a list of delinquent fees and penalties that are enforceable under this section, including:

(A) the name or names of the owner or owners of each lot or parcel of real property on which

fees are delinquent;

(B) a description of the premises, as shown on the records of the county auditor; and

(C) the amount of the delinquent fees and the penalty; or

(2) an instrument for each lot or parcel of real property on which the fees are delinquent.

(e) The officer shall record a copy of each list or each instrument with the county recorder, who shall

charge a fee for recording the list or instrument under the fee schedule established in IC 36-2-7-10.

(f) The amount of a lien shall be placed on the tax duplicate by the auditor. The total amount, including any accrued interest, shall be collected in the same manner as delinquent

taxes are collected and shall be disbursed to the general fund of the municipal corporation.

(g) A fee is not enforceable as a lien against a subsequent owner of property unless the lien for the fee was recorded with the county recorder before conveyance to the subsequent owner. If the property is conveyed before the lien is recorded, the municipal corporation shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not later than fifteen (15) days after

the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be considered a bad debt loss.

(h) The municipal corporation shall release:

- (1) liens filed with the county recorder after the recorded date of conveyance of the property; and
- (2) delinquent fees incurred by the seller;

upon receipt of a written demand from the purchaser or a representative of the title insurance company or the title insurance company's agent that issued a title insurance policy to the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner and that the purchaser has not been paid by the seller for the delinquent fees.

(i) The county auditor shall remove the fees, penalties, and service charges that were not recorded before a recorded conveyance to a subsequent owner upon receipt of a copy of the written demand under subsection (h).

As added by Acts 1980, P.L.211, SEC.1. Amended by P.L. 50-2002, SEC.1; P.L.144-2003, SEC.1; P.L.177-2003, SEC.2; P.L.131-2005, SEC.5; P.L.88-2006, SEC.1; P.L.194-2007, SEC.8.

IC 34-28-5

Chapter 5. Infraction and Ordinance Violation Enforcement Proceedings

IC 34-28-5-1

Prosecution in name of state or municipality; rules; limitations; burden of proof; deferral

programs; agreement for community restitution or service

Sec. 1. (a) An action to enforce a statute defining an infraction shall be brought in the name of the state of Indiana by the prosecuting attorney for the judicial circuit in which the infraction allegedly took place. However, if the infraction allegedly took place on a public highway (as defined in IC 9-25-2-4) that runs on and along a common boundary shared by two (2) or more judicial circuits, a prosecuting attorney for any judicial circuit sharing the common boundary may bring the action.

(b) An action to enforce an ordinance shall be brought in the name of the municipal corporation. The municipal corporation need not prove that it or the ordinance is valid unless validity is controverted by affidavit.

(c) Actions under this chapter (or IC 34-4-32 before its repeal):

- (1) shall be conducted in accordance with the Indiana Rules of Trial Procedure; and
- (2) must be brought within two (2) years after the alleged conduct or violation occurred.

(d) The plaintiff in an action under this chapter must prove the commission of an infraction or defendant

pay under section 4(e) of this chapter for the ordinance violation if the defendant fails to perform the

community restitution or service provided for in the agreement as approved by the court; and

(B) are recorded in a written instrument signed by the defendant and the attorney for the municipal corporation;

(3) the agreement is filed in the court where the judgment was entered; and

(4) the court approves the agreement.

If a defendant fails to comply with an agreement approved by a court under this subsection, the court shall require the defendant to pay up to the amount of the judgment requested in the action under section 4(e) of this chapter as if the defendant had not entered into an agreement under this subsection. *As added by P.L. 1-1998, SEC.24. Amended by P.L.98-2000, SEC.12; P.L.98-2004, SEC.123; P.L.176-2005, SEC.24; P.L.200-2005,*