

TOWN OF GREENVILLE
ORDINANCE NO. 2009-T-028

**ORDINANCE CONCERNING THE REGULATING OF LAND
EXCAVATION WITHIN THE TOWN OF GREENVILLE, INDIANA**

WHEREAS, the town council for the Town of Greenville, Indiana, in the interest of preventing land erosion and water run off, has deemed it necessary that the Town develop an Ordinance which forbids excavation on real property within the Corporate limits of the Town of Greenville without prior Greenville Town Council approval;

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

Definition of Excavating for the Purpose of this Ordinance

Excavating: 1. To make a hollow by removing the inner part; make a hole or cavity in; form into a hollow, as by digging. 2. To make {a hole, tunnel, etc.} by removing material. 3. To dig or scoop out, {earth, sand, etc.}. 4. To expose or lay bare by digging; unearth, hollow out.

Requirements of Compliance with this Ordinance:

1. Persons or person wishing to excavate a property must appear before the Greenville Town Council and present a clear and precise drawing plan for the area to be excavated before excavation can begin.
2. Plan shall address such topics as earth {land} erosion and water run off.
3. Plan shall indicate the purpose required for the excavation.
4. If property is for new construction the person or persons shall present a copy of those plans to the Greenville Town Council along with a plot plan for the location of such structure, it's dimensional location to adjoining properties, the proposed entry and exits from adjoining Greenville streets and alleyways.

Exempted from this Ordinance

1. Person or persons performing common yard maintenance such as planting trees, shrubs, seeding and re-seeding of grass, etc.
2. The Greenville Water Utility and streets, alleys and roadway maintenance performed by or on the behalf of the Town of Greenville.

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Penalties


- 1) If failure to comply with this Ordinance will require Greenville Marshal's Department to obtain a court order to stop excavation. A fine of five hundred dollars per day will occur for each day the excavation continues after Marshal issuing the citation while obtaining a court order to stop the excavation. If levied fines are not paid within 30 days then a lien will be sought against person's property, who is the owner of the property being excavated in accordance with I.C. 36-1-6-2.

2. Persons or person who is the owner or owners of such property shall be responsible for any repair construction work required. Repairs to be completed within 14 days upon notice to correct any damage to roadway {streets, alleyways}, earth {land} erosion and water run off caused by such excavation to the satisfaction of the Greenville Town Council. If the Town of Greenville Council deems it necessary to hire another party to perform such repairs, the owner or owners of such property shall be responsible for those costs. If levied costs are not paid within 30 days then a lien will be sought against person's property, who is the owner of the property being excavated in accordance with I.C. 36-1-6-2.

ADOPTED BY THE TOWN COUNCIL OF GREENVILLE, INDIANA, ON THE
26th DAY OF MAY, 2009.

PRESIDENT OF THE TOWN
COUNCIL OF GREENVILLE,
INDIANA


TALBOTTE RICHARDSON,


JACK TRAVILLIAN,
CLERK/TREASURER

PREPARED BY:
TALBOTTE RICHARDSON

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IC 36-1-6 Chapter Enforcement of Ordinances

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

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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.

C 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):

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- (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.L98-2000, SEC.12;P.L98-2004, SEC. 123; P.L 176-2005, SEC.24; P.L200-2005, SEC.*