

TOWN OF GREENVILLE
ORDINANCE NO. 2010-T-060

**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, and 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.

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2. The Greenville Water Utility and streets, alleys and roadway maintenance performed by or on the behalf of the Town of Greenville.

ENFORCEMENT:

Enforcement of this Ordinance shall be pursuant to I.C. 36-1-6-2, I.C. 36-1-6-3 or I.C. 36-1-6-4, or a successor statute if said statute is repealed.

Fines and 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 plus attorney fees and court cost.

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 plus attorney fees and court cost.

3. If levied fines are not paid within 30 days, a lien will be sought against person or person's responsible real estate in accordance with I.C. 36-1-6-2.

4. The Town of Greenville may pursue any and all penalties described in I.C. 36-1-6-3 in addition to the penalties described in I.C. 36-1-6-4, or a successor statute if said statute is repealed plus attorney fees and court costs.

5. Furthermore, if the condition has not been corrected within thirty {30} days, the Town may cause to be certified to the County Auditor as a charge against the taxes due and payable to the County Treasurer in the following year together with attorney fees and court cost in accordance with IC 36-1-6-2 or successor statute, if said statute is repealed.

6. Any portion of any prior Ordinance in conflict with the provisions of this Ordinance is hereby repealed.

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7. This Ordinance replaces Ordinance 2009-T-028 dated May 26th, 2009. Ordinance 2009-T-028 shall be moved to the voided Ordinance file after passage of this Ordinance.

8. The Town of Greenville Clerk Treasurer shall publish this Ordinance within 30 days in the New Albany Tribune after passage.

9. The Town of Greenville Clerk Treasurer shall attach a copy of the publication and related information to the original signed Ordinance and a PDF file shall be added to the electronic file copy of this Ordinance.

10. Any unlawful provision found in this ordinance shall not effect the remaining provision.

ADOPTED BY THE TOWN COUNCIL OF GREENVILLE, INDIANA, ON THE
31st DAY OF AUGUST, 2010.

PRESIDENT OF THE TOWN
COUNCIL OF GREENVILLE,
INDIANA


TALBOTTE RICHARDSON,



JACK TRAVILLIAN,
CLERK/TREASURER

PREPARED BY:
RANDAL JOHNES

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IC 36-1-6

Chapter 6. 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

Action to bring compliance with ordinance conditions; expense as lien against property; enforcement of delinquent fees and penalties

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. Continuous enforcement orders (as defined in IC 36-7-9-2) can be enforced and liens may be assessed without the need for additional notice. 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 instalment 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.

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(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.7; P.L.194-2007, SEC.8; P.L.88-2009, SEC. 5.

IC 36-1-6-3

Proceeding to enforce ordinance; law applicable

Sec. 3. (a) Certain ordinances may be enforced by a municipal corporation without proceeding in court through:

(1) an admission of violation before the violations clerk under IC 33-36; or

(2) administrative enforcement under section 9 of this chapter,

(b) Except as provided in subsection (a), a proceeding to enforce an ordinance must be brought in accordance with IC 34-28-5, section 4 of this chapter, or both.

(c) An ordinance defining a moving traffic violation may not be enforced under IC 33-36 and must be enforced in accordance with IC 34-28-5.

As added by Acts 1980, P.L.211, SEC.1. Amended by Acts 1981, P.L.108, SEC.39; P.L.177-1988, SEC.8; P.L.130-1991, SEC.35; P.L.1-1998, SEC.202; P.L.98-2004, SEC.159.

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IC 36-1-6-4

Civil action by municipal corporation; action by court

Sec. 4. (a) A municipal corporation may bring a civil action as provided in IC 34-28-5-1 if a person:

- (1) violates an ordinance regulating or prohibiting a condition or use of property; or
- (2) engages in conduct without a license or permit if an ordinance requires a license or permit to engage in the conduct.

(b) A court may take any appropriate action in a proceeding under this section, including any of the following actions:

- (1) Issuing an injunction.
- (2) Entering a judgment.

- (3) Issuing a continuous enforcement order (as defined in IC 36-7-9-2).
- (4) Ordering the suspension or revocation of a license.
- (5) Ordering an inspection.
- (6) Ordering a property vacated.
- (7) Ordering a structure demolished.
- (8) Imposing a penalty not to exceed an amount set forth in IC36-1-3-8(a)(10).
- (9) Imposing court costs and fees in accordance with IC 33-37-4-2 and IC 33-37-5.
- (10) Ordering a defendant to take appropriate action to bring a property into compliance with an ordinance within a specified time.
- (11) Ordering a municipal corporation to take appropriate action to bring a property into compliance with an ordinance in accordance with IC 36-1-6-2.

As added by Acts 1980, P.L.211, SEC.1. Amended by P.L. 194-2007, SEC. 9; P.L. 88-2009, SEC. 6.

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9. The Town of Greenville Clerk Treasurer shall attach a copy of the publication and related information to the original signed Ordinance and a PDF file shall be added to the electronic file copy of this Ordinance.

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ADOPTED BY THE TOWN COUNCIL OF GREENVILLE, INDIANA, ON THE 31st DAY OF AUGUST, 2010. PRESIDENT OF THE TOWN COUNCIL OF GREENVILLE, INDIANA TALBOTTE RICHARDSON, JACK TRAVILLIAN, CLERK/TREASURER PREPARED BY: RANDAL JOHNES

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