

Ordinance 2019 - 2

AN ORDINANCE GOVERNING UNSAFE BUILDINGS WITHIN THE TOWN OF BOURBON, INDIANA

WHEREAS, the members of the Town Council of the Town of Bourbon, Indiana, have received complaints from the residents and visitors of the Town of Bourbon regarding deteriorating structures that appear to be unsafe; and

WHEREAS, the State of Indiana has adopted standards regarding unsafe buildings contained in Indiana Code 36-7-9, and permits municipalities to adopt their own ordinance thereunder; and

WHEREAS, Marshall County, Indiana has adopted an ordinance under that chapter regarding unsafe buildings in unincorporated areas; and

WHEREAS, the Marshall County Building Department enforces building standards for the Town of Bourbon;

WHEREFORE, be it ordained by the Town Council of Bourbon, Marshall County, Indiana that the following standards are hereby adopted and incorporated into the Town Code of the Town of Bourbon, Indiana as the Unsafe Building Ordinance, as follows:

1. Indiana Code 36-7-9-1 through Indiana Code 36-7-9-28 is hereby adopted by reference as the Town of Bourbon Unsafe Building Ordinance. All proceedings within the town of Bourbon for the inspection, repair and removal of unsafe buildings shall be governed by said law and the provisions of this ordinance. In the event the provisions of this ordinance conflict with the provisions of Indiana Code 36-7-9-1 through Indiana Code 36-7-9-28, the provisions of the State statute shall control.
2. All buildings and properties or portions thereof within the Town of Bourbon which are determined after inspection by the Marshall County Building Commissioner to be unsafe as defined in this ordinance are hereby declared to be a public nuisance and shall be abated by repair, rehabilitation, demolition, or removal.
3. The Town of Bourbon Code Enforcement Officer shall be authorized to administer and to proceed under the provisions of said law and this ordinance in ordering the repair or

removal of any buildings or materials found to be unsafe as specified therein or as specified thereafter.

4. In lieu of a hearing authority, the Town of Bourbon shall pursue enforcement and/or sanctions before the Marshall County Circuit Court.
5. Wherever in the building regulations of the State of Indiana or the Town of Bourbon Unsafe Building Ordinance it is provided that anything must be done to the approval of or subject to the direction of the Town of Bourbon Code Enforcement Officer or any other officer of the Town of Bourbon, this shall be construed to give such officer only the discretion to determine whether the property in question complies with the rules and standards established by this ordinance. No such provision shall be construed as giving any officer discretionary authority to determine what such regulations and/or standards shall be, the authority to require conditions not prescribed within said ordinance, or to enforce ordinance provisions in an arbitrary or discretionary manner. The Town Council of the Town of Bourbon, Indiana has the authority to establish policy and standard operating procedures.
6. The description of an unsafe building and unsafe premises described in Indiana 36-7-9-4 is hereby adopted to provide the minimum standards for building condition, property conditions or maintenance in the Town of Bourbon, Indiana, but supplemented adding the following definition:

UNSAFE BUILDING: Any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be an unsafe building, provided that such conditions or defects exist to the extent that life, health, property or safety of the public or its occupants are in danger.

- (a) Whenever any door, aisle, passageway, or other means of exit is not of sufficient width or size or is not so arranged as to provide an adequate means of exit in case of fire or panic.
- (b) Whenever the street in any materials, member, or portion thereof, due to all dead and live loads, is more than one and one-half times the working stress or stresses allowed for new buildings of a similar structure, purpose or location.
- (c) Whenever any portion thereof has been damaged by fire, earthquake, wind, flood, or by any other cause, to such an extent that the structural strength or

stability thereof was materially less than it was before such a catastrophe and is less than the minimum requirements for new buildings for a similar structure, purpose or location.

- (d) Whenever any portion, member, or appurtenance thereof is likely to fall, to become detached or dislodged, or to collapse and thereby injure persons or damage property.
- (e) Whenever any portion of a building, or any member, appurtenance, or ornamentation on the exterior thereof is not of sufficient strength or stability or is not so anchored, attached, or fastened in place, so as to be capable of resisting a wind pressure of one-half of that specified for new buildings or a similar structure, purpose or location without exceeding the working stresses permitted for such buildings.
- (f) Whenever any portion thereof has racked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.
- (g) Whenever the building or structure, or any portion thereof, because of
 - (1) dilapidation, deterioration, or decay;
 - (2) faulty construction;
 - (3) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building;
 - (4) the deterioration, decay or inadequacy of its foundation; or
 - (5) any other cause, is likely to partially or completely collapse.
- (h) Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.
- (i) Whenever the exterior walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle on-third of the base.
- (j) Whenever the building or structure, exclusive of the foundation, shows thirty-three percent (33%) or more damage or deterioration of its supporting member or members, or fifty percent (50%) damage or deterioration of its non-supporting members, enclosing or outside walls or coverings.

- (k) Whenever the building or structure has been so damaged by fire, wind, earthquake, flood or other natural disaster, or has become so dilapidated or deteriorated so as to become (1) an attractive nuisance to children, or (2) freely accessible to persons for the purpose of committing unlawful acts.
- (l) Whenever any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of the Town of Bourbon, or of any law or ordinance of this State, Marshall County, or the Town of Bourbon, relating to the condition, location, or structure of buildings.
- (m) Whenever any building or structure which, whether or not erected in accordance with applicable laws and ordinances, has in any non-supporting parts, member or portion less than fifty (50%), or is any support part, member or portion less than sixty-six (66%) of the (1) strength, (2) fire-resisting qualities or characteristics, or (3) weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height and occupancy in the same location.
- (n) Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate light, air or sanitation facilities, or otherwise, is determined by the Marshall County Building Commissioner to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.
- (o) Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections, or heating apparatus, or other cause, is determined by the Marshall County Building Commissioner to be a fire hazard.
- (p) Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six (6) months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

7. The definition of “substantial property interest” set forth in Indiana Code 36-7-9-2 is hereby incorporated by reference herein as if copied in full.
8. All work for the reconstruction, alteration, repair or demolition of the buildings and other structures shall be performed in a good workmanlike manner according to the accepted standards and practices of the trade. The provisions of the rules pertaining to construction, plumbing, electrical, mechanical and one-and two-family dwellings, promulgated by the Fire Prevention and Building Safety Commission of Indiana shall be considered standard and acceptable practice for all matters covered by this ordinance or orders issued pursuant to this ordinance by the Marshall County Building Commissioner.
9. An Unsafe Building and Unsafe Premises Fund is hereby designated and established in the operating budget of the Town of Bourbon in accordance with the provisions of Indiana Code 36-7-9-14.
10. No person, firm or corporation, whether as owner, lessee, sub-lessee or occupant, shall erect, construct, enlarge, alter, repair, move, improve, remove, demolish, equip, use, occupy or maintain any building or premises, or cause or permit the same to be done, contrary to or in violation of any of the provisions of this ordinance or any order issued by the Marshall County Building Commissioner. Any person violating the provisions of this ordinance or Indiana Code 36-7-9-28 shall commit a Class C infraction for any day such violation continues.
11. Should any section, paragraph, sentence, clause or phrase of this ordinance be declared unconstitutional or invalid for any reason, the remainder of said ordinance shall not be affected thereby.
12. This ordinance will be in full force and effect on the _____ day of _____, 2019, according to the law of the State of Indiana. All former ordinances which conflict with this ordinance are hereby repealed and superseded.

Adopted this _____ day of _____, 2019.

THE TOWN COUNCIL OF THE
TOWN OF BOURBON, INDIANA

Philip Hanley, President

Les McFarland, Vice President

Larry Wattenbarger, Member

ATTEST:

Kimberly Berger, Clerk-Treasurer
Town of Bourbon, Indiana

CHAPTER 5.2 - JUNK CARS

5.2.01. Definitions. As used in this Chapter unless the context otherwise indicates:

- a. "Vehicle" means any motor vehicle, automobile, motorcycle, truck, trailer, semi-trailer, truck tractor, bus, school bus, pickup truck camper, camper trailer, horse drawn vehicle, utility trailer, boat and/or boat trailer, RV, snowmobile and/or snowmobile trailer, jet ski, motor home, house car or motorized bicycle or any portion or part thereof.
- b. "Abandoned" when used in conjunction with the term vehicle, means:
 - (1) A vehicle located on public property illegally.
 - (2) A vehicle left on public property without being moved for twenty-four (24) hours.
 - (3) A vehicle located on public property in such a manner as to constitute a hazard or obstruction to the movement of pedestrian or vehicular traffic on a public right-of-way.
 - (4) A vehicle that has remained on private property without the consent of the owner or person in control of that property for more than forty-eight (48) hours.
 - (5) A vehicle from which the engine, transmission, or differential has been removed or that is otherwise partially dismantled or inoperable and left on public property.
 - (6) A vehicle that has been removed by a towing service or public agency upon request of an officer enforcing a statute or an ordinance other than this chapter if the impounded vehicle is not claimed or redeemed by the owner or the owner's agent within twenty (20) days after the vehicle's removal.
 - (7) A vehicle that is at least three (3) model years old, is mechanically inoperable, and is left on private property continuously in a location visible from public property for more than twenty (20) days. For purposes of this subdivision, a vehicle covered by a tarpaulin or other plastic, vinyl, rubber, cloth, or textile covering is considered to be visible.
 - (8) A vehicle:
 - (A) that was repaired or stored at the request of the owner;
 - (B) that has not been claimed by the owner; and
 - (C) for which the reasonable value of the charges associated with the repair or storage remain unpaid more than thirty (30) days

after the date on which the repair work is completed or the vehicle is first stored.

- c. "Public Premises" means any public right-of-way, street highway, alley, park or other state-, county- or municipally- owned property.
- d. "Private Premises" means all privately owned property which is not classified within the definition of public premises.
- e. "Person" means all natural persons, firms, partnerships and corporations, excluding officer as defined in *.
- f. "Officer" means any regular member of the Town of Bourbon Police Department, or any individual of the Town designated by ordinance of the Town Council of the Town of Bourbon.
- g. "Bureau" shall mean the Bureau of Motor Vehicles of the State of Indiana.
- h. "Owner" means a person, other than a lien holder, that holds the property in or the title to a vehicle, or is entitled to the use or possession of a vehicle through a lease or other agreement intended to operate as a security.
- i. "Public agency" means the local agency given the responsibility by statute and/or ordinance for the removal, storage, and disposal of abandoned vehicles.
- j. "Disposal Agent" means any firm or individual engaged in the business of converting vehicles and parts of vehicles into processed scrap or scrap metal.
- k. "Commissioner" means the commissioner of the bureau.
- l. "Parts" means all components of a vehicle that as assembled do not constitute a complete vehicle.
- m. "Wrecked" means a vehicle that has been physically damaged or destroyed, has substantial visible damage, and may be mechanically inoperable.
- n. "Junked" means a vehicle that meets at least one of the following criteria:
 - 1. is wrecked, dismantled or partially dismantled, or discarded, or unattended on jack stands or blocks or other means;
 - 2. is wrecked, dismantled or partially dismantled, or discarded,

20 days

- or unattended on jack stands or blocks or other means;
- 3. in a condition with two or more flat tires for fourteen (14) days or more, or is missing two or more wheels for fourteen (14) days or more;
- 4. is used primarily for storage and remains unmoved for fourteen (14) days or more;
- 5. a habitat for rats, mice, snakes, or other vermin;
- 6. is substantially disfigured, damaged, or disintegrated;
- 7. is ruined, destroyed or demolished;
- 8. is inoperable and has remained inoperable for more than twenty (20) days on private property; or
- 9. is parked on grass, dirt, or other unpaved areas not ordinarily used for parking a vehicle in regular use;
- 10. does not have a current, valid license plate affixed to the vehicle. This item cannot be the sole criteria for determining whether a vehicle is a junked vehicle.

5.2.02. Prohibitions.

- a. No person shall abandon his vehicle on any public premises or private premises in a location which is visible from public premises, except as otherwise set for in this chapter.
- b. The keeping, parking or storing of any wrecked, junked or abandoned vehicle or parts thereof, on private or public property, exposed to public view, except as provided in this chapter, is hereby declared to be a nuisance.

5.2.03 Authority to Impound The Town of Bourbon Police Department is the authorized agency assigned the responsibility for removing vehicles defined as abandoned under the provisions of this Chapter and Indiana Code 9-22-1.

5.2.04 Removal of Abandoned Vehicles When an officer discovers an abandoned vehicle as defined by 5.2.01, or a vehicle in the possession of a person other than the owner of the vehicle and the person cannot establish the right to possession of the vehicle, the vehicle shall be taken to and stored in a suitable place as determined by the officer.

- (a) Seventy-two (72) hours after having placed a tag on a vehicle, the officer shall require the vehicle or parts to be towed to a storage yard or towing service.
- (b) If in the opinion of the officer the market value of the abandoned vehicle or parts is at least One Thousand Dollars (\$1,000.00), the officer, before placing a notice tag on the vehicle or parts, shall make a reasonable effort to ascertain the person who owns the vehicle or parts or who may be in control of the vehicle or parts.

- (c) If the vehicle is a junk vehicle and the market value of an abandoned vehicle or parts is less than Seven Hundred Fifty Dollars (\$750.00), the towing service shall immediately transfer the vehicle to a storage yard. A copy of the abandoned vehicle report and photographs, if applicable, relating to the abandoned vehicle shall be provided to the storage yard. A towing service or storage yard may dispose of an abandoned vehicle not less than thirty (30) days after the date on which the towing service removed the abandoned vehicle.
- (d) If a vehicle or a part tagged under 5.2.05 of this chapter is not removed within the applicable period, the officer shall prepare a written abandoned vehicle report of the vehicle or parts, including information on the condition and missing parts, prior to having the vehicle towed. Photographs may be taken to describe the condition of the vehicle or parts.
- (e) Within 72 hours after removal of a vehicle to a storage yard or towing service under this section, the Bourbon Police Department shall conduct a search of national databases, including a database of vehicle identification numbers, to attempt to obtain the last state of record of the vehicle in order to attempt to ascertain the name and address of the person who owns or hold a lien on the vehicle.
- (f) If a vehicle or parts are in a condition that vehicle identification numbers or other means of identification are not available to determine the person who owns or holds a lien on the vehicle, the vehicle may be disposed of without notice.

5.2.41 Removal of Junked Vehicles Upon the determination of any vehicle to be a junked vehicle as defined herein and therefore a public nuisance, the owner of said vehicle shall be issued a citation. If the owner of said vehicle fails to abate said nuisance within seven (days) of the date said citation is issued, the Town of Bourbon shall file suit to abate such nuisance and may request, but is not limited to the following relief:

- (a) on order to abate said nuisance;
- (b) reimbursement for the costs to abate said nuisance;
- (c) an entry of judgment for the fines assessed by each citation issued hereunder;
- (c) court costs and costs of collection, including attorney fees; and
- (d) all other relief allowed under the statutes of the State of Indiana and the Town Code of the Town of Bourbon, Indiana.

5.2.05 Notice Tag to be Placed on Vehicle by Officer An officer who finds or is notified of a vehicle or parts believed to be abandoned shall attach in a prominent place a notice tag containing the following information:

- a. The date, time, officer's name, the Town of Bourbon Police Department, and the address and telephone number for the Town of Bourbon Police

- Department to contact for information;
- b. That the vehicle or parts are considered abandoned;
 - c. That the vehicle or parts will be removed after:
 - (1) Twenty-four hours, if the vehicle is located on or within the right-of-way of an interstate highway or any highway that is designated as part of the state highway system under I.C. 8-23-4;
 - (2) Seventy-two hours for any other vehicle;
 - d. That the person who owns the vehicle will be held responsible for all costs incidental to the removal, storage and disposal, and if the costs are not paid, the person's registration privileges will be suspended on the vehicle; and
 - e. That the person who owns the vehicle may avoid costs by removal of the vehicle or parts within:
 - (1) Twenty-four hours, if the vehicle is located on or within the right-of-way of an interstate highway or any highway that is designated as part of the state highway system under I.C. 8-23-4; or
 - (2) Seventy-two hours for any other vehicle.

5.2.06 Responsibility and Liability of Vehicle Owner

- (a) Except as provided in section (c) below, the owner of an abandoned vehicle or parts is responsible for the abandonment, and liable for all of the costs incidental to the removal, storage and disposal of the vehicle or the parts under this chapter.
- (b) The costs for storage of an abandoned vehicle may not exceed Two Thousand Dollars (\$2,000.00).
- (c) If an abandoned vehicle is sold by a person who removed, towed, or stored the vehicle, the person who previously owned the vehicle is not responsible for storage fees.
- (d) If an abandoned vehicle is sold by a person who removed, towed, or stored the vehicle, and proceeds from the sale of the vehicle covered the removal, towing and storage expenses, any remaining proceeds from the sale of the vehicle shall be returned to the previous owner of the vehicle if the previous owner is known.

5.2.07 Failure of Owner or Lienholder to Appear If the owner or lienholder under I.C. 9-22-1-8 does not appear to pay all costs, or the owner of a vehicle cannot be determined by a search conducted under I.C. 9-22-1-19, the vehicle is considered abandoned and must be disposed of as set forth in this chapter.
I.C. 9-22-1-7

5.2.08 Release to Owner or Lienhold of Stored Vehicle If the properly identified person who owns or holds a lien on a vehicle appears at the site of storage before disposal of the vehicle or parts and pays all costs incurred against the vehicle or parts at that time, the vehicle or parts shall be released. A towing service shall notify the appropriate public agency of all releases under this section. The notification must include the name, signature, and address of the person that owns

or holds a lien on the vehicle, a description of the vehicle or parts, costs, and the date of release.

5.2.09 Abandoned Vehicle Removal Fund An Abandoned Vehicle Fund is established as required under I.C. 9-22-1-30.

- (a) The costs for removal and storage of an abandoned vehicle or parts not claimed by the person who owns or holds a lien on a vehicle shall be paid from the Abandoned Vehicle Fund. The charge payable by the person who owns or holds a lien on a vehicle for towing, storing or removing an abandoned vehicle or parts may not exceed the limits established by ordinance of the Town.
- (b) The proceeds from the sale of abandoned vehicles or parts, including charges for bills of sale; and money received from persons who own or hold liens on vehicles for the cost of removal or storage of vehicles, shall be deposited in the Abandoned Vehicle Fund by the Clerk-Treasurer.
 - (1) The costs incurred by any authorized towing agency in administering this chapter shall be paid from the Abandoned Vehicle Fund.
 - (2) The Town Council shall annually appropriate sufficient money to the fund to carry out this chapter. Money remaining in the fund at the end of a year remains in the fund and does not revert to the General Fund.

5.2.10. Penalties. Any person violating any of the provisions of this Chapter shall be deemed guilty of a Class C Infraction and upon conviction thereunder shall be fined not exceeding \$500.00. Each day violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

5.2.11 Exceptions This chapter does not apply to the following:

- (a) A vehicle in operable condition specifically adapted or constructed for operation on privately-owned raceways;
- (b) A vehicle stored as the property of a member of the Armed Forces of the United States who is on active duty assignment;
- (c) A vehicle located on a vehicle sale lot or at a commercial vehicle servicing facility;
- (d) A vehicle located upon property licensed or zoned as an automobile scrapyard;
- (e) A vehicle registered and licensed under I.C. 9-18-12 as an antique vehicle;
- (f) A golf cart; or
- (g) An off-road vehicle.

5.2.12 Exemptions from Liability

The following are not liable for loss or damage to a vehicle or parts occurring during the removal, storage, or disposition of a vehicle or parts under this chapter:


- (A) A person who owns, leases or occupies property from which an abandoned vehicle or its contents or parts are removed or a junked vehicle is removed by court order;

- (B) the Town of Bourbon;
- (C) A towing service;
- (D) An automobile scrapyard;
- (E) A storage yard; and/or
- (F) An agent of a person or entity listed in divisions (A) through (E).

5.2.13 Abandoned Vehicles on Private or Rental Property The procedure to be followed for abandoned vehicles on private or rental properties shall be as set forth in I.C. 9-22-1-15 through

5.2.14 Towing and Storage Charges The Town Council shall establish, by ordinance, the charges allowed for towing and storage of abandoned and/or junked vehicles, which shall be filed with the Bureau of Motor Vehicles and shall be available for public inspection at the office of the Clerk-Treasurer.

3/28/2019

 | [Close Window](#)**Subject:** Jan Lemler**From:** Anthony Wagner <awagner@wagnerllp.com>**Date:** Wed, Mar 27, 2019 6:56 pm**To:** ""kberger@bourbon-in.gov"" <kberger@bourbon-in.gov>, "PJ Hanley (hanleytool@gmail.com)" <hanleytool@gmail.com>, "Les McFarland (lesdtf@frontier.com)" <lesdtf@frontier.com>, "Larry Wattenbarger (nascarfanlw@gmail.com)" <nascarfanlw@gmail.com>**Attach:** 20190327184726981.pdf

Mr. Lemler called my office this afternoon to talk about the mowing bids. He said that he had consulted an attorney who had said that the process did not need to be bid out. I told him that there is a state standard for purchasing but the Town may also have adopted a local standard for bidding vs quotes (I'm not concerned that we have done anything wrong because bidding the contract has more public accountability than using quotes, I really don't know what his angle is). He demanded that I answer his questions, because as a resident of the Town of Bourbon I work for him. I told him I certainly did not and that I would be happy to speak to his attorney about it. He called back again, and I had Alissa tell him that he could submit any future requests in writing. He brought the attached letter in response. I suppose I should write back to him, but I wanted to let you know what was going on. Kim, please let me know if the Town has adopted a local standard for bidding and quotes, as I would include that information in my response.

Thanks,
Tony

Anthony J. Wagner
Wagner & Wagner, LLC
1406 W. Plymouth St.
P.O. Box 158
Bremen IN 46506
(574) 546-2626
(574) 546-2608 (fax)

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