

ORDINANCE NO. 2020-11

AN ORDINANCE OF THE TOWN OF ARGOS, INDIANA, AMENDING CHAPTER 91 OF THE ARGOS TOWN CODE

WHEREAS, that Argos Town Code Chapter 91 addresses Nuisances, along with Indiana Code 32-30-6 et. seq. which establishes a cause of action for real property nuisances; and

WHEREAS, that the Town of Argos now wishes to amend Chapter 91 of the Argos Town Code.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Argos, Indiana,

SECTION 1. That Chapter 91 of the Argos Town Code is hereby repealed in its entirety and replaced with the following, attached hereto as Exhibit "A".

SECTION 2. That this Ordinance is effective from and after its date of passage.

PASSED and ADOPTED this 2 day of December, 2020.

TOWN COUNCIL
TOWN OF ARGOS, INDIANA



Charles R. Snead

George Null, President



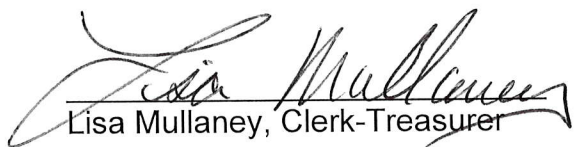
Shawn Harley



Erica Partin

ATTEST:

Mary Gibson



Lisa Mullaney, Clerk-Treasurer

EXHIBIT "A"

CHAPTER 91: NUSANCES

General Provisions

- 91.01 Common law and statutory nuisances
- 91.02 Certain conditions declared nuisances
- 91.03 Test for nuisance
- 91.04 Nuisance created by others
- 91.05 Inspection of premises
- 91.06 Abatement of nuisances

§ 91.01 COMMON LAW AND STATUTORY NUSANCES.

(A) In addition to what is declared in this subchapter and code to be a public nuisance, those essentials which are known to the common law and the state statutes as public nuisances may, in case any thereof exist within the town limits, be treated as such and be proceeded against as provided in this subchapter and code, or in accordance with any other provisions of law.

(B) Wherever the word **NUISANCE** is used in this subchapter, it refers to a public nuisance.

§ 91.02 CERTAIN CONDITIONS DECLARED NUSANCES.

The following conditions within the town constitute and are declared to be nuisances:

(A) *Dangerous trees over public highways.* Any tree, shrub, or other object standing on such premises in such condition that it shall, if the condition is allowed to continue, endanger life, limb, or property, or cause hurt, damage or injury to persons or property hereto, by the falling thereon of a part thereof;

(B) *Accumulation of rubbish.* Accumulation on any premises of filth, refuse, trash, garbage, or other waste material which endangers the public health, welfare, or safety, or materially interferes with the peaceful enjoyment by others or occupants of the adjacent property because of the danger of it catching or communicating fire, its attracting or propagating burning, rodents, or insects, or blowing into any street, sidewalk, or property of others;

(C) *Noxious odors or smoke.* Emissions from premises into the surrounding atmosphere of such odors, dust, smoke, or other matter as to render ordinary use or physical occupation of other property in the vicinity uncomfortable or impossible;

(D) *Noise.* Noise noxious enough to destroy the enjoyment of dwelling houses or other uses of property in the vicinity by interfering with the ordinary comfort of human existence. Noise also includes the sound associated with the use of legal or illegal consumer fireworks except during the following days:

- (1) June 29 to July 3 from 5:00 p.m. until two (2) hours past sunset.
- (2) July 4 from 10:00 a.m. until midnight.
- (3) July 5 to July 9 from 5:00 p.m. until two (2) hours past sunset.
- (4) New Year's Eve from 10:00 a.m. until 1:00 a.m. New Year's Day.
- (5) Any other date and time as approved by the Town Council.

(E) *Storage of explosives or combustible material.* Storage on the premises of such combustible or explosive material as to create a safety hazard to other property or persons in the vicinity;

(F) *Open Wells.* The maintenance of any open or uncovered, or insecurely covered cistern, cellar, well, ditch, excavation, or vault situated on private premises in an open or unfenced lot or place;

(G) *Grass and Weeds.*

(1) Excessively tall grass, weeds, and other rank vegetation growing upon any real estate in the town are declared a nuisance.

(2) It shall be unlawful for any person to allow or permit any excessively tall grass, weeds, or other rank vegetation to be or remain upon any property owned, leased, occupied by, or under the control of such persons in the town.

(3) It shall be the duty of every person to cut and remove all excessively tall grass, weeds, and other rank vegetation from any property owned, leased, occupied by, or under the control of such person within the town as follows:

(a) All grass, weeds, or other rank vegetation shall never exceed a maximum height of eight inches at any time.

(b) The destruction of weeds and other rank vegetation by the use of a chemical spray and removal of the same that exceed the height of eight inches shall be deemed in full compliance with this section.

(4) It shall be the duty of every person immediately after mowing, to clean up and remove any and all grass, weeds, leaves, or other rank vegetation from any and all public streets, highways, or sidewalks, regarding any property owned, leased, occupied by, or under the control of such person located within the town.

(5) If any person fails to remove or mow such grass, weeds, or rank vegetation at such times and in the manner prescribed above, the Street Department

may cause such grass, weeds, and rank vegetation to be cut and removed. The Clerk-Treasurer shall make a certified statement of the actual cost incurred by the town in such removal, which such statement shall be delivered to the owner of a substantial interest in the real estate by certified mail with a return receipt. The owner shall within 30 days from receipt of such notice, pay the amount to the Clerk-Treasurer. The Code Enforcement Officer shall provide a written notice to all persons holding a substantial interest in the property, prior to the entering into the property of any such parcel of real estate, that they have a reasonable opportunity to bring the property into compliance, which notice shall provide not less than ten days for bringing the property into compliance. If no such steps are taken, then the expense involved may be made a lien against the property, all as pursuant to I.C. 36-1-6-2. If the violation described above is a violation that is located outdoors and does not involve a building or structure, the town may also issue a bill to the owner of the property for the costs incurred by the town in bringing the property into compliance with this ordinance, including administrative costs and removal costs.

(6) If the owner fails to pay said payments in the time prescribed, the Clerk-Treasurer shall file a certified copy of the statement of costs in the County Auditor's Office, and the Auditor shall place the amount so claimed on the tax duplicate against the land or the land owner affected by the lien, and the same shall be collected as taxes are collected. When the cost is fully recovered, it shall be deposited in the General Fund of the town.

(H) *Junk and abandoned vehicles.* It shall be unlawful for any person, firm, or corporation to keep, park, or store any wrecked, junked, or abandoned automobile or other vehicle, or parts thereof, on public or private property within the corporate limits of the town unless kept in a garage or other enclosure so as not to be exposed to public view. Any vehicle shall be deemed to be included in this section, if such vehicles does not have the attached thereto a valid and current license plate, but such license plate shall not be the sole factor in determining the status of such vehicle. Nothing described above shall be construed to apply to any person, firm or corporation lawfully engaged in the junk business, or yards lawfully operated for vehicles awaiting permission for junking from the Bureau of Motor Vehicles.

§ 91.03 TEST FOR NUISANCE.

Whether or not a particular annoyance of the characteristics in § 91.02 constitutes a nuisance, shall depend on its effect on persons of ordinary health and average sensibilities, and not on its effect on the persons who are delicate or supersensitive, or whose habit, tastes, or conditions are such that they are never sensible under any annoyance.

§ 91.04 NUISANCE CREATED BY OTHERS.

For the purpose of this subchapter, it shall not be essential that the nuisance be created or contributed to by the owner, or tenants, or their agents or representatives, but merely that the nuisance be enacted or contributed to by licensees, invitees, guests, or other persons for which conduct the owner or operator is responsible, or by persons for whose conduct the owner or operator is not responsible, but, by the exercise of reasonable care, the owner or operator ought to have become aware.

§ 91.05 INSPECTION OF PREMISES.

For the purpose of carrying the provisions of this subchapter into effect, it is made by the duty of all officers and employees of the town to report the existence of nuisances to the Town Council, the Police Department, or other employees designated by the Town Council. When a nuisance has been reported in such a manner, the owner, tenant, and/or any other person in possession of the property upon which the nuisance is reported to exist shall cooperate in allowing the inspection of such property by such town officials or employees to determine the existence and with such inspection upon reasonable request shall, without more, justify a finding by the Town Council or Code Enforcement Officer that the nuisance does in fact exist as provided in § 91.06 below.

§ 91.06 ABATEMENT OF NUISANCES.

(A) In any case where a nuisance may be found to exist, it shall be the duty of the Code Enforcement Officer appointed by the Town Council, or any law enforcement officer, to serve notice on the owner or occupant of the premises and any other person having a substantial property interest in the premises where such nuisance exists, or any other persons causing such nuisance, to abate such nuisance within a reasonable time period. In determining such reasonable time, the Council, Code Enforcement Officer and/or law enforcement officer shall take into consideration the degree of threat to the public health, safety, and welfare and the means required to abate such nuisance. This notice may take the form of a written letter, or a uniform code and ordinance violation notice.

(B) In the event that the notice takes the form of a written letter, it shall not be necessary for the Council and/or Code Enforcement Officer to designate in this notice the manner in which any nuisance shall be abated unless the Council and/or Code Enforcement Officer shall deem it advisable to do so. However, the Council and/or Code Enforcement Officer shall indicate in such notice the date within which the nuisance must be abated.

(C) If the nuisance is not satisfactorily abated in the time allowed by such notice, or in the case of emergency, the Council may cause such nuisances to be abated in any manner authorized by law, including the institution in the name of this town of an action therefor against the owner, occupant, or other persons for the recovery of the amount of expense of such abatement, including reasonable attorney fees and other legal expenses involved.

(D) As an additional remedy (if allowed by law), the Council shall notify the Clerk-Treasurer of the cost of abating any nuisance. The Clerk-Treasurer shall notify the owner, occupant, or other person against whom the abatement proceedings were brought as to the cost of the abatement; and if said cost is not paid by the owner within 30 days, the proper officers of the town shall proceed to collect the same either by causing said costs to be placed on the tax duplicate regarding the property or by suit.

(E) The requirement for service of notice under the provisions of (A), (B) and (D) above may be complied with by mailing such notice to the person sought to be notified, or by personal service of this notice by any police officer.

§ 91.07 PENALTIES.

Any person or entity who violates any provision of this Chapter 91 may be subject to the fines and penalties as set forth in Chapter 36, Appendix A.