

**TOWN OF AVON**

**ORDINANCE 2009 - 04**

**AN ORDINANCE OF THE TOWN OF AVON AMENDING  
THE TOWN'S REGULATION OF NUISANCES**

WHEREAS, Sections 6-180 through 6-186 of the Town Code prohibit the maintenance of nuisances in the Town and authorize the Town to regulate and abate such nuisances;

AND WHEREAS, Indiana Code §32-30-6-7 specifically authorizes the Town to initiate legal actions to abate or enjoin nuisances;

AND WHEREAS, it is in the best interests of the citizens of the Town that Town Code sections 6-180 through 6-186 be amended in order to provide for additional procedural safeguards and other technical improvements.

IT IS, THEREFORE, ORDAINED that sections 6-180 through 6-186 of Chapter 6, Article 13, which reads as follows:

§6-180 Maintaining Nuisances Prohibited.

No person shall erect, construct, cause, permit, keep or maintain within the town limits, anything whatsoever which is injurious to the public health or safety, or offensive to the senses of the inhabitant. The existence of any of the above is declared to be a nuisance and shall be regulated as set forth in this article. ('95 code, § 6-180) (Ord. 9507, passed 11-30-95) Penalty, see § 1-99

§6-181 Certain Nuisances Designated.

The following are declared to be nuisances but shall not be construed to prevent any other thing from being declared a nuisance pursuant to the standards of §6-180 of this article:

(A) The erecting or using of any building or other place for the exercise of any trade, employment or manufacture which, by occasioning noxious

exhalations, dense smoke, ash or other annoyances, becomes harmful to the health, safety or property of individuals or the public;

(B) Causing or suffering any offal, filth or waste to be collected or to remain in any place to the prejudice of others;

(C) The obstructing or encumbering by any means whatsoever the private ways and the public streets, alleys and places so as to create a physical threat to the public; and/or

(D) Billboards, signboards and advertising signs whether erected or constructed on public or private property, or overhanging branches or vegetation, which so obstruct and impair the view of any portion of a public street or alley of the town as to render dangerous the use thereof. ('95 code, §6-181) (Ord. 95-7, passed 11-30-95) Penalty, see § 1-99

§ 6-182 Notice to Abate Nuisance.

Whenever any town official or their designee finds that a nuisance exists, he shall cause to be served upon the property owner and shown by the record of the county Auditor, a written notice to abate the nuisance within a reasonable time after the notice. The notice shall be sent by personal service or by certified mail to the property owner. ('95 code, § 6-182) (Ord. 95-7, passed 11-30-95)

§ 6-183 Contents of Notice to Abate.

The notice to abate shall contain:

(A) A description of what constitutes the nuisance;

(B) The location of the nuisance;

(C) A statement of the act or acts necessary to abate the nuisance;

(D) A reasonable time within which to complete the abatement; and

(E) A statement that if the nuisance is not abatement as directed and no request for hearing is made within the time prescribed, the town will abate it and assess the costs against the property owner. ('95 Code, § 6-183) (Ord. 95-7, passed 11-30-95)

§ 6-184 Request for Hearings or Appeals.

(A) Any person ordered to abate a nuisance may have a hearing with the Town Manager ordering the abatement to determine whether a nuisance

does exist. A request for a hearing must be made in writing and delivered to the Town Manager ordering the abatement within the time stated in the notice, or it will conclusively be presumed that a nuisance exists that must be abated as ordered.

(B) At the conclusion of the hearing, the Town Manager shall render a written decision as to whether a nuisance exists. If he finds that a nuisance exists, he must order it abated within a additional time of no longer than then ten days. An appeal from this decision may be had by immediately filing a written notice to the Town Manager within two days. This appeal will be heard before the Town Council within a reasonable time thereafter at a time and place fixed by the Town Council. The findings of the Town Council shall be conclusive and, if a nuisance is found to exist, it shall be ordered abated within a time reasonable under the circumstances. ('95 Code, § 6-184) (Ord. 95-7, passed 11-30-95) Penalty, see § 1-9

§ 6-185 Failure to Abate.

If the person notified to abate a nuisance neglects or fails to abate as directed, the town may perform the action required to abate, keeping an accurate account of the expenses incurred. An itemized expense account shall be certified and filed with the fiscal officer. ('95 code, § 6-185) (Ord. 95-7, passed 11-30-95) Penalty, see § 1-99

*Statutory reference:*

*For provisions concerning the authorization for the Town Attorney to bring a civil action to abate or enjoin a nuisance, see I.C. 34-1-52-2*

§ 6-186 Collection of Cost of Abatement.

The Clerk-Treasurer shall send a statement by certified mail of the total expense incurred to the property owner who has failed to abide by the notice to abate, and if the amount shown by the statement has not been paid within one month, he shall certify the costs to the County Auditor. The amount due shall then be collected within, and in the same manner, as general property taxes and disbursed into the General Fund of the town. ('95) code, § 6-186) (Ord. 95-7, passed 11-30-95)

Shall be amended to read as follows:

§6-180 MAINTAINING NUISANCES PROHIBITED

(A) For purposes of this Article, the term "nuisance" shall mean whatever is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property so as essentially to interfere with the comfortable enjoyment of life or property.

- (B) No person shall erect, construct, cause, permit, keep or maintain within the town limits a nuisance.

#### 6-181 CERTAIN NUISANCES DECLARED

The following are declared to be nuisances but shall not be construed to prevent any other thing from being declared a nuisance pursuant to the standards of 6-180 of this Article:

- (A) The erecting or using of any building or other place for the exercise of any trade, employment or manufacture, which, by occasioning noxious exhalations, dense smoke, ash or other annoyances, becomes harmful to the health, safety or property of individuals or the public;
- (B) Causing or suffering an offal, filth or waste to be collected or to remain in place to the prejudice of others;
- (C) The obstructing or encumbering by any means whatsoever the private ways and public streets, alleys and places so as to create a physical threat to the public; and
- (D) Billboards, signboards and advertising signs whether erected or constructed on public or private property, or overhanging branches or vegetation, which so obstruct and impair the view of any portion of a public street or alley as to render dangerous the use thereof.

#### 6-182 ABATEMENT OF NUISANCE

(A) Notice to Correct. If the Town finds a violation of this Article, it shall mail to the property owner, at the address provided to the County Auditor for tax statements, a notice to correct the violation. This notice shall advise the owner of the violation, describe the action to be taken by the owner to correct the violation, advise the owner that he or she has ten (10) days to correct the violation, advise the owner of the Town's remedies if the owner fails to correct, advise the owner of his or her right to appeal the determination of violation and provide a form notice of appeal, and notify the owner of any other information which, at the Town's discretion, will further comply with the Town's ordinances.

(B) Appeal. If the owner contests the determination by the Town that a nuisance exists, the owner may appeal this determination by filing with the Town Court a notice of appeal within seven (7) days of the owner's receipt of the notice to

correct. If the owner cannot be found using the address from the Auditor, the owner shall be deemed to have received the notice to correct two (2) days after the notice was mailed by the Town.

(C) Procedure for Appeal of Notice to Correct. The Town Court shall conduct an evidentiary hearing of the Town's determination not earlier than twenty (20) days after the filing of the notice of appeal and not later than forty (40) days after notice of appeal is filed. At this hearing, the town shall have the burden of proving the violation. The violation must be proved by a preponderance of the evidence. The owner and the Town may be represented by attorneys, and shall have the right to call witnesses and to confront them, to subpoena witnesses in order to compel their attendance at the hearing, and to present exhibits and other evidence for the Court's consideration. The Court shall issue written findings of fact and conclusions not more than ten (10) days after the hearing and then mail the same to the parties. If the court determines that a violation existed, the Town may exercise its remedies as provided herein. If the Court determines that no violation existed, the notice to correct shall be deemed void and have no force and effect.

(D) Remedies. In the event that the violator or owner fails to correct the violation as provided for in the notice, the Town shall have all of the following remedies:

(1) Fine. The Town may fine the violator the sum of \$100 for each day the violation remains unabated. The first day the fine can be assessed is the first day after the expiration of the ten-day cure period which begins on receipt by the violator of the notice to correct. The Town is not required to provide to the violator any further notice or document as a precondition to assessing the fine. The fine will continue to accrue until the violation is corrected as provided for in the notice. The Town shall notify the violator of the fine due, and the violator shall have thirty (30) days from receipt of the notice to pay the fine to the Clerk-Treasurer. If the violator fails to pay the fine within thirty (30) days, the Town may file in the Avon Town Court a complaint for the collection of the fine which accrues due to the violation.

(2) Town Correction. The Town may obtain a court order from the Avon Town Court which authorizes the Town and its agents to enter upon the violator's real property, correct the violation at the Town's expense, collect the cost of correction from the property owner, and take all other action necessary to enforce the Town Code;

(3) Lien. If the Town corrects the violation and incurs the expense of such corrective work, the Town shall be entitled to a lien on the real property of the violator in an amount to the Town's cost of correction and expenses incurred in the prosecution of the enforcement action.

(4) Attorney's Fees and Litigation Expenses. If the Town brings an enforcement action under this Section, the violator shall be liable for any and all reasonable attorney's fees, court costs and litigation expenses incurred by the Town in the enforcement action. The Town shall notify the violator of these costs in the Notice of Fine, and the violator shall have thirty (30) days from receipt of the notice to pay said sum to the Clerk-Treasurer. If the violator fails to pay the costs, the Town may file an action in the Avon Town Court complaint for the collection of these fees, costs and expenses.

(5) Other Remedies. The Town shall also have any other remedy provided for by Indiana law or Town ordinance. The Town may exercise one or more remedies without waiving its other available remedies.

#### §6-183 COLLECTION OF COST OF ABATEMENT AND LIEN

(A) Collection. If the Town abates the violation, the Clerk-Treasurer shall notify the owner of the actual costs of abatement. If the owner fails to pay the costs within thirty (30) days, the Clerk-Treasurer shall certify the unpaid amount to the Hendricks County Auditor.

(B) Lien. The Hendricks County Auditor shall place the total amount certified on the real estate tax duplicate for the property affected. The Hendricks County Treasurer shall collect the amount certified as delinquent taxes and disperse the funds collected to the Town's general fund.


(C) Appeal of Fine or Costs. Within seven (7) days of receiving from the Town notice of fines and expenses due, the violator may file an appeal of the Town's determination by filing with the Town Court a notice of appeal. If the violator fails to appeal, he or she waives the right to contest the amount claimed due by the Town. The appeal process shall be the same process provided for in this ordinance for appeals of the Town's determination of a violation.

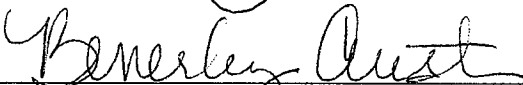
IT IS FURTHER ORDAINED that all other provisions of Chapter 6 remain in full force and effect.

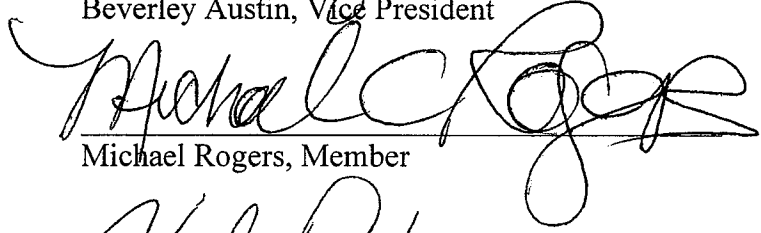
IT IS FURTHER ORDAINED that the effective date of this amendment shall be May 1, 2009.

Adopted this 12<sup>th</sup> day of March, 2009.

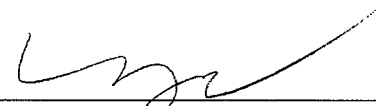
A Majority of the Avon Town Council:

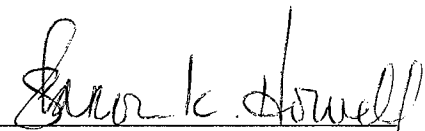
  
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Greg Zusan, President

  
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Beverley Austin, Vice President

  
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Michael Rogers, Member

  
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Charles Dorton, Member

  
\_\_\_\_\_  
Nicole Gordy, Member

Attest:   
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Sharon Howell, Clerk-Treasurer