Cumberland Town Council
Ordinance 2016 – 29
Ordinance Amending Town Code Chapter 96: Weeds and Vegetation

Whereas, the Town of Cumberland has in effect an ordinance that regulates the excessive growth of grass and other vegetation in the town and provides for enforcement and abatement action in the event of violations; and

Whereas, the town has found that the enforcement and abatement procedures in the current ordinance are cumbersome and inefficient and do not provide for effective and timely abatement of violations; and

Whereas, it has been determined that Chapter 96 of the Town Code should be repealed and replaced with more streamlined and efficient regulation of excessive vegetation.

It is therefore ordained that Chapter 96 of the Town Code, “Weeds and Vegetation”, is hereby repealed and is replaced with the following:

CHAPTER 96: WEEDS AND VEGETATION
Section
00-09-96-01 Definitions
00-09-96-02 Owner’s Duty to Prevent Excessive Growth
00-09-96-03 Failure to Cut; Notice; Abatement
00-09-96-04 Removal by Town; Payment of Costs
00-09-96-05 Collecting Unpaid Costs; Tax Lien; Civil Action
00-09-96-06 Emergency Removal
00-09-96-07 Non-Exclusive Remedies

§ 00-09-96-01 DEFINITIONS.
The following definitions apply to this chapter:

Department: The Cumberland Department of Planning and Development, which is responsible for administering this chapter.

Weeds and Rank Vegetation: “Weeds and Rank Vegetation” includes all grass, weeds, or other rank or useless vegetation, or any vegetation that harbors insects or disease that constitutes a hazard to health or property. “Weeds and Rank Vegetation” does not include agricultural crops, hay and pasture, garden plants, ornamental grasses and plants used for landscape purposes, wild flowers, wetlands, storm water best management practice areas, or nature preserves.
§ 00-09-96-02 OWNER’S DUTY TO PREVENT EXCESSIVE GROWTH.

(A) Policy. Because the excessive growth of weeds, grass, and other vegetation can lead to increased presence of insects and vermin, conceals dangerous land conditions, adversely affects the property and adjacent properties, and otherwise adversely affects the public health, safety, and welfare, it is the town’s policy to prohibit and take all necessary action to remove such conditions.

(B) Not to Exceed Twelve Inches. It is the duty of every owner of real property in the Town of Cumberland to cut and remove all weeds and rank vegetation growing on the real estate before it exceeds a height of 12 inches, as measured from the ground.

§ 00-09-96-03 FAILURE TO CUT; NOTICE; ABATEMENT.

(A) Notice to correct. If the Department finds a property contains weeds or rank vegetation exceeding twelve inches in height in violation of this chapter, it shall mail to the property owner a notice to correct the violation. The notice shall advise the owner of the violation and require it to be corrected and removed within five days. The notice shall also inform the owner of the town’s remedies if the owner fails to correct the violation. The Department shall serve the notice to correct on the property owner by first class mail, registered or certified mail return receipt requested or an equivalent service permitted under IC 1-1-7-1 to the owner’s last address on record with the Hancock County Auditor’s office, or by personal delivery to the owner.

(B) If an initial notice to correct was provided by certified mail, first class mail, or equivalent service permitted under IC 1-1-7-1, a continuous abatement notice may be posted at the property at the time of abatement. A continuous abatement notice serves as notice to the owner that each subsequent violation during the same calendar year for which the initial violation notice was provided may be subject to further penalties and abated by the town or its contractors without further notices.

§ 00-09-96-04 REMOVAL BY TOWN; PAYMENT OF COSTS.

(A) From the date the notice to correct is mailed, the property owner has five days to abate the violation. After five days, the Department may inspect the property. This includes the right of entry. If the property owner has abated the violation (mowed the property), the Department will note the compliance and close the matter. If the owner has not abated the violation, the Department will document the violation and immediately mow the property, either by its own employees and equipment or by a hired contractor.

(B) If the property owner fails to abate the violation within the five-day period, the owner shall be liable for a fine as follows:

1. If the owner has not previously violated this chapter, the fine shall be $250;
2. If the owner has committed one prior violation of this chapter, the fine shall be $500; and
3. If the owner has committed two or more prior violations of this chapter, the fine shall be $750.

(C) If the owner failed to abate the violation, the owner shall also be liable and responsible for an administrative fee of $250 to cover the town’s time and costs incurred in the enforcement action.
(D) After mowing the property, the Department shall mail to the property owner, via first class mail, an invoice reflecting the costs incurred by the town in mowing the property, the $250 administrative fee, and the appropriate fine.

(E) Within ten days after the invoice is mailed, the property owner shall:
1. Pay to the Department all amounts owed as identified in the invoice; or
2. File a written appeal with the Town Court. The appeal shall identify the property address, the property owner’s name and mailing address, the basis for the appeal, and any supporting information or documentation. Upon appeal, the Town Court shall set the matter for hearing. At the conclusion of the hearing the court shall determine whether the owner is liable for the violation and, if so, assess the appropriate fine, costs, and the administrative fee. If the town prevails in an action before the Town Court, it is also entitled to recover its reasonable attorney fees.

§ 00-09-96-05 COLLECTING UNPAID COSTS; TAX LIEN; CIVIL ACTION.

If the property owner fails to pay the invoice or file a written appeal within ten days, or fails to pay the invoice within ten days of an adverse determination by the Town Court, the town may take the following action to collect the invoiced amounts due, including the fine, the $250 administrative fee, and costs incurred in abating the violation:

A. The Department may certify to the Hancock County Auditor the amount due from the owner, and the Auditor shall place the certified amount on the tax duplicate for the real estate and it shall be collected as taxes are generally collected. When collected, the funds shall be disbursed to the town for deposit in its General Fund. The town may distribute the funds to the Department.

B. In the alternative, the town may file a civil action in court to collect the amounts due. If the town prevails, it is also entitled to collect its costs and reasonable attorney’s fees. If the town obtains a judgment, the town may obtain a lien in the judgment amount on any real or personal property of the owner.

§ 00-099-96-06 EMERGENCY REMOVAL.

If a property owner fails to perform his or her duty to cut and remove weeds and rank vegetation as required by this chapter and such vegetation obstructs, either in whole or in part, the normal and usual view of any street or vehicular traffic from an intersecting street, alley, or drive, the Director may deem the condition an emergency and may cut and remove the vegetation immediately, either by its own employees or a hired contractor, without the necessity of the five-day written notice. The property owner shall be subject to the same penalties as provided above, and the procedures above for invoicing, collecting, and appealing the action apply.

§ 00-099-96-07 NON-EXCLUSIVE REMEDIES.

The remedies in this chapter are non-exclusive, and the town may also seek any other remedy provided for by Indiana law or town ordinance. Vegetation prohibited by this chapter constitutes a nuisance which the town may abate in any authorized manner. The town may exercise one or more remedies without waiving any other available remedies.
It is further ordained that because this ordinance imposes a penalty for its violation, the Clerk-Treasurer shall cause the ordinance to be published one time, within thirty days, and the ordinance shall be effective upon such publication.

Adopted this 4th day of January, 2017.

A Majority of the Cumberland Town Council

[Signatures]

[Signatures]

[Signatures]

[Signatures]

Absent

Nicole Bell, Council Member

Absent

Brian Gritter, Council Member

Absent

Mark Reynold, Council Member

ATTEST:

[Signature]

Erica Salmon, Clerk-Treasurer