

**TOWN OF AVON**

**ORDINANCE 2009- 03**

**AN ORDINANCE OF THE TOWN OF AVON AMENDING  
PROCESS FOR CORRECTION OF CONDITIONS AND REMEDIES  
FOR VIOLATION OF SECTIONS 6-115 THROUGH 6-118  
OF THE TOWN CODE**

WHEREAS, Sections 6-115 through 6-118 prohibit the depositing of waste on public ways and public property, allowing waste to fall from a motor vehicle, and allowing real property to become unsightly, unclean, unsanitary, unsafe or dangerous;

AND WHEREAS, Section 6-119 provides that the Town Council may order the real property owners to correct conditions which violate Sections 6-115 through 6-118;

AND WHEREAS, Section 6-119 provides for certain remedies for the Town in the event the property owner fails to comply with the order to correct, and these remedies include a fine, cure of the violation, and placing a lien on the property for the cost of cure;

AND WHEREAS, the experience of the Town staff and officials in attempting to enforce Section 6-119 in order to protect the health, safety and welfare of the Town leads them to believe that additional remedies and procedures are necessary;

AND WHEREAS, it is in the best interests of the citizens of Avon that Section 6-119 of the Town Code be amended in order to provide the Town with additional remedies and procedures.

IT IS, THEREFORE, ORDAINED, that Section 6-119 of the Avon Town Code which reads as follows:

§6-119 CORRECTION OF CONDITIONS

The Town Council may order the real property owners to correct conditions which violate §§6-115 through 6-118. If the real property owner fails to comply with the order in the time prescribed, the council may have the condition corrected, and place on the owner's real property a lien for the cost of correction in accordance with the statutory procedure provided for weed cutting in the town. The owner shall also be liable for the fine prescribed in §1-99.

shall be amended to read as follows:

§6-119 CORRECTION OF CONDITIONS

(A) Notice to Correct. In the event of a violation of Sections 6-115 through 6-118, the Town Manager or his delegee shall cause to be issued to the violator of Sections 6-115 and 6-116 or to the property owner for violations of sections 6-117 and 6-118 a notice to correct. The notice shall advise the violator or owner to correct the violation within 10 days of the receipt of the notice. The notice shall also describe the violation and the minimum requirements of correction, and it shall advise the violator of the remedies available to the Town and the procedures for appeal available to the violator.

(B) 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;

(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 a 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.

(C) Appeal of Notice to Correct. If the alleged violator believes that he or she is not in violation of the prescribed section of the Town Code, the alleged violator may appeal the determination of the Town by providing to the Clerk-Treasurer notice of appeal within seven (7) days of his or her receipt of the notice to correct. This notice of appeal shall be attached to the notice to correct when the notice to correct is issued. If the alleged violator fails to appeal the determination of the Town that a violation has occurred, he or she waives the issue of whether a violation has occurred.

(D) Procedure for Appeal of Notice to Correct. If the alleged violator files a timely notice of appeal, the Town Court shall conduct an evidentiary hearing not sooner than twenty (20) days but not longer than forty (40) days after the

filing of the notice of appeal. At the evidentiary hearing, the Town shall have the burden of proving the violation. The violation must be proved by a preponderance of the evidence. The alleged violator 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.

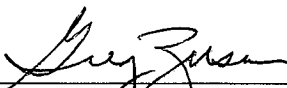
(E) Appeal of Remedies. Within seven (7) days of receiving from the Town notice of fines and expenses due, the violator may file an appeal of the Town's determination by filing with the Town Court a notice of appeal. If the violator fails to appeal, he or she waives the right to contest the amount claimed 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.

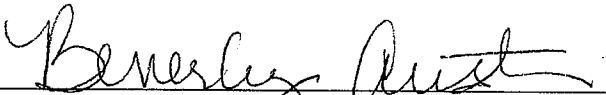
IT IS FURTHER ORDAINED that all other provisions of Chapter 6, Article 9 remain in full force and effect.

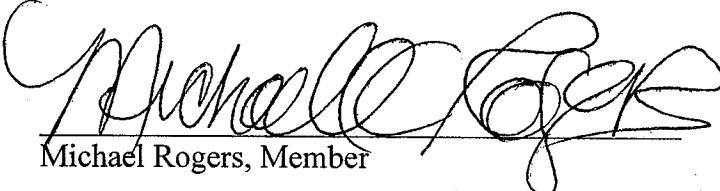
IT IS FURTHER ORDAINED that the effective date of this amendment shall be May 1, 2009.


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

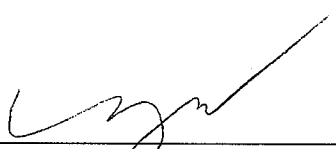
A Majority of the Avon Town Council:

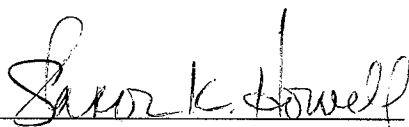
  
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Greg Zusan, President

  
Beverley Austin, Vice President

  
Michael Rogers, Member

  
Charles Dorton, Member

  
Nicole Gordy, Member

Attest:   
Sharon Howell, Clerk-Treasurer