

**TOWN OF AVON**

**ORDINANCE 2009 - 05**

**AN ORDINANCE OF THE TOWN OF AVON AMENDING  
THE TOWN'S REGULATION OF TREE AND VEGETATION**

WHEREAS, Indiana Code §36-7-10.1 authorizes Towns to require owners of real property located in the Town to cut and remove weeds and other rank vegetation growing on the property;

AND WHEREAS, Town Code sections 6-200 through 6-202 authorize town officials to notify the owner of a violation of the prohibition of allowing a property to become overgrown with weeds, grass or noxious plants, to remove the weeds, grass or noxious plants if the owner fails to do so, to collect reimbursement from the owner for the costs of removal, and to place a lien on the property if the owner fails to reimburse the Town;

AND WHEREAS, the remedy provisions do not include the assessment of an administrative fee to reimburse the Town for enforcing the ordinance and removing the non-compliant vegetation;

AND WHEREAS, Indiana Code §36-7-10.1 specifically authorizes the collection of an administrative fee;

AND WHEREAS, the recent experience of the Town staff is that a substantial amount of staff time is spent enforcing this provision of the Town Code;

AND WHEREAS, it is in the best interests of the citizens of the Town that Town Code sections 6-200 through 6-202 be amended in order to provide for the collection of an administrative fee and to provide for other technical improvements.

IT IS, THEREFORE, ORDAINED that sections 6-200, 6-201 and 6-202 of Chapter 6, Article 14, which reads as follows:

(Insert)

Shall be amended to read as follows:

§6-200 UNLAWFUL GROWTH

(A) Violation. It is unlawful for the owner of any real estate in the Town to allow it to become overgrown with weeds, grass, or noxious plants beyond the height of one foot.

(B) Policy. Because growths of weeds, grass, or noxious plants beyond the height of one foot leads to increased presence of insects and vermin, conceals dangerous conditions of the land, adversely affects the property and adjacent properties, and otherwise adversely affects the public health, safety and welfare, it is the policy of the Town of Avon to prohibit such conditions and to take all necessary action to remove such conditions.

(C) Weeds and Rank Vegetation. For purposes of this section of the Town Code, the term “weeds and rank vegetation” shall include all weeds, grasses and growing plants which exceed a height of one foot, except agricultural crops, hay and pasture, garden plants, ornamental grasses and plants used for landscape purposes, wild flowers, and wetland and/or vegetation drainage.

(D) Nuisance. Weeds and rank vegetation which have grown to one foot or more constitute a nuisance. The Town is authorized to abate such nuisances as provided for in this Article or in Article 13 of this Chapter.

## §6-201 REMOVAL

- (A) Administration. The Planning & Building Department shall be responsible for the administration of sections 6-200, 6-201 and 6-202.
- (B) Notice to Correct. If the Town finds a violation of §6-200, 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.
- (C) Appeal. If the owner contests the determination by the Town that a violation 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.
- (D) 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.

(E) 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 a complaint for the collection of these fees, costs and expenses.

(5) Administrative Fee. If the Town removes the weeds and rank vegetation, it shall be entitled to an administrative fee in the amount of \$250. The violator shall pay this fee with the fine and other costs in the same manner as prescribed herein. 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.

(6) 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.

#### §6-202 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, and the amount of the administrative fee. If the owner fails to pay the costs and fee within thirty (30) days, the Clerk-Treasurer shall certify the unpaid amount to the Hendricks County Auditor, plus any additional administrative costs incurred in the certification.

(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.

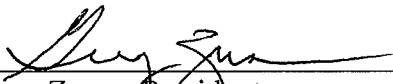
(C) Appeal of Fine or Costs. Within seven (7) days of receiving from the Town notice of fines and expenses due, the violator may file an appeal of the Town's determination by filing with the Town Court a notice of appeal. If the violator fails to appeal, he or she waives the right to contest the amount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

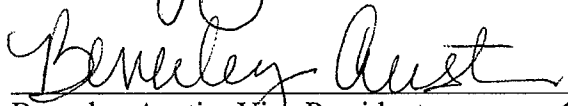
IT IS FURTHER ORDAINED that all other provisions of Chapter 6, Article 14 remain in full force and effect.

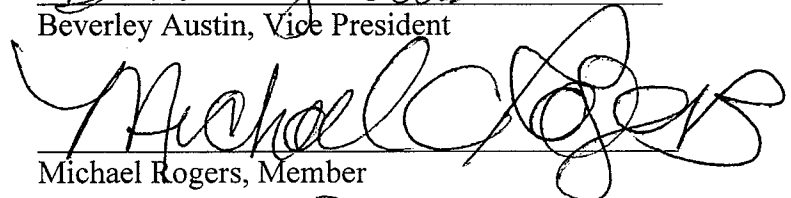
IT IS FURTHER ORDAINED that the effective date of this amendment shall be May 1,  
2009.

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

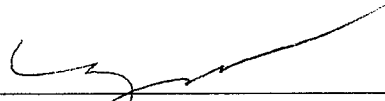
A Majority of the Avon Town Council:

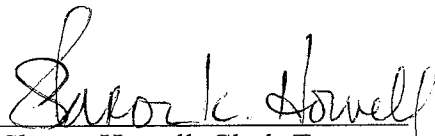
  
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Greg Zusan, President

  
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Beverley Austin, Vice President

  
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Michael Rogers, Member

  
\_\_\_\_\_  
Charles Dorton, Member

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

Attest:   
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Sharon Howell, Clerk-Treasurer