

ORDINANCE 2021-25

AN ORDINANCE PROHIBITING CERTAIN PUBLIC NUISANCES

WHEREAS, the Town of Whitestown, Indiana (“Town”) is authorized by Indiana law to regulate conduct, use, or possession of property that might endanger the public health, safety, or welfare; and

WHEREAS, the Town desires to prohibit certain forms of public nuisances within the Town to ensure the health, safety, and welfare of its citizens and first responders.

NOW, THEREFORE BE IT ORDAINED, by the Town Council of the Town of Whitestown, Indiana, as follows:

Section 1. *Occupant Defined.*

“Occupant” means any person who occupies, leases, rents, resides in or upon, controls, maintains, or possesses property, including, but not limited to, commercial property, industrial property, developed property, undeveloped property, residential rental property, short-term residential rental property, hotel rooms, motel rooms, boarding houses, hostels, or any other interest in property whatsoever.

Section 2. *Owner Defined.*

“Owner” includes, but is not limited to, the following:

- A. The recorded owner of the property;
- B. The owner of a hotel, motel, boarding house, hostel, apartment complex, duplex, multi-family housing complex, rental property, short-term rental property, or any other ownership interest in property;
- C. Any party with an equitable or contractual interest in the property; or
- D. The trustee of a land or other trust, if the trust holds title to such property.

Section 3. *Public Nuisance Defined.*

A “public nuisance”, for purposes of this Ordinance, is a thing, act, condition, or use of property that does or includes any of the following:

- A. Unlawfully or substantially interferes with, obstructs, or tends to obstruct or render dangerous any street, alley, highway, or other public way;
- B. Endangers public safety through excessive or unjustified calls to fire, police, or emergency medical services;
- C. All buildings or structures kept, resorted to, or allowed to be used for the purpose of prostitution, patronizing a prostitute, promoting prostitution, or gambling;

- D. All buildings or structures kept, resorted to, or allowed to be used for the use or sale of illegal or controlled substances as defined by Indiana Code Article 35-48;
- E. All places where intoxicating liquor or fermented malt beverages are sold, possessed, stored, brewed, bottled, or manufactured in violation of the laws of the State of Indiana or ordinances of the Town;
- F. Any place or premises resorted to for the purpose of drinking intoxicating liquor or fermented malt beverages in violation of the laws of the State of Indiana or ordinances of the Town; or
- G. Any place or premises within the Town where the laws of the State of Indiana or ordinances of the Town relating to public health, safety, peace, morals, or welfare are openly, continuously, repeatedly, or intentionally violated.

Section 4. *Public Nuisance Prohibited.*

It is unlawful for any Owner or Occupant of property to maintain a Public Nuisance or to permit or allow a Public Nuisance to exist. An Owner is responsible for a Public Nuisance on its property even if the Public Nuisance is caused by an Occupant or their guest, if the Property Owner either permitted or allowed the Public Nuisance to exist or did not abate it within the time provided in a Notice of Violation.

Section 6. *Notice of Violation; Contents of Notice.*

- A. Whenever a Public Nuisance is found to exist within the Town, the Town Manager or any enforcement or police officer will give written notice (“Violation Notice”) to the Occupant or Owner that a Public Nuisance has been found to exist.
- B. The Violation Notice will describe the nature and location of the Public Nuisance.
- C. The Violation Notice will describe the actions necessary to abate or correct the Public Nuisance.
- D. The Violation Notice will provide a date, not less than ten (10) days after issuance of the Violation Notice, when the Occupant or Owner must abate the Public Nuisance.

Section 7. *Fines for Failure to abate a Public Nuisance.*

- A. An Occupant or Owner that fails to abate the Public Nuisance by the date provided in the Violation Notice is subject to a fine.
- B. Each day, beyond the date provided in the Violation Notice for abating the Public Nuisance, that an Occupant or Owner fails to abate the Public Nuisance is a separate violation.

- C. Each violation of the Violation Notice is subject to a fine not to exceed \$2,500 per violation.

Section 8. *Notice of Fines; Contents; Payment Due.*

- A. The Town Manager or enforcement or police officer will issue a written notice of fines (“Fine Notice”) to the Occupant or Owner that a fine (“Fine”) has been assessed for failure to abate a Public Nuisance by the date provided in the Violation Notice.
- B. The Occupant or Owner will have thirty (30) days from the date of receipt of the Fine Notice to pay the Fine.
- C. Fines may be paid to the Whitestown Clerk-Treasurer.

Section 9. *The Town’s Remedies.*

The Town reserves the right to pursue all available remedies at law or equity to abate or enjoin a Public Nuisance, to enforce compliance with a Violation Notice, or to enforce compliance with a Fine Notice, including, but not limited to, the following:

- A. An action to enforce an ordinance, under Ind. Code § 36-1-6-4;
- B. An action to abate or enjoin a nuisance, under Ind. Code Chapter 32-30-6;
and
- C. An action for an injunction or mandate.

The Town shall be entitled to recover its attorneys’ fees from any person or entity found to be in violation of this Ordinance, in any lawsuit brought by the Town to enforce this Ordinance in which the Town is the prevailing party.

Section 10. This Ordinance supersedes those portions of any ordinance(s) inconsistent or in conflict herewith. The terms and provisions of this Ordinance are severable, and the invalidity or unenforceability of any term or provision shall not affect the remaining portions of this Ordinance. This Ordinance shall be in full force and effect upon adoption and publication pursuant to applicable law.

Adopted by the Town Council of the Town of Whitestown, Indiana, on _____, 2021, by a vote of _____ in favor and _____ against.

THE TOWN COUNCIL OF THE
TOWN OF WHITESTOWN

Clinton Bohm, President

ATTEST:

Matt Sumner, Clerk-Treasurer
Town of Whitestown, Indiana

4105727