



CITY*of* **MARION**

Weed Violations:

A weed violation is any growth of weeds, grass or other rank vegetation on private or governmental property which is neglected, disregarded or not cut, mowed, or otherwise removed and/or which has attained a height of nine (9) inches or more.

*After June 1st property owners will not receive notification of weed violation.

GENERAL ORDINANCE NO 10-2005

AN ORDINANCE AMENDING
GENERAL ORDINANCE NO. 12-1997

ENVIRONMENTAL PUBLIC NUISANCES

WHEREAS, the present ordinance entitled General Ordinance Number 12-1997, relating to Environmental Public Nuisances is in need of revision.

NOW, THEREFORE, be it ordained by the Common Council of the City of Marion, Indiana:

Section 1. That General Ordinance Number 12-1997 of the Municipal Code of the City of Marion is hereby repealed.

Section 2. That there is hereby established and adopted a revised ordinance which shall constitute a new ordinance of the Municipal Code of the City of Marion as follows:

ENVIRONMENTAL PUBLIC NUISANCES

Section A – Purpose and Intent

It is hereby declared to be the purpose of this ordinance to protect the public safety, health, welfare, and enhance the environment of the people of the City of Marion by making it unlawful to allow an environmental public nuisance to exist.

Section B – Definitions

For the purpose of this ordinance, the following terms shall have the following meanings. The word “shall” will be mandatory and not merely directory.

- (1) Authorized Employee – An individual designated to make environmental public nuisance inspections or any individual(s) of any governmental department of the City of Marion, which department has been designated by the Mayor of the City of Marion to enforce this ordinance.
- (2) City – The City of Marion.
- (3) Weeds and Rank Vegetation – Any plant which grows where it is not wanted.
- (4) Environmental Public Nuisance – Any of the following constitute an environmental public nuisance.
 - (a) Any growth of weeds, grass or other rank vegetation on private or governmental property which is neglected, disregarded or not cut, mowed, or otherwise removed and/or which has attained a height of nine (9) inches or more; or

- (b) Any accumulation of dead weeds, grass, brush, trees or woody growth on private or governmental property; or
 - (c) Any poison ivy, ragweed or other poisonous plant or plants detrimental to health growing on any private or governmental property; or
 - (d) Any vegetation, trees or wood growth on private property which due to its proximity to any governmental property, right-of-way or easement interferes with the public safety or lawful use of the government property, right-of-way or easement or which has been allowed to become a health or safety hazard.
- (5) Excluded Property – Any of the following may constitute excluded property;
- (a) Land cultivated in a commercial, domestic, agricultural or horticultural zone; or
 - (b) An existing natural or developed forest which does not create a health or safety hazard; or
 - (c) Vacant open lands, fields or wooded areas more than one hundred fifty (150) feet from occupied property; or
 - (d) A nature habitat area more than one hundred fifty (150) feet from an occupied structure on adjacent property and determined not to be a health or safety hazard; or
 - (e) A wetland area designated by the United States Department of Interior Fish and Wildlife Division on a National Wetlands Inventory Maps.
- (6) Governmental Property – Real estate within the City of Marion which is owned, leased, controlled or occupied by the United States, the State of Indiana, or any political subdivision thereof; excluding areas such as interior fields, river bank properties and wooded lots which are maintained as natural sites by and such political entity.
- (7) Officer – An employee of the Code Enforcement Department or any other governmental department of the City of Marion, so designated by the Mayor of the City of Marion having law enforcement powers to issue city ordinance violation summons in order to enforce the provisions of this ordinance.
- (8) Owner – Shall be presumed to be any one or more of the following:
- (a) The owner or owners in fee simple of a parcel of real estate including the life tenant or tenants if any; or

- (b) The record owner or owners as reflected by the most current records in the township assessor's office of the township in which the real estate is located; or
 - (c) The purchaser or purchasers of such real estate under any contract for the conditional sale thereof.
- (9) Private Property – All real estate within the City of Marion except governmental property.
 - (10) Traffic Hazard – Any environmental public nuisance that is potentially dangerous to the existing traffic at the intersection in question, as it may block or prohibit the view of any oncoming traffic.

Section C – Application of Chapter

- (1) Each department or agency of the United States, the State of Indiana, or any political subdivision thereof, shall be required to keep governmental property free from environmental public nuisances.
- (2) Any owner of private property shall be required to keep that private property free from environmental public nuisances.

Section D – Prohibited Activity

It shall be a violation of this ordinance for any owner of private property or governmental property to allow an environmental public nuisance to exist on that property, unless the property is excluded property.

Section E – Determination of Violation; Notice of Violation

- (1) Complaint – Any department of the city which receives a complaint regarding any environmental public nuisances within the city shall forward that complaint to the Code Enforcement Department of the City.
- (2) Assignment of Complaint – The Code Enforcement Department shall thereafter forward the complaint to the officer for processing, who in turn, shall visually inspect the property in question. If the officer determines that a violation exists, they shall issue a notice of violation as provided below.
- (3) Notice to Abate – When a complaint addresses private property, the officer through the Code Enforcement Department shall cause a written notice to abate to be served upon the owner of the property in question, granting that owner a minimum of five (5) calendar days in which to remove the environmental nuisance. This notice shall be served by a law enforcement officer, by certified mail to the owner or by a “notice” placard conspicuously posted on the property which contains the following information:

the address of the property, the date of the notice, the name of the agency enforcing this ordinance, the address of the agency, the phone number of the agency and a warning that if the environmental public nuisance is not removed within five (5) calendar days after the posting, the City of Marion has the right to enter on the property to abate and/or correct the condition and bill the owner for costs incurred in so doing and/or file a court action against the owner for an ordinance violation.

The officer, after posting a notice to abate shall serve to the owner of the subject property a copy of the notice by regular 1st Class United States mail postage prepaid and provided further that any failure to give such written notice shall not constitute a defense to any action to enforce the provisions of Section D.

- (4) Exception to Notice to Abate Requirement – If the officer finds a violation which constitutes a “traffic hazard,” the officer shall find it necessary to waive the five day grace period and abate the problem as soon as possible.
- * (5) Publication of Notice – In lieu of the notice required by Section #3), the City of Marion, through the Code Enforcement Department, may publish notice in a newspaper of general circulation in the city, on two separate occasions during the month of April, that if any environmental public nuisance violations are not corrected by June 1st of that year they will be cut by the City of Marion and the owner of the property charged with the costs under the provision of Section F(3). The publication shall contain all the information required of the “Notice to Abate” in public nuisance violations as many times as is necessary to comply with this ordinance and charge the actual cost to the property owner.
- (6) Inspection – Following the expiration of the “Notice to Abate” or a publication of Notice to Abate, an officer shall visually inspect the property to determine whether an environmental public nuisance still exists. If an environmental public nuisance exists, action shall be taken to abate that nuisance in accordance with this ordinance.
- (7) Abatement by City on Government Property – Where the complaint addresses governmental property and it is determined by the officer that a violation exists and threatens the health and safety of the people of the City of Marion, the officer may direct the City to immediately enter upon the premises and remove the environmental public nuisance.

Section F – Enforcement

- (1) Citation for Violation – If the officer finds that an environmental public nuisance exists on private property and has not been abated as directed in the written notice to abate of Section E(3) or the Public Notice to Abate of Section E(5), that officer may cause a citation for violation of City Ordinance to be issued to the offending property owner.

(2) Abatement by City of Private Property – In addition to the issuance of a citation for violation of City Ordinance under Section F(1), and after the time for an appeal has expired under Section G, the officer shall make a written request to the City of Marion to abate the environmental public nuisance and shall thereafter furnish the City Controller with a statement of the actual cost as calculated pursuant to Section F(3). The actual abatement may be assigned to a city department or contracted out through standard procedures.

(3) Responsibility of Offender for Costs of Enforcement – The Code Enforcement Department shall make a statement of the costs incurred in eliminating the environmental public nuisance. The costs shall include: cost or removal of the environmental public nuisances, administrative fees, attorney fees if the court ordered enforcement is necessary and all recording fees associated with the collection of the outstanding balances. The following fees shall be charged:

(a) Administrative Fees\$100.00 *

These fees would cover such administrative tasks as inspecting the property to determine violation, to determine compliance, determining ownership and preparing and mailing notices.

(b) Attorney Fees – This fee shall cover the legal time on an hourly basis necessary to enforce this ordinance in court for each violation.

(c) Labor and Fees

The following labor fees per person, per hour or fraction thereof, shall apply for labor necessary to abate an environmental public nuisance.

Operator/Driver/Laborer w/o CDL.....	\$20.00
Operator/Driver/Laborer w/CDL.....	\$25.00
Supervisor.....	\$40.00

(d) Equipment Fees

The following equipment fees per machine, per hour or fraction thereof, shall apply for the use of each piece of equipment necessary to abate an environmental public nuisance.

Pick-Up Truck.....	\$25.00
Tractor/Bush Hog.....	\$30.00
Backhoe.....	\$45.00
Dump Truck.....	\$40.00
Packer.....	\$50.00
Loader.....	\$65.00

(e) Any landfilling fees actually incurred to dispose of litter and waste product removed.

(f) Any other reasonable fees actually incurred in abating an environmental public nuisance. Said statement shall be delivered

to the property owner by 1st class mail. The owner shall pay the amount noted to the City of Marion within ten (10) days after receipt, which shall be deposited in the Environmental Public Nuisance Account.

- (4) Failure to Pay – The City of Marion shall have the following options should an owner fail to pay:
- (a) If the owner fails to pay the amount within ten (10) days after receiving a statement, a copy of all costs may be filed in the office of the Auditor of Grant County for the purpose of placing the amount claimed on the tax duplicate against the property, so that the amount claimed can be collected as taxes are collected, subject to the limitations above.
 - (b) The City of Marion may file the citation in the Marion City Court and seek the costs.
 - (c) The City of Marion may seek the recovery of the costs plus attorney fees in the County courts.

Section G – Property Owner Right to Object to Complaint

Upon receipt of a “Notice to Abate,” the property owner or their duly authorized representative may notify the Code Enforcement Department of an intent to object to any “Notice to Abate.”

This correspondence shall be in writing and shall specify the street address involved, as well as the current mailing address and phone number of the property owner or their representative. Any such correspondence must be received by the Code Enforcement Department within the amount of time set out in the “Notice to Abate.”

Upon receipt of such correspondence, the Code Enforcement Department shall provide copies of same to the City Attorney and to the officer involved in the violation, who shall cause the objection to be investigated. If the officer determines that the violation has not been corrected, he shall file the citation in the Marion City Court. No other action concerning the property in question shall be pursued against the owner to abate the environmental public nuisance until resolution of the objection thereto.

Section H – Severability

If any provisions of this ordinance or any application thereof, is held invalid, the invalidity shall not effect other applications of the provisions or terms of this ordinance which reasonable can be given effect without the invalid provision or term or the application thereof.

Section 3. It is the express intent of this ordinance to adopt I.C. 36-7-10.1-3.

Section 4. Notwithstanding any provisions of this ordinance, this ordinance shall not be construed to repeal any former ordinance as to any offense committed against such former