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Utica

Richard P. Jones

CLARK COUNTY RECORDER

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BEFORE THE
TOWN OF UTICA COMMON COUNCIL

ORDINANCE NO. 2011-01

AN ORDINANCE REGULATING THE MAINTENANCE OF
EXISTING BUILDINGS AND PROPERTY WITHIN THE TOWN OF
UTICA

WHEREAS, the Town of Utica (the "Town"), a Town formed and operating under the laws of the State of Indiana, is permitted to establish ordinances to protect the health, safety and general welfare of its residents; and

WHEREAS, the Town of Utica Common Council finds that there are a number of residential and non-residential building within the corporate boundaries of the Town that are poorly maintained and neglected by their owners;

WHEREAS, these buildings adversely affect citizens who own or occupy nearby buildings and dwellings by lowering property values and rental values;

WHEREAS, these adverse effects also increase the incidence of vandalism and fire;

WHEREAS, the Town of Utica Common Council finds that the elimination and prevention of these conditions is necessary and is in the best interest of the Town of Utica and its citizens;

WHEREAS, the Indiana General Assembly has set forth findings as to the effect of vacant and deteriorated structures, noting the problems associated with vacant and deteriorated buildings and structures that are not maintained by their owners attract children, harbor vermin, invite dumping, spread rodents or fires to nearby structures, and are temporary abodes for criminals and are likely to be damaged by vandalism or arson (See Ind. Code § 36-7-9-5);

WHEREAS, the Indiana General Assembly has also set forth additional findings that in Indiana, there exist a large number of unoccupied structures that are not maintained and that constitute a hazard to public health, safety, and welfare (See Ind. Code § 36-7-9-4.5(a));

WHEREAS, Town of Utica Common Council adopts the findings of the Indiana General Assembly and recognizes that the problems created within in the Town of Utica by vacant and deteriorated structures warrants vigorous and disciplined action to ensure the proper maintenance and repair of vacant structures;

WHEREAS, the Indiana General Assembly has encouraged local government bodies to adopt maintenance and repair standards appropriate for the community in accordance with the Indiana Code (See Ind. Code §36-7-9-4.5(k));

WHEREAS, the Town of Utica Common Council specifically finds that the elimination and prevention of unsafe buildings and premises within the Town of Utica is necessary and is in the best interest of the Town of Utica and its citizens;

WHEREAS, in carrying out this stated purpose, the Town of Utica Common Council intends to exercise its full powers and authority to protect the public health, safety, and welfare, whether those powers are derived from the United States Constitution or from the laws of the State of Indiana;

NOW, THEREFORE, IT IS HEREBY ORDAINED by the Town of Utica Common Council, that:

Section I: Property Maintenance Code

a. *Adoption by reference.* The 2006 Edition of the International Property Maintenance Code, promulgated by the International Code Council (ICC), is hereby adopted by reference as fully as if set forth herein to govern existing buildings and structures in the Town of Utica ("Town"), except for the additions or deletions which are specified in this section. At least two (2) copies of the 2006 Edition of the International Property Maintenance Code shall be kept in the Building Commission, a department within and under the immediate control of the Town of Utica, Planning & Zoning Department for public inspection.

b. *Additions, modifications, and deletions.* The provisions of the 2006 Edition of the International Property Maintenance Code, adopted by subsection (a) shall be modified, added to or deleted so that the following articles, sections, or subsections shall read as follows:

1. Section 102.3 shall be modified to read in its entirety as follows:
Application of other codes. Repairs, additions, or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the International Building Code, International Mechanical Code, International Fuel Gas Code, International Residential Code, and the ICC Electrical Code, and any other applicable federal, state, or local law.

2. Sections 102.6, 103, 106, 107, 109, 110 and 111 shall be deleted in their entirety.

3. The definition of "workmanlike" in Chapter 2 shall be modified to read as follows: Executed in a skilled manner, e.g., generally plumb, level, square, in line, undamaged, and without marring adjacent work. To be workmanlike, maintenance or repair work must be performed in a manner consistent with work done by a skilled craftsman. In general, floors should be level, walls plumb and square, and windows installed so that they operate easily and fit within the rough opening to exclude the elements.

4. Section 301.2 shall be modified to read in its entirety as follows: Responsibility. The owner of the premises shall maintain the structures and exterior property in compliance with these requirements, except as otherwise provided for in this Code. A person shall not occupy as owner-occupant or permit another person to occupy premises which are not in a sanitary and safe condition and which do not comply with the requirements of this chapter.

5. Sections 302.1, 302.4, 302.8, 304.3, 304.4, and 304.8 shall be deleted in their entirety.

6. Section 304.14 shall be modified to read in its entirety as follows: Every door, window, and other outside opening required for ventilation of habitable rooms, food preparation areas, food service areas, or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tightly fitting screens of not less than 16 mesh per inch (16 mesh per 25 mm) and every swinging door shall have a self-closing device in good working condition.

7. Section 305.1 shall be modified to read in its entirety as follows. General. The interior of a structure and equipment therein shall be maintained in good repair, structurally sound and in a sanitary condition. Every owner of a structure containing a rooming house, a hotel, dormitory, two or more dwelling units, or two or more nonresidential occupancies, shall maintain, in clean and sanitary condition, the shared or public areas of the structures and exterior property.

8. Section 307, 308.3, 308.4, and 308.5 shall be deleted in their entirety.

9. Section 404.1 shall be modified to read in its entirety as follows: Privacy. Dwelling units, hotel units, rooming units, and dormitory units shall be arranged to provide privacy and be separate from public areas or commons areas or any other adjoining spaces.

10. Section 404.4.4 shall be modified to read in its entirety as follows: Prohibited occupancy. Kitchens and public non-habitable spaces shall not be used for sleeping purposes.

11. Section 602.3 shall be modified to read in its entirety as follows: Heat Supply: Every owner and operator of any building who rents, leases or lets one or more dwelling unit, rooming unit, dormitory or guestroom on terms, either expressed or implied, to furnish heat to the occupants shall supply heat to maintain a temperature of not less than 68° F (20° C) during the period the spaces are occupied.

Exceptions:

- i. Processing, storage and operation areas that require cooling or special temperature conditions.
- ii. Areas in which persons are primarily engaged in vigorous physical activities.

c. *Adoption of Unsafe Building Law.* Pursuant to the authority granted by the Indiana General Assembly through the Acts of 1981, Public Law 309, § 28 and all subsequent amendments, the Town of Utica, Indiana, by legislative action of its Common Council, hereby re-adopts the Unsafe Building Law, being Ind. Code § 36-7-9-1 through Ind. Code § 36-7-9-29, as it may be amended from time to time, and incorporates the definition of "substantial property interest" contained in Ind. Code § 36-7-9-2, as it may be amended from time to time.

d. *Administration.* The Town of Utica Common Council hereby establishes the Planning & Zoning Department to have direction and control of the Building Commission, Department of Code Enforcement. The Building Commission, Department of Code Enforcement is hereby designated as the executive department which shall administer the provisions

of the Unsafe Building Law. The Building Commissioner shall be the person responsible for the administration of the Department of Code Enforcement.

e. The Town of Utica, Building Commissioner, shall be the Board with control over the Department of Code Enforcement for purposes of setting performance bonds and processing expenses provided under the Unsafe Building Law, and shall have the responsibility for fixing the average "processing and administration expense" and a schedule of performance bonds as provided in the Unsafe Building Law.

f. Unsafe Building Fund:

1. As provided in Section 14 of the Unsafe Building Law, a fund designated as the "Unsafe Building Fund" shall be established in the operating budget of the Department of Code Enforcement. Any balance remaining at the end of the fiscal year shall be carried over in the fund for the following year and shall not revert to the general fund. Monies for such fund may be received from any source including appropriations by local, state, or federal governments, and donations.

2. As further provided by Section 15 of the Unsafe Building Law, the Building Commission, Department of Code Enforcement may take action to transfer all or any part of any money which may exist in the "building, demolition, repair and contingent fund" created by Ind. Code § 18-5-5-7 before its repeal on September 1, 1981, to the unsafe building fund.

g. *Penalties.* An ordinance citation may be issued with respect to any existing building or structure which is in violation of the provisions of the 2006 Edition of the International Property Maintenance Code, as adopted by reference in Subsection (a) and modified by Subsection (b), or which is in violation of the Unsafe Building Law, Ind. Code § 36-7-9-1 through Ind. Code § 36-7-9-29, as it may be amended from time to time, adopted by reference in Subsection (c). Such a citation shall be issued to any person with a substantial interest in the property affected. A citation issued pursuant to this section shall impose a fine not less than fifty dollars (\$50.00) for the first day of violation, a fine not less than one hundred dollars (\$100.00) for the second day of violation and a fine of not less than two hundred dollars (\$200.00) for every day of violation thereafter with each day of violation constituting a separate violation for which a citation

may be issued. No fine, however, shall exceed seven thousand five hundred dollars (\$7,500.00).

h. *Public Nuisance.* A building or property existing in violation of the standards required by this section constitutes a public nuisance.

Section II: Vacant Building Maintenance and Registration

a. The Town of Utica Common Council makes the following legislative findings:

1. In the Town of Utica, Indiana, a significant number of unoccupied buildings are not maintained and constitute a hazard to public health, safety and welfare.
2. Vacant buildings often become dilapidated because they are not maintained and repaired by their owners.
3. Vacant buildings attract children, harbor vermin, shelter vagrants and criminals, and are likely to be damaged by vandals or arsonists.
4. Unkempt grounds surrounding vacant and abandoned buildings invite dumping of garbage, trash and other debris.
5. Many vacant and abandoned buildings are on narrow lots and close to neighboring buildings, increasing the risk of fire and spread of insect and rodent infestation.
6. Vacant and abandoned buildings contribute to blight, cause a decrease in property values, and discourage neighbors from making improvements to buildings.
7. Buildings that remain boarded up for an extended period of time also exert a blighting influence and contribute to the decline of the neighborhood by decreasing property values, discouraging persons from moving into the neighborhood, and encouraging persons to move out of the neighborhood.
8. Vacant and abandoned buildings often continue to deteriorate to the point that demolition of the structure is required, decreasing available housing in the community and contributing to the neighborhood decline.

9. The blighting influence of vacant and abandoned buildings adversely affects the tax revenues of local government.

10. Vacant and abandoned buildings create a serious and substantial problem and are public nuisances.

11. The Town of Utica spends extraordinary resources and staff time to secure, demolish or otherwise respond to problems associated with vacant and abandoned buildings.

12. Owners of vacant and abandoned buildings should be held accountable for the physical condition of their buildings. At a minimum they should prevent such buildings from exerting negative influence on the well-being of the neighborhoods where they are located.

Accordingly, in addition to the property maintenance requirements set forth and adopted in Section I of this Code, the Common Council establishes the following standards for maintenance of any real property within the Town of Utica which is vacant and abandoned as defined by this section.

b. This section:

1. Establishes a program for ongoing identification and registration of buildings which have been vacant for a certain length of time.

2. Establishes responsibilities of owners of these vacant buildings; and

3. Provides for administration and enforcement of standards related to vacant buildings.

This section should be construed liberally to affect its purpose and intent.

c. *Definitions.* For purposes of this Section, unless the context otherwise requires, the following words and phrases have the meanings set forth below:

1. For purposes of this section, *vacant building* means a structure or parcel of real property which lacks the habitual presence of human beings who have a legal right to be on the premises, or at

which substantially all lawful business operations or residential occupancy has ceased.

2. For purposes of this section, *abandoned building* means a structure on a parcel of real property which is: vacant for more than ninety (90) days; the subject of an order issued pursuant to the Unsafe Building Law; and at which the condition which generated the order has existed for at least thirty (30) days and has not been remedied.

3. For purposes of this section an *owner* is a person or entity with a fee interest in a parcel of real property on which a vacant and abandoned building is located, and whose identity and address may be determined from an instrument recorded in the Clark County Recorder's Office.

d. *Continuing maintenance; mandatory and voluntary registration.*

1. Upon finding a building vacant and abandoned, the Building Commission, Department of Code Enforcement may issue to the building owner an order for continuing maintenance pursuant to the Unsafe Building Act, Ind. Code § 36-7-9, as it may be amended from time to time, or pursuant to similar authority granted by State statute, this Code or other statutes, ordinances and regulations.

2. The owner of a building that is abandoned as defined by this section shall register with the Building Commission, Department of Code Enforcement pursuant to Subsection (f) of this section.

3. The owner of a building that is vacant but not abandoned, within the meaning of this section may opt to register the building with the Building Commission, Department of Code Enforcement, so as to notify Town officials of the Property Manager and exchange other information pertinent to the condition of the building.

e. *Property Manager*

1. The owner of a building required to be registered pursuant to this section must appoint a Property Manager residing within fifty (50) miles of the property. The failure to appoint a Property Manager is a separate violation of this section. The Property Manager may be the owner or an agent of the owner.

2. An agent acting as the Property Manager must be at least eighteen (18) years of age.

3. The Property Manager must be available to government officials by telephone twenty-four (24) hours a day. The owner's failure to make certain that such a Property Manager is available and maintains the property is a separate violation of this section.

f. *Information required with registration.* The owner of a building that is vacant and abandoned shall register the property with the Building Commission, Department of Code Enforcement upon receipt of an order for registration. Registration shall be on a form provided by the Building Commission, Department of Code Enforcement, shall be verified under the penalties of perjury, and shall include the following information:

1. The street address of the property;
2. The names, addresses, and telephone numbers of all persons or entities which hold an ownership, land contract, mortgage, or other lien interesting the property, and all beneficiaries of any land trust which owns the property;
3. A copy of the most recently executed deed used to transfer title to the property and the most recently prepared sales disclosure form, if said disclosure form is reasonably available from the owner;
4. The names and residential and business addresses and telephone numbers of the Property Manager;
5. The names and addresses of all persons or entities which hold a lien interest or a substantial property interest in the property;
6. The names, addresses, and telephone numbers of the insurance agent and the carrier providing insurance coverage for the property as required by this section; and
7. The owner's plan for maintenance and repair of the property, including the time within which the owner anticipates completion of all repairs necessary to bring the property into compliance with all Property Maintenance Codes. However, the owner's statement of plan does not relieve the owner of any orders issued pursuant to the Unsafe Building Law or of any obligations imposed by statute, ordinance or regulation governing the maintenance of property. The Department's receipt of a plan does not constitute approval of the owner's plan or of any violation of property maintenance standards.
8. The owner is responsible for providing an updated registration form to the Building Commission, Department of Code Enforcement within five (5)

business days of any change of ownership or any information provided by the registration. The failure of the owner to provide such updated information within five (5) business days of any change is a violation of this section.

g. Standards for maintenance.

1. At least once each week, the owner of a property required to be registered under this section must ensure that the property is inspected and secured against unlawful entry, and that it is cleaned, vegetation is mowed, and cleared of snow and ice in the walkways. Records of such inspections shall be provided to the Building Commission, Department of Code Enforcement upon request.
2. The window and door opening of all buildings on the property shall be secured against unlawful entry by the use of locks designed for such use.
3. In order to protect a building against unlawful entry or vandalism while it is vacant, an owner may secure the windows and doors of the building by the use of boarding. If boarding is used to secure the building, the following standards must be met: Windows shall be framed by two-inch by four-inch (2"x4") boards secured with plywood to the frame by using six (6) seven-inch lag bolts into King studs in all corners and in the center of the vertical boards. The plywood must be 4-ply CDX sheathing or approved equivalent material, no less than one-half (1/2) inch in thickness and attached by tamper proof screws no less than three (3) inches in length. The screws must be type W for wood and type S for steel, and must be applied to a maximum of eight (8) inches on center.
4. Boarding of a vacant structure is to be considered a temporary and not a long-term method of securing the building. Any boards applied to secure doors and windows for more than thirty (30) days must be surface coated with exterior grade paint so as to reduce the blighting effect on the immediate neighborhood.

h. Registration Fee.

1. The owner of any building required to be registered under this section shall pay an annual registration fee to the Building Commission, Department of Code Enforcement upon registration. However, the owner of a building that is vacant but not abandoned within the meaning of this section, who voluntarily registers the building pursuant to Subsection (d)(3), is not required to pay a registration fee.

2. If the building is used for or zoned for residential purposes and contains not more than three (3) residential units, the registration fee shall be fifty dollars (\$50.00) per year.

3. If the building is used or zoned for residential purposes and contains more than three (3) residential units, or if it is used or zoned for any non-residential purposes, the fee shall be two hundred and fifty dollars (\$250.00) for the first year or any part thereof, three hundred and seventy-five dollars (\$375.00) for the second year or any part thereof, and five hundred dollars (\$500.00) for the third and each subsequent year or any part thereof that the property is required to be registered pursuant to this section.

4. The purpose of the registration fee is to reimburse the Building Commission, Department of Code Enforcement for the costs of monitoring the property and the additional costs of responding to emergencies and property maintenance requirements for a vacant and abandoned building. All fees collected shall be deposited into the Unsafe Building Fund as outlined in Section I(f).

i. Liability Insurance.

1. The owner of any property required to be registered by this section must maintain a policy of liability insurance for the building, and must provide to the Building Commission, Department of Code Enforcement the name, address, and telephone number of the insurance agent and carrier, along with a copy of the certificate of or other proof of insurance coverage. The coverage required shall be not less than one hundred thousand dollars (\$100,000.00) per occurrence and one hundred thousand dollars (\$100,000.00) in the aggregate.

2. The policy of insurance must require the agent or carrier to provide fifteen (15) days' advance notice of cancellation to the Building Commission, Department of Code Enforcement.

j. *Exemptions.* The Building Commission, Department of Code Enforcement may exempt a property from the registration requirements of this section if the property is subject of an open probate estate or has suffered extensive fire or catastrophic damage within the past ninety (90) days. Any exemption granted shall be for a specific period of time, not to exceed ninety (90) days. However, exemption from the registration requirements shall not constitute approval of any violation of property maintenance standards established by statute or this Code.

k. *Penalties.* An ordinance violation citation shall be issued for violating any provision of the requirements of this section, or for knowingly providing false information or withholding information required to be provided by the registration requirements of this section. Such a citation shall be issued to the owner and shall impose a fine of two hundred and fifty dollars (\$250.00) for the first day of violation, and not less than six hundred dollars (\$600.00) for all subsequent violations. No fine, however, shall exceed two thousand five hundred dollars (\$2500.00). The citations and fines imposed by this section are in addition to other legal and equitable remedies and enforcement action available to the Town of Utica.

l. *Quarterly administrative reports to the Building Commission and filed with the Office of the Town Clerk addressing implementation and enforcement.* All Town offices charged with implementing and enforcing the regulations set forth in this section shall report on a quarterly basis a written summary of their actions to the Town of Utica and filed with the office of the Town Clerk.

Section III: Nuisances; Penalty

a. Conditions constituting public nuisances

1. In addition to what is declared in this Code to be a public nuisance, those offenses which are known to the common law and the Statutes of Indiana as public nuisances may, when found to exist within the Town limits, be treated as such and be proceeded against as provided in this Section and Code, or in accordance with any other provision of law. Wherever the word "nuisance" is used in this article it refers to a public nuisance.

2. No owner, occupant, tenant, or any other person having a substantial interest in any real or personal property within the Town, or any agent

thereof, shall permit or allow to remain on or within such property or upon public ways abutting such real property any materials, trash, garbage, debris or any other matter which is detrimental to public health, comfort, safety, or to the aesthetic well-being of the community.

3. The following conditions shall be considered to constitute public nuisances for the purpose of this section:

- a. Litter
- b. Fallen tree stumps, dead trees, cut brush, fallen or cut limbs
- c. Boxes, appliances, household items and tires
- d. Demolition remains
- e. Open excavations, uncovered or improperly covered holes, whether lined or unlined, and dirt piles on any open or unfenced real property within the Town
- f. Accumulated garbage and trash
- g. Automobile parts, disassembled automobiles, automobiles without engines, plumbing and piping materials and parts, scrap metal, unseaworthy or dilapidated boats, dilapidated, deteriorated, or non-operable jet skis, snowmobile, motorcycles, bicycles, trailers, golf carts, or mopeds
- h. Structures defaced with paint or wording
- i. Any portion of real property or any personal property which emits an unwholesome odor
- j. Any waste water, filth, offal, garbage, rubbish, animal waste, human excrement, which is deposited, allowed or caused to be upon any public or private property
- k. Any water or any other substance which is caused or permitted to flow onto or be deposited upon any public property or public way, except natural surface water drainage
- l. Any dead animal or animal parts
- m. The erection of a dam or any other obstruction by a private property which prevents the natural flow of water and causes it to collect or pool upon any public property
- n. Any real or personal property which is infected with contagious disease or is likely to cause an immediate health hazard
- o. The placing or accumulating on or within any real or personal property or the permitting of the same, of any matter which attracts or may attract rodents, insects, domestic or wild animals in such a manner as to create a health hazard or unsanitary or dangerous condition

p. Any real or personal property, used as a place of residence or habitation or for sleeping, that is maintained in such a way as to be dangerous or detrimental to life or health due to lack of or defects in water, drainage, heat, electricity, plumbing, ventilation or garbage and trash removal

q. The storage of any explosive, combustible or other material which creates a safety or health hazard

r. Trees, shrubbery, weeds, snow or other matter obstructing public ways, or causing visual barriers which create vehicular traffic or pedestrian safety hazards

s. Trash or garbage containers left upon the sidewalk, the area between a street and sidewalk or the front or side yard, except as permitted by Code or Ordinance for trash and garbage collection purposes

t. Building materials stored on any lot in violation of Section III, below

u. Any furniture, not originally designated or manufactured solely for outdoor use; or any furniture which was originally designed or manufactured for outdoor use, which is now dilapidated or deteriorated

v. It is hereby strictly prohibited for any person(s) to dump or dispose of, rake, blow or sweep grass clippings, limbs, leaves or any materials into a public street at any time.

b. Citations

When a public nuisance is found to exist and after all persons known to have substantial interest in the property have been given reasonable opportunity to bring property into compliance and have not done so, the Building Commission, Department of Code Enforcement may issue a town ordinance violation citation to the record owner of the property or to the person shown to have right of exclusive possession of the property. Such citation shall impose a fine in conformance with Section III (i), below. Each subsequent day of violation shall be considered a separate violation for which a citation may be issued.

c. Notice Prior to Abatement by City

The Department of Code Enforcement shall give forty-eight (48) hours' notice, in writing, to remove any real or personal property within the Town or any object or condition which is deemed a public nuisance under Section III(a)(3) of this Section. Such notice shall be given to the owner of record or his agent, and to any tenant or occupant of the property upon which nuisance exists. Notice to the record owner may be mailed to his last known address. Notice to any tenant or occupant may be

given by posting same in a prominent place upon the premises where the nuisance is located.

d. Failure to Comply with Notice to Abate

Failure, neglect, or refusal by the record owner or his agent, or the tenant or occupant, to comply with the terms of the notice given pursuant to Section III(c) shall constitute a violation of this section. Each day's failure, neglect or refusal to abate the nuisance following notice pursuant to III(c) shall constitute a separate offense under this Section.

e. Abatement by City

Upon the failure, neglect or refusal of any party to whom notice to abate a nuisance has been given under Section III(c) or whenever a nuisance exists which creates a health or safety hazard requiring immediate abatement in order to protect public health or safety, the Building Commission, Department of Code Enforcement, or its designee, may abate the nuisance, keeping accurate account of all costs, and shall bill them to the record owner or to the person shown to have the right of exclusive possession of the property. Appropriate legal action may be taken to collect such costs if they remain unpaid forty-five (45) days after the billing date. Unpaid costs may be made a lien against the property.

f. Duties of Owner or Persons in Control of Vacant Lots

1. Any person owning or controlling any vacant lot within the City must keep same free of trash, litter, debris, garbage and similar material.
2. All persons owning or controlling vacant lots shall mow the lot or cause it to be mowed before the weeds or grass thereon reach a height of more than nine (9) inches.
3. If a person owning or controlling a vacant lot fails to maintain it in accord with the conditions set forth in this article, the Building Commission, Department of Code Enforcement or its designee shall proceed with notice and abatement procedures as set forth in this Section.

g. Weeds and Rank Vegetation; Removal of Vegetation

1. *Definitions.* As used in this section, "weeds and rank vegetation" means grass and weeds which is or may be harmful to the senses, health or well being of citizens of the Town. Pursuant to Ind. Code § 36-7-10.1-3, weeds and rank vegetation does not include agricultural crops, such as hay and pasture.

2. *Prohibitions.* No owner of real property or other person with a substantial property interest shall allow any growth of grass or weeds in excess of nine (9) inches in height upon his property. No owner of real property shall allow the growth of rank vegetation upon his property. A property existing in violation of this standard constitutes a public nuisance.

3. *Notice.* The Building Commission, Department of Code Enforcement shall give forty-eight (48) hours notice, in writing, to remove from any real or personal property within the Town, weeds and rank vegetation. Such notice shall be given to the owner of record or his agent and to any tenant or occupant of the property upon which the weeds and rank vegetation exists. Notice to the record owner shall be mailed to the last known address of the record owner by certified mail, return receipt requested, or an equivalent service under Ind. Code § 1-1-7-1. Notice to any tenant or occupant may be given by posting the same in a prominent place upon the premises where the weeds and rank vegetation exists.

4. *Failure to comply.* Upon a failure to comply with a notice issued pursuant to Section III(g)(3) of this Ordinance, the Building Commission, Department of Code Enforcement or an entity acting on behalf of the Building Commission, Department of Code Enforcement may enter upon the property to abate the violation of this Section by cutting the weeds and rank vegetation.

5. *Bill issued to record owner.* In the event the Building Commission, Department of Code Enforcement or an entity acting on its behalf is forced to remove the weeds and rank vegetation, the Department of Code Enforcement shall issue a bill to the

record owner of the property or to the person shown to have the right of exclusive possession of the property. The bill shall include removal costs as well as any administrative costs incurred in the process.

6. *Appeals.* Any appeal of either the abatement notice or the bill must be made in writing within ten (10) days of the date of the document being appealed. The appeal must be in writing and must be filed with the Building Commission, Department of Code Enforcement. If a written appeal is filed with the Building Commission, Department of Code Enforcement, the matter shall be scheduled for a hearing before the hearing authority and a hearing shall be held pursuant to Ind. Code § 36-7-9. The hearing authority's order regarding this appeal is considered final from the date of its issuance and is subject to judicial review pursuant to the provisions of Ind. Code § 36-7-9-8.

7. *Failure to pay bill.* If the owner fails to pay a bill issued pursuant to this section within the time specified in the bill, or within the time specified in the order if an appeal of the bill was made, the Building Commission, Department of Code Enforcement shall certify to the Auditor of Clark County the amount of the bill, plus any additional administrative costs incurred in the certification. The Auditor of Clark County shall then place the entire amount certified on the tax duplicate for the property affected, and the total amount, including any accrued interest, shall, upon collection, be disbursed to the general fund of the Town of Utica.

h. Storage of Building Materials

Building materials and equipment may be placed or stored on lots zoned as residential or commercial only during the process of building on said lot or for a period of no longer than one (1) month prior to a commencement of building and no longer than ten (10) days after the completion of building on said lot.

Except as otherwise provided, any person violating a provision of this Section shall be deemed guilty of an offense and fined not less than one hundred dollars (\$100.00) for a s for a first offense in any calendar year, with the second offense carrying a civil penalty of two hundred fifty dollars (\$250.00), and the third and subsequent offenses during any calendar year carrying a penalty of five hundred dollars (\$500.00). No fine for any individual offense shall exceed seven thousand five hundred dollars (\$7,500.00). Each day after the expiration date of the time limit ordered by the Building Commission, Department of Code Enforcement for abating a nuisance condition under this Section shall constitute a distinct and separate offense.

ORDINANCE ADOPTION

If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town of Utica Common Council hereby declares that it would have passed this Ordinance, and each section, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

It is hereby ordered that this Ordinance be published in a newspaper of general circulation in Jeffersonville, Clark County, Indiana, one (1) time within thirty (30) days after its passage.

NOW THEREFORE, BE IT HEREBY FURTHER ORDAINED that this Ordinance governing the maintenance of existing buildings and property within the Town of Utica as herein set forth shall become effective upon the date of its final passage by the Common Council of the Town of Utica, approval of 2011-01, and when properly published in accordance with the Indiana Code.

Voted for:

Voted Against:

Henry Brown

Jimmy Carter

Bobbi DeLoach

James Van Dusen

PASSED AND ADOPTED by the Common Council of the Town of Utica Clark County, Indiana,
upon this 8th day of March 2011.

ATTEST:

Garnie A. Love

Clerk-Treasurer

Town of Utica