ORDINANCE 1529

AN ORDINANCE AMENDING TITLE 8, CHAPTER 8.24, GARBAGE AND RUBBISH, AND CHAPTER 8.20, SECTION 8.20.040, STORAGE OF JUNK, OF THE MUNICIPAL CODE OF THE CITY OF BLUFFTON, INDIANA

WHEREAS, the Common Council ("**Council**") of the City of Bluffton ("**City**") has authority under the Acts of the Indiana General Assembly to make all necessary regulations for the preservation of the rights, property, health, safety and welfare of its citizens and the Council finds that the interests of the citizens of the City of Bluffton would be best served by amending the Bluffton Municipal Code to replace Chapter 8.24 in its entirety and to replace Section 8.20.040 in its entirety; and

WHEREAS, the City has considered the current language in the Municipal Code of the City of Bluffton, Indiana ("**Code**"), specifically Chapter 8.24, concerning garbage and rubbish, and has determined that Chapter 8.24 should be updated and revised; and

WHEREAS, the City has considered the current language in the Code, specifically Section 8.20.040, concerning the storage of junk, and has determined that Section 8.20.040 should be revised to be updated and more reflective of how the City desires to address the storage of junk within the limits of the City; and

WHEREAS, the City's Building Inspector has prepared and presented the City with a proposal for the replacement in their entirety of Chapter 8.24 and Section 8.20.040 of the Code with the Chapter 8.24 as revised and restated in the attached "**Exhibit A**", titled "Nuisances, Garbage and Rubbish".

THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLUFFTON, INDIANA AS FOLLOWS:

Section 1: Title 8, Chapter 24, and Section 8.20.040 of the Code of Ordinances of the City of Bluffton, Indiana as they have heretofore read are hereby repealed and replaced in their entirety and shall henceforth read as set forth in "**Exhibit A**" attached hereto and are to be enforced as an ordinance of the City of Bluffton, Indiana.

Section 2: This Ordinance shall take effect and be in force upon adoption and publication as required by law.

Adopted by the Common Council of the City of Bluffton, Indiana, this 5th day of January 2021, by the following vote:

	AYE	NAY	ABSENT	ABSTAIN
Roger Thornton	✓			
Rick Elwell	✓			
Josh Hunt	✓			
Scott Mentzer	✓			
Janella Stronczek	✓			

Mayor John S. Whicker, Presiding Officer

ATTEST:

Tamara D Runyon
Tamara D. Runyon, IAMC, MMC, CPFA
City Clerk-Treasurer

Presented by me to the Mayor of the City of Bluffton, Indiana, at 7:30 o'clock p.m. this 5th day of January, 2021.

Tamara D Runyon
Tamara D. Runyon, IAMC, MMC, CPFA
City Clerk-Treasurer

Approved by me this 5th day of January, 2021.

Mayor John S. Whicker

"EXHIBIT A"

NUISANCES, GARBAGE AND RUBBISH

Sections:

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8.24.010 DEFINITIONS.

A. "BOARD" means the City of Bluffton Board of Public Works and Safety.
B. "CENTRAL CITY" means the area of the City enclosed by the centerlines of Washington Street, Scott Street, Marion Street, and Wabash Street.
C. "CITY" means those areas inside the corporate limits of the City of Bluffton, Indiana.
D. "ENFORCEMENT AUTHORITY" as designated by the Board.
E. "GARBAGE" means food waste, including every waste accumulation of animal, fruit or vegetable matter intended for food or that results from the preparation, use, cooking, dealing in or storing of meat, fish, fowl, fruit or vegetables.
F. "HAZARDOUS MATERIAL" includes, but is not limited to, explosives, pathological wastes, radioactive materials and chemicals.
G. "LITTER or RUBBISH" includes any man-made or man-used waste, which, if deposited within the City otherwise than in a litter receptacle, tends to create a danger to public health, safety, and welfare or tends to impair the environment of aesthetic well-being of the community. "LITTER" includes, but is not limited to, Garbage, trash, refuse, debris, grass clippings or other lawn or garden waste, paper products, glass, metal, plastic or paper containers, motor vehicle parts, furniture, appliances, carcasses of dead animals, or other waste material of an unsightly, unsanitary, nauseous or offensive nature.
H. "LAND" means real estate or real property, and all improvements and appurtenances thereto.
I. "NUISANCE" is defined in IC 32-30-6-6, to wit: whatever is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as essentially to interfere with the comfortable enjoyment of life and property.
J. "OF RECORD' means filed in the records of Wells County, Indiana.
K. "PERSON" means any individual, firm, corporation, association or other recognized legal entity.
L. "PRIVATE PREMISES" means all real property, including, but not limited to, vacant land and land upon which is located one or more buildings or other structures designated or used for residential, commercial, business, industrial, institutional, or religious purposes, together with any yards, grounds, walks, driveways, fences, porches, or other structures or improvements appurtenant to the land, excluding any public property.
M. "SUBSTANTIAL PROPERTY INTEREST" means any right to the enjoyment of Land, now or in the future, that may be adversely affected by action authorized by this chapter, including a fee interest, a life estate interest, a future interest, a present possessory interest, or an equitable interest of a contract purchaser.
N. "PERSONAL PROPERTY" means property that is not Land or an intangible.
O. "PROPERTY" means any Land or Personal Property.

8.24.020 PROHIBITION

A. No owner, occupant, tenant, or any person having a substantial property interest in any Property within the City, or any agent thereof, shall maintain, create, cause, place, deposit, leave, or permit a nuisance to remain on the Property, or upon any public place abutting the Property.
B. No owner, occupant, tenant, or any person having a substantial property interest in any Property within the City, or any agent thereof, shall own, rent, lease or operate a continuing nuisance on or with the Property.

8.24.030 NUSANCES DESCRIBED.

For the purpose of this chapter, and in addition to IC 32-30-6-6, the following list includes, but is not limited to, conditions which constitute a nuisance:

A. Litter.
B. Accumulation of Rubbish, trash, refuse, junk, or other abandon materials, metals, and lumber.
C. Fallen trees, stumps, dead trees, cut brush, fallen or cut limbs except stacked firewood.
D. Boxes, appliances, household items and tires.
E. Demolition remains.
F. Open excavations, uncovered or improperly covered holes, whether lined or unlined, and dirt piles on any open or unfenced Land within the City.
G. Automobile parts, disassembled automobiles, automobiles without engines, inoperable automobiles, plumbing and piping materials and parts, scrap metal, unseaworthy or inoperable boats or watercraft, dilapidated, deteriorated, or non-operable jet skis, snowmobiles, bicycles, trailers, or mopeds.
H. Structures defaced with paint, graffiti, or wording.
I. Any wastewater, filth, offal, Garbage, Rubbish, animal waste, human excrement, which is deposited, allowed or caused to be upon any public or private Property.
J. Any water or any other substance which is caused or permitted to flow onto or be deposited upon any private or public right of way, except natural surface storm water drainage.
K. Any dead animal or animal parts.
L. The construction of a dam or any other obstruction which prevents the natural flow of water and causes it to collect upon public Land.
M. Any Property which is infected with a contagious disease or is likely to cause an immediate health hazard.
N. The placing or accumulating on or within any Property, or the permitting of the same, of any matter which attracts rodents, insects, domestic or wild animals creating a health hazard or unsanitary or dangerous condition.
O. Any Property, used as a place of residence or habitation or for sleeping, that is dangerous or detrimental to life or health due to lack of or defects in the supply of water, drainage, heat, electricity, plumbing, ventilation, or Garbage and trash removal.

P. The storage of any explosive, combustible or other material which creates a safety or health hazard.
Q. Trees, shrubbery, weeds, or other matter obstructing public rights of way, or causing visual barriers which create vehicular traffic or pedestrian hazards.
R. Any furniture not within an enclosed structure which was not originally designed or manufactured for outdoor use or furniture which was originally designed or manufactured for outdoor use which is now dilapidated or deteriorated.
S. Accumulation of stagnant water in an amount to cause a heath concern.
T. Any Property infested with insects, rats, vermin, or wild or domestic animals to a degree that prevents the reasonable use and enjoyment of the Property and any adjoining and surrounding Property.
U. Fences and partition walls that are in a state of disrepair and/or a danger to the public.

8.24.040 AUTHORITY TO MAKE INSPECTIONS

All officers and employees of the City are to report the existence of nuisances to the Enforcement Authority. Upon reasonable notice or an attempt to provide notice, the Enforcement Authority, or any other municipal employees so designated by the Board, shall be authorized to visit and enter upon any lot, grounds, or premises within the limits of the City for the purpose of investigating any complaint of or ascertaining the existence of an alleged Nuisance and to make examination thereof. With consent of the person holding a Substantial Property Interest in Property upon which a Nuisance is alleged to exist or the then current occupant of the Property, with a Warrant or with a Court Order, the Enforcement Authority may enter a building on the Property to investigate a complaint of a Nuisance.

8.24.050 ABATEMENT NOTICE

A. Abatement notice. If the results of an inspection establish reasonable cause to believe that a Nuisance exists on Property, the Enforcement Authority shall issue a written notice under Subparagraph B.
B. To whom the notice is given. Abatement notices are to be served upon all holders of substantial property interests in the Land upon which the nuisance is alleged to exist. If the resident or occupant of the Land is not the owner of record, the Enforcement Authority shall serve the resident or occupant and the owner of record of the Land as shown in the records of the Wells County at the address shown for property tax statements in addition to other known holders of a Substantial Property Interest.
C. Content of notice. The abatement notice must contain:
    1. The name of the person to whom the order is issued.
    2. The legal description or street address of the Land where the nuisance is located.
    3. The action that the notice requires. The ordered action must be reasonably related to the abatement of the conditions constituting the Nuisance.
    4. The period of time within which the action ordered is required to be accomplished, measured from the date of the abatement order, which shall be not less than 48 hours. If the notice allows more than 30 days to complete the abatement, the notice

may require a specific percentage of the abatement be completed within the initial 30-day period.

5. A statement that the order becomes final ten (10) calendar days after the date notice is served, unless the owner of record, the tenant, occupant, or a person holding a substantial property interest in the Property files a request for a hearing with the Board. A copy of the request for a hearing must be served upon the Enforcement Authority prior to the expiration of the aforementioned ten (10) calendar day period.
6. A statement indicating what action the City may take if there is non-compliance with the abatement order.
7. The name, business address, and business telephone number of the Enforcement Authority.

D. Manner of giving notice. Service of an abatement notice is to be made by any of the following means:

1. Sending a copy of the notice by registered or certified mail to the residence, place of business or employment of the person to be notified, with return receipt requested. A failure of the person to accept delivery of the notice sent to the address for property taxes shall not defeat the notice.
2. Delivering a copy of the notice personally to the person to be notified.
3. Leaving a copy of the notice at the Property or residence of the person to be notified.
4. Posting a copy of the notice in a prominent place upon the Property where the Nuisance is located.
5. If service cannot be verified by any of the means described in subdivisions D 1. through 4., service may be made by publishing the notice once in a newspaper of general circulation in the county in which the Property subject to the notice is located.

E. Proof of service. When service is made by any of the means described in this section, except by mailing or by publication, the person making service must make an affidavit stating that he has made service, the manner in which service was made, to whom the service was made, attach a copy of the order, and the date of the service. Where service is made by mailing, proof of service will be evidenced by postal service return receipt signed by a person receiving the notice. Where service is by publication, service shall be evidenced by publisher's certificate.

F. Effective date of notice. The date when notice is considered given is as follows:

1. If notice is delivered personally or left at the Property, notice is considered given on the day when the order or statement is delivered to the person or left at the Property.
2. If notice is mailed, notice is considered given on the date shown on the return receipt, or, if no date is shown, on the date when the return receipt is received by the Enforcement Authority.
3. Notice by publication is considered given on the date of publication.

8.24.060 WHEN ABATEMENT NOTICE NOT REQUIRED

Where, in the opinion of the Enforcement Authority, a nuisance exists which creates a substantial and imminent health or safety hazard requiring immediate abatement in order to protect health and safety, the Enforcement Authority shall abate the nuisance without the necessity of issuing an abatement notice as set forth in Section 8.24.050, but only after notifying the Board and the Bluffton Police Department. The Enforcement Authority shall then present its actions to the Board at the Board's next meeting following the abatement.

8.24.070 HEARINGS

A. Any owner, tenant, occupant, or person holding a Substantial Property Interest in Property upon which a Nuisance is alleged to exist and disputes the existence of the Nuisance or the abatement action ordered, may, within ten (10) calendar days of service of the abatement notice, serve upon the Enforcement Authority and the Board a written request for a hearing as permitted in Section 8.24.050.C.5.
B. Upon conclusion of the presentation of evidence and arguments, if any, the Board shall deliberate and render a decision either confirming, modifying and confirming, or rescinding the abatement notice. The decision of the Board shall be final.

8.24.080 COMPLIANCE WITH ABATEMENT NOTICE

It is the intent of this Chapter to promote the timely abatement of Nuisances within the City to the satisfaction of the Enforcement Authority, and, if applicable, the Board after a hearing. The Enforcement Authority or the Board may extend the time periods stated in the abatement order for completion of the required abatement. The Enforcement Authority shall make written note of the compliance and the enforcement file shall be closed.

8.24.090 FAILURE TO COMPLY WITH NOTICE

Failure, neglect, or refusal by the record owner, the record owner's agent, tenant or occupant, to comply with the abatement order within the required time period, or within any extended time period agreed to by the Enforcement Authority or the Board, shall constitute a violation of this chapter and shall render the record owner and the individual causing the Nuisance liable for a fine not to exceed the amount as set forth in Section 1.08.010. Each day after the time period allowed for abatement that the Nuisance is not abated shall be considered a separate offense subject to a separate fine under this Chapter. Any unpaid fine assessed under this Chapter shall be a lien against the Property on which the Nuisance exists.

8.24.100 ABATEMENT BY THE CITY

A. In addition to fines imposed under Section 8.24.090, in non-emergency situations when the abatement is not timely completed, the Enforcement Authority may request authorization from the Board to abate the Nuisance. Where authorization is given, the Enforcement Authority must file a copy of the abatement notice/order with the Recorder of Wells

County, Indiana, as notice to subsequent purchasers that the Property is subject to the costs associated with the abatement. The Abatement may be accomplished with the City crews if the abatement is within their capacity to accomplish, or the abatement may be advertised for public bid and awarded to the lowest responsible and responsive bidder. An accurate accounting shall be kept of all costs incurred in abating the Nuisance. Upon completion of the abatement, a statement for costs incurred shall be forwarded to the record owner of the Property by certified mail. Should such costs remain unpaid ten (10) calendar days after receipt by owner of record, or upon return of certified mail as undeliverable, legal action may be taken to collect the costs incurred and any judgment obtained shall be filed as a judgment lien against the Land upon which the Nuisance was abated.

B. In an emergency, the Enforcement Authority may proceed to abate the Nuisance without prior notice to the record owner of the Property on which the Nuisance exists. However, the Enforcement Authority must attempt notice upon the record owner of the Property as soon as possible.

C. In the alternative, where there has been non-compliance with the abatement notice, the City is also authorized to seek equitable relief in a court of competent jurisdiction to compel compliance with the orders set out in the abatement notice.

8.24.110 ACCUMULATION OF GARBAGE AND RUBBISH, AND UNSANITARY DISPOSAL

The owner, occupant or lessee of any premises in the City of Bluffton, Indiana, shall cause to be removed from the premises all Garbage and Rubbish, and shall keep the premises at all times free and clear of any accumulation of Garbage and Rubbish. No person shall deposit or place any Garbage or Rubbish in any alley, street, river or other public place within the City, except as authorized in this Chapter 24. No person shall deposit or place any Garbage or Rubbish upon private property, whether owned by the person or not, within the limits of the City, unless the Garbage or Rubbish is enclosed in an authorized container.

8.24.120 TYPE OF CONTAINERS; PLACING FOR COLLECTION

The Board shall have the authority to establish the specifications for authorized containers for Garbage and Rubbish. The City, or its duly authorized agent shall collect all Garbage and Rubbish provided the Garbage and Rubbish is deposited in authorized containers and placed in a location and at a time as designated by the collecting agency. Garbage shall be carefully drained before depositing in authorized containers. Trees, limbs, boxes and other articles of unwieldy size or shape will only be acceptable for collection if they are broken or cut down to a size suitable for handling and transportation. The Board shall have authority to designate the maximum size and weight of trees, limbs, boxes and other articles. No authorized containers of Garbage or Rubbish shall be placed for collection on the public right of way more than 24 hours prior to the regularly scheduled time for pickup and all authorized containers shall be removed from the curb within 24 hours after the Garbage or Rubbish has been removed by the City or its designated agent.

8.24.130 PLACING FOR COLLECTION WITHIN THE CENTRAL CITY

The City shall permit authorized containers to be placed at specified locations within the Central City into which persons owning or leasing premises located within the Central City may place for collection the Garbage, Rubbish and recyclable fiber generated solely at such premises. No authorized containers, bags of Garbage or Rubbish, or other trash receptacles shall be placed or maintained in a public right of way in the Central City any time except as otherwise set forth in this Section and Section 8.24.170.

8.24.140 COLLECTION; EQUIPMENT

The City or its duly authorized agency shall collect all Garbage and Rubbish not less than once each week. The Garbage and Rubbish shall be collected only when it has been properly deposited in an authorized container at the proper place for collection as determined and set forth by the Board. Equipment used for the collection of Garbage and Rubbish shall be constructed of a suitably sanitary type, with an all-enclosed body and watertight beds. All equipment used for the collection of Garbage and Rubbish shall be sufficiently covered and so constructed that Garbage and Rubbish shall not be blown or scattered on the streets or area adjacent to the streets over which the hauling is performed. All hauling equipment is subject to the approval of the Board.

8.24.150 PRIVATE CONTRACTORS; MUNICIPAL COLLECTION AGENCY

The person or firm contracting to provide the service of collecting and disposing of Garbage and Rubbish shall give a good and sufficient bond to the City. The contractor shall be directly responsible to the Board, whose duty it shall be to see that the collection and disposal of Garbage and Rubbish is carried out according to the agreement between the contractor and the City.

8.24.160 SERVICE CHARGES

The Board shall adopt one or more resolutions to establish regulations and fees for the collection of Rubbish, Garbage, and recyclable materials within the City. The fees shall be payable at the same time and in the same manner as the City's electric, water, and wastewater fees. The receipt and disbursement of all fees for Garbage and Rubbish collection shall be accounted separately through the Bluffton Wastewater Utility Fund.

8.24.170 REGULATION USAGE OF REFUSE CONTAINERS AT PUBLIC PARKS AND IN PUBLIC PLACES

The refuse containers maintained by the City at the City's parks are intended only for the disposal of Garbage and Rubbish generated at the parks; therefore, it is unlawful for any Person to place into any refuse container located in a public park and marked "Park Use Only" any Garbage

or Rubbish, other than Garbage or Rubbish that has been generated by that Person normal use of the park. The open street side refuse containers maintained by the City at various locations in the Central City and as may be added during special events are intended for the deposit of incidental and normal amounts of trash for the convenience of persons shopping or doing business in the downtown district. No person shall use these containers for the deposit of large amounts of household or business Garbage or Rubbish.

8.24.180 PROHIBITED ACTIVITIES

A. No person shall place for collection any building materials, carcasses of dead animals, Hazardous Waste or other material that will require the labor of more than the normal sanitary truck complement or require special collection equipment.
B. No person shall tamper with locks placed on refuse containers within the Central City or permit the unauthorized use of the refuse containers within the Central City.