**ORDINANCE NO. 2019-2**

**AN ORDINANCE CONCERNING PUBLIC NUISANCES WITHIN THE TOWN OF WESTPORT**

WHEREAS, the creation of public nuisance within the Town of Westport is a detriment to the public health, safety, and welfare, and the quality of life within the community; and

WHEREAS, the Westport Town Council finds that it is in the public interest of Westport and its citizens to provide for the regulation and control of certain nuisances within the Town; and

WHEREAS, the Town Council desires to amend and restate its current :

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

**Section 1. Nuisance Defined.**

The following words, terms and phrases, when used in this article, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

*Public Nuisance* means a thing, act, occupation, condition or use of property which shall continue for such length of time as to:

1. Substantially annoy, injure or endanger the comfort, health, repose or safety of the public;
2. In any way render the public insecure in life or in the use of property;
3. Greatly offend the public morals or decency;
4. Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage on any street alley, highway, navigable body of water or other public way; or
5. Is injurious to health, or indecent, or offensive to the senses, or an obstruction to the full use of property, so as essentially to interfere with the comfortable enjoyment of life or property. **State law reference –** Nuisance defined, IC 32-30-6-6.

**Section 2. Nuisance Prohibited.**

1. No person shall erect, contrive, cause, continue, maintain or permit to exist any public nuisance within the town. **State law reference –** Nuisance actions, IC 36-30-6-1

**Section 3. Abatement.**

1. Inspection of Premises. Whenever complaint is made to the town council that a public nuisance exists or has existed with the town, the president or clerk treasurer will promptly notify a town official to inspect the premises and make a written report of the findings to the town council. Whenever practical, the inspection officer will take photographs of the premises and file same photographs with the clerk treasurer.
2. Summary Abatement
3. Notice to Owner. If the inspection officer determines that a public nuisance exists on private property and that there is a great and immediate danger to the public, health, safety, peace, morals or decency, the president of the town council may direct the town marshal or a deputy sheriff to serve a notice on the owner or if the owner cannot be found, on the occupant or person causing, permitting or maintaining such nuisance and all persons holding a substantial interest in the property to abate or remove such nuisance within a reasonable time of at least 10 days but not more than 40 days and shall state that unless such nuisance is so abated, the town will cause the same to be abated and will charge the cost thereof to the owner, occupant or person causing, permitting or maintaining the same, as the case may be.
4. Abatement by Town. If the nuisance is not abated within the time provided or if the owner, occupant or person causing the nuisance cannot be found, the town clerk or some other town official whom the president of the town council shall designate, shall cause the abatement or removal of such public nuisance.
5. *Abatement by court action*. If the inspecting officer shall determine that a public nuisance exists on private premises, but that the nature of such nuisance is not such as to threaten great and immediate danger to the public health, safety, peace, morals or decency, he shall file a written report of his findings with the president of the town council, who shall cause an action to abate such nuisance to be commenced in the name of the town.
6. *Cost of Abatement*. In addition to any other penalty imposed by this article for the erection, contrivance, creation, continuance or maintenance of a public nuisance, the cost of abating a public nuisance by the town shall be collected as a debt from the owner, occupant or person causing, permitting, or maintaining the nuisance, and if notice to abate the nuisance has been given to the owner, such cost shall be assessed against the real estate as other special taxes. (State Law Ref.: IC 36-1-6-2, IC 32-40-6-7)

**Section 4. Health.**

The following acts, omissions, places, conditions, and things are specifically declared to be public health nuisances, but shall not be constructed to exclude other health nuisances coming with the definition hereof:

1. All decayed, harmfully adulterated or unwholesome food or drink sold or offered for sale to the public;
2. Carcasses of animals, birds or fowl not buried or otherwise disposed of in a sanitary manner within 24 hours after death;
3. Accumulations of decayed animal or vegetable matter, trash, rubbish, rotting lumber, bedding, packing material, junk vehicles, scrap metal or any material in which flies, mosquitos, disease-carrying insects, rats or other vermin may breed, or which may be a fire hazard;
4. All stagnant water in which mosquitos, flies or other insects can multiply;
5. Garbage cans which are not flytight, or not kept clean;
6. The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash, or industrial dust within the town limits in such quantities as to endanger the health of persons of ordinary sensibilities or to threaten or cause substantial injury to property.
7. The pollution of any public well or cistern, stream, river, lake, canal or body of water by sewage, creamery or industrial wastes or other substances;
8. Any use of property, substances or things within the town emitting or causing foul, offensive, noisome, nauseous, noxious, or disagreeable odors, effluvia or stenches extremely repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of any appreciable number of persons within the town; or any slaughterhouse;
9. All abandoned wells not securely covered or secured from public use;
10. All noxious weeds;
11. Any accumulations of junk, rubbish, scrap metal, automotive parts, building materials, machinery, dead trees or parts thereof, upon any premises in a residential area; or
12. Any structure used for the collections or deposit of trash or garbage that has an open door allowing access into said structure, except when the door is open to allow the structure to be used for the deposit or removal of trash or garbage, or to allow the structure to be cleaned or repaired.

**Section 5. Morals and Decency.**

1. The following acts, omissions, places, conditions and things are specifically declared to be public nuisances offending public morals and decency, but such enumeration shall not be constructed to exclude other nuisances offending public morals and decency coming within the definition hereof.
2. All disorderly houses, bawdy houses, houses of ill fame, gambling houses and buildings or structures kept or resorted to for the purpose of prostitution, promiscuous sexual intercourse or gambling;
3. All gambling devices and slot machines
4. All places where intoxicating liquor or fermented malt beverages are sold, possessed, stored, brewed, bottled, manufactured or rectified without a permit or license as provided for by this Code or state law;
5. Any place or premises within the town where town ordinance or state laws relating to public health, safety, peace, morals or welfare are openly, continuously, repeatedly and intentionally violated.
6. Any place or premises resorted to for the purpose of drinking intoxicating liquor or fermented malt beverage in violation of the laws of the state or the ordinances of the town.
7. Public nuisances offending morals and decency shall also mean:
8. Any place in or upon which prostitution (as described in IC 35-45-4);
9. Any public place in or upon which deviate sexual conduct (as defined in IC 35-41-1) or sexual intercourse (as defined in IC 35-41-1); or
10. Any public place in or upon which the fondling of the genitals of a person;

Is conducted, permitted, continued, or exists, and the personal property and contents used in conducting and maintaining the place or such a purpose. (IC 34-19-2)

**Section 6. Peace and Safety.**

The following acts, omissions, places, conditions and things are declared to be public nuisances affecting peace and safety, but such enumeration shall not be construed to exclude other nuisances affecting public peace or safety coming within the provisions of this section:

1. All buildings erected, repaired or altered within the town in violation of the provisions of the ordinances of the town, the county, or the state relating to materials and manner of construction of buildings and structures.
2. All unauthorized signs, signals, markings or devices whch purporet to be or may be mistaken as official traffic control devices placed or maintained upon or in view of any public highway or railway crossing.
3. All trees, hedges, billboards, or other obstructions, which prevent persons driving vehicles on public street, alleys or highways from obtaining a clear view of traffic when approaching an intersection or pedestrian crosswalk.
4. All limbs of trees which project over a public sidewalk less than eight feet above the surace therof or less than ten fee above the surface of a public street.