

ORDINANCE NO. 34

AN ORDINANCE FOR THE REMOVAL OF WEEDS AND OTHER RANK VEGETATION  
IN THE TOWN OF MIDDLEBURY, INDIANA

WHEREAS, Indiana Code Sections 36-1-3-1 et. seq. permit any town in the State of Indiana to exercise any power or perform any function necessary to the public interest in the context of its municipal or internal affairs, which is not prohibited by the Constitution of the United States or of the State of Indiana, or denied or pre-empted by any other law, or is not expressly granted by any other law to another governmental entity;

WHEREAS, the Town Council of the Town of Middlebury is the Town legislative body and is by law authorized to adopt ordinances and resolutions for the performance of functions for the Town of Middlebury;

WHEREAS, Indiana Code Section 36-7-10.1 et seq. provides authorization for the Town Council of the Town of Middlebury to adopt an ordinance requiring the cutting and removal of weeds and other rank vegetation growing on property in the Town of Middlebury, Indiana;

WHEREAS, the Town Council of the Town of Middlebury, Indiana deems it to be within the public interest to further the public safety, health, welfare, general aesthetics, and common good within the Town of Middlebury that such an ordinance be established;

NOW, THEREFORE, BE IT ORDAINED, ORDERED, RESOLVED, AND ESTABLISHED by the Town Council of the Town of Middlebury, Indiana, as follows:

1. IDENTIFICATION OF ORDINANCE. This Ordinance may be identified and referred to as the Middlebury Weed Control Ordinance.

2. DEFINITION. For purposes of this Ordinance, "weeds and other rank vegetation" shall mean grass and other vegetation that is unkept and unmowed over a period of time and left to grow to a height in excess of eighteen ( 18 ) inches. The term shall not include:

- a. Agricultural and vegetable crops such as corn, wheat, hay, and pasture;
- b. Designated wetlands, parklands, and forest preserves;
- c. River banks, creek banks, and drainage ditches from the centerline of the waterway to the area within ten feet (10') of the top edge of each bank.

3. VIOLATION OF ORDINANCE. Weeds and other rank vegetation are prohibited in the Town of Middlebury and the existence of which shall constitute a violation of this Ordinance subjecting the landowner to a civil fine of up to Two Hundred Dollars (\$200.00). Each day a violation continues after receipt of a notice of violation shall constitute a separate offense. The civil fine shall be in addition to the cost collection procedures set forth in Indiana Code §36-7-10.1-4.

4. NOTICE OF VIOLATION. Upon receipt of information from the Middlebury Police Department or the Middlebury Town Marshal that a violation of this Ordinance exists, the Middlebury Clerk-Treasurer shall issue a five (5) day written notice to cut and remove the weeds and other rank vegetation which shall be served by the Middlebury Police Department upon the landowner, if he is a resident of the Town of Middlebury, or by registered mail addressed to his last known address, if he is a non-resident of the Town of Middlebury.

5. REMOVAL BY TOWN. If the landowner fails to cut and remove the weeds and other rank vegetation within the five (5) day time prescribed by the written notice of violation, the Town of Middlebury Public Work's Department or a contractor of its hiring may enter the real property to cut and remove the weeds and other rank vegetation and abate the ordinance violation.

6. NOTICE OF COSTS TO LANDOWNER. Following any abatement of the ordinance violation by the Town of Middlebury Public Work's Department or its contractor, the Middlebury Clerk-Treasurer shall prepare a certified statement of the actual costs incurred by the Town in the cutting and removal of the weeds and other rank vegetation, including administrative costs and removal costs. The certified statement shall be delivered to the landowner by the Middlebury Police Department if the landowner is a resident of the Town of Middlebury, or by registered mail addressed to his last known address, if he is a non-resident of the Town of Middlebury. If the landowner fails to pay the certified amount within ten (10)

days after receiving the certified statement, the Middlebury Clerk-Treasurer shall certify to the Elkhart County Auditor the amount of the original certified statement plus any additional administrative costs incurred in the certification process. The Elkhart County Auditor shall place the total amount certified on the tax duplicate for the property affected, and the total amount, including any accrued interest, shall be collected as delinquent taxes are collected and shall be disbursed to the general fund of the Town of Middlebury.

7. COMPLAINT AND SUMMONS. If the landowner fails to cut and remove the weeds and other rank vegetation within the five (5) day time prescribed by the written notice of violation, the ordinance violation shall be enforced under proceedings brought pursuant to Indiana Code §34-4-32-1 et seq. in a manner similar to that of infractions with complaint and summons described in Indiana Code §9-30-3-6 issued by the Middlebury Police Department.

8. ADMINISTRATION OF ORDINANCE. This Ordinance shall be administered by the respective Town of Middlebury officers, employees, and departments as directed and specified within the particular terms and provisions of this Ordinance.

9. APPEALS. The landowner may appeal a notice of violation or a certified statement of costs issued under this Ordinance to the Middlebury Town Manager. The Middlebury Town Manager shall conduct an investigation of the appeal and make a written determination which shall be forwarded to the landowner and

to the Middlebury Clerk-Treasurer. The decision of the Middlebury Town Manager on all appeals shall be final.

10. EFFECTIVE DATE. This Ordinance shall be effective and enforceable following its date of passage immediately upon compliance with the publication requirements provided by law.

ORDAINED AND ADOPTED this 1<sup>st</sup> day of July,

1996.

TOWN COUNCIL OF THE TOWN OF  
MIDDLEBURY, INDIANA

BY Richard D. Hochstetler  
Richard D. Hochstetler, President

BY Gregg Fore  
Gregg Fore

BY Gary O'Dell  
Gary O'Dell

BY Vivian Tomlinson  
Vivian Tomlinson

BY Harley Wingard  
Harley Wingard

Attest:

Dolores Weaver  
Dolores Weaver,  
Middlebury Clerk-Treasurer