

## **TITLE IX: GENERAL REGULATIONS**

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## CHAPTER 90: ANIMALS

Section

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## ***GENERAL PROVISIONS***

### **§ 90.01 PURPOSE.**

This chapter requires animals to be given humane care and treatment; it declares animals to be a public nuisance under certain conditions and provides penalties for failure to abate the nuisance; it authorizes the impoundment of stray animals and requires the Town Marshal to capture or destroy animals when they are a public nuisance; it provides for the registration and licensing of animals kept within the town; it requires a permit for operation of a commercial animal establishment, kennel, or

animal shelter; and it provides penalties for violations.

(Prior Code, Ch. 20, Art. I)

## § 90.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context indicates or requires a different meaning.

**ANIMAL.** Any living, vertebrate creature, domestic or wild.

**ANIMAL SHELTER.** Any facility operated by a humane society, or municipal agency, or its authorized agents for the purpose of impounding or caring for animals held under the authority of this chapter or state law.

**COMMERCIAL ANIMAL ESTABLISHMENT.** Any pet shop, grooming shop, auction, riding school or stable, zoological park, circus, performing animal exhibition, or kennel.

**HUMANE OFFICER.** Any person designated by the State of Indiana, the town, or a humane society as a law enforcement officer who is qualified to perform the duties under the laws of this state.

**KENNEL.** Any premises wherein any person engages in the business of boarding, breeding, buying, letting for hire, training for a fee, or selling dogs or cats.

**OWNER.** Any person, partnership, or corporation owning, keeping, or harboring 1 or more animals. An animal shall be deemed to be harbored if it is fed or sheltered for 3 consecutive days or more.

**PERSON.** An individual, firm, partnership, corporation or company.

**PET.** Any animal kept for pleasure rather than utility.

**PET SHOP.** Any person, partnership, or corporation, whether operated separately or in connection with another business enterprise, except for a licensed kennel, that buys, sells or boards any species of animals.

**RESTRAINT.** Any animal secured by a leash or lead, or under the control of a responsible person and obedient to that person's commands, or within the real property limits of its owner.

**VETERINARY HOSPITAL.** Any establishment maintained and operated by a licensed veterinarian for surgery, diagnosis and treatment of diseases and injuries of animals.

**VICIOUS ANIMAL.** Any animal or animals that constitute a physical treat to human beings or other animals.

**WILD ANIMAL.** Any live monkey (non-human primate), raccoon, skunk, fox, poisonous snake, leopard, panther, tiger, lion, lynx or any other warm-blooded animal which can normally be found in the wild state.

(Prior Code, Ch. 20, Art. II)

**§ 90.03 ANIMAL CARE.**

(A) *Humane care and treatment.*

(1) Owners shall provide their animals with sufficient good and wholesome food and water, proper shelter and protection from the weather, veterinary care when needed to prevent suffering, and with humane care and treatment.

(2) No person shall beat, cruelly ill treat, torment, overload, overwork, or otherwise abuse an animal, or cause, instigate, or permit any dog fight, cockfight, bullfight, or other combat between animals and humans.

(3) No person shall crop an animals' ears or tail, except when by a licensed veterinarian and with certificate that the operation is necessary for the dog's health and comfort, and in no event shall any person except a licensed veterinarian perform such an operation.

(4) Owners shall not abandon their animals nor leave them unattended while away from home for any period exceeding 24 hours without compliance with division (A)(1) above.

(5) Any person who recklessly turns a live animal lose which causes any incident within the town's limits is in violation of this chapter and may face criminal charges for cruelty and inhumane treatment of the animal, and shall also be held civilly liable for any damages or injuries that result from the animal being unrestrained.

(B) *Giving animals as prizes prohibited.* No person shall give away any live animal, fish, reptile, or bird as a prize for, or as an inducement to enter, any contest, game or other competition, or as an inducement to enter a place of amusement; or offer the vertebrate as an incentive to enter into any business agreement whereby the offer was for the purpose of attracting trade.

(C) *Poisonous substances.*

(1) No person shall expose any known poisonous substance, whether mixed with food or not, so that the same shall be liable to be eaten by any animal.

(2) The foregoing provisions shall not be construed as preventing or precluding the use of tranquilizers, or other sedative-type drugs, by police officers or humane officers in the capture of animals.

(Prior Code, Ch. 20, Art. III) Penalty, see § 90.99

#### **§ 90.04 CONTRACTUAL SERVICE.**

The Town Council may enter into agreements with other governments, animal shelters, and/or humane societies for services in connection with policies of this chapter, or any regulations connected with this chapter.

(Prior Code, Ch. 20, Art. XV)

#### **§ 90.05 ENFORCEMENT.**

All provisions of this chapter shall be enforced by agents designated by the town. It shall be a violation of this chapter to interfere with an agent or officer who is performing his or her duties of enforcement.

(Prior Code, Ch. 20, Art. XVI) Penalty, see § 90.99

### ***PERMITS***

#### **§ 90.20 PERMITS FOR COMMERCIAL ANIMAL ESTABLISHMENTS.**

(A) *Permit must be obtained.* No person shall open or operate a commercial animal establishment or animal shelter within the planning jurisdiction of the town without first obtaining a permit in compliance with this subchapter.

(B) *Application for permit.*

(1) Written application for a permit shall be made to the Spencer Commissioner of Buildings, Municipal Building. The application shall show the type and number of animals to be involved and shall provide assurances that the applicant is willing and able to provide humane care for all of his or her animals and assurances that he or she will comply with all applicable ordinances of the town.

(2) The permit period shall begin with the calendar year and shall run for 1 year. Renewal applications for permits shall be made 30 days prior to, and up to 60 days after, the start of the calendar year. Application for a permit to establish a new commercial animal establishment under the provisions of this subchapter may be made at any time.

(3) If there is a change in ownership of a commercial animal establishment, the new owner may have the current permit transferred to his or her name upon payment of a \$10 transfer fee.

(C) *Fee for permit.*

(1) The Commissioner of Buildings shall, when not in conflict with the zoning ordinance, issue annual permits upon payment of the applicable fee:

- (a) For each establishment authorized to house less than 10 dogs or cats: \$25;
- (b) For each establishment authorized to house less than 50 dogs or cats: \$50;
- (c) For each establishment authorized to house 50 or more dogs or cats: \$100; and
- (d) For each pet shop: \$75.

(2) Every commercial animal establishment regulated by this section shall be considered a separate enterprise and requires an individual permit.

(3) Any person who has a change in the category under which a permit was issued shall be subject to reclassification and appropriate adjustment of the permit fee shall be made.

(D) *Exception.* No fee shall be required of any veterinary hospital, animal shelter, or government operated zoological park. However, a permit shall be required as stated in divisions (A) and (B) above. (Prior Code, Ch. 20, Art. XI) Penalty, see § 90.99

#### **§ 90.21 REVOCATION OF LICENSE/PERMIT.**

(A) The town may revoke any license or permit if the person holding the license or permit refuses or fails to comply with this subchapter, the regulations promulgated by the town, or any law governing the protection and keeping of animals.

(B) Any person whose license or permit is revoked shall, within 10 days thereafter, humanely dispose of all animals owned, kept, or harbored by the person and no part of the license or permit fee shall be refunded.

(Prior Code, Ch. 20, Art. XII)

#### **§ 90.22 INSPECTION OF PREMISES.**

It shall be a condition of issuance of any permit or license that any authorized agent of the town shall be permitted to inspect all premises and all animals kept on the premises at any time, and shall, if inspection rights are refused, revoke the permit or license of the refusing owner.

(Prior Code, Ch. 20, Art. XIII)

#### **§ 90.23 DENIAL OF LICENSE/PERMIT.**

(A) If an applicant has withheld or falsified information on the application, the town shall refuse to issue a license/permit.

(B) No person who has been convicted of cruelty to animals shall be issued a license/permit to operate an animal establishment.

(C) Any person denied a license or permit may not reapply for a period of 30 days. Each re-application must be accompanied with a \$10 fee.

(Prior Code, Ch. 20, Art. XIV)

## ***RULES AND REGULATIONS***

### **§ 90.40 RESTRAINT OF ANIMALS.**

(A) Owners shall keep their animals under restraint and each owner shall exercise proper care and control of his or her animals to prevent them from becoming a public nuisance.

(B) Every female dog or cat in heat shall be confined in a building or in a secure enclosure in a manner that the female dog or cat cannot come into contact with another animal except for planned breeding purposes.

(C) Every vicious animal, as determined by a Marshal or humane officer, shall be confined by the owner within a building or secure enclosure and shall be securely muzzled or caged whenever off the premises of its owner.

(Prior Code, Ch. 20, Art. V) Penalty, see § 90.99

### **§ 90.41 REMOVAL OF ANIMAL WASTE.**

The owner of every animal shall be responsible for the removal of any excreta deposited by his or her animal(s) on public walks, recreation areas, and/or on private property when it interferes with the reasonable sense of others while not located on the property.

(Prior Code, Ch. 20, Art. VI)

## ***WILD AND DOMESTIC ANIMALS***

### **§ 90.60 FARM AND WILD ANIMALS.**

(A) *Farm animals.* It is unlawful for any person to keep or permit to be kept on his or her premises within the town limits any cattle, pigs, horses, chickens, rabbits, ducks, or other domesticated farm animals.

(B) *Wild animals.*

(1) No person shall keep or permit to be kept on his or her premises within the town limits any wild or vicious animal for display or for exhibition purposes, whether gratuitously or for a fee. This

section shall not be construed to apply to zoological parks, performing animal exhibitions or circuses.

(2) No person shall keep or permit to be kept any wild animal as a pet, except as may be authorized by the laws of the State of Indiana.

(C) *Exceptions.* The provisions of this section do not apply to farm animals brought into the town for the purposes of participating in shows, fairs, or similar short term exhibitions.

(D) *Farm and wild animals kept by schools.*

(1) A school shall be an entity that is licensed, chartered and/or incorporated under federal, state (Indiana) and/or local laws, rules and regulations, (and whose license, charter and/or articles of incorporation have not been revoked terminated, lapsed, or suspended) for the purpose of providing education and training to its student body and whose faculty members (teachers) hold a valid Indiana teacher's license.

(2) A school may keep farm and wild animals in accordance with the terms and provisions of this subchapter and all other applicable laws, ordinances, rules and regulations.

(3) All farm and wild animals must be kept in cages, pens and/or enclosures specifically designed for the type of animal being harbored. No animal shall be brought and/or kept in the Town of Spencer unless the cage, pen or enclosure is ready and available for the animal. All cages, pens and enclosures shall be located upon the real estate where the school building is located and the real estate shall belong to the school. In no event shall the total land area used for the cage, pen or enclosure exceed ½ acre.

(4) All farm and wild animals shall be properly taken care of in a humane manner at all times. All the animals shall be provided with proper and sufficient food, water, shelter, medical and physical care by a licensed veterinarian or other person sufficiently trained to care for the animals.

(5) All animal waste and refuse shall be properly cleaned up and disposed of on a regular basis. However, the waste or refuse shall not accumulate and become a nuisance.

(6) The school shall comply with all federal, state and local laws, rules and regulations pertaining to the animal(s). This shall include but is not limited to vaccinations and other shots, registration, licenses and permits.

(7) Before a school may keep animals under the provisions of this subchapter, the school must first execute a waiver of liability form (provided by the Town of Spencer) to and for the benefit of the Town of Spencer, Indiana. A waiver of liability form is incorporated by reference as part of this chapter. This form will be available at the Clerk-Treasurer's office located in the Spencer Municipal Building.  
(Prior Code, Ch. 20, Art. X)



**§ 90.61 IMPOUNDMENT OF STRAY ANIMALS.**

*(A) Stray/unrestrained dogs and cats.*

(1) All stray and/or unrestrained animals and all those animals which constitute a public nuisance shall be subject to capture by Marshals or humane officers or the Spencer Police Department, and after capture shall be impounded in an animal shelter and there confined in a humane manner. If unable to reasonably capture stray animals, the Town Marshals are authorized to cause the destruction of the animals to protect persons and/or property.

(2) Impounded animals shall be humanely treated and housed.

*(B) Licensed animals.*

(1) If the owner of the dog or cat captured can be determined by its tag or otherwise, the Marshals or humane officer shall immediately upon impoundment notify the owner by telephone or by mail.

(2) Prior to release to the person owning and reclaiming an impounded animal, a fee of \$25 plus \$1 for each day an animal has been impounded, shall be paid to the operator of the animal shelter.

*(C) Adoption of unlicensed/unclaimed animals.*

(1) Any animal not reclaimed within 5 working days after impoundment shall become the property of the humane society and shall be placed for adoption in a suitable home or humanly euthanized.

(2) No unclaimed dog or cat shall be released for adoption without being sterilized, or without a written agreement from the adoptive person(s) guaranteeing that the animal will be sterilized after the adoption.

(Ch. 20, Art. IX)

**§ 90.99 PENALTY.**

*(A) General.* Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99.

*(B) Failure to obtain permit.* Failure to obtain a permit before opening any facility covered in this section shall result in a fine of \$200.

(Prior Code, Ch. 20, Art. XI)

*(C) Appearances in court.*

(1) Any person not slated to appear in court who violates this chapter shall be subject to a fine of \$25, unless a different fine and/or penalty is prescribed for a particular violation, then the fine and/or

penalty shall apply as may be provided for throughout this chapter. If any violation continues, each day's violation shall be considered a separate violation.

(2) Alleged violators not slated to appear in court may pay to the Spencer Clerk-Treasurer, within 7 days, the sum required by the citation issued. If the fine is not paid within 7 days, charges shall be filed in the court having jurisdiction over the alleged violation.

(Ch. 20, Art. XVII)

(D) *Mandatory and injunctive relief.*

(1) The Town of Spencer may bring an action in the Owen Circuit Court for mandatory and injunctive relief in the enforcement of and to secure compliance with § 90.60, and any orders made by the Building Commissioner of the Town of Spencer, and the action for mandatory or injunctive relief may be joined with an action to recover the penalties provided for in this chapter.

(2) In addition to mandatory and injunctive relief as provided for in division (C)(2) above, a fine of \$25 shall be assessed for a violation of the terms or provisions of this chapter. Each day a violation exists shall be considered a separate offense.

(3) These penalties shall apply specifically to division (D) of § 90.60 of this chapter of the Town Code. Any other penalties provided for in this chapter of the Town Code shall not apply.

(Ch. 20, Art. X)

(E) *Proceedings against owners of stray animals.*

(1) In addition to or in lieu of impounding an animal found at-large, a police officer or humane officer may issue to the known owner of the animal a notice of ordinance violation. The notice shall impose upon the owner of the animal found at-large a fine based on the following schedule:

(a) A fine of \$25 for the first offense of letting an animal run-at-large.

(b) A fine of \$50 for the second offense of letting an animal run-at-large.

(c) A fine of \$100 for the third offense and each subsequent offense of letting an animal run- at-large.

(2) The fines shall be paid to the Clerk-Treasurer within 7 days of day of issuance of the ordinance violation. In the event the fine or fines are not paid within the time prescribed above, the town may bring suit in the court having jurisdiction over the alleged violation to enforce the provisions of this section. Any person who violates any provisions of this chapter shall become liable to the town for any expense, loss or damage by reason of the violation including reasonable attorney fees incurred by the town for collection of the account.

(Prior Code, Ch. 20, Art. IX)

## **CHAPTER 91: ABANDONED VEHICLES**

Section

91.01 Abandoned vehicles

### **§ 91.01 ABANDONED VEHICLES.**

This chapter established the procedures for carrying out within the incorporated areas of the town the provisions of I.C. 9-13-2-1 and 9-22-1 which prescribe the requirements for the removal, storage and disposal of abandoned vehicles in this state.

## CHAPTER 92: STREETS AND SIDEWALKS

### Section

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## ***STREETS***

### **§ 92.001 PURPOSE.**

This subchapter regulates and controls the making of excavations and openings in any street, alley, curb, sidewalk or ditch within the corporate limits of the town; it regulates and controls the placements of sewers and pipes in the drainage ditches of the town; it requires the obtaining of permits for making excavations; it requires surety bonds or cash deposits; and it prescribes penalties for violations.

(Prior Code, Ch. 15, Art. I)

### **§ 92.002 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context indicates or requires a different meaning.

**COMMISSIONER.** The Commissioner of Buildings, Municipal Building, 90 North West Street, Spencer, Indiana 47460.

**DRAINAGE DITCH.** A ditch or depression alongside a public street or alley which has as its primary purpose the drainage of surface water from the area.

**EXCAVATION.** The digging of a ditch, hole, tunnel or other opening in the earth and the removal of dirt and other materials. It also means the insertions of cables, conduits, pipes or other similar materials underground with or without digging.

**LINES.** Pipes, cables, conduits or other means of transmitting products of utilities underground.

**PERSON.** An individual, firm, partnership, company or corporation.

**SANITARY SEWER.** A pipe or conduit for carrying sewage.

**STORM SEWER.** Those pipes, conduits, and passages through which water from rain and storms is drained from one area to another.

**UTILITIES.** Those corporations which provide the town with water, gas, electricity, voice communications and the Town Sanitary Sewage Disposal System.

(Prior Code, Ch. 15, Art. II)

### **§ 92.003 EXCAVATION PERMITS REQUIRED.**

(A) *Unlawful to excavate without permit.* It shall be unlawful for any person to make excavations anywhere inside the corporate limits of the town for the purpose of laying new or replacement water, electric, telephone or other utility lines or for its maintenance or repair without first having obtained a permit or without complying with the provisions of this subchapter or the provisions and terms of the permit.

(B) *Unlawful to block drainage ditch.* It shall be unlawful for any person, to fill, block or otherwise impede the natural flow of water within storm sewers or drainage ditches.

(C) *Unlawful to install pipe or conduits in drainage ditch without a permit.* It shall be unlawful for any person to install a pipe or conduit in any storm drainage ditch within the corporate limits of the town to bridge the ditch with a driveway or for any other purpose without first having obtained a permit as herein required, or without complying with the provisions here for the provisions and terms of and the permit.

(Prior Code, Ch. 15, Art. III) Penalty, see § 92.999

### **§ 92.004 APPLICATION FOR PERMIT.**

(A) Applications for excavation permits for utility lines shall be made to the Commissioner or his or her authorized representative and shall describe the location of the intended excavation, the size thereof, the purpose therefore, and the person, firm or corporation for whom or which the work is being done and the application shall contain an agreement that the applicant will comply with all ordinances, laws and regulations relating to the work to be done.

(B) Applications for permits to install storm drains to bridge drainage ditches of the town shall describe the location of the site where the drain is to be installed, the size of drain, its intended purpose,

the name of the person for whom the work is being done and the application shall state that the applicant will comply with all ordinances, laws and regulations relating to the work to be done.

(C) Excavation permits shall be required for all excavations made on, over and/or in all streets, alleys, sidewalks, and all other public property. The fee for each permit shall be \$20. The Commissioner shall turn in all fees collected to the Clerk-Treasurer at the times as required by the Clerk-Treasurer and the fees shall be deposited to the general fund of the town.

(1) *Surety bond.* Unless exempted as provided by division (C)(2)(c) below, no excavation permit shall be issued unless the applicant therefore has filed with the Commissioner a surety bond conditioned to indemnify the town for any loss, liability or damage that may result or accrue from or because of the making, existence or manner of guarding or constructing any such tunnel or excavation, or for failure to properly restore the ground and the laying of pavement or for failure to satisfactorily repair sidewalks and curb area disturbed by the excavation. The bond shall have a surety from a corporation licensed to do business in the State of Indiana.

(2) *Amount of surety bond.*

(a) Except as provided by divisions (C)(2)(b) and (c) below, applicants for excavation permits shall file with the Commissioner a surety bond in the minimum amount of \$2,000;

(b) If the excavation project is of sufficient scope to warrant the filing of a surety bond in excess of \$2,000 or if the applicant makes frequent excavations annually, such as utility companies, the Commissioner may require the applicant to file a surety bond in the amount of \$10,000; and

(c) The Commissioner may, when in his or her judgment the action is in the best interest of the town, waive the bonding requirement for a single excavation of a minor nature when the work is to be done by a reputable and reliable contractor who only infrequently engages in this type work.

(Prior Code, Ch. 15, Art. IV) (Am. Ord. 1990-2, passed 1-15-1990)

## **§ 92.005 EXCAVATION REQUIREMENTS.**

(A) *Compliance with terms of permit.* It shall be unlawful to make any excavation in any manner or means contrary to or at variance with the terms of the permit therefore or the requirements of this chapter.

(B) *Excavation safety.* The permit holder is responsible for taking all precautionary measures necessary to insure the safety of workers engaged in the excavation to include proper bracing to prevent the collapse of adjoining ground; and in excavations, the excavation shall not have anywhere below the surface any portion which extends beyond the opening at the surface.

(C) *Barricades.*

(1) *Required for all excavations.* It shall be unlawful for any person to excavate in or in any way to obstruct any sidewalk or public place unless he or she shall properly barricade the same.

(2) *Barricades to be lighted.* It shall be the duty of the person so occupying or obstructing any sidewalk or public place to cause 1 or more red lights to be securely and conspicuously posted at the excavation or obstruction. One of the lights shall be placed at each end of the space so occupied, where the excavation or obstruction is 20 feet or less in length or breadth; and if space so occupied shall exceed 50 feet, additional lights at intervals of not more than 50 feet shall be placed and maintained from dusk until daylight during every night the excavation or obstruction shall be allowed to remain.

(D) *Temporary walkways.* If any sidewalk is blocked by excavations or other such work, a temporary sidewalk shall be constructed or provided which shall be safe for travel and convenient for users.

(E) *Underground lines.*

(1) Care shall be exercised to avoid injury to other lines in making excavations. The permit holder shall give notice to appropriate utility company personnel and the Superintendent of the Sewage Department of the town when utility lines or sewers are or may be endangered or affected by the excavation.

(2) Damage caused to any utility by anyone other than the one making the excavation shall be held responsible for immediately reporting the damage to the affected utility and for all costs involved in repair of the damage.

(3) Utility companies shall attach metallic tracers to non-metallic lines in order to provide a means of determining the exact location of the lines prior to excavation.

(F) *Protection of trees, bushes and shrubbery.* Care shall be exercised during all excavations to prevent any unnecessary damage or injury to any trees, bushes or shrubs.

(G) *Restoration of surface.* Any person, firm or corporation making any excavation or tunnel in or under any public street, alley, sidewalk or other public place in the town shall restore the surface to its original condition. The opening shall be backfilled with bank run gravel, flume, agricultural lime or sand and shall be properly tamped down every 10 inches of fill. Any opening in a paved or improved portion of a street, alley or sidewalk shall be repaired and the surface relaid by the applicant in compliance with the terms of the permit and it shall be done under the supervision of the Superintendent of Streets and the applicant shall be liable and responsible for the proper maintenance and subsequent repairs of the opening for 1 year from the date of the repair and resurfacing.



(Prior Code, Ch. 15, Art. V) Penalty, see § 92.999

### **§ 92.006 INSPECTIONS.**

(A) *Superintendent of Streets notified.* The Commissioner shall promptly notify the Superintendent of Streets of each excavation permit issued and the terms thereof.

(B) *Inspection for compliance.* The Superintendent of Streets or his or her representative, shall from time to time inspect or cause to be inspected, all the excavations and tunnels being made in or under any public street, alley, sidewalk or other public place in the town to see to the enforcement of the provisions of this subchapter and the conditions of the permit.

(C) *Inspection before backfilling.* The excavation permit holder shall be responsible for giving notice to the Superintendent of Streets at least 10 hours before the work of backfilling any excavation or tunnel begins.

(D) *Release of deposit.* The Commissioner shall not release the deposit made by the permit holder until the Superintendent of Streets advises that all terms of the permit have been complied with and the surface disturbed by the excavation has been satisfactorily restored.

(Prior Code, Ch. 15, Art. VI)

### **§ 92.007 EMERGENCIES.**

Nothing contained in any section of this subchapter shall prevent any person from making excavations or openings in any street, alley or sidewalk inside the corporate limits of the Town of Spencer to repair underground lines if any extreme emergency exists which endangers the health, safety and welfare of the residents and buildings of the town, provided, that the person shall apply for and obtain a permit as herein required on the first day following the emergency on which the office of the Commissioner is open for business.

(Prior Code, Ch. 15, Art. VII)

### **§ 92.008 EXCLUSIONS.**

(A) Employees of the Street and Sewage Departments while engaged in necessary performance of their duties are hereby excluded from the provisions of this subchapter requiring permits, fees, bonds and deposits.

(B) However, the manner of excavation as provided by § 92.005 shall apply to excavations made by the Spencer Sewage and Street Departments.

(Prior Code, Ch. 15, Art. VIII)

**§ 92.009 MAPS OF UNDERGROUND UTILITY LINES.**

(A) All utility companies having responsibility for existing underground utility lines located within the corporate limits of the town shall present to the Commissioner a map indicating the location of the lines within 180 days from the date of the adoption of this subchapter.

(B) Utility companies shall update and keep in current status, maps showing the location of their new lines, the re-routing of lines, and other matters pertinent to location of its system of utility lines within the town.

(Prior Code, Ch. 15, Art. IX)

**§ 92.010 BANNERS/SIGNS ACROSS STREETS/ALLEYS.**

It shall be unlawful for any person to place, or have placed, any banner or sign across any public street or alley in the town unless expressly approved by the Town Council.

(Prior Code, Ch. 22, Art. X) Penalty, see § 92.999

**§ 92.011 TEMPORARY OCCUPANCY FOR CONSTRUCTION MATERIALS, EQUIPMENT/DUMPSTER**

No person or entity shall cause the placement of any construction equipment, construction materials, dumpsters or any other personal property that would otherwise block access to the town's rights-of-way except pursuant to a permit issued by the Town.

(Ord. Passed 2018-14, 11/5/2018)

**§ 92.012 PERMIT APPLICATION-TEMPORARY OCCUPANCY PERMIT**

(A) Application for temporary occupancy shall be made to the Spencer Town Clerk-Treasurer. The application requirements shall include, at a minimum, the following:

- (1) The applicant's legal name assumed business name, if any, address, telephone and fax numbers, and email address;
- (2) A general description of the following:
  - (a) the purposes, intent of, and the uses to which any facility will occupy the right-of-way;
  - (b) the type and approximate dimensions of and the proposed location for use;

(c) the length of time the right-of-way is intended to be occupied, including seasonal variations, if any.

(3) Drawings, plans and specifications showing the location of the occupancy;

(4) Evidence of insurance, if required;

(5) Such additional information as may be reasonably required by the Town.

(B) The fee for such permit shall be the sum of \$10.00 per week, per metered parking space occupied or \$10 per 10 lineal feet of space occupied, and fees shall be paid to the Spencer Town Clerk-Treasurer

(C) A permit issued under this section shall be valid for no more than thirty (30) days from the date of issuance. Extensions may be granted by the Spencer Town Board. Extensions will not be granted unless they are submitted in writing to the Spencer Town Board.

(D) Any permit issued under this section must be placed in a conspicuous area at or near the proposed site.

(Ord. Passed 2018-14, 11/5/2018)

## **§ 92.013 REVOCATION/SUSPENSION OF TEMPORARY OCCUPANCY PERMIT**

(A) Town Right to Revoke or Suspend Permit. The Town may revoke or suspend a permit issued pursuant to this Section for one or more of the following reasons:

(1) Fraudulent, false, misrepresenting, or materially incomplete statements in the permit application; Non-compliance with this Chapter;

(2) Permittee's physical presence or presence of permittee's facilities on, over, above, along, upon, under, across, or within the rights-of-way presents a direct or imminent threat to the public health, safety, or welfare; or

(3) Permittee's failure to place the authorized personal property substantially in accordance with the permit and approved plans.

(B) Notice of Revocation or Suspension. The Town shall send written notice of its intent to revoke or suspend a permit issued pursuant to this Chapter stating the reason or reasons for the revocation or suspension and the alternatives available to permittee under this section.

(1) Permittee Alternatives Upon Receipt of Notice of Revocation or Suspension. Upon receipt of a written notice of revocation or suspension from the Town, the permittee shall have the following options:

- (a) Within seven (7) calendar days provide the Spencer Town Board with evidence that no cause exists for the revocation or suspension;
  - (b) Within seven (7) calendar days correct, to the satisfaction of the Spencer Town Board, the deficiencies stated in the written notice, providing written proof of such correction to the Town within seven (7) working days after receipt of the written notice of revocation; or
  - (c) Within seven (7) calendar days remove the personal property located on, over, above, along, upon, under, across, or within the rights-of-way and restore the rights-of-way to the satisfaction of the Town providing written proof of such removal to the Town within ten (10) days after receipt of the written notice of revocation.
- (2) Failure or Refusal of the Permittee to Comply. If the permittee fails to comply with an order to remove the personal property, the Spencer Town Board may:
- a) Correct the deficiencies;
  - b) Upon not less than seven (7) days' notice to the permittee, cause the personal property to be removed and the permittee shall be liable in all events to the Town for all costs of removal.

(Ord. Passed 2018-14, 11/5/2018)

## **§ 92.014 INDEMNIFICATION**

By placing facilities in or occupying the right-of-way, a permittee or applicant shall be deemed to agree to defend, indemnify and hold the Town and its elected and appointed officials and officers, employees, agents and representatives harmless from and against any and all injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the permittee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction of facilities or occupancy of the rights-of- way, and in providing or offering service over the facilities, whether such acts or omissions are authorized, allowed or prohibited by this Article or by a franchise, license, or similar agreement; provided, however, that the utility's indemnity obligations hereunder shall not apply to any injuries, claims, demands, judgments, damages, losses or expenses arising out of or resulting from the negligence, misconduct or breach of this

Article by the Town, its officials, officers, employees, agents or representatives. By accepting a permit, the permit holder agrees to this requirement.

(Ord. Passed 2018-14, 11/5/2018)

## **§ 92.015 RESPONSIBILITIES**

(A) The applicant shall be deemed responsible for any damages caused to the town streets and or rights-of-way due the placement or removal of the dumpster or the contents therein.

(B) The applicant shall sign a liability statement assuming all risks associated with the placement or removal of the dumpster in the public street or right-of-way and shall provide proof of liability insurance.

(Ord. Passed 2018-14, 11/5/2018, Am. Ord. 2022-15, passed 8/15/2022)

## ***SIDEWALKS AND CURBS***

### **§ 92.025 PURPOSE.**

This subchapter states the responsibility for construction, reconstruction, repair and maintenance of sidewalks and curbs; it prescribes responsibilities for snow removal and for keeping sidewalks free from obstruction; and it prescribes penalties for violations of the provisions of this subchapter.

(Prior Code, Ch. 13, Art. I)

### **§ 92.026 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context indicates or requires a different meaning.

***BARRETT LAW.*** The state law which provides the Town Council with the power and authority to require sidewalk, street, curb construction, reconstruction and repair and for the financing of costs therefore by different means, including the levying of assessments against property owners.

***COMMISSIONER.*** The Spencer Building Commissioner.

***DRAINAGE CURB.*** A curb constructed along the edge of the street for the primary purpose of enhancing storm water drainage and for providing a barrier between the edge of the street and the grass strip between the street and sidewalk.

***OCCUPANT.*** The individual, firm, partnership, company, corporation or other organized group occupying for business, residence or other purpose, the first floor of any building so occupied.

**PROPERTY OWNER.** The individual, firm, partnership, company, corporation, association or other organized group having the right of ownership in a lot, dwelling building or other structure abutting a street or alley.

**PROTECTIVE CURB.** A curb constructed to protect the sidewalk when the sidewalk forms an edge of the street and there is no grass strip between the outer edge of the sidewalk and the street.

(Prior Code, Ch. 13, Art. II)

## § 92.027 SIDEWALKS.

(A) *Property owner's responsibility.* Although the town may from time to time obtain grants of funds from federal and state agencies to construct, reconstruct and repair sidewalks, the basic responsibility for the cost of construction, reconstruction, repair, maintenance and cleanliness of sidewalks is that of the property owner along whose property lines the sidewalk is laid or required.

(B) *Location of sidewalks.* All sidewalks shall be laid within the street right-of-way. However, if there is no space or insufficient space within the street right-of-way for the sidewalk, the Town Council shall purchase or obtain the required space by condemnation action.

(C) *Construction specifications.*

(1) In addition to the other specifications and requirements as may be established by the Town Council, the following specifications and requirements shall apply to all new, repaired and replacement sidewalks:

- (a) All old and existing sidewalks shall be broken up and all debris removed.
- (b) Tree roots and other obstructions shall be removed to assure leveling of sidewalk.
- (c) The base for the sidewalk shall be 4 inches deep of thoroughly compacted, crushed limestone or its equivalent.
- (d) All sidewalks shall be not less than 4 feet wide.
- (e) All sidewalks shall be made with concrete having a 28 day compressive strength of 3,000 psi and shall not be less than 4 inches thick.
- (f) Finished sidewalks shall generally be at the same grade level as the existing sidewalk and the sidewalk shall be sloped to meet grade levels at streets and alleys.
- (g) Cold joints shall be scored at 5 foot intervals and the concrete surface shall be troweled and broomed.

(h) Protective curbs may be required in those cases where the sidewalk forms an edge of the public street.

(2) Prior to beginning work on any new or replacement sidewalk, the owner or owners shall advise the Building Commissioner of the proposed work, to insure that all town requirements regarding the sidewalk are known to the owner or owners before work begins.

(D) *Owner responsible for construction.*

(1) Should the Town Council deem it necessary for the health, safety, welfare and convenience of the citizens of the town that a sidewalk should be constructed along the property lines of any block, lot, or parcel of land within the town, the Town Council shall by resolution, determine that the sidewalk is necessary for the health, welfare, safety and convenience of the public and that it shall be constructed.

(2) The Town Council shall then cause personal notice to be served upon the owner or owners of the property abutting the street on the block, lot, or parcel of land where it has been determined to construct the sidewalk, and the owner or owners shall be given 60 days within which to construct or cause the sidewalks to be constructed.

(3) If the owner elects to have the work done himself or herself the construction shall comply with the specifications prescribed by division (C) above, and shall be subject to inspection and approval by the Building Commissioner.

(4) Should the owner or owners of property along any block, lot, or parcel of land within the town fail or neglect to construct a sidewalk in accordance with a notice and resolution of the Town Council, the Town Council shall proceed to construct the sidewalk either by letting a contract for the work and materials or by purchasing the materials and causing the work to be done by employees of the town. After the sidewalk is constructed, the owner or owners of the abutting property shall be billed for the full amount of the costs of the materials, labor and supervision, in case the work be done by the town employees. Should the responsible owners fail to pay the amount billed to them by the Clerk-Treasurer within 30 days, then the town shall take appropriate action against the owner or owners of property to collect the amount due for the construction whether by taking legal action or proceeding under the provisions of the Barrett Law.

(E) *Repairs and maintenance.*

(1) The responsibility for the costs of repairs and maintenance of sidewalks is that of the owner of the property and it shall be unlawful for any owner to permit the sidewalk to become so out of repair or broken that it is a hazard, a potential hazard, or dangerous to the life or limb of foot travelers.

(2) Should any owner, occupant or person in charge of any lot or premises permit dirt, filth or any other obstruction upon the sidewalk when written notice to remove the filth, dirt or other obstruction from the sidewalk shall be given by the Town Council. Unless the filth, dirt or other obstruction is removed within 24 hours, or within the time determined by the Town Council, the Superintendent of Streets shall remove the filth, dirt, or obstruction and certify the costs to the Town Council. Should the Town Council, upon examination, determine that the charges and costs so reported are reasonable, then the Clerk-Treasurer shall give notice in writing by mail to the owner, occupant or other person having charge of the lot, tract or parcel of land that unless the costs as specified are paid to the Clerk-Treasurer within 30 days after the notice, suit shall be instituted for and on behalf of the town by the Town Attorney to collect the costs, including reasonable attorney fees incurred by the town for collection of the account.

(3) In addition to the payment for the costs of removal of the obstruction, the person who violated the provisions of this subchapter make it unlawful to permit the obstruction may be subject to a fine of not more than \$25.

(4) The obstruction of sidewalks by storing, selling or exhibiting goods, wares, merchandise, materials or the obstruction of sidewalks by trees, shrubs, signs or other objects is prohibited and is a public nuisance subject to the provisions and penalties of this chapter.

(F) *Owner responsible for snow and ice removal.*

(1) Although the Town Street Department may, within its manpower and equipment capacities, assist in the removal of snow and ice from sidewalks, the primary responsibility for snow and ice removal from in front of each premise is that of the occupant of the premise or premises or the owner of unoccupied premises.

(2) If the first floor of any building is not occupied, then the premises shall be deemed to be unoccupied and the property owner thereof shall be required to remove snow and ice as herein provided.

(3) In case the snow and ice on the sidewalk be frozen so hard that it cannot be removed without injury to the pavement or in case the weather conditions are such that cleaning of the sidewalk at the time is not practicable, the occupant of the premises and the owner of the unoccupied premises shall, within the time specified above, cause the sidewalk abutting the premises to be sprinkled with ashes, sand, sawdust, salt, or other similar suitable materials as to render the sidewalk safe for travel and shall, as soon thereafter as the weather may permit, thoroughly clean the sidewalk.

(Prior Code, Ch. 13, Art. III)



## § 92.028 CURBS.

(A) *Property owner responsible.* Although the town may from time to time obtain grants of funds from federal or state agencies for the construction, reconstruction and repair of curbs, the basic responsibility for the costs of construction, reconstruction and repair is that of the owner or owners of the property along whose property lines the curb is laid or required.

(B) *Location of curbs.*

(1) Protective curbs shall be constructed in a straight line parallel with and be an intricate part of the sidewalk.

(2) Drainage curbs shall be constructed in a straight line parallel with the sidewalks and on a line between the roadway and the grass plot by and under the provisions as the Town Council shall prescribe.

(C) *Construction specifications.* The specifications for construction of protective and drainage curbs shall be obtained from the Street Commissioner prior to beginning construction of the curbs.

(D) *Owner responsible for construction.*

(1) Should the Town Council deem it necessary for the welfare and convenience of its citizens that a curb should be constructed along the property lines of any block, lot or parcel of land within the town, the Town Council shall, by resolution, determine that the curbs should be constructed and that they are necessary to the health, welfare and convenience of the public. The Town Council shall then cause notice to be served upon the owner of the property abutting the street on the block, lot or parcel of land wherein it is declared to be necessary to construct the curbs, and the owner shall be given 60 days time within which to construct or cause the curbs to be constructed.

(2) If the owner elects to have the work done himself or herself, the construction shall comply with the specifications prescribed by the Street Commissioner and shall be subject to inspection and approval by the Commissioner.

(3) Should the owner of property along any block, lot or parcel of land fail or neglect to construct curbs in accordance with the notice and the resolution of the Town Council, the town shall proceed to construct the curbs, either by letting a contract for the work and materials, or by purchasing the materials and causing the work to be done by town employees. After the curb is constructed, the owner or owners of the abutting property shall be billed for the full amount of the contract, in case a contract be let, or for the full amount of the costs of the materials, labor and supervision, in case the work be done by the town, and upon failure of the owner or owners, as the case may be, to pay the sum billed to them by the Clerk-Treasurer within 30 days, then the town shall take appropriate action against the

owner or owners of property to collect the amount due for the construction either by taking legal action or proceeding under the provisions of the Barrett Law.

(E) *Repairs and maintenance.*

(1) The responsibility for the costs of repair and maintenance of curbs is that of the property owner whose property abuts the street and it shall be unlawful for any property owner to permit the curb to become so out of repair, deteriorated, or broken to such an extent, that it creates a hazardous or dangerous condition for persons or vehicles.

(2) Upon request of the Town Council, each property owner shall have the option of having the required repair and maintenance work done himself or herself or of having the repair and maintenance work done and collection therefore as stated in division (D)(3) above.

(Prior Code, Ch. 13, Art. IV)

**§ 92.029 AWNINGS/SIGNS OVER OR NEAR SIDEWALKS.**

(A) All awnings, signs, or other objects, extending over any sidewalk, street, or alley shall be suspended by being securely fastened to some building or other support standing on the land adjacent to the sidewalk, street or alley.

(B) Every sign or other object extending into or over any sidewalk, street or alley shall be so placed and maintained as not to interfere with the free use of the sidewalk, street or alley; but in no case shall it be closer to the sidewalk than 7 feet.

(C) Every sign or other object extending into or over any sidewalk, street or alley shall be so placed and maintained to provide an unobstructed view so that a hazard is not created for pedestrian or vehicular traffic.

(Prior Code, Ch. 22, Art. XI)

***REGULATING PRIVATE ENTRANCES***

**§ 92.045 NAME.**

This subchapter shall be known as the “Town of Spencer Driveway Ordinance”.

(Ord. 1994-3, passed 5-2-1994)

## **§ 92.046 SCOPE.**

(A) It shall be unlawful for any person, firm, or corporation to construct a private entrance, driveway, or approach which connects to any road, street, highway, or alley in the Town of Spencer without first filing with the Town of Spencer Building Department a written application for a permit to construct the entrance, driveway, or approach on forms provided or approved by the Street Department, at least 10 days in advance of the time of beginning the work, and without first executing a surety bond, all as required by the ordinance; provides further, however, that:

(1) This subchapter shall not apply to construction of any entrance, driveway, or approach made under contract with or by order of the Town Council of Spencer through its proper officials.

(2) The provisions of this subchapter pertaining to bonds and fees shall not apply to work being done by any city, town, municipal corporation, any other county, or by any agency of the state, provided that the entities shall comply with all applicable provisions of this subchapter.

(B) It shall also be unlawful for any person, firm, or corporation to fill any drain or ditch which is located within the town's right-of-way without first filing with the Town of Spencer Street Department a written application for a permit for the work on forms provided or approved by the Town of Spencer Building Department at least 10 days in advance of the time of beginning the work, and without first executing a surety bond, all as required by this subchapter.

(Ord. 1994-3, passed 5-2-1994) Penalty, see § 92.999

## **§ 92.047 PERMIT APPLICATION.**

(A) Any person, firm or corporation desiring to construct a private entrance, driveway or approach which connects to a road, street, highway or alley in the Town of Spencer Road System shall make an application for a permit therefore, which application shall be presented to the Town of Spencer Building Department. The application for residential driveway shall be accompanied by a site plan showing:

- (1) Property lines;
- (2) Road right-of-way;
- (3) Distances from intersecting roads;
- (4) Width and type of road surface;
- (5) Existing drainage features (ditches, culverts);
- (6) Location of existing driveways and structures;
- (7) Location of proposed driveways and structures;

- (8) Width and type of surface for proposed driveway;
- (9) Proposed drainage features (culvert size and type);
- (10) Copy of plat (if platted); and
- (11) Any other pertinent information requested.

(B) The application for a multi-family, commercial, or industrial driveway shall include all items for a residential driveway in addition to the following items:

- (1) Site plan shall be certified by a professional engineer, architect, or land surveyor;
- (2) Proposed parking arrangement;
- (3) Location of proposed traffic control devices and signs;
- (4) Proposed use of each driveway (enter only, exit only, employees only, delivery trucks, and the like); and
- (5) Location of any loading docks.

(C) Additionally, the applicant shall stake out the proposed driveway location prior to filing the application.

(D) The applicant shall also erect and maintain all necessary barricades, warning signs, and lights in conformance with the latest edition of the *Indiana Manual on Uniform Traffic Control Devices* as required to direct traffic safely around the place where the work is being done, so long as the work in any way interferes with traffic.

(E) The applicant shall hold harmless and indemnify the Town of Spencer of any and all claims arising out of the occupation and work of the applicant person, corporation and work of the applicant to work in the Town of Spencer's right-of-way pursuant to the approved application and permit.

(F) The applicant shall conspicuously display the approved permit at the site of work until the construction is completed.

(G) The Town of Spencer Building Department shall keep on file all applications and a record of all permits granted. All permits issued in compliance with the terms of this subchapter must have prior Street Department Commissioner approval attached and shall be made in triplicate, 1 copy of which shall be filed at the Street Department, 1 copy shall be sent to the Building Department, and a copy given to the applicant.

(Ord. 1994-3, passed 5-2-1994)

#### **§ 92.048 BOND PROVISIONS.**

(A) Whenever the application is approved, the applicant will be required to give surety bond to the Town of Spencer, which the bond shall guarantee that the performance of the work described in the application is in conformance with this subchapter. The bond shall be in the sum of \$500 for each residential driveway and shall be in the sum of \$10,000 for each commercial or industrial driveway or an amount as indicated from a signed contract with an approved contractor. The amounts may be increased if a culvert in excess of 24 inches in diameter is needed. The bond shall remain in full force for a period of 1 year or until the driveway construction is completed and/or the construction of any building(s) on the property is completed.

(B) Anything contained herein to the contrary notwithstanding, however, a cashier's check or certified check payable to the Town of Spencer, in the same sum as designated herein for the bond, or a letter of credit issued by a financial institution approved by the Town Council in the sum as designated herein for the bond, may be filed with the application in lieu of the surety bond.

(Ord. 1994-3, passed 5-2-1994)

#### **§ 92.049 PERMIT EXTENSIONS.**

The holder of a permit issued as provided by this subchapter shall complete the work within 1 year of the date of issuance of the permit. An extension of time may be granted upon receipt of a new bond.

(Ord. 1994-3, passed 5-2-1994)

#### **§ 92.050 RELEASE OF BOND.**

The bond as provided herein shall be released only after an inspection of the completed work in conformance with this subchapter and after completion of the construction of the driveway and/or the construction of any building(s) on the property is completed.

(Ord. 1994-3, passed 5-2-1994)

#### **§ 92.051 INSPECTIONS.**

The Town of Spencer Building Department and the Town of Spencer Street Department Supervisor shall make an inspection of the premises to determine whether the driveway as proposed conforms to the provisions of this subchapter and any subsequent rules and regulations as approved by the Town Council of Spencer, and shall then issue or deny the permit.

(Ord. 1994-3, passed 5-2-1994)

**§ 92.052 SPECIFICATIONS.**

The specifications contained herein are the minimum allowable and at the discretion of the Street and Building Departments may be increased or decreased when warranted.

(A) *Residential driveways.*

(1) *Table.*

Minimum driveway width	12 feet
Maximum driveway width	20 feet
Minimum culvert diameter	12 inches
Minimum culvert length	24 feet
Culvert material	Reinforced concrete, corrugated metal pipe (14 Ga. minimum)
Culvert elevation	Top of pipe at least 6 inches lower than edge of roadway
Minimum sight distance	200 feet each direction for 30 mph 250 feet each direction for 35 mph 325 feet each direction for 40 mph 400 feet each direction for 45 mph
Minimum distance to nearest intersection	50 feet
Material	Paved or compacted aggregate #53 or #73 surface typed to match road section
Angle of intersection with road	60 degree minimum
Minimum design and sketches for residential driveways and mail box turnouts shall be shown	

Note:

1. Cross-hatched areas shall be 1 of the following:
  - a. 6 inch plain concrete;
  - b. 1 inch hot asphalt surface on 2 inch hot asphalt binder on 4 inch hot asphalt base;
  - c. 1 inch hot asphalt surface on 2 inch hot asphalt binder on 6 inch compacted #53 or # 73 stone;  
and/or
  - d. 8 inch compacted #53 or #73 stone.
2. Metal or precast concrete end sections shall be constructed on all pipes.
3. Pipe culverts shall be either concrete or corrugated metal.
4. Subgrade under all driveways shall be compacted in accordance with the Indiana Department of Transportation Standard Specification.

(2) *Mailbox turnouts.*

(a) Mailbox turnouts shall be provided in the driveway approach permit applications. As practical, mailboxes should be grouped and turnouts combined with the driveway approach pavement. The mailboxes should be placed 2 feet center to center and the turnout lengthened to accommodate the grouping.

(b) Mailbox supports shall not be larger than a 4 inch by 4 inch timber post, a 2-1/2 inch standard wall pipe, or a section having similar breakaway characteristics.

(c) The mailbox turnout pavement should be the same material as the driveway approach. Town residents should submit drawings illustrating geometric designs for mail box turnouts to the Town Street Department for approval before installation.

(B) *Multi-family, commercial and industrial driveways.*

Minimum driveway width	20 feet
Maximum driveway width	40 feet
Minimum culvert diameter	12 inches
Minimum culvert length	32 feet

Culvert material	Reinforced concrete, corrugated metal pipe (14 Gas. minimum)
Culvert elevation	Top of pipe at least 6 inches lower than edge of driveway
Minimum sight distance	200 feet each direction for 30 mph 250 feet each direction for 35 mph 325 feet each direction for 40 mph 400 feet each direction for 45 mph
Minimum distance to nearest intersection	35 feet
Minimum distance to nearest driveway	25 feet
Material	Paved or compacted aggregate #53 or #73 surface type to match road section
Angle of intersection with road	70 degree minimum
Acceleration and deceleration tapers	ADT greater than 100 and/or road is designated as collector or arterial route
Minimum design and sketches for residential driveways and main box turnouts shall be as shown	

(C) Residential, commercial and industrial subdivisions and planned unit development entrances.

Minimum driveway width	20 feet
Maximum driveway width	50 feet
Minimum culvert diameter	12 inches



Culvert material	Reinforced concrete, corrugated metal pipe (14 Ga. minimum)
Culvert elevation	Top of pipe at least 6 inches lower than edge of roadway
Minimum sight distance	200 feet each direction for 30 mph 250 feet each direction for 34 mph 325 feet each direction for 40 mph 400 feet each direction for 45 mph
Minimum distance to nearest intersection	50 feet
Minimum distance to nearest driveway	25 feet
Material	Paved or compacted aggregate #53 or surface type to match road section
Angle of intersection with road	20 degree minimum
Acceleration and deceleration tapers with right turn storage lane	ADT greater than 1,000 and/or road is designated as collector or arterial route
Passing blisters	All routes designated by town thoroughfare plan or designated as collector or arterial routes
Minimum design and sketches for residential driveways and mail box turnouts shall be as shown	
Metal End Section	

Notes: End sections and toe plate anchors shall conform to all applicable requirements as set out in the Standard Specifications.

If aluminum alloy pipe culvert is furnished, aluminum alloy end sections should also be used and all component parts shall be aluminum alloy as set out in the Standard Specifications.

Multiple panel bodies shall have lap seams which shall be tightly jointed with 3/8 inch 0 Galvanized rivets or bolts.

The toe plate anchor shall be constructed of 10 gauge galvanized steel and be required on all steel pipe end sections. It shall be matched-punched to holes in skirt lip, and supplied loose, complete with 3/8 inches Ø galvanized bolts.

Where vitrified clay culvert or cast iron culvert pipe is used a pipe end section comparable to that as shown for metal or concrete shall be furnished and shall be as approved by the engineer.

Pimpled connection band may be used to connect pipe end section to helically corrugated pipe.

(D) *Location of driveways.*

(1) Driveways shall be located so as to result in no undue interference with, or hazard to, the free movement of normal vehicular traffic and so that areas of traffic congestion will not be created on the roadway. In accordance with this principle, driveways shall be located where the roadway alignment and profile are favorable and there are no sharp curves, steep grades, and sight distance restrictions. To the extent feasible within the frontage limits, any driveway should be located at a point of optimum sight distance along the roadway. Application may be denied if adequate sight distance cannot be obtained.

(2) For property tracts with a sizeable frontage on the roadway, the driveway location and arrangement will be governed by the position of the improvements. However, where driveways are provided to predominantly unimproved areas, they shall be located to the best advantage with regard to the roadway alignment, profile and sight distance conditions.

(3) Where a driveway is provided to a commercial establishment, the road right-of-way and the adjacent borders shall be reasonably clear.

(E) *Number of drives.*

(1) The number of driveways should be a minimum to adequately serve the needs of the abutting property. Commercial frontages of less than 200 feet are limited to 1 driveway. Normally, not more than 2 driveways shall be allowed into any single property tract or business establishment. When more than 2 driveways on 1 frontage are necessary to facilitate operations, the minimum distance

between the drives should be 400 feet. A property which has more than one frontage on a roadway may be allowed one driveway per frontage.

(2) Where there are several adjacent roadside establishments, each with limited frontage or where there is a probability of the development, consideration shall be given to constructing a frontage road for several driveways so as to reduce the number of separate connections to the highway. Frontage roads that parallel the highway shall be allowed access points at minimum intervals of 500 feet. Frontage roads should be set back from the town roadway in such a manner as to allow adequate storage for entering and exiting traffic.

(F) *Joint driveways.* An approach to a driveway that serves adjacent property owners may be allowed. However, the application shall be jointly prepared and submitted by the property owners.

(G) *Driveway approach grade.* The profile grade of the approach from the edge of the existing lane pavement shall slope down and away at the same rate as the roadway shoulder grade. It shall be constructed in a manner that no surface water will drain onto the roadway.

(H) *Sight distance.* To the extent feasible within the frontage limits, any driveway should be located at a point of optimum sight distance along the roadway.

(I) *Drainage.*

(1) The applicant shall provide drainage information and show that there are no adverse affects to drainage patterns in the vicinity caused by the new drive.

(2) Culvert pipes shall not be sized smaller than structures upstream from their location.

(3) Culvert pipes sized for driveways shall follow design frequencies for a 10 year design storm.

(4) All pipes shall have end sections. End sections may be either concrete or metal and shall comply with all state and local codes.

(Ord. 1994-3, passed 5-2-1994)

### **§ 92.053 MAINTENANCE.**

The applicant shall agree to maintain that portion of the driveway that is within the public right-of-way including the culvert pipe and drainage ditches in good condition in such a manner as to prevent obstruction or interference with the roadway, the traffic thereon, or with any drain or ditch which serves the roadway. There shall be no time limit on this responsibility. If the property should change ownership, the successor(s) shall acquire this obligation.

(Ord. 1994-3, passed 5-2-1994)

**§ 92.054 OTHER PERMITS REQUIRED.**

The Town of Spencer hereby adopts regulations of the State Building Code.

**§ 92.055 FEES FOR PERMITS.**

The Town of Spencer hereby adopts regulations of the State Building Code.

***ACCESSIBILITY FOR HANDICAPPED PERSONS***

**§ 92.070 BUSINESS SURVEY AND ENFORCEMENT OF PARKING ACCESSIBILITY.**

(A) The Town of Spencer in September, 2001, issued notice to several businesses of their potential violations of the ADA provisions regarding the number, signage and marking of the handicapped parking locations at their respective places of business.

(B) These businesses were asked to voluntary upgrade or establish the required parking within 60 days and to respond affirmatively as to their individual plan of action and response to the alleged violations.

(1) The Town of Spencer will continue to monitor these known businesses to ensure their compliance by voluntary means on or before February 1, 2002. In the event that any known business fails or refuses to complete its upgrade or establishment of parking facilities for the handicapped on or before March 1, 2002, the town will take all appropriate legal steps to enforce compliance.

(2) The town will ensure that all building permits issued in accordance with the Town Code specifically identify any and all accessibility issues and will redesign the permit application process to require adequate information as the building design, layout and parking facilities to ensure compliance with the above recited federal, state and local statutes and ordinances.

(3) The town will continue to maintain its liaison with the ADA Advisory Committee to develop further plans and areas of concern with regard to the implementation of the provisions of the ADA.

(Ord. passed 3-4-2002)

**§ 92.071 STREETS AND SIDEWALKS.**

(A) *Survey and inventory.* The town will undertake a complete inventory of the sidewalk and street crossing locations to identify and create a matrix identification system, for the specific locations of each major and minor intersection in the town. The suggested format would include a grid nomenclature using

a combination of letters and numbers, such as “A1”, “B1” and the like as is typically used in mapping functions. This matrix shall become a permanent part of the Street Department records and shall be amended from time to time as the boundaries of the town are increased, decreased or modified. As streets are closed within the town limits, matrix locations will be retired and those identification codes removed from active use. The manner and means of labeling and coding of the matrix system will rest in the sound discretion of the town's Street Department Superintendent.

(B) *Notice to the public.* On or before March 1 of each year hereafter, the town will issue notice to the public requesting advise from the citizens of the Town of Spencer as to the location of persons or properties specifically needing remedial or rehabilitative maintenance of the sidewalks or streets bounding the residences and workplaces of persons needing accessibility as defined by the aforesaid federal, state and local statutes and ordinances. The list of the locations will be forwarded to and maintained by the Street Department and used to define the areas of annual rehabilitation, maintenance and construction. The information collected in this process is not binding upon the town but will be reviewed for accuracy, measured for degree of potential safety issues, and analyzed for the potential benefit to the largest population of citizens for the cost to be incurred. The notice suggested by this division will be the simple community calendar notice in the local newspapers and does not constitute a requirement for any other legal notice.

(C) *Maintenance and construction.* Each year hereafter, the Street Department, or its delegated representative, will present its proposed budget and fiscal plan required for the maintenance, construction and rehabilitation of all projects anticipated for that year. The Department Superintendent, his or her delegate or 1 appointed by the Town Council, will submit his or her proposals for the number and location of sidewalk cuts or other construction methods used to implement accessibility requirements during the project year. The town directs the Superintendent, his or her delegate or others appointed by the Town Council, to analyze and present the locations by matrix nomenclature and to present the cost and/or benefit analysis of the proposed projects individually. Attention must be given to those sidewalk areas that meet the following criteria:

(1) Sidewalks that require handicap access due to the private residential use or commercial workplaces which have been identified by the public as necessary or significantly interfering with commercially handicapped traffic;

(2) Sidewalks that are presently and contemporaneously in need of repair and rehabilitation by reason of independent, uneven and unsafe physical condition;

- (3) Sidewalks which have the highest density of residential and/or commercial traffic; and
- (4) Sidewalks that have the highest and best cost and/or benefit ratio for repair.

(Ord. passed 3-4-2002)

**§ 92.072 GENERAL PROVISIONS.**

(A) *Five and 10 Year Plans.* The Street Department, its delegate or others appointed by the Town Council, will furnish annually an update on the 5 and 10 Year Plan of Action designed to remediate the town's streets and sidewalks within the budgetary and fiscal responsibilities assigned to that unit by the annual budget. In addition, the Department will research and identify any and all known sources of additional grants or funding available, but not yet certified to the Town of Spencer for the projects.

(B) *Council approval.* The Town Council meeting in open session will discuss, review and direct the Street Department to implement the projects as it deems appropriate and consistent with its budget and other fiscal priorities in its regular meeting.

(C) *Purpose.* The purpose of this policy statement and endorsement of the town's responsibility for monitoring and enforcing the provisions of the aforesaid regulatory and statutory laws is to ensure the public that the Council is aware and concerned about the welfare of its handicapped citizens and that a plan of action has been definitively announced to implement and carry forward its responsibilities in this regard.

(D) *Focus.* Nothing in this policy statement shall be construed to carry the force of a legal ordinance or compel any particular Council action or expenditure. To the contrary, every project in the Town of Spencer's repertoire of activities in any calendar year must be considered a dynamic and ever-changing administrative design that will react to the exigencies present at the time of implementation. The focus of this policy is to judiciously implement responsibilities, over time, that have costs and expenses which would be otherwise prohibitive and inconsistent with the health, welfare and safety of the citizens of the Town of Spencer. The policy is designed to identify and act upon the known areas of concern and to balance this rehabilitation with all other duties and responsibilities of the town to provide all the other utilities and services to its residents.

(Ord. passed 3-4-2002)

### **§ 92.073 PURPOSE**

This subchapter sets forth policies, procedures, and minimum standards for road construction and for reconstruction for any road, highway, street or other thoroughfare which may be presented to the Town for dedication as a public road or sought for dedication as a public road by the Town.

(Ord 2023-01, 02/21/2023)

### **§ 92.074 DEFINITIONS**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**EXCAVATION.** The digging of a ditch, hole, tunnel or other opening in the earth and the removal of dirt and other materials. It also means the insertions of cables, conduits, pipes or other similar materials underground with or without digging.

**PERMIT.** The written form provided by the Town in which a person describes the use, excavation or road cut which will be performed on public property, and in which are contained any special conditions required of the person by the Town in the execution of the work.

**PERSON.** An individual, firm, partnership, company or corporation.

**PUBLIC RIGHT-OF-WAY** or **PUBLIC PROPERTY.** Those properties or sites within the Town possessing a real property estate or interest, such as fee simple title, prescriptive easement or dedicated easement, and includes easements, rights-of-way, highways or road, paved or unpaved, curbs, gutters, sidewalks, or other paved, unpaved, un-surfaced or concrete property which the Town owns or maintains.

**ROAD CUT.** The act of cutting a hole, trench, ditch or tunnel in, on, under, or through the surface of a public facility; or the act of drilling, boring, tunneling under or jacking up the surface of a public right-of-way.

(Ord 2023-01, 02/21/2023)

### **§ 92.075 DEDICATION OF ROADS**

No road will be considered for maintenance by the Town of Spencer unless the right-of-way is dedicated to the Town. If maintenance is being requested on a road, which is not dedicated, the initial step in acquiring periodic maintenance shall be the dedication of the right-of-way to the Town.

(Ord 2023-01, 02/21/2023)

## § 92.076 PROCEDURE

- (A) An offer or request for the dedication of a road requires an Offer of Dedication Application, Letter of Authorization (if applicable) and an administrative fee of \$500.00. Examples may be obtained from the Town Clerk/Treasurer.
- (B) Upon receipt of an offer or request, the Town Street Department Superintendent shall determine if the road meets the minimum standards for Town roads and, if applicable, identify any required actions to bring the road up to acceptable standards.
- (C) Roads must have right-of-way transferred to the Town through a warranty deed, dedication on a plat and the dedication approved by the Town Council, or other type of document acceptable to the Town Attorney. In addition, the Town will require proof of clear title, and may require title insurance to be provided and paid for at the expense of the person(s) dedicating the right-of-way or road to the Town. Person(s) dedicating right-of-way must pay for and furnish a legal survey and plat of proposed dedication prepared by a registered land surveyor, meeting minimum standards for land surveying in Indiana.
- (D) The Town of Spencer Street Department Superintendent shall review the proposed road and provide a written analysis of the impact of the road on adjoining Town roads together with related concerns of the departments. Such report shall reflect approval of affected utility easement holders. The Fire Chief and the Town Marshal shall review the proposed road for safety concerns involving ingress and egress and other related concerns in a written analysis. The Petition will not be submitted for dedication until the aforementioned departments have submitted written reports and agency comment. All written reports and comments will be available for public viewing and provided to the Petitioner. Upon substantial completion by the owner(s) of the conditions addressed by the various Town departments, if any, the Town Manager shall submit the petition along with all department reports and comments to the Town Council for final determination.
- (E) The Council may, in its discretion, grant a full or partial waiver in order to accept roads for maintenance that do not otherwise meet the above road standards if the acceptance of the road is essential to the protection of the public health, safety and welfare, with the understanding that Town maintenance of accepted roads will be undertaken with available funding and pursuant to priorities for road maintenance Town-wide.
- (F) Considerations to be used in determining whether an acceptance of dedication or a full or partial waiver is granted are:



- (1) Compliance with the general design and develop standards outlined in this Chapter and/or Chapter 153;
- (2) Number of occupied dwellings on the road;
- (3) Total length of the road to be maintained;
- (4) Whether the road is a collector or local access road or a dead-end road;
- (5) Whether the road is an established school bus route;
- (6) Whether mail deliveries are made on the road;
- (7) Accessibility to dwellings for emergency services, including times of inclement weather;
- (8) The adequacy of driving space and drainage;
- (9) Any costs likely to be incurred by the Town including lifecycle maintenance, signage, and striping; and
- (10) Surface type of the roadway.

(Ord 2023-01, 02/21/2023)

#### **§ 92.077 MAINTENANCE ACCEPTANCE**

Acceptance of dedication is reserved for the Council who has the option to accept the dedication, to not accept the dedication, or to accept the dedication contingent upon roads being constructed in conformance with Town standards and specifications and this chapter.

(Ord 2023-01, 02/21/2023)

#### **§ 92.078 ROAD EXCLUSIONS**

Roads within subdivisions, which are not dedicated to public use by disclosure on the plat and approved by the Town Council, will not be accepted by the Town for maintenance. The responsibility for maintenance of private roads is with the developer, owner, or the purchasers. Temporary, courtesy or emergency maintenance by the Town does not constitute an implied acceptance of maintenance by the Town.

(Ord 2023-01, 02/21/2023)

**§ 92.999 PENALTY.**

- (A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99.
- (B) Any person, firm or corporation violating any provision of § 92.001 through 92.009 shall upon conviction thereof, be fined in an amount not less than \$100 and not more than \$1,000 for each violation. Each day in which any such violation shall continue shall be deemed a separate offense.  
(Prior Code, Ch.15, Art. X)
- (C) Should the owner or occupant fail to remove snow and ice from his or her sidewalk as required by § 92.27, he or she may be subject to a fine of not less than \$10 nor more than \$50 for each offense. A separate offense shall be deemed committed upon each day during or on which the violation occurs or continues.
- (D) Any person, firm or corporation violating any provision of § 92.012 shall be subject to a fine in an amount \$25. Each day in which any such violation shall continue shall be deemed a separate offense.

(Prior Code, Ch. 13, Art. III) (Ord Am. 2018-14, 11/5/2018)

## CHAPTER 93: NUISANCES

### Section

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- 93.02 Power and authority of the Town Council
- 93.03 Definitions
- 93.04 Nuisance created by others
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#### ***Conditions To Be Declared Nuisances***

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- 93.45 Request to abate nuisance
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  - 93.49 Appeal of Notice of Violation, Citation, or Abatement Costs
- 
- 93.99 Penalty

## **GENERAL PROVISIONS**

### **§ 93.01 PURPOSE.**

It shall be unlawful and it shall be a nuisance for any person to erect, construct, cause, permit, keep or maintain within the limits of the town anything whatsoever which is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, and any person or persons maintaining a nuisance as above set forth herein or as otherwise defined by ordinance is declared to be the author or maintainer of the nuisance. However, in accordance with Indiana Code 32-30-6 *et seq.*, the provisions of this section do not apply to any such condition when:

- (A) An agricultural or industrial operation or any of its appurtenances that has been in operation for more than one (1) year, there has been no significant change in the type of operation, and the operation would not have been a nuisance at the time the agricultural or industrial operation began.
- (B) A public use airport operation or any of the operation's appurtenances that has been in continuous operation for more than one (1) year, the operation was not a nuisance with the operation began, and the operation is operated in accordance with the rules of the Indiana Department of Transportation, aeronautics section.
- (C) A forestry operation that existed before a change in the land use or occupancy of the land within one (1) mile of the boundaries of the locality and would not have been a nuisance before the change in land use or occupancy.
- (D) A forestry operation that conforms to generally accepted forestry management practices that has been in continuous operation and has had a change in ownership or size of the operation, enrollment in a government forestry conservation program, has began the use of a new forestry technology, has had a visual change due to removal of timber or vegetation, has normal noise from forestry equipment, has had removed timber or vegetation from a forest adjoining the locality, or has properly applied pesticides and fertilizers.

(Prior Code, Ch. 22, Art. I) (Ord. 2015-06 passed 8/3/15)

### **§ 93.02 POWER AND AUTHORITY OF THE TOWN COUNCIL.**

The Indiana Code provides the Town Council with the power and authority to declare what constitutes a public nuisance and to provide for the prevention, abatement, and removal of nuisances and to take the other measures as are deemed necessary for the public safety, health and welfare.

(Prior Code, Ch. 22, Art. II)

### **§ 93.03 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context indicates or requires a different meaning.

**ABATEMENT.** The stopping or ceasing or putting an end to whatever the condition or action may be which causes or is causing a public nuisance.

**JUNK.** Any unsightly things, or things regarded as worthless or having no to low value or causing clutter. Visible items of personal property or the remains thereof randomly scattered or strewn upon the property of the owner which remains in that condition for a period in excess of seven (7) days is presumed to be junk.

**NUISANCE.** Whatever is injurious to health, or is indecent, or is offensive to the senses, or is an obstruction to the free use of property so as to essentially interfere with the comfortable enjoyment of life or property. Whenever the words **PUBLIC NUISANCE** are used in this chapter, they shall have the same meaning as **NUISANCE**.

**OWNER.** The fee simple title holder as it appears in the records of the Owen County Auditor.

**PERSON.** An individual, firm, company, association, corporation or group.

**PREMISES.** Include all buildings, structures, dwellings, lots or grounds within the town.

(Prior Code, Ch. 22, Art. III) (Ord. 2015-06 passed 8/3/15)

### **§ 93.04 NUISANCE CREATED BY OTHERS.**

For the purposes of this chapter, it shall not be necessary or essential that a public nuisance be created or contributed to by the owner, or tenants or their agents or representatives, but merely that the nuisance be enacted or contributed to by licenses, invitees, guests or other persons for whose conduct the owner or operator is responsible, or by persons for whose conduct the owner or operator is not responsible for but who should, by the exercise of reasonable care become aware of.

(Prior Code, Ch. 22, Art. V)

### **§ 93.05 DUTY OF THE TOWN COUNCIL, TOWN MARSHAL AND TOWN BUILDING INSPECTOR TO ASSIST COUNTY HEALTH OFFICER**

It shall be the duty of the Town Council, Town Marshal, and Town Building Inspector to at all times aid the County Health Officer, his agents, employees, and assigns, in the work of enforcing applicable state

and local health laws, regulations, and ordinances upon the request of the Health Officer.

(Ord. 2015-06 passed 8/3/15)

**§ 93.06 DUTY OF THE TOWN MARSHAL TO REMOVE NUISANCES FROM PUBLIC PLACES**

It shall be the duty of the Town Marshal to cause to be removed any dead animal, dead fowl, or other nuisance from the streets, alleys, or other places of the town when he or she shall become cognizant of the existence of the nuisance without waiting for demand from the Health Officer.

(Ord. 2015-06 passed 8/3/15)

***CONDITIONS TO BE DECLARED NUISANCES***

**§ 93.20 ACCUMULATION OF FILTH, TRASH, AND THE LIKE.**

The accumulation of filth, refuse, trash, garbage, rubbish and waste materials and matter is a public nuisance and it endangers the public health, welfare and safety; it is an annoyance to, and materially interferes with the peaceful enjoyment of other persons residing in the area and no person shall allow the accumulations on his or her premises and he or she shall keep his or her premises clean. This shall include any animal waste, human excrement, dead domestic or wild animals, or any other placement or accumulation of any matter which attracts or may attract rodents, insects, or other animals in such a manner as to create a health hazard or unsanitary or dangerous condition.

(Prior Code, Ch. 22, Art. IV, § 1) (Ord. 2015-06 passed 8/3/15)

**§ 93.21 LITTERING.**

(A) A person who recklessly, knowingly, or intentionally places or leaves refuse on property of another person, commits littering, which is a Class B infraction.

(B) "Refuse" includes solid and semisolid wastes, dead animals and offal.

(C) Evidence that littering was committed from a moving vehicle other than a public conveyance constitutes prima facie evidence that it was committed by the operator of that vehicle.

(Prior Code, Ch. 22, Art. IV, § 2) Penalty, see § 93.99

**§ 93.22 OBSTRUCTING SIDEWALKS, STREETS, OR ALLEYS.**

(A) It is unlawful for any person to place, or cause to be placed any objects, materials, snow, or other matter in or on any street, alley or sidewalk which obstructs the flow of traffic, or creates an unsafe condition and a hazard to users of the street, alley or sidewalk.

(B) No person shall use or occupy any portion of any public street, alley sidewalk or right-of-way for the purpose of storing, selling, or exhibiting any goods, wares, merchandise or materials. The Town Council, may, however, authorize the use of sidewalks and streets and alleys under special conditions to promote the economic welfare of the town. The authorizations when issued, shall be specific as to locale and date and time.

(Prior Code, Ch. 22, Art. IV, § 3) Penalty, see § 93.99

**§ 93.23 WEEDS AND RANK VEGETATION.**

(A) Weeds and Rank Vegetation shall be defined as any vegetable matter which exceeds the height of six (6) inches; provided however that such definitions do not include:

- (1) Trees, bushes or shrubs which have been planted or cultivated by the landowner and which do not block sidewalks, streets, alleys, or otherwise encroach upon or impair the normal use and enjoyment of the property or adjoining property;
- (2) Agricultural crops, such as hay and pasture; or
- (3) Vegetable matter cultivated in plant beds or gardens.

(B) Landowners within the town are responsible for cutting and removing weeds and rank vegetation. If the landowner fails to keep his or her property mowed, and rank vegetation removed, then the Spencer Town Police may issue a written notice or citation to the landowner giving him or her a specified amount of time to correct the violation. The notice shall be served by a member of the Spencer Police Department upon the landowner. If the landowner is not the person residing upon the premises, then the notice must also be mailed by certified mail to the last known address of the landowner. A person wishing to appeal a written notice or citation for violation must do so in writing within 10 days of the date on the written notice or citation. A appeal shall be filed with the Spencer Town Clerk-Treasurer and will be heard by the Spencer Town Board at its next regular meeting.

(C) If the landowner fails to correct the violation within the time prescribed, the Spencer Town Police shall immediately notify the Spencer Town Board. The Spencer Town Board will notify the Superintendent of Streets, if they deem necessary, to correct the violation.

(D) If the Superintendent of Streets is required to perform any action to correct the violation, he must provide the Clerk-Treasurer with a certified statement of the amount of actual costs incurred by the town in the removal. The Clerk-Treasurer shall have the Town Marshal deliver the statement to the landowner, or send by certified mail, and the landowner shall have not more than 10 days within which to pay the amount to the Clerk-Treasurer.

(E) If the landowner fails to pay the costs within the time prescribed, a certified copy of the statement of costs shall be filed with the Owen County Auditor who shall place the amount of the claim on the tax duplicate against the lands of the landowner, and the amount shall be collected as taxes are collected and when collected shall be deposited in the general fund of the town.

(Prior Code, Ch. 22, Art. IV, § 4) (Amend Ord. 2015-06 passed 8/3/15. Amend Ord 2017-13, passed 10/2/2017) Penalty, see § 93.99

#### **§ 93.24 TREES, SHRUBS AND OTHER OBSTRUCTIONS.**

(A) No property owner or occupant shall allow any shrubs, hedge, or tree to encroach upon any alley, street or sidewalk and shall not let any limbs of trees on his or her property to project out over any street, alley or sidewalk at a height of less than 14 feet.

(B) No property owner or occupant shall cause or allow any tree, stack or other object to remain standing upon his or her premises in the condition that it, if the condition is suffered to continue, endangers the life, limb, or property or cause hurt, damage or injury to persons or property upon the public streets or public ways adjacent thereto, by the falling thereof or of parts thereof.

(Prior Code, Ch. 22, Art. IV, § 5) Penalty, see § 93.99

#### **§ 93.25 OBSTRUCTIONS AT STREET/ALLEY INTERSECTIONS.**

(A) It shall be unlawful for any property owner or occupant to have or maintain on his or her property any tree, hedge, billboard, sign or other obstruction which prevents persons driving vehicles on public streets or alleys from obtaining a clear view of traffic when approaching an intersection. For the purpose of this section the Town of Spencer incorporates by reference the provisions of the INDOT line of sight standards and requirements, as amended, as if the same were recited in full text herein.

(Prior Code, Ch. 22, Art. IV, § 6) (Ord. 2015-06 passed 8/3/15) Penalty, see § 93.99



**§ 93.26 OPEN WELLS/CISTERNS.**

No person shall cause or permit the existence of any open or uncovered or insecurely covered, cistern, cellar, well, pit, excavation or vault situated upon private premises in any open or unfenced lot or place.

(Prior Code, Ch. 22, Art. IV, § 7) Penalty, see § 93.99

**§ 93.27 DISCARDED REFRIGERATORS, AND OTHER APPLICANCES CONTAINING DOORS.**

(A) No person shall store, place or permit any discarded, abandoned or unused icebox, refrigerator or similar container of any airtight character in any place where the same is accessible to children, without first removing and rendering completely inoperable all catches or locks on the exterior of all doors thereof, so as to prevent any person or child from becoming imprisoned therein.

(B) This section shall not apply to the delivery, transfer or removal of any icebox, refrigerator or container from 1 location to another while in transit.

(Prior Code, Ch. 22, Art. IV, § 8) Penalty, see § 93.99

**§ 93.28 ATTACHMENT OF POSTERS TO POLES, TREES.**

No person shall post, paste, nail or in any way attach or fix any bill, notice, announcement or other advertisement to any tree located in any alley, street or other public place in the town or upon or to any pole used for telephone or telegraph or electric light or any other purpose; provided that the provisions of this section shall not apply to the posting of any notice or order of any court, nor to the posting of any legal notice required or authorized by law.

(Prior Code, Ch. 22, Art. IV, § 9) Penalty, see § 93.99

**§ 93.29 NOXIOUS ODORS.**

No person shall use or occupy any premises in such a manner as to cause the unreasonable emission of noxious or offensive odors, dusts, smoke or other matters into the atmosphere so as to render ordinary use or physical occupation of other property in the vicinity to be uncomfortable or unhealthy or impossible.

(Prior Code, Ch. 22, Art. IV, § 10) Penalty, see § 93.99

### § 93.30 OBNOXIOUS NOISES.

(A) *Noise.* Obnoxious noise is any noise noxious enough to destroy the reasonable enjoyment of residents or other uses of property in the vicinity interfering with the ordinary comforts of human existence, including but not limited to:

(1) *Horns, signaling devices.* Unnecessary sounding of horns or signal devices on any automobile, motorcycle, bus or other vehicle while not in motion, except as a danger signal if another vehicle is approaching apparently out of control or if in motion only as a danger signal after or as brakes are being applied and declaration of the vehicle is intended or any signal device of any unreasonably loud or harsh sound from any device for an unnecessary and unreasonable period of time.

(2) *Radios, phonographs, boom boxes, and the like.* The using, operating, or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in the manner as to disturb the reasonable peace and quiet and comfort of the neighboring inhabitants or at any time with louder volume than is deemed reasonably necessary; the operation of any set, instrument, phonograph, machine or device between the hours of 11:00 p.m. and 7:00 a.m. or at any time or place, so as to annoy or reasonably disturb the quiet, comfort or repose of any persons in such a manner as to be plainly audible at a distance of 20 feet from the building, structure, property or vehicle in which it is located shall be prima facie evidence of a violation of this section.

(3) *Schools, courts, churches, hospitals.* Creation of excessive noise or disturbing noise of any kind on any street adjacent to any school, institution of learning, church or court while the same are in session or adjacent to the medical facility which unreasonably interferes with the workings of the institutions provided conspicuous signs are displayed in the streets indicating that the same is a school, hospital or court street.

(4) *Hawkers, peddlers, advertisers, and the like.* The use of sound trucks, loudspeakers, amplifiers or other instruments or devices for the purpose of making noise to attract attention to any performance, show or sale or display of merchandise without the specified approval of the Town Council prior to the use.

(5) *Yelling, shouting, and the like.* Noise on the street made by persons or groups of persons yelling, shouting, singing, hooting, whistling or making other vocal noises on the public streets, particularly between the hours of 11:00 p.m. and 7:00 a.m. or at any time or place so as to annoy or reasonably disturb the quiet, comfort or repose of any persons in any medical facility, dwelling, hotel or any other type of residence or of any other persons in the vicinity.

(6) *Fireworks.* The Spencer Town Council reserves the right to pass separate ordinances concerning the use of fireworks.

(B) *Exemptions.* Noise that is a result of parades, school functions, sports or band functions or the like is exempt from this statute.

(Prior Code, Ch. 22, Art. IV, § 11) Penalty, see § 93.99

### **§ 93.31 GRAFFITI.**

The unauthorized inscription, word, figure, painting, or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted or engraved on or otherwise affixed to any surface of a public or private property that is not expressly authorized by the property owner is a public nuisance (Ord. 2015-06 passed 8/3/15)

### **§ 93.32 STORAGE OF JUNK**

It shall be unlawful for any person to cause or permit the storage of junk upon his or her property. Junk shall include, but is not limited to, scrap metal; scrap wood; synthetic or organic material; ruined, dismantled, inoperable, wrecked motor vehicles, boats or objects of similar nature or parts thereof; discarded tires, and any or all parts of dismantled buildings or structures. (Ord. 2015-06 passed 8/3/15)

## ***ABATEMENT OF NUISANCE***

### **§ 93.45 REQUEST TO ABATE NUISANCE.**

(A) In those cases where the action is deemed reasonable, appropriate and proper, the Town Marshal, his agents, employees, or assigns, or the Town Building Inspector shall issue a written notice stating the nature of the violation and provide a reasonable time limit for satisfactory correction thereof. The offender shall, within the time period specified, permanently abate all violations. (B) If the nuisance created is a nuisance that the Town Council, Town Marshall, his agents, employees or assigns, or Town Building Inspector has previously been provided written notification for the same condition or occurrence to the owner then, in that instance, the Town Marshall may immediately issue a citation pursuant to the provision of §93.99 of this chapter for the persons failure to properly abate the nuisance. No cure period will be offered.

(Prior Code, Ch. 22, Art. VI, § 1) (Ord. 2015-06 passed 8/3/15)

**§ 93.46 SERVICE OF NOTICE.**

(A) In all cases of required written notice, registered or certified mail to the last known address of the person creating a nuisance, or personal service by the appropriate town official will apply.

(B) In all cases that the property owner's whereabouts are unknown, then service shall be considered valid when the notice is sent to the address listed on the tax duplicate records of the Owen County Treasurer.

(Prior Code, Ch. 22, Art. VI, § 2) (Ord. 2015-06 passed 8/3/15)

**§ 93.47 REFUSAL OR NEGLECT TO ABATE NUISANCE.**

If an owner, occupant or other person served with a notice to abate a nuisance shall refuse or neglect to abate the nuisance within the time designated in the notice, the person shall be subject to the penalties provided in this chapter.

(Prior Code, Ch. 22, Art. VI, § 3) Penalty, see § 93.99

**§ 93.48 ACTION AGAINST CREATOR OF A NUISANCE.**

(A) The Town Council may cause a nuisance to be abated in any manner authorized by law, including the institution of an action for declaratory relief or to recover the amount of expenses of the abatement.

(B) The Clerk-Treasurer will notify the person who owes any costs for abatements, and if the costs are not paid within 30 days, the town shall proceed to collect the same either by causing the costs to be placed on the tax duplicate or by a civil suit. Upon initiation of a civil suit additional fees will be incurred by the person who owes the costs for abatement, including reasonable attorney fees incurred by the town for collection of the account.

(Prior Code, Ch. 22, Art. VI, § 4)

**§ 93.49 APPEAL OF NOTICE OF VIOLATION, CITATION, OR ABATEMENT COSTS**

A person who has been served with a written notice of violation or citation may appeal the notice or citation by notifying the Town Clerk-Treasurer, in writing, of the specific objection to the notice within ten (10) days of the issuance of the written notice of violation or citation. The objection shall be heard by the Town Council at its next regularly scheduled meeting and no further action of abatement shall be

taken by the town until the Town Council has heard and acted upon the objection. The failure to object to the citation constitutes an affirmative admission of the facts stated in the citation.

(Ord. 2015-06 passed 8/3/15)

### **§ 93.99 PENALTY.**

(A) If the person creating the nuisance does not abate the nuisance or only temporarily abates the nuisance, then the Town Marshal, his agents, employees or assigns, shall issue a local citation in accordance with this section. If the violation is a nuisance violation that the owner or creator has previously received written notice regarding, then no subsequent written notice is required and the Town Marshal, his agents, employees, or assigns, may immediately issue a local citation in accordance with this section.

(B) if the violation is for unreasonable noise observed by a town marshal and is coming from a mobile source such as a vehicle, or walking person, no previous warnings or written notices are required.

(C) If the violation is for weeds and or rank vegetation, and the owner has failed to abate the nuisance, then in that instance, the Town may enter upon the premises and remove the nuisance. Any costs for removal shall be certified by the Town and a statement shall be tendered to the owner, by certified mail, allowing ten (10) days for the owner to reimburse the town for its costs associated with removal. If the owner fails to make payment within the ten (10) days, then the Town Clerk-Treasurer shall file a certified copy of the statement of costs with the Auditor's office, pursuant to Indiana Code 36-7-10-3, and the Auditor shall place the amounts on the tax duplicate as a lien against the lands of the owner. The amounts shall then be collected as taxes upon the real estate and when collected shall be dispersed to the General Fund of the Town.

(D) Any person who violates this chapter or fails to comply with any of its requirements, shall be guilty of an infraction and shall be fined in the sum of \$50 for the first offense in any 12 month time frame, \$100 for the second offense in any 12 month time frame, and \$500 for the third and all subsequent offenses in any 12 month time frame. Each time any violation of this chapter continues, shall constitute a separate and chargeable offense.

(E) If the person creating the nuisance fails to pay the costs as specified to the Clerk-Treasurer within 30 days after the notice, suit shall be instituted for and on behalf of the town by the Town Attorney to collect the costs, including reasonable attorney fees incurred by the town for collection of the account. (Prior Code, Ch. 22, Art. IV, § 11) (Ord. 2015-06 passed 8/3/15)"

## CHAPTER 94: GENERAL FIRE REGULATIONS

### Section

94.01 Burning of structures

94.02 Bonfires

### **§ 94.01 BURNING OF STRUCTURES.**

No person shall burn, or cause to be burned, any structure, or the debris resulting from the demolition or razing of any structure, on any private or public land within the town limits without the expressed written approval from the Fire Territory's Chief.

(Prior Code, Ch. 22, Art. VIII, § 1) Penalty, see § 10.99

### **§ 94.02 BONFIRES.**

(A) No person shall kindle or maintain any bonfire, rubbish fire, or any type of outdoor fire, or authorized or permit any fire to be kindled or maintained on private land, public street, alley, road, or other public ground, at any time without first obtaining the expressed written approval or authorization from the Fire Territory.

(B) In the event the Fire Territory's Chief shall approve or authorize the kindling or maintaining of any fire, as contemplated in § 94.01 and/or division (A) above, the approval or authorization shall be in writing on a form provided by the Fire Territory Chief (the form shall be approved and adopted by the Town Council).

(C) The provisions of division (A) above are intended to eliminate the hazardous, obnoxious, annoying and discomforting effect of outdoor fires from whatever source. The restrictions of division (A) above are not intended to apply to the kindling and maintaining of fires in approved furnaces and/or stoves which are primarily used for heating a structure, for example: houses, motels, retail stores, offices, factories, schools, churches and government buildings.

(D) The restrictions of division (A) above do not apply to the kindling and maintaining of a fire for the purpose of outdoor cooking. However, a fire may be kindled and maintained for the purpose of preparing or otherwise cooking of food for human consumption so long as the fire is kindled and maintained in an apparatus specifically designed for cooking outdoors. The provisions of this division do not permit the kindling or maintenance of an open type bonfire. However, upon application, the Fire Territory's Chief may issue a permit allowing the kindling and maintaining of such a bonfire for cooking

purposes. The permit shall be issued in compliance with the applicable provisions of divisions (A) and (B) above.

(Prior Code, Ch. 22, Art. VIII, § 2) Penalty, see § 10.99

## CHAPTER 95: TREE PLOTS

### Section

- 95.01 Purpose
- 95.02 Intent
- 95.03 Policy
- 95.04 Definitions
- 95.05 Applicability
- 95.06 Removal, Newly Planted or Replacements
- 95.07 Obstructions and Pruning
- 95.08 Permits
- 95.09 Fees
- 95.10 Tree Advisory Committee
- 95.11 Terms of Office
- 95.12 Compensation
- 95.13 Operation
- 95.14 Meetings
- 95.15 Minutes and Records
- 95.16 Quorum
- 95.17 Duties and Responsibilities
- 95.18 Jurisdiction and Appeals
- 95.99 Penalties

### § 95.01 PURPOSE

The Town of Spencer recognizes that trees and vegetation provide benefits to the community and finds it necessary to establish basic standards, measures, and compliance for the preservation and protection of trees and vegetation while at the same time recognizing the individual rights to develop private property. Benefits provided by trees include:

(A) Enhancing visual and aesthetic qualities that attract visitors and businesses and serve as a source of community image and pride.

(B) Energy conservation and energy costs reductions by providing shade and evaporative cooling.



- (C) Increasing real property values
  - (D) Reducing storm water runoff and the potential for soil erosion
  - (E) Reducing Noise Pollution
  - (F) Reducing local air pollution by absorbing carbon dioxide and ozone and by releasing oxygen.
  - (G) Reducing wind speed and directing air flow.
  - (H) Providing habitat for birds, small mammals and other wildlife.
- (Ord. 2009-2, passed 1-5-2009)

### **§95.02 INTENT**

The provisions of this chapter are enacted to:

- (A) Promote the public health, safety and general welfare,
- (B) Maintain and enhance the natural scenic beauty of the Town of Spencer
- (C) Complement and strengthen zoning, subdivision and land use standards and regulations, while at the same time recognizing individual rights to develop private property.
- (D) Establish and maintain the optimum amount of tree cover on public and private lands to moderate climatic conditions, sustain long-term potential increase in property values, maintain original ecology, reduce soil erosion, and increase the oxygen output of the area needed to combat air pollution.
- (E) Maintain health trees on public and private lands using the most current arboricultural practices
- (F) Encourage quality project design and utilize design incentives to promote the conservation of tree resources.
- (G) Authorize the Tree Advisory Committee to administer the Tree Ordinance.

(Ord. 2009-2, passed 1-5-2009)

### **§ 95.03 POLICY.**

- (A) This chapter shall be known as the Town of Spencer “Tree Plot Ordinance”.
- (B) This chapter provides full power and authority over all trees, plants and shrubs located within the areas commonly known as tree plots.

(Prior Code, § 97.01, Prior Code §95.01) (Am. Ord. 2009-2, passed 1-5-2009)

#### **§ 95.04 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context indicates or requires a different meaning.

**APPROVED STREET TREE LIST.** The list of trees approved by the Spencer Town Council for planting within the public right-of-way or on public property.

**ARBORICULTURAL.** The cultivation of trees and shrubs especially for ornamental purposes.

**PUBLIC PROPERTY.** Property owned or controlled by the town.

**PUBLIC RIGHT-OF-WAY.** A strip of land occupied or intended to be occupied by a street or alley, boulevard, road, trail, transportation support facilities such as signs and signals, public utilities or other special public uses.

**SHRUB.** A woody plant this is characteristically below 20 feet in height and is multi-stemmed supporting the main leafy growth.

**TOWN.** The Town of Spencer.

**TREE.** A perennial woody plant, with 1 main stem, or in a clump form up to 3 main stems, which develops many branches and ordinarily grows to a height of 20 feet or more.

**TREE PLOT.** An area designated by the town as dedicated to the growth of established species of trees, shrubs or other plants within the space between the streets or thoroughfare of the town and the sidewalks of the town. The areas will be memorialized by a tree plot map, maintained by the town.

**VEGETATION.** All herbaceous and woody plant material, including turf grass, vines, ground covers, flowers and all other plant material not considered to be a tree or shrub.

(Prior Code, § 97.02; Prior Code §95.02) (Am. Ord. 2009-2, passed 1-5-2009))

#### **§ 95.05 APPLICABILITY.**

No person or business shall plant trees, shrubs, vegetation or any combination thereof in the areas designated as tree plots without the prior written consent of the Spencer Town Council.

For the purposes of this ordinance property owners shall be considered liable for trees, shrubs and vegetation planted within the area to begin at the lot line and end at the curb or street. This includes the sidewalk and the area that may exist between the sidewalk and the curb or street.

(Prior Code, § 97.03; Prior Code §95.03) (Am. Ord. 2009-2, passed 1-5-2009))

## **§ 95.06 REMOVAL, NEWLY PLANTED OR REPLACEMENTS**

(A) No person, entity or corporation, shall remove or cause the removal of any tree, shrub or vegetation between the sidewalk and the curb or roadway, within the grassy area behind the sidewalks, or within the areas designated as tree plots without first securing a permit from the Town of Spencer. Acceptable trees, shrubs or vegetation for planting within these areas are defined in subsection (B)

(B) The following trees are approved for planting within the areas defined in section (A):

1. Sugar Maple “Acer Saccharum
2. Brandywine Red Maple "Acer Rubru”
3. Pin Oak “Quercus Palustris”
4. White Oak “Quercus Alba”
5. Princeton American Elm “Ulmus Americana”

(C) No person, entity or corporation shall plant any ornamental type of tree within the areas defined in section (A), including, but not limited to, Bradford or Cleveland Flowering Pear Trees or any type of Crabapple or fruit tree.

(D) No person, entity or corporation shall plant any other tree, shrub, or vegetation within the areas defined in Section (A) other than those listed in section (B) without the express consent of the Tree Advisory Committee.

(E) Spacing and placement of replaced or newly planted trees should be determined by the Tree Advisory Committee according to local conditions, tree species used, their height, spread and form.

(Ord. 2009-2, passed 1-5-2009, Am. Ord. 2022-12, passed 7/18/2022)

## **§ 95.07 OBSTRUCTIONS AND PRUNING**

(A) It shall be the duty of any person or persons owning or occupying real property bordering on any street or public way upon which property there may be trees, to prune such trees in such a manner that they will not obstruct or shade the street lights, obstruct the passage of pedestrians on sidewalks, obstruct vision or traffic signs, obstruct flow of vehicular traffic, or obstruct view of any street or alley intersection. Such clearances and pruning shall be done in a judicious manner so that such trees will not be damaged.

(B) Should any person or persons owning real property bordering on any street fail to prune trees as provided in this section, the city tree official shall order such person or persons to

prune such trees within then (10) calendar days after receipt of written notice.

(C) When a person to whom an order is directed fails to comply within the specified time, the town, shall do such pruning and/or trimming, or cause same to be done and shall charge the expense in doing such work or having such work done to the town. Such expense or expenses shall then be assessed on the real estate or lot(s) upon which such expense incurred and a lien placed on the real property as provided by law.

(D) Electric utility or cable television companies shall coordinate tree pruning with the Town of Spencer prior to the start of pruning work.

(Ord. 2009-2, passed 1-5-2009)

## **§ 95.08 PERMITS**

(A) All applications must be made on the forms provided by the Town of Spencer.

(B) Tree Removal Permit: An application for a tree removal permit must be submitted and approved prior to the removal of any tree in the areas between the sidewalk and the curb or roadway, within the grassy area behind the sidewalks, or within the areas designated as tree plots. A permit for tree removal is valid for one (1) year from the date of issuance.

(C) Newly Planted or Replacement Permit: An application for new or replacement tree, shrub or vegetation must be filed with the Town of Spencer prior to the placement of any trees, shrubs, or vegetation between the sidewalk and the curb or roadway, within the grassy areas behind the sidewalk, or in the areas designated as tree plots. The request must include a site plan for the area in which the tree, shrub or vegetation will be planted. The site plan must include the setbacks from the sidewalks, curbs, and streets. The site plan must also include the species of tree, shrub or vegetation to be planted.

(Ord. 2009-2, passed 1-5-2009)

## **§ 95.09 FEES**

The fee for the Tree Removal Permit and/or the Newly Planted or Replacement Permit shall be in the sum of Ten Dollars (\$10.00). All fees shall be payable to the Town of Spencer.

(Ord. 2009-2, passed 1-5-2009)

## **§ 95.10 TREE ADVISORY COMMITTEE**

(A) There is created and established by this chapter a Tree Advisory Committee for the Town.

(B) The Tree Advisory Committee shall be created to serve in an advisory capacity to the Town Council.

(C) The Tree Advisory Committee shall consist of five (5) members. The Street Department Superintendent shall be one member and a member of the Parks and Recreation Board shall be another member. The remaining three (3) members shall be citizens and residents of the Town of Spencer and shall be appointed by the Spencer Town Council.

(Ord. 2009-2, passed 1-5-2009)

## **§ 95.11 TERMS OF OFFICE**

(A) The Street Department Superintendent shall have no set term limits. A person who holds the position of the Town of Spencer Street Department Superintendent shall serve as a member of the Tree Advisory Committee so long as he/she holds the position of Street Department Superintendent.

(B) The initial member of the Parks and Recreation Board shall hold a two (2) year term and at the expiration of the initial two year term the subsequent member shall hold a four (4) year term. The remaining three (3) citizen members shall hold four (4) year terms with the exception of one (1) member who shall hold an initial term of (2) years and at the expiration of the initial two year term the subsequent member shall hold a four (4) year term.

(C) In the event of any vacancy or term conclusion the Spencer Town Council shall appoint a replacement member to serve.

(Ord. 2009-2, passed 1-5-2009)

## **§ 95.12 COMPENSATION**

Members of the Tree Advisory Committee shall serve without compensation.

(Ord. 2009-2, passed 1-5-2009)

## **§ 95.13 OPERATION**

(A) The Tree Advisory Committee shall select a Chairperson in January of each year.

(B) The Committee shall be advisory only and shall submit its written recommendations to the Town Council for action and approval.

(Ord. 2009-2, passed 1-5-2009)

#### **§ 95.14 MEETINGS**

The Tree Advisory Committee shall meet at the times as called by the Chairperson and at the Municipal Building.

(Ord. 2009-2, passed 1-5-2009)

#### **§ 95.15 MINUTES AND RECORDS**

(A) The Tree Advisory Committee shall keep minutes and records of all of its proceedings.

(B) All minutes and records are public records and shall be kept in the Municipal Building

(C) The Tree Advisory Committee shall make written findings of fact

(D) Votes on any Tree Advisory Committee action shall be recorded.

(Ord. 2009-2, passed 1-5-2009)

#### **§ 95.16 QUORUM**

A Quorum shall consist of a majority of the entire membership of the Tree Advisory Committee.

(Ord. 2009-2, passed 1-5-2009)

#### **§ 95.17 DUTIES AND RESPONSIBILITIES**

(A) Preparation of the Comprehensive Tree Plan

(1) The Tree Advisory Committee shall prepare a written plan for the care, replacement, maintenance, and removal or disposition of trees, shrubs, and other existing vegetation within the public right-of-way and on public property.

(2) The plan shall be presented annually to the Town Council and, upon its acceptance and approval, shall constitute the Town's official comprehensive tree plan.

(B) Preparation of an Approved Tree List.

(1) The Tree Advisory Committee shall prepare a list of the species, sizes, and forms of trees to be planted in public right-of-ways and on public property for adoption by the Town Council as the Town's approved street tree list.

(2) The list shall be submitted for approval and updated annually.

(C) Dissemination of News and Information

(1) The Tree Advisory Committee shall assist in the dissemination of news and information regarding the protection, maintenance, removal, and planting of trees, shrubs and other vegetation within the Town.

(2) The Committee is authorized to initiate activities in related areas such as wildlife habitat.

(D) Study proposals for landscape modifications

(1) The Tree Advisory Committee shall study proposals for landscape modifications within the public right-of-way and public property referred to it for review by the Town Council and other town officials.

(E) Other Duties and Responsibilities

(1) The Tree Advisory Committee shall advise the Town Council, as needed concerning amendments to this chapter or any other standards or documents prepared by the Tree Advisory Committee.

(2) The Tree Advisory Committee is authorized to submit applications for grants and awards. Acceptance of any grants or awards must be approved by the Town Council.

(3) The Tree Advisory Committee shall meet at least quarterly during the year in order to conduct business and coordinate the Town's urban forestry program, grants, and educational activities.

(4) Any grants shall be coordinated with the Clerk Treasurer and all funds are to be considered a part of the Town's funds.

(5) No expenditures of any funds are to be made without the approval of the Town Council as handled under general operation procedure.

(Ord. 2009-2, passed 1-5-2009)

## § 95.18 JURISDICTION AND APPEALS

All actions or decisions taken or made by the Tree Advisory Committee shall **be subject to review** by the Town Council

(A) Any citizen may appeal any recommendation made by the Tree Advisory Committee to the Town Council

(B) The Town Council shall hear the matter and make all final decisions and determine all final actions to be taken.

(Ord. 2009-2, passed 1-5-2009)

### **§ 95.99 PENALTIES**

(A) Any person, firm or corporation violating any of the provisions of this chapter shall be fined \$25.00 for each offense. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

(B) Any person, firm or corporation who violates any provision of this chapter is subject to civil penalties. The Town Attorney shall request injunction, abatement, or any appropriate action at his or her disposal to prevent, enjoin, abate, or remove violations. Costs incurred by the Town of Spencer to prevent, enjoin, abate or remove violations, including reasonable attorney fees, shall be borne by the Defendant.

(Ord. 2009-2, passed 1-5-2009)



## CHAPTER 96: PARKS AND RECREATION

### Section

#### 96.01 Hours of use for the Cooper Commons Park Area

##### **§ 96.01 HOURS OF USE FOR THE COOPER COMMONS PARK AREA.**

(A) The area known as Cooper Commons Park shall be closed for use from the hours of 10:00 p.m. to 5:00 a.m. each night. These restrictions may be modified during special events such as the Owen County Fair and by action of the Council for other activities.

(B) The police shall have authority to enforce this rule in accordance with applicable local and state laws.

(Res. 2005-1, passed 3-21-2005)

## CHAPTER 97: FAIR HOUSING

### Section

- 97.01 Purpose
- 97.02 Definitions
- 97.03 Unlawful Practice
- 97.04 Discrimination in the Sale or Rental of Housing
- 97.05 Discrimination in Residential Real Estate-Related Transactions
- 97.06 Discrimination in the Provision of Brokerage Service
- 97.07 Interference, Coercion, or Intimidation
- 97.08 Prevention of Intimidation in Fair Housing Cases
- 97.09 Exemptions
- 97.99 Administrative Enforcement of Ordinance

### § 97.01 PURPOSE

It shall be the policy of the Town of Spencer to provide, within constitutional limitation, for fair housing throughout its corporate limits as provided for under the federal Civil Rights Act of 1968, as amended, the federal Housing and Community Development Act of 1974, as amended, and Indiana Code 22-9.5-1 *et. seq.*

(Ord. 2013-1, passed 1-22-2013)

### § 97.02 DEFINITIONS

(A) The definitions set forth in this Section shall apply throughout this Ordinance:

**DWELLING** means any building, structure, or part of a building or structure that is occupied as, or designed or intended for occupancy as, a residence by one (1) or more families; or any vacant land which is offered for sale or lease for the construction or location of a building, structure, or part of a building or structure that is occupied as, or designed or intended for occupancy as a residence by one (1) or more families (I.C. 22-9.5-2-8).

**FAMILY** includes a single individual (I.C. 22-9.5-2-9), with the status of such family being further defined in subsection (H) of this Section. Also, pursuant to 24 CFR Part 5, the definition of "family" is revised to include families regardless of the actual or perceived sexual orientation, gender identity, or marital status of its members.

**PERSON** (I.C. 22-9.5-2-11), includes one (1) or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, non-incorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers, and fiduciaries.

**TO RENT** (I.C. 22-9.5-2-13), includes to lease, to sublease, to let and otherwise to grant for a consideration the rights to occupy the premises owned by the occupant.

**DISCRIMINATORY HOUSING PRACTICE** means an act that is unlawful under Sections §97.04, §97.05, §97.06, §97.07, or §97.08 of this Ordinance or I.C. 22-9.5-5.

**HANDICAP** means, with respect to a person:

1. a physical or mental impairment which substantially limits one or more of such person's major life activities.
2. a record of having such an impairment, or
3. being regarded as having such an impairment,
4. an impairment described or defined pursuant to the federal Americans with Disabilities Act of 1990.
5. Any other impairment defined under I.C. 22-9.5-2-10.

The term 'Handicap' shall not include current illegal use of or addictions to a controlled substance as defined in Section 802 of Title 21 of the United States Code (I.C. 22-9.5-2-10(b)); nor does the term 'Handicap' include an individual solely because that individual is a transvestite (I.C. 22-9.5-2-10(c)).

**AN AGGRIEVED PERSON** includes any person who (I.C. 22-9.5-2-2):

1. claims to have been injured by a discriminatory housing practice; or
2. believes that such person will be injured by a discriminatory housing practice that is about to occur.

**FAMILIAL STATUS** means one or more individuals who have not attained the age of 18 years being domiciled with a parent or another person having legal custody of such individual or the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

**COMMISSION** (I.C. 22-9.5-2-3) means the Indiana Civil Rights Commission created pursuant to I.C. 22-9-1-4, et. Seq.

**COMPLAINANT** (I.C. 22-9.5-2-4) means a person, including the Commission, who files a complaint under I.C. 22-9.5-6.

(Ord. 2013-1, passed 1-22-2013)

### **§ 97.03 UNLAWFUL PRACTICE**

Subject to the provisions of subsection (8) of this Section, Section §97.09 of this Ordinance and Title 22-9.5-3 of Indiana Code, the prohibitions against discrimination in the sale or rental of housing set forth Title 22-9.5-5-1 of Indiana Code and in Section §97.04 of this Ordinance shall apply to:

(A) All dwellings except as exempted by subsection (8) and Title 22-9.5-3 of Indiana Code.

(B) Other than the provisions of subsection (C) of this Section, nothing in Section §97.04 shall apply to:

1. Any single-family house sold or rented by an owner where the private individual owner does not own more than three such single-family houses at anyone time; provided that in the sale of such single family house by a private individual owner not residing in the house at the time of sale or exemption shall apply only to one such sale within any twenty-four (24) month period. The private individual owner may not own any interest in, nor have owned or reserved on his behalf, title to or any right to all or a portion of the proceeds from the sale or rental of more than three such single-family houses at anyone time. The sale or rental of any such single family house shall be exempted from application of this section only if such house is sold or rented:
  - a. without the use in any manner of the sales or rental facilities or services of any real estate broker, agent or salesman, or any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent or salesman, or person and
  - b. without the publication, posting or mailing, after notice of advertisement or written notice in violation of Section 4( C) of this Ordinance, but noting in this provision shall prohibit the use of attorneys, escrow agents, abstracters, title companies and other such professional assistance as necessary to perfect or transfer this title, or
2. Rooms or units in dwellings containing living quarters occupied or intended to be

occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(C) For the purposes of subsection (B), a person shall be deemed to be in the business of selling or renting dwellings if:

1. They have, within the preceding twelve (12) months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or

2. They have, within the preceding twelve (12) months, participated as agent, other than in the sale of his own personal residence, in providing sales or rental facilities or services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or

3. They are the owner of any dwelling unit designed or intended for occupancy by, or occupied by, five (5) or more families.

(Ord. 2013-1, passed 1-22-2013)

#### **§ 97.04 DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING**

As made applicable by Section §97.03 and except as exempted by Section §97.03(B) and §97.09, it shall be unlawful:

(A) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, handicap, familial status or national origin.

(B) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services of facilities in connection therewith, because of race, color, religion, sex, handicap, familial status or national origin.

(C) To make, print, or publish, or cause to be made, printed, or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status or national origin, or an intention to make any such preference, limitation or discrimination.

(D) To represent to any person because of race, color, religion, sex, handicap, familial status or national origin that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available.

(E) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status or national origin.

(F) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of:

1. that buyer or renter;
2. a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
3. any person associated with that person.

(G) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of:

1. that person; or
2. a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
3. any person associated with that person.

(H) For purposes of this subsection, discrimination includes:

1. a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modifications, reasonable wear and tear excepted;
2. a refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or
3. in connection with the design and construction of covered multi-family dwellings for first occupancy after the date that is 30 months after September 13, 1998, a failure to design and construct those dwellings in such a manner that:
  - a. the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

- b. all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and
- c. all premises within such dwellings contain the following features of adaptive design:
  - i. an accessible route into and through the dwelling;
  - ii. light, switches, electrical outlets , thermostats, and other environmental controls in accessible locations;
  - iii. reinforcements in bathrooms such that an individual in a wheelchair can maneuver about the space.

Compliance with the appropriate requirement Americans with Disabilities Act of 1990 and of the American National Standard for Buildings and Facilities providing accessibility and usability for physically handicapped people (commonly cited as “ANSI A 117.1) suffices to satisfy the requirements of paragraph (3) (C)(iii). Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health of safety of other individuals of whose tenancy would result in substantial physical damage to the property of others.

(Ord. 2013-1, passed 1-22-2013)

## **§ 97.05 DISCRIMINATION IN RESIDENTIAL REAL ESTAE-RELATED TRANSACTIONS**

(A) It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

(B) As used in this section, the term residential real estate-related transaction means any of the following:

- 1. The making or purchasing of loans or providing other financial assistance:
  - b. for purchasing, constructing, improving, repairing, or maintaining a dwelling; or
  - c. secured by residential real estate.

2. The selling, brokering, or appraising of residential real property.

(C) Nothing in this Ordinance prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color,

religion, national origin, sex, handicap, or familial status.

(Ord. 2013-1, passed 1-22-2013)

#### **§ 97.06 DISCRIMINATION IN THE PROVISION OF BROKERAGE SERVICE**

It shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, sex, handicap, familial status or national origin.

(Ord. 2013-1, passed 1-22-2013)

#### **§ 97.07 INTERFERENCE, COERCION, OR INTIMIDATION**

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by sections §97.03, §97.04, §97.05 or §97.06 of this Ordinance.

(Ord. 2013-1, passed 1-22-2013)

#### **§ 97.08 PREVENTION OF INTIMIDATION IN FAIR HOUSING CASES**

Whoever, whether or not acting under code or law, by force or threat of force willfully injures, intimidates or interferes with, or attempt to injure, intimidate or interfere with:

- (A) any person because of his race, color, religion, sex, handicap, familial status, or national origin and because he is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing or occupation of any dwelling, or applying for or participating in any service, organization, or facility relating to the business of selling or renting dwellings; or
- (B) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from:
  1. participating, without discrimination on account of race, color, religion, sex, handicap, familial status, or national origin, in any of the activities, services, organizations or facilities described in subsection (A); or
  2. affording another person or class of persons opportunity or protection so to



participate; or

(C) any citizen because he is or has been, or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex, handicap, familial status, or national origin, in any of the activities, services, organizations or facilities described in subsection (A), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to participate shall be fined according to local, state and federal law; and if bodily injury results shall be fined not more than \$10,000 or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life.

(Ord. 2013-1, passed 1-22-2013)

#### **§ 97.09 EXEMPTIONS**

(A) Exemptions defined or set forth under Title 22-9.5-3 et. seq. of Indiana Code shall be exempt from the provisions of this Ordinance to include those activities or organizations set forth under subsections (§97.08) and (C) of this Section.

(B) Nothing in this Ordinance shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color or national origin. Nor shall anything in this Ordinance prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodging to its members or from giving preference to its members.

(C) Nothing in this Ordinance regarding familial status shall apply with respect to housing for older persons. As used in this Section, 'housing for older persons' means housing:

1. provided under any state or federal program that the Secretary of the Federal Department of Housing and Urban Development or the state civil rights commission determines is specifically designed and operated to assist elderly person (as defined in the state or federal program) or;

2. intended for, and solely occupied by, person 62 years of age or older; or
3. intended and operated for occupancy by at least one person 55 years of age or older per unit.

(Ord. 2013-1, passed 1-22-2013)

#### **§ 97.99 ADMINISTRATIVE ENFORCEMENT OF ORDINANCE**

- (A) The authority and responsibility for properly administering this Ordinance and referral of complaints hereunder to the Commissioner as set forth in subsection (8) hereof shall be vested in the Chief Elected Official of the Town of Spencer, Indiana.
- (B) Notwithstanding the provisions of I.C. 22-9.5-4-8, the Town of Spencer, Indiana, because of lack of financial and other resources necessary to fully administer enforcement proceedings and possible civil actions under the Ordinance, herein elects to refer all formal complaints of violation of the articles of this Ordinance by complainants to the Indiana Civil Rights Commission for administrative enforcement actions pursuant to Title 22-9.5-6 of Indiana Code and the Chief Elected Official of the Town of Spencer, Indiana, shall refer all said complaints to the Commission as provided for under subsection (A) of this Section to said Commission for purposes of investigation, resolution and appropriate relief as provided for under Title 22-9.5-6 of Indiana Code.
- (C) All executive departments and agencies of the Town of Spencer, Indiana shall administer their departments, programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this Ordinance and shall cooperate with the Chief Elected Official and the Commission to further such purposes.
- (D) The Chief Elected Official of the Town of Spencer, Indiana, or the Chief Elected Official's designee, shall provide information on remedies available to any aggrieved person or complainant requesting such information.

(Ord. 2013-1, passed 1-22-2013)

## CHAPTER 98: DISCHARGE OF PROJECTILES/WEAPONS

### Section

- 98.01 Definitions
- 98.02 Use of Weapons/Projectiles Prohibited
- 98.03 Permit to Discharge Weapons/Projectiles
- 98.04 Penalty

### §98.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**AMMUNITION.** Any material intended as a projectile including, but not limited to, bullets, pellets, BBs, arrows, shotgun shot, salt, stones or other missiles.

**DISCHARGE.** The propulsion of any ammunition by any weapon.

**PROJECTILE.** A body projected by external force and continuing in motion by its own inertia; a self-propelling weapon

**WEAPON.** A firearm, bow, slingshot, sling, air rifle or other similar device from which a projectile is shot or otherwise commonly propelled of a speed sufficient to penetrate the skin of a person or animal.

(Ord. 2017-11, passed 10-2-2017)

### §98.02 USE OF WEAPONS/PROJECTILES PROHIBITED.

(A) No person shall discharge a weapon or projectile of any kind within the boundaries of the Town of Spencer except:

- (1) Law enforcement or members of the armed forces discharging a weapon or projectile in the proper performance of their duties,
- (2) Military personnel conducting military commemorative exercises at a funeral/cemetery provided that proper notification has been made, in writing, to the Spencer Town Board advising it of the date, time, and place of such activity. In no event shall live ammunition be used in the discharge of weapons,
- (3) By a person in the defense of one's life or property,

- (4) In a shooting range or area of similar nature established according to all applicable zoning regulations and permitting requirements established by this section.

(Ord. 2017-11, passed 10-2-2017)

### **§98.03 PERMIT TO DISCHARGE WEAPONS/PROJECTILES**

(A) Permission to discharge weapons/projectiles may be granted under certain circumstances by the Spencer Town Board. An applicant must provide to the Spencer Town Board, in writing, the following for consideration:

- (1) Name, address, and contact information for a person/organization wishing to discharge a weapon/projectile within the Town Limits
- (2) Location of the area where the weapon/projectile will be discharged.
- (3) A detailed description of the activities to be performed, including type of weapon(s)/projectiles to be used.
- (4) Evidence of liability insurance, if applicable.

(Ord. 2017-11, passed 10-2-2017)

### **§98.99 PENALTY.**

- (A) Any person who violates any provision in this chapter shall be issued a citation by a Spencer Town Marshal.
- (B) Fine. The fine for such a citation shall be the sum of \$75.00 and the confiscation of the weapon or projectile.
- (C) Confiscation of Weapon/Projectile. The weapon or projectile will be logged and stored with the Spencer Town Marshal for a period not to exceed one (1) year. The weapon/projectile will be returned to the violator upon the payment of the fine referenced in (B) above. If the violator is under the age of eighteen (18), then the weapon or projectile will be only be released to the parent or guardian of the violator. Any items remaining with the Spencer Town Marshal after one (1) year will be considered abandoned property and will be disposed of pursuant to law.
- (D) Appeal of Violation. Any person wishing to appeal a violation of this chapter may do so in writing to the Spencer Town Board within ten (10) days of date of the citation. The Spencer Town Board will hear the appeal at its next regularly scheduled Town Board meeting. The

appellant will be notified in writing by the Town Clerk Treasurer of the date and time at which the appeal will be heard.

- (E) Payment. The fine referenced in (B) above must be paid within thirty (30) days of the issuance of the citation. The failure to pay within the time frame specified may result in additional penalties and charges and civil remedies shall be sought in the court having jurisdiction. Additional penalties to include reasonable attorney fees and court costs incurred by the town for collection of the account.

(Ord. 2017-11, passed 10-2-2017)