ORDINANCE 81-5

To Amend Various Sections of the Bloomington Municipal Code Dealing with Penalties for Misdemeanors and to Repeal Certain Sections in Conflict with State Law

WHEREAS, Indiana Code 18-1-1.5-19(2) of the present Indiana Code, and Indiana Code 36-1-3-8, effective September 1, 1981, deny Indiana cities the power to punish for offenses which are also violations of Indiana statutes, and to punish violations of ordinances by imprisonment; and

WHEREAS, certain sections of the Bloomington Municipal Code contain references to acts already made criminal by state statute and to misdemeanors, terms of imprisonment, and bail, which are no longer within the city's power; and

WHEREAS, it is desirable to bring these sections within the bounds of the city's powers in order to maintain their effectiveness;

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION I. Section 1.01.090 is amended to read:

1.01.090 Violation--Prosecution. Neither the adoption of this code nor the repeal or amendment of any ordinance or part or portion of any ordinance of the city shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date thereof, nor be construed as a waiver of any license, fee, or penalty at the effective date due and unpaid under such ordinances, nor be construed as affecting any of the provisions of such ordinances relating to the collection of any such license, fee, or penalty, nor to affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed, or deposited pursuant to any ordinance, and all rights and obligations thereunder appertaining shall continue in full force and effect.

SECTION II. Section 1.01.130 is amended to read:

Violations--Penalty. (a) Whenever in this Code or in any ordinance of the city, any act is prohibited or is made unlawful, or the doing of an act is required or the failure to do any act is made unlawful and no specific fine is provided, any person violating any such Code provisions or ordinance may be subject to a fine of not more than one thousand dollars. Each day that a violation continues shall constitute a separate violation.

(b) In addition to or in lieu of the penalty provided above or in any other section of the Code, where a condition violating a Code provision or ordinance exists on private property, the city may enter onto a property and take appropriate action to bring the property into compliance, provided that all persons holding a substantial interest in the property have been provided a reasonable opportunity to bring the property into compliance. If action to bring compliance is taken by the city, the expense involved may be made a lien against the property.

(c) In addition to or in lieu of the penalty and remedy provided above or in any other section of the Code, the city may bring a civil action to enjoin any person from violating a Code provision or ordinance regulating or prohibiting a condition or use of property, or engaging in conduct without a license if an ordinance requires a license to engage in the conduct.

SECTION III. Section 7.08.040 is amended to read:

7.08.040 Interference with Humane Officer - Penalty. Whoever forcibly assaults, resists, opposes, obstructs, prevents, impedes or

interferes with any humane officer while that officer is engaged in the execution of any duties required of humane officers under this title shall be fined not more than one thousand dollars.

SECTION IV. Section 7.32.040 is amended to read:

7.32.040 Notice of Ordinance Violation. In lieu of impounding an animal which is at large, unlicensed, or a public nuisance according to this title, the law enforcement or humane officer may issue to the known owner of such animal a notice of ordinance violation. Such notice shall impose upon the owner a penalty of ten dollars which may, at the discretion of the animal owner, be paid to the authorized agency within seventy-two hours in full satisfaction of the assessed penalty. This penalty shall increase by five dollars for each subsequent offense. In the event that such payment is not made within the time period prescribed, proceedings shall be filed in the Monroe County court of competent jurisdiction.

SECTION V. Section 11.04.090 is amended to read:

11.04.090 Civil Liability. Any person violating any provision of this chapter shall become liable for all damage and expense thereby caused to the city or any other person by reason of such violation in addition to the penalties herein provided.

SECTION VI. Section 11.04.170 is amended to read:

11.04.170 Subdivisions in Vicinity--Correction of Violations. Any person violating any provision of sections 11.04.100 through 11.04.160 shall be notified by the city in writing, stating the nature of the violation and providing a time limit not to exceed two weeks for the satisfactory correction thereof. The offender shall, within the period of two weeks stated in such notice, permanently cease all violation or correct it at his own expense in a manner approved by the city engineer. A person failing to correct such violation after such notice shall be subject to the general penalty provisions of this code.

SECTION VII. Section 11.04.440 is amended to read:

11.04.440 Penalties. Each day that a condition or act in violation of this chapter remains or continues shall be deemed on the part of the person guilty of such violation to be a separate and distinct offense. Each offense shall be punished by a fine of not less than five dollars and not more than two hundred to which may be added a revocation of any license issued pursuant to this chapter. Any person may, within six hours of notification of violation pay to the lake patrolman or the city controller as a penalty for, and in full satisfaction of such violation the sum of ten dollars for which a receipt will be given. The failure of such violators to make such payment within six hours shall render such violator subject to the penalties hereinbefore provided for violation of the provisions of this chapter.

SECTION VIII. Section 11.08.070 is amended to read:

11.08.070 Civil Liability. Any person violating any provision of this chapter shall become liable for all damage and expense thereby caused to the city or any other person by reason of such violation in addition to the penalties herein provided.

SECTION IX. Section 11.08.240 is amended to read:

11.08.240 Penalties. Each day that a condition or act in violation of this chapter remains or continues shall be deemed on the part of the person guilty of such violation, to be a separate and distinct offense. Each offense shall be punished by a fine of not less than five dollars nor more than two hundred dollars, to which shall be added the revocation of the license for the boat from which such violation occurs.

SECTION X. Section 12.04.010 is amended to read:

12.04.010 Repair of Sidewalks--Duty of Adjacent Owner. Every owner or occupant of any house or other building, and any owner of any vacant lot within the city, shall keep the sidewalks in front of such house, bulding or vacant lot in repair. Any person neglecting or refusing to comply with the provisions of this section, or neglecting or refusing to put the sidewalk in front of any house, building or vacant lot owned or occupied by him in repair after having received notice from the city engineer to do so shall be subject to general penalty provisions of this code.

SECTION XI. Section 12.23.060 is amended to read:

12.23.060 Penalties. Any person, firm or corporation violating any of the provisions of this chapter shall be fined in an amount not exceeding one thousand dollars. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

SECTION XII. Chapter 14.04, entitled "Disorderly conduct", is repealed.

SECTION XIII. Chapter 14.12, entitled "Loitering and Vagrancy", is repealed.

SECTION XIV. Section 14.36.160 is amended to read:

14.36.160 Fences Adjacent to Swimming Pools, Ponds, Quarries or Other Water-filled Excavations--Required. Every person in possession of land upon which is situated a swimming pool, pond, quarry or other water-filled excavation exceeding the depty of thirty-six inches at its deepest point who fails to fence the area adjacent to such swimming pool, pond, quarry or excavation with a chain link, wire or board fence at least five feet high and with no opening, except gates or doors, of more than four inches in width so that the pool, pond, quarry or excavation is made inaccessible to children, shall be subject to the general penalty provisions of this code.

SECTION XV. Section 14.36.170, entitled, "Fences adjacent to swimming pools, ponds, quarries, or other water-filled excavations--Penalty for violation of Section 14.36.160," is repealed.

SECTION XVI. Chapter 15.16, entitled "Violations", is repealed.

SECTION XVII. Section 15.60.080 is amended to read:

15.60.080 Penalties. Any person violating any of the provisions of this ordinance shall be fined not more than Three Hundred Dollars. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

SECTION VIII. Section 15.68.230 is amended to read:

15.68.230 Penalty for Violation of Chapter. Any person who violates any of the provisions of this chapter or any person who aids, abets, or assists therein shall, upon being found guilty thereof, be subject to a fine of any amount not exceeding fifty dollars for each offense or violation.

SECTION XIX. Section 15.84.020 is amended to read:

15.84.020 Prohibited--Penalties. Soliciting in the roadway is prohibited in the city. Any person who violates any of the provisions of this section shall, upon being found guilty thereof, be punished by a fine of not more than one thousand dollars.

SECTION XX. Section 18.04.110 is amended to read:

18.04.110 Penalties. (a) Any person who violates any of the provisions of the codes adopted in Section 18.04.010 or fails to comply therewith, or who violates or fails to comply with any order made thereunder, or who builds in violation of any detailed statement of specifications or plans submitted and approved thereunder, and from which no appeal has been taken, or who fails to comply with such an order within the time fixed herein, is severally, for each and every such violation and noncompliance, respectively, subject to the penalty provided in Section 1.01.130. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and, all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and, when not otherwise specified, each ten days that prohibited conditions are maintinaed shall constitute a separate offense.

(b) The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

SECTION XXI. This ordinance shall be in full force and effect from and after its passage by the Common Council and approval by the Mayor.

PASSED and ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 21st day of January, 1981.

Alfred I. Towell, President
Bloomington Common Council

ATTEST:

Nora M. Connors, City Clerk

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 22nd day of January, 1981.

Nora M. Connors, City Clerk

SIGNED and APPROVED by me upon this 27th day of January, 1981.

Francis X. McCloskey, Mayor
City of Bloomington

SYNOPSIS

Indiana law prohibits cities from punishing for offenses that are violations of state statutes or from imprisoning violators of city ordinances, and this ordinance would amend and repeal various sections of the Municipal Code to bring it within the bounds of the city's powers.