Passed 8-0
Sandberg absent

ORDINANCE 12-23

TO AMEND TITLE 6 (HEALTH AND SANITATION), TITLE 15 (VEHICLES AND TRAFFIC), AND TITLE 17 (CONSTRUCTION REGULATIONS) OF THE BLOOMINGTON MUNICIPAL CODE
- Re: Adjusting Fees and Fines Found in Chapter 6.06 (Refuse and Weeds), Chapter 15.48 (Removal and Impoundment of Vehicles), Section 15.60.080 (Services and Fees), and Section 17.08.050 (Fees) and Making Other Related Changes to those Provisions

WHEREAS, Chapter 6.06 of the Bloomington Municipal Code sets forth provisions regarding the regulation of refuse and weeds in the City's jurisdictional limits; and

WHEREAS, the City of Bloomington is concerned with properties which regularly and consistently fail to comply with the requirements of Chapter 6.06, which negatively impacts the Bloomington community's livability, and the City therefore feels modification to the current Chapter's penalty section is in order; and

WHEREAS, Indiana Code Chapter 36-8-10.1 requires a municipality, when substantially altering an existing ordinance which regulates the removal of weeds and rank vegetation, to comply with certain notice requirements not presently found within Chapter 6.06; and

WHEREAS, Bloomington Municipal Code Chapter 15.48 regulates the removal and impoundment of vehicles, and the City of Bloomington Police Department wishes to offset the cost of enforcing and administering said Chapter through imposition of an administrative fee; and

WHEREAS, to the extent practical, the City of Bloomington wishes to offset the cost of the Police Department providing accident reports under Bloomington Municipal Code Section 15.60.080(a)(1) by increasing an administrative fee; and

WHEREAS, to the extent practical, the City of Bloomington wishes to offset the cost of the Police Department providing fingerprinting services under Bloomington Municipal Code Section 15.60.080(a)(5) by increasing an administrative fee; and

WHEREAS, Bloomington Municipal Code Sections 15.60.080(a)(1), (6), (7), (10), (12) and (14) reference Indiana Code provisions which have been modified or repealed, which therefore requires the aforementioned municipal code sections to also be modified or repealed; and

WHEREAS, Bloomington Municipal Code Section 17.08.050(e) sets a fee of fifty-five dollars to obtain a permit for either a temporary or a permanent sign, which does not cover the considerable amount of time and resources taken in processing and issuing these sign permits and should be raised; and

WHEREAS, Bloomington Municipal Code Section 17.08.050(e) also references provisions in Bloomington Municipal Code Title 20 which have since been amended and are no longer applicable and should be amended to accurately reflect these prior changes and to ensure consistency in the overall municipal code;

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

SECTION 1. Chapter 6.06 of the Bloomington Municipal Code entitled "Refuse and Weeds" shall be deleted and replaced with Chapter 6.06 "Garbage and Weeds." The codifier shall insert the title in the Table of Contents for Title 6 "Health and Sanitation." Chapter 6.06 shall read as follows:

CHAPTER 6.06

GARBAGE AND WEEDS

Sections:

6.06.010 Definitions.
6.06.020 Deposit of garbage.
6.06.030 Use of city garbage containers.
6.06.040 Use of private garbage containers.
6.06.050 Excessive growth.
6.06.060 Inspections.
6.06.070 Enforcement procedures.

6.06.080 Failure to remedy.
6.06.090 Cost of removal by city.
6.06.100 Vehicles hauling garbage.
6.06.110 Violations.

6.06.010 Definitions.

As used in this chapter, the following terms have the following meanings unless otherwise designated:

"Board" means the City of Bloomington Board of Public Works.

"Garbage" means putrescible animal and vegetable wastes, resulting from handling, preparation, cooking and consumption of food; refuse; and rubbish.

"HAND" means the City of Bloomington's Housing and Neighborhood Development Department.

"Owner" means a person holding legal title to real property within the City of Bloomington.

"Person" means an individual, partnership, corporation, trust, or any commercial association or venture, however defined.

"Putrescible" means substances which are subject to organic decomposition.

"Recyclable materials" means those materials designated by the Board or its designee as those which may be collected for recycling purposes. Such materials may include, but may not be limited to, aluminum products, clean glass containers, bimetal containers, newspapers, magazines and periodicals, and plastic containers. What constitutes "recyclable materials" may change depending on what the Board or its designee is able to dispose of through their recycling efforts.

"Refuse" means all putrescible and nonputrescible solid wastes, including animal wastes, garbage, rubbish, ashes, street cleanings, and solid market and industrial wastes.

"Rubbish" means nonputrescible solid wastes consisting of both combustible and noncombustible wastes, such as paper, cardboard, tin cans, wood, glass, bedding, crockery, construction debris, and similar materials.

"Weed" means any plant or vegetation classified as a detrimental plant, invasive plant or noxious weed by either the State of Indiana under authority of I.C. 15, entitled "Agriculture and Animals" or the United States government in accordance with 7 USC 7701. The term shall also includes the vegetation listed in Section 20.05.059 of the Bloomington Municipal Code

"Yard waste" means grass, weeds, leaves, brush, tree trimmings, hedge clippings, and other yard and garden materials.

6.06.020 Deposit of garbage.

It is unlawful for any person to throw, place, or scatter any garbage, recyclable materials or yard waste over or upon any premises, street, alley, either public or private, or to suffer or permit any garbage, recyclable materials or yard waste to be placed or deposited on the premises owned, occupied or controlled by such person either with or without the intent to later remove, cover, or burn it. This provision shall not restrict the filling of low lands within the city with brick, stone, sand, gravel, cold ashes, or dirt after the appropriate permit has been obtained from the City Engineering Department.

6.06.030 Use of city garbage containers.

It is unlawful for any person to deposit any household or commercial garbage, recyclable materials or yard waste in any receptacle maintained on a sidewalk or at any other public location by the city for disposal of refuse by pedestrians.

6.06.040 Use of private garbage containers.

It is unlawful for any person to deposit garbage, recyclable materials or yard waste in a receptacle or dumpster unless said person has permission from the owner of the receptacle or dumpster to use it for garbage, recyclable materials or yard waste disposal.

6.06.050 Excessive growth.

It is unlawful for the owner of any lot or tract of ground within the city to allow it to become overgrown with weeds, grass, or noxious plants beyond the height of eight inches or to such extent that the growth is detrimental to the public health and constitutes a nuisance.

6.06.060 Inspections.

It shall be the duty of the police department or HAND to make a careful inspection of any lots, grounds and tracts of land situated within the corporate limits of the city for the purpose of determining whether there is a violation of this chapter.

6.06.070 Enforcement procedures.

(a) If the director of HAND, the assistant director, any neighborhood compliance officer, or any other designee of the director (collectively referred to as "staff") determines that there is a violation of this chapter, that person shall issue a notice of violation (NOV) to the responsible party. For purposes of issuing a NOV, the following persons shall be considered responsible parties, with liability for fines and responsibility for remedy of the violation: persons with any possessory interest in the property; property owner(s); and/or any persons who have caused the violation.

Liability for fines shall not attach to nonpossessory property owner(s) for a period of seven days following issuance of the NOV, provided that the nonpossessory property owner(s) presents to HAND, within seven days after issuance of the NOV, a true and exact copy of any and all leases in effect during the time period covered by the NOV.

(b) The NOV shall be in writing and shall be served on one or more of the responsible parties in one or more of the following manners: delivery in person; by first class mail; and/or by placement in a conspicuous place on the property where a violation occurs. The notice shall state:

(1) The location of the violation;
(2) The nature of the violation;
(3) The period of correction (if any);
(4) The fine assessed for the violation;
(5) Additional remedies the city may seek for violation (including abatement of the violation by HAND or by a private contractor hired by HAND);
(6) That the fine is to be paid at HAND;
(7) That the fine may be contested in the Monroe County Circuit Courts;
(8) That the NOV may be appealed to the Board, provided the appeal is in writing and filed with the Board no later than seven (7) days from the date of the NOV.

(c) Schedule of Fines. The initial penalty or fine for all violations of this chapter shall be fifty dollars. A second violation of this chapter in any twelve-month period shall be subject to a penalty or fine of one hundred dollars. A third and all subsequent violations of this chapter in any twelve month period shall be subject to a penalty or fine of one hundred and fifty dollars. The twelve-month period described above shall begin on August 1 of each year and end on July 31 of the following year.

(d) If the responsible party fails to pay any accumulated fines, the city's legal department may collect said fines in any manner authorized by law.

6.06.080 Failure to remedy.

(a) HAND may file a request with the Board for the abatement of any property still in violation of a NOV after the correction period in the NOV has expired.

(b) The property owner who is the subject of an abatement request by HAND shall be notified of the request; said notice shall state the following:

(1) The location of the violation;
(2) The nature of the violation;
(3) A statement that abatement of the violation is being sought;
(4) A statement that the abatement may be provided by the city or by a private third-party contractor hired by the city to perform the abatement;
(5) A statement that the property owner will be liable for any and all costs associated with the city, and/or the city's contractor, abating the property;
(6) A statement that if the property owner fails to reimburse the city for any and all costs associated with an abatement of his property, said costs shall be filed with the county auditor and placed on the tax duplicate for the property at issue; said costs being collected as taxes are collected;
(7) The date, time and location of the Board's hearing; and
(8) A statement indicating that the property owner is entitled to appear at said hearing and is entitled to present arguments and evidence in his defense at said hearing.

The abatement notice described in the above subsection (b) shall be in writing and shall be served on the property owner via certified mail, return receipt requested. If the abatement notice is returned as undeliverable the notice shall be given by personally delivering a copy of the abatement notice to the property owner; leaving a copy of the abatement notice at the usual place of abode of

the property owner; sending by first class mail a copy of the abatement notice to the last known address of the property owner; or by serving the agent of the property owner.

(c) At the abatement hearing the Board shall hear evidence from all parties and render its decision in writing.

(d) All appeals from the Board's decision on an abatement request shall be made to courts of competent jurisdiction within ten days.

(e) If an initial notice of abatement was provided in accordance with this Section, and Section 6.06.070 was first followed, a continuous abatement notice may be posted at the property at the time of abatement instead of by certified mail. A continuous abatement notice serves as notice to the property owner that each subsequent violation of this chapter during the same twelve-month period for which the initial NOV was provided may be abated by the City or its private third-party contractors.

6.06.090 Cost of removal by city.

If the landowner fails to remedy a violation under this chapter, the controller shall make a certified statement of the actual cost incurred by the city for any abatement conducted by the city or its private third-party contractor. The statement shall be served on the property owner by certified mail, return receipt requested. The property owner shall pay the amount in the statement to the city legal department within ten days after receiving it. If the landowner should fail to pay within the ten-day period, a certified copy of the statement of costs shall be filed in the office of the county auditor. The auditor shall place the amount claimed on the tax duplicate against the property affected by the work. The amount shall be collected and disbursed to the general fund of the city.

6.06.100 Vehicles hauling garbage.

(a) It is unlawful to transport garbage, recyclable material, yard waste, stone or other materials that are likely to fall from a vehicle unless such materials are covered and secured so as to prevent their deposit on public and private property.

(b) Any materials falling from a vehicle shall be promptly removed by the person responsible for their deposit. If such person neglects or refuses to remove the materials, the city shall cause such materials to be removed at the expense of the person responsible, who shall be liable to pay the city the cost of the removal.

6.06.110 Violations.

Violations of the provisions of this chapter are declared a public nuisance. Each day that a violation continues shall constitute a separate violation.

SECTION 2. A new Section 15.48.070 entitled "Administrative Fee" shall be created and shall read as follows:

(a) If a vehicle is removed and impounded pursuant to Section 15.48.020, then in addition to any towing and storage charges assessed under Section 15.48.030, an administrative fee of twenty-five dollars ($25.00) shall be levied when the vehicle owner or last operator obtains a copy of the Abandoned/Impounded Vehicle Report from the Police Department.

(b) This administrative fee shall be for the purpose of offsetting, to the extent practicable, the cost to the City of implementing, enforcing and administering the provisions of this Chapter.

(c) The administrative fee shall be deposited into the City's General Fund.

SECTION 3. Section 15.60.080(a)(1) shall be deleted and replaced with the following:

(1) Accident Reports. The police department is authorized to charge a fee of eight dollars for copies of accident reports in accordance with the Indiana Code. The fee shall be deposited into the local law enforcement continuing education fund established by Indiana Code 5-2-8.

SECTION 4. Section 15.60.080(a)(5) shall be amended to read as follows:

(5) Fingerprinting for Noncriminal Purpose. The police department shall charge a fee of fifteen dollars per card to fingerprint any City resident who requires the prints for reasons other than official business of the City. The police department shall charge a fee of twenty-five dollars per card to fingerprint any non-City resident who requires the prints for reasons other than official business of the City; additional cards for non-City residents shall be

charged a fee of fifteen dollars per additional card. Requests for fingerprints for child protection shall be exempt from these fees.

SECTION 5. Section 15.60.080(a)(6) shall be amended by deleting "a special vehicle inspection fund. Appropriation by the Common Council shall only be used for law enforcement purposes" in the second sentence and replacing it with "the local law enforcement continuing education fund established by Indiana code 5-2-8" so that the section shall read as follows:

(6) Certificate of Title—Vehicle Inspections. In accordance with Indiana Code 9-29-4-2 the police department shall charge a fee of five dollars to inspect a vehicle prior to the owner's application to the Bureau of Motor Vehicles for a certificate of title. Revenues shall be deposited in the local law enforcement continuing education fund established by Indiana code 5-2-8.

SECTION 6. Section 15.60.080(a)(9) shall be amended by deleting the word "Division" and replacing it with the word "Bureau" and shall be further amended by deleting the phrase "State Department of Public Welfare" and replacing it with "department of child services" so that the section will read as follows:

(9) Limited Criminal History Release. The fee for processing a request for release is seven dollars in accordance with Indiana Code 10-13-3-30(a)(3). Requests from the parent locator service of the Child Support Bureau of the Department of Child Services are exempt from this fee.

SECTION 7. Section 15.60.080(a)(12) shall be amended to read as follows:

(12) Handgun Applications. In accordance with Indiana Code 35-47-2-3 the fee for processing handgun applications shall be as follows:

(A) From a person applying for a four year handgun license, a ten dollar application fee, five dollars of which shall be refunded if the license is not issued;
(B) From a person applying for a lifetime handgun license who does not currently possess a valid Indiana handgun license, a fifty dollar application fee, thirty dollars of which shall be refunded if the license is not issued; and
(C) From a person applying for a lifetime handgun license who currently possesses a valid Indiana handgun license, a forty dollar application fee, thirty dollars of which shall be refunded if the license is not issued.
(D) These fees shall be deposited in the local law enforcement continuing education fund established by Indiana Code 5-2-8."

SECTION 8. Sections 15.60.080(a)(7), (10), and (14) shall be deleted and the entire Section shall be renumbered accordingly.

SECTION 9. Section 17.08.050(e) shall be amended by deleting all present references to sign permits and replacing said references to read as follows:

Temporary Sign Permits Temporary signs erected under Title 20 of this Code.	$75.00 per application
Permanent Sign Permits Permanent signs erected under Title 20 of this Code.	$125.00 per sign

SECTION 10. If any section, sentence or provision of this ordinance, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 11. This ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington, approval of the Mayor and all other requirements of the Indiana Code.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 3rd day of OCTOBER, 2012.

TIMOTHY MAYER, President
Bloomington Common Council

ATTEST:

REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 4th day of OCTOBER, 2012.

REGINA MOORE, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 4th day of October, 2012.

MARK KRUZAN, Mayor
City of Bloomington

SYNOPSIS

This is an omnibus piece of legislation which has four essential parts.

The first part is a proposed repeal and replacement of Chapter 6.06 which has seven key components. First, because a substantial modification of an already existing ordinance which regulates the removal of weeds and rank vegetation requires the presence of certain notice provisions under Indiana Code Chapter 36-7-10.1 the following must be added to the Chapter: (a) the word "weed" must be defined, and the City has chosen to use a definition utilized by the State and Federal governments and provide a further list established by the City's environmental planner; (b) if the City abates a violation notice of that abatement must occur in a certain manner; and (c) if a property has already been the subject of an abatement, the City can post a continuous abatement notice without having to seek Board of Public Work approval for each new abatement request. Second, the current ordinance repeatedly uses the phrase "rubbish, trash and refuse." In an effort to consolidate this phrase and make it more identifiable to the average public the ordinance rolls all of those words into one commonly defined word called "garbage". Third, the ordinance adds a new prohibition against dumping trash into a private dumpster without having the owner of said dumpster's permission to do so. Fourth, the ordinance clarifies how and when a person can appeal a Notice of Violation versus an Abatement Order. Fifth, while not required by State law, in an effort to provide the community with a more open and transparent government, the ordinance specifically advises citizens that an abatement can be effectuated by either the City or by a private contractor hired by the City. Sixth, the ordinance adopts a new fine schedule—(a) the first violation in a 12-month period results in a $50.00 fine; (b) the second violation in a 12-month period results in a $100.00 fine; (c) the third and all subsequent violations in a 12-month period results in a $150.00 fine; and (d) the 12-month period will run from August 1 to the following July 31. Seventh, "habitual nuisance" properties can regularly avoid penalties under the current ordinance. The current ordinance prohibits a fine from being issued to a rental property if one of two things occur; either the landlord provides HAND with a copy of a valid lease within 7 days of the notice of violation or the violation is remedied within 7 days. What happens is that "habitual nuisance" properties will regularly clean up the violation within 7 days of getting a notice, but since there is no penalty assessed for the violation, the violations continue to occur on a regular and consistent basis. In an effort to alleviate the "habitual nuisance" properties, this ordinance provides that the only way

a landlord can avoid being fined for his tenants violation of the ordinance is to provide the City with a copy of a valid lease within 7 days of the notice—this will allow the City to always pass along a penalty to the tenants who violate the ordinance, thereby hopefully reducing the number of "habitual nuisance" properties within the community.

The second part adds a new section to Chapter 15.48 (Removal and Impoundment of Vehicles). Specifically the newly created Section 15.48.070 imposes a $25.00 administrative fee upon any person whose vehicle is towed pursuant to Chapter 15.48. The purpose of the administrative fee is to offset, to the extent practicable, the cost to the City's Police Department of implementing, enforcing and administering the provisions of Chapter 15.48.

The third part amends Section 15.60.080 (Miscellaneous Traffic Rules) in five key ways. First, it raises the fee for fingerprinting services provided by the Police Department. Second, it provides differing fees for City residents requesting this service versus non-City residents requesting the service. The fee for City residents shall be $15.00 per card. The fee for non-City residents shall be $25.00 for one card, and $15.00 for each additional card. Third, it raises the fee for obtaining accident reports from $5.00 to $8.00. Fourth, it amends the City's ordinance to accurately reflect the Indiana Code's mandate as to which funds certain collected fees are to be deposited. Fifth, it amends the City's ordinance to accurately reflect the Indiana Code's requirement on how much of a fee the City is to charge for handgun applications. Sixth, it deletes those provisions of the ordinance that were the result of Indiana Code requirements which have now been repealed by the Indiana General Assembly.

The fourth and final part amends Section 17.08.050 (Fees) by increasing the fee for a temporary sign permit and a permanent sign permit in Part (e). The temporary sign permit fee is raised from $55.00 an application to $75.00 an application and the permanent sign permit fee is raised from $55.00 a sign to $125.00 a sign. In addition to raising the fee, the change makes it clear that each new application, regardless of whether or not it's a renewal application, will be charged the same fee. Finally, the ordinance changes an incorrect reference to a Title 20 provision and replaces it with the correct statement of the law.

Signed copies to:
legal
controller
HAND
Public Works
Police Admin
Planning
HT for ADU.

CA/CA (2)
BMC (2)
Clerk (2)