

**(h) Towing Vehicle from Rental Property.**

(1) If after twenty-four (24) hours the person who owns a vehicle believed to be abandoned on private property has not removed the vehicle from the private property, the person who owns or controls the private property on which the vehicle is believed to be abandoned may have the vehicle towed from the private property.

(2) Notwithstanding paragraph (1) above, in an emergency situation a vehicle believed to be abandoned on private property may be removed immediately. As used in this subsection, **emergency situation** means that the presence of the vehicle believed to be abandoned interferes physically with the conduct of normal business operations of the person who owns or controls the private property or poses a threat to the safety or security of persons or property, or both.

(i) **Notice to Public Agency of Vehicle Abandoned on Rental Property.** A towing service that tows a vehicle under § 91.3.5(h) shall give notice to the public agency that the abandoned vehicle is in the possession of the towing service.

(j) **Complaint by Person Owning or Controlling Private Property.** Under complaint of a person who owns or controls private property that a vehicle has been left on the property for at least forty-eight (48) hours without the consent of the person who owns or controls the property, an officer shall follow the procedures set forth in §§ 91.3.5(c) through 91.3.5(f).

**(k) Abandoned Vehicle Report.**

(1) Within seventy-two (72) hours after removal of an abandoned vehicle to a storage yard or towing service under §§ 91.3.5(e), 91.3.5(f) or 91.3.5(h), the public agency or towing service shall conduct a search of national data bases, including a data base of vehicle identification numbers, to attempt to obtain the last state of record of the vehicle in order to attempt to ascertain the name and address of the person who owns or holds a lien on the vehicle.

(2) A public agency or towing service that obtains the name and address of the owner of or lienholder on the vehicle shall, not later than seventy-two (72) hours after obtaining the name and address, notify the person who owns or holds a lien on the vehicle of the:

- (A) Name;
- (B) Address; and
- (C) Telephone number;

of the public agency or towing service. The notice must be made by certified mail or a certificate of mailing or by means of an electronic service approved by the Bureau.

(3) Notwithstanding I.C. 9-22-1-4, a public agency or towing service that fails to notify the owner of or the lienholder on the vehicle, as set forth in this division, may not collect additional storage costs incurred after the date of receipt of the name and address obtained.

(l) **Means of Vehicle Identification Not Available; Disposal without Notice.** If a vehicle or parts are in such a condition that vehicle identification numbers or other means of identification are not available to determine the person who owns or holds a lien on the vehicle, the vehicle may be disposed of without notice.

(m) **Purchasers at Public Sales.** A person that purchases a vehicle under this chapter shall be furnished a bill of sale for each abandoned vehicle sold by the public agency upon paying the fee for a bill of sale imposed by the public agency. The fee may not exceed \$6 for each bill of sale. A person that purchases a vehicle under this chapter must:

- (1) Present evidence from a law enforcement agency that the vehicle purchased is roadworthy, if applicable; and
- (2) Comply with the applicable requirements under I.C. 9-17; to obtain a certificate of title for the vehicle.

(n) **Payment of Removal, Storage and Disposition Costs.** The costs for removal and storage of an abandoned vehicle or parts not claimed by the person who owns or holds a lien on a vehicle shall be paid from the abandoned vehicle account established under § 91.3.5(q). The charge payable by the person who owns or holds a lien on a vehicle for towing, storing, or removing an abandoned vehicle or parts may not exceed the limits established by ordinance adopted under § 91.3.5(q).

(o) **Sale Proceeds Credited Against Removal, Storage and Disposition Costs.** The proceeds of sale of an abandoned vehicle or parts under this chapter shall be credited against the costs of the removal, storage, and disposal of the vehicle.

(p) **Sales; Deposit. Of Proceeds; Payment of Public Agency Costs; Appropriations.**

(1) This section applies to sales of abandoned vehicles or parts by local units.

(2) The proceeds from the sale of abandoned vehicles or parts, including:

- (A) Charges for bills of sale; and

(B) Money received from persons who own or hold liens on vehicles for the cost of removal or storage of vehicles; shall be deposited with the City Clerk-Treasurer and placed by the Clerk-Treasurer in the City's abandoned vehicle fund.

(3) The costs incurred by the City in administering this chapter shall be paid from the abandoned vehicle fund.

(4) The fiscal body shall annually appropriate sufficient money to the fund to carry out this chapter. Money remaining in the fund at the end of a year remains in the fund and does not revert to the general fund.

(5) Notwithstanding paragraph (4) above, the City Council may transfer money from the fund.

(q) **Abandoned Vehicle Fund.** There is hereby created the City of Berne Abandoned Vehicle Fund which shall be a revolving fund, and all moneys paid to the City for the cost of removal, storage and disposal of abandoned vehicles shall be placed in such fund and in no other place. Such fund shall also have added to it such moneys as may be appropriated by the Common Council and such moneys also shall not revert but shall remain in the Abandoned Vehicle Fund.

(r) **Liability for Loss or Damage to Vehicle or Vehicle Parts.** The fund are not liable for loss or damage to a vehicle or parts occurring during the removal or storage of a vehicle or parts under this chapter:

- (1) A person who owns, leases, or occupies property from which an abandoned vehicle or its contents or parts are removed.
- (2) A public agency.
- (3) A towing service.
- (4) An automobile scrap yard or storage yard.
- (5) An agent of a person or entity listed in paragraphs (1) through (4) above.

**OUTDOOR BURNING REGULATIONS****§ 91.4.1 Application of Outdoor Burning Regulations.**

All outdoor burning of any material is banned within the municipal City limits except as provided by § 91.4.2 and I.C. 13-17-9.

**§ 91.4.2 Exceptions.**

(a) The following types of fires are permitted subject to the limitations found in subsection (b):

- (1) Fires used for celebrating school pep rallies.
- (2) Fires used for celebrating scouting activities.
- (3) Fires used for recreational and cooking purposes, i.e., camp fires.

(4) Residential burning where residence contains four (4) or fewer units. Burning shall be in a noncombustible container sufficiently vented to induce adequate primary air with enclosed sides, a bottom, and a mesh covering with opening no larger than ¼-inch square. Burning is prohibited in apartment complexes and mobile home parks.

(5) Farm burning and burning by the Department of Natural Resources as allowed by I.C. 13-17-9.

(6) Burning with prior receipt of a variance application and approval of the Indiana Air Pollution Control Board or its designated agent as allowed by 326 IAC 4-1-1.

(b) All permitted type of fires shall be subject to the following:

- (1) Only untreated wood products shall be burned unless otherwise stated.
- (2) Fires shall be attended at all times until completely extinguished.
- (3) If fires create an air pollution problem, a nuisance, a health hazard, or a fire hazard, they shall be extinguished. A nuisance shall be defined so as to include a complaint regarding the burning from any downwind property owner or occupant.
- (4) All residential burning shall occur between sunrise and sunset, during which the fires may be replenished, but only in such a manner that all of the burning material is consumed by sunset.
- (5) No burning shall be conducted unless the wind is at least five (5) m.p.h. and no more than 15 m.p.h.
- (6) No burning shall be conducted on property owned by another party, including publicly-owned streets, roads, and highways.
- (7) No burning shall be conducted on any paved street or alley within the city.
- (8) No burning shall be conducted within 100 feet of a structure owned by another party.
- (9) No burning shall be conducted within 100 feet of a power line.

**§ 91.4.3 Enforcement.**

The City of Berne Fire Department and the City of Berne Police Department shall have authority for issuing citations for violations of this division.

**§ 91.4.4 Fines.**

(a) Any person found to be in violation of this division shall be subject to a fine of \$200 for each violation, to be paid to the City Clerk-Treasurer.

(b) The Adams County Superior Court shall be the court of jurisdiction for determining all violations cited, pursuant to this division.

**MISCELLANEOUS REGULATIONS****§ 91.5.1 Nondisposal of Dangerous and Toxic Materials.**

Any and all collected trash, garbage and/or refuse containing potentially dangerous and toxic materials must be otherwise legally disposed of, and will not be subject to City trash pickup.

**§ 91.5.2 Smoking Prohibited in the Berne City Facilities.****(a) Definitions.**

**Berne City Facilities.** Berne City Facilities shall include the buildings and the grounds surrounding the Berne City Hall, Lehman Park, South Adams Senior Center, Berne Fire Station, Berne Public Safety Building, Berne City Garage and Water Works, and Berne Waste Treatment Plant, but shall exclude all public streets, alleys and rights-of-ways.

**Person.** Any man, woman, or child, regardless of age.

**Smoke or Smoking.** To ignite or cause to be ignited tobacco or a tobacco product or derivative, which includes but is not limited to tobacco, marijuana or a derivative thereof, such that the product or derivative emits a gas or cloud which is commonly understood to be smoke, which may be or is intended to be inhaled by any person.

(b) **Prohibition.** No person shall have in his possession any lighted tobacco product, tobacco derivative, including but not limited to pipes, cigars, cigarettes, or other devices used for smoking of tobacco or tobacco-like products, which includes but is not limited to tobacco, marijuana or a derivative thereof, within or upon the grounds of Berne City Facilities.

(c) **Fine.** Any person who violates the provisions of this section shall be guilty of an infraction, punishable by a fine of \$100.

(d) **Venue.** The Adams County Superior Court shall be the court of proper venue and jurisdiction for the enforcement of this section.

(f) **Citations.** Citations for violation of this section may be issued by any member of the City of Berne Police Department.

**§ 91.5.3 Noise Regulations.**

(a) No person shall play, use or operate any machine, motor vehicle, device, or thing that produces or reproduces sound if the sound therefrom generated, made, caused or otherwise emitted is audible 50 feet or more from its source:

- (1) At a level of more than 55 decibels for a period of five (5) minutes or more within any 30-minute period of time between the hours of 8:00 a.m. and 10:00 p.m., when measured on a dB(A) scale, or
- (2) At a level of more than 50 decibels for a period of five (5) minutes or more within any 30-minute period of time between the hours of 10:00 p.m. and 8:00 a.m., when measured on a dB(A) scale, or
- (3) At a level of more than 70 decibels for any period of time, when measured on a dB(A) scale.

(b) The following are exempted from the provisions of this section:

- (1) Sounds emitted from authorized emergency vehicles.
- (2) Lawn mowers, weed blowers, garden tractors, construction and repair equipment, and similar home power tools, when properly muffled, between the hours of 6:00 a.m. and 10:00 p.m. only.
- (3) Burglar alarms and other warning devices when properly installed, providing the cause for such alarm or warning device sound is investigated and turned off within a reasonable period of time.
- (4) Parades, festivals, carnivals, fairs, celebrations, concert performances, band and drum corps performances, and artistic performances, as well as any rehearsals for same, and all other events authorized by the Board of Public Works and Safety or other appropriate governmental entity.
- (5) Attendant noise connected with the actual performance of athletic or sporting events and practices related thereto.
- (6) The emission of sound for the purposes of alerting persons to the existence of an emergency, or for the performance of emergency construction, repair or other work.
- (7) Sounds associated with the use of legal consumer fireworks during the following days and times:
  - a. Between the hours of 5:00 p.m. and two (2) hours after sunset on June 29, June 30, July 1, July 2, July 3, July 5, July 6, July 7, July 8 and July 9;
  - b. Between the hours of 10:00 a.m. and 12:00 midnight on July 4;
  - c. Between the hours of 10:00 a.m. on December 31 and 1:00 a.m. on January 1.
- (8) Sounds associated with the use of the City of Berne Police Department Firing Range.
- (9) Sounds associated with the normal conduct of legally established non-transient businesses, organizations and governmental entities, when such sounds are customary, incidental and within the normal range appropriate for such use.
- (10) Rubbish collection utilizing any mechanical equipment between the hours of 6:00 a.m. and 9:00 p.m. only.
- (11) Subject to the other provisions of this section, and any other applicable law, rule or regulation, those sounds associated with motor vehicles lawfully operating on City streets.
- (12) Sounds associated with equipment or animals lawfully utilized by handicapped persons to accommodate their handicap.
- (13) Sounds associated with the operation of aircraft or snow removal equipment.
- (14) Sounds associated with church and temple bells and chimes.
- (15) Sounds associated with building construction between the hours of 7:00 a.m. and 9:00 p.m. only, as well as, and to the extent that, such construction is necessitated at other times due to a bona fide "emergency," as that term is defined in I.C. 36-1-2-4.5, as the same may be amended from time to time.

(c) No person shall keep any animal which, by causing frequent or long-continuing noise that is audible 50 feet or more from its source when the animal is on public property or 50 feet or more outside of a private property line when the animal is on private property, does disturb the comfort or repose of any other person.

(d) Any person who violates the provisions of this section shall be guilty of an infraction, punishable by a fine as follows:

- (1) First offense: \$25;
- (2) Second offense: \$50;
- (3) Third offense: \$100;
- (4) Fourth and subsequent offenses: \$250.

(e) The Adams County Superior Court shall be the court of proper venue and jurisdiction for the enforcement of this section.

(f) Citations for violation of this section may be issued by any sworn member of the City of Berne Police Department.

**§ 91.5.4 Unsafe Building Regulations.**

(a) **Adoption by reference.** I.C. 36-7-9-1 through 36-7-9-28, as amended from time to time, which addresses unsafe buildings and the enforcement of building standards, is hereby adopted and incorporated in full by this reference, and is supplemented by the additional terms and conditions of this section. Two copies of the same are on file in the office of the Clerk-Treasurer. All proceedings within the City for the inspection, repair, and removal of unsafe buildings shall be governed by this law and the provisions of this subchapter. In the event the provisions of this subchapter conflict with the provisions of I.C. 36-7-9-1 through 36-7-9-28, then the provisions of the state statute shall control.

**(b) Definitions.**

**City** shall refer to the City of Berne, Indiana.

**Director** shall refer to the Building and Planning Director of the City of Berne.

**Hearing Authority** shall refer to the Board of Public Works and Safety.

**Mayor** shall mean the City Executive and the head of the Executive Branch of the City's government.

**Substantial Property Interest** shall refer to any right in real property that may be affected in a substantial way by actions authorized hereunder, including a fee interest, a life estate interest, a future interest, a present possessory interest and/or the equitable interest of a contract purchaser.

**Unsafe Premises** shall refer to an "unsafe building," as defined hereinbelow, and the tract of real property on which the unsafe building is located.

(c) **Nuisance.** All buildings or portions thereof within the City which are determined after inspection by the Director to be "unsafe" as defined in subsection (h) hereinbelow, are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition, or removal in accordance with the terms and conditions of this section.

(d) **Authorized official.** The Director shall be authorized to administer and enforce this section and to proceed under the provisions hereof in ordering the repair, removal or other disposition of any building or structure found to be "unsafe."

(e) **Hearing.** Any hearing required pursuant to such order shall comply with I.C. 36-7-9-7.

(f) **Action performed by contractor.** Pursuant to I.C. 36-7-9-10 and 36-7-9-11, the Mayor may cause any action required by an order of the Director hereunder to be performed by a contractor.

(g) **Authority to determine compliance.** Any provision hereof which provides for the approval or direction of the Director, or any other officer of the City, shall be construed as giving such person only the discretion to determine whether compliance with the rules and standards established by this section have occurred, and not as giving such person any discretionary powers as to the substance of such rules and standards, nor any power to require conditions not prescribed by this section, nor any power to enforce these section provisions in an arbitrary or discriminatory manner.

(h) **Unsafe building defined.** An **Unsafe Building** under this section shall be any building or structure, or any part of a building or structure, that:

- (1) Is in an impaired structural condition that makes it unsafe to a person or property;
- (2) Is a fire hazard;
- (3) Is a hazard to the public health;
- (4) Is a public nuisance;
- (5) Is dangerous to a person or property because of a violation of a statute or ordinance concerning building condition or maintenance;
- (6) Is vacant and not maintained in a manner that would allow human habitation, occupancy or use under the requirements of any statute or ordinance;
- (7) Has any door, aisle, passageway or other means of exit that is not of

sufficient width or size or is not arranged so as to provide safe and adequate means of exit in case of fire or panic;

(8) Has the walking surface of any aisle, passageway, stairway or other means of exit so warped, worn, loose or otherwise unsafe so as not to provide safe and adequate means of exit in case of fire or panic;

(9) Has stress on any material, member or portion thereof, due to dead and/or live loads, that is more than one and one-half times the working stress allowed for new buildings of similar structure, purpose or location;

(10) Has any portion thereof that has been damaged by fire, earthquake, wind, flood or other cause to such an extent that the structural strength or stability thereof is materially less than it was before such event and is less than the minimum requirements for new buildings of similar structure, purpose, or location;

(11) Has any portion, member or appurtenance thereof that is reasonably likely to fail, to become detached or dislodged or to collapse and thereby injure persons or damage property;

(12) Has any exterior portion, member, appurtenance or ornamentation thereon that is not of sufficient strength or stability, or is not anchored, attached or fastened, so as to be capable of resisting a wind pressure of one-half that specified for new buildings of similar structure, purpose, or location without exceeding the working stresses permitted for such buildings;

(13) Has any portion thereof that was warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of new buildings of similar structure, purpose or location;

(14) Is, or has any portion thereof that, because of (1) dilapidation, deterioration, or decay; (2) faulty construction; (3) the removal, movement, or instability of any portion of the ground necessary for the support of such building; (4) the deterioration, decay, or inadequacy of its foundation; or, (5) any other cause, is reasonably likely to partially or completely collapse;

(15) Is, or has any portion thereof that is, manifestly unsafe for the purpose for which it is being used;

(16) Has exterior walls or other vertical structural members that list, lean, or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base;

(17) Shows, exclusive of its foundation, 33% or more damage or deterioration of any supporting member, or 50% or more damage or deterioration of any non-supporting member, enclosure or outside wall or covering;

(18) Has been so damaged by fire, wind, earthquake or flood or has become so dilapidated or deteriorated so as to become (1) an attractive nuisance to children, or (2) freely accessible to persons for the purpose of committing unlawful acts;

(19) Has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by any law of the State of Indiana or any City ordinance or building regulation relating to the condition, location or structure of buildings;

(20) Has, whether or not it was erected in accordance with all applicable laws and ordinances, in any non-supporting part, member or portion, less than 50%, or in any supporting part, member, or portion, less than 66%, of the (1) strength, (2) fire-resisting qualities or characteristics, and/or (3) weather-resisting qualities or characteristics that would be required by law in the case of a newly constructed building thereof of like area, height and occupancy;

(21) Is used or intended to be used for dwelling purposes and, because of inadequate maintenance, dilapidation, decay, damage, faulty construction, or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined by the Adams County Health Department to be unsanitary, unfit for human habitation or in such a condition that it is likely to cause sickness or disease;

(22) Is, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits or lack of sufficient fire-resistive construction, determined by the City of Berne Fire Department to be a fire hazard;

(23) Is the remnant of a building or structure that remains on site after the attempted demolition or destruction of such building or structure; or

(24) Is abandoned for a period in excess of six months, so as to constitute an attractive nuisance or hazard to the public.

(i) **Work performed in workmanlike manner.** All work for the reconstruction, repair, or demolition of buildings and other structures performed pursuant hereto shall be performed in a good and workmanlike manner according to accepted standards and practices in the trade. The provisions of all building laws referenced in I.C. 22-12-1-3, as adopted as rules of the Fire Prevention and Building Safety Commission described in I.C. 22-12-1-6, shall be considered standard and acceptable practices for all matters covered hereby and/or all orders issued by the Director pursuant hereto.

(j) **Unsafe Building Fund.** An Unsafe Building Fund is hereby established in the operating budget of the City in accordance with the provisions of I.C. 36-7-9-14.

(k) **Construction and the like forbidden.** No person, firm, corporation or other entity, whether as owner, lessee, sublessee, or occupant, shall erect, construct, enlarge, alter, repair, move, improve, remove, demolish, equip, use, occupy or maintain any building or premises, or cause or permit the same to be done, contrary to or in violation of any of the provisions of this section and/or any order issued by the Director hereunder.

**(l) Violation.**

(1) Any person violating any provision of this chapter may be subject to a fine in any sum not exceeding \$2,500. The assessment of a monetary penalty shall in no way limit the operation of the penalties provided elsewhere in this chapter.

(2) Any violation of the provisions of this section shall constitute a Class C Infraction for each day such violation continues, except where another penalty is expressly set forth in I.C. 36-7-9 et seq.

(m) **Performance bond.** The Board of Public Works and Safety shall, after proper notice and hearing, adopt a schedule defining forth the maximum amount of performance bonds applicable to various types of actions ordered by the Director hereunder and the amount of the average processing expense incurred in taking the actions necessary hereunder concerning a typical unsafe premises.

(n) **Severability.** Should any section, paragraph, sentence, clause, or phrase of this section be declared unconstitutional or invalid for any reason by a court of competent jurisdiction, the remainder of this section shall continue in full force and effect and not be affected thereby.

**SECTION 2.** Title IX, Chapter 94 of the Berne City Code, is hereby deleted.

**SECTION 3.** Title XIII, Chapter 130, Section 130.03 of the Berne City Code, is hereby deleted.

**SECTION 4.** Title XV, Chapter 150, Sections 150.30, 150.31, 150.32, 150.33, 150.34, 150.35, 150.36, and 150.99 of the Berne City Code, are hereby deleted.

**SECTION 5.** Title I, Chapter 10, Section 10.99 of the Berne City Code, is hereby amended to read as follows:

(A) Any person, firm, or corporation who violates the following specific sections of this Code, shall, upon conviction, be subject to penalties and fines as set out herein.

Code Section	Offense	Fine
§70.01(A)	Disregarding Police Officer Directing Traffic	\$50.00
§70.01(B)	Disregarding Silent Officer Directing Traffic	\$50.00
§70.41	Bicycles - Must Obey All Traffic Laws	\$10.00
§70.42	Bicycles - Disregarding Traffic Control Devices	\$10.00
§70.55	Truck 16,000# Parked at Lehman Park	\$25.00
§71.01	Disregarding Stop Sign	\$25.00
§71.02	Disregarding Yield Sign	\$25.00
§71.03	Illegal Use of Jake/Engine Compression Brake	\$25.00
Ch. 73, Sched. I	Speeding - Designated Speed Zone(s) - 1-10 Mph	\$35.00
Ch. 73, Sched. I	Speeding - Designated Speed Zone(s) - 11-15 Mph	\$45.00
Ch. 73, Sched. I	Speeding - Designated Speed Zone(s) - 16-24 Mph	\$60.00
Ch. 73, Sched. I	Speeding - Designated Speed Zone(s) - 25-35 Mph	\$80.00
§91.1.8	Graffiti	\$2,500 <sup>00</sup>
§91.3.2	Abandoned Vehicle	\$50.00
§91.4.1	Outdoor Burning	\$200.00
§91.5.2	Smoking in Berne City Facilities	\$100.00
§91.5.3	Noise Violation - First Offense	\$25.00
§91.5.3	Noise Violation - Second Offense	\$50.00
§91.5.3	Noise Violation - Third Offense	\$100.00
§91.5.3	Noise Violation - Fourth and Subsequent Offenses	\$250.00
§91.5.4	Unsafe Building Regulations Violation	\$2,500 <sup>00</sup>
§113.02	Failure to Register for Solicitation	\$50.00
§130.01 (A)	Curfew Violation for a Child Ages: 15, 16, 17	\$10.00
§130.01 (B)	Curfew Violation for a Child Ages 14 and Under	\$10.00
§130.02	Discharging a Firearm in City Limits	\$150.00
§130.03	Open Burning - City Street or Alley	\$200.00

(B) A separate offense shall be deemed committed upon each day during which any violation occurs or continues.

**SECTION 5.** This Ordinance shall be in full force and effect from and after its passage and approval by the Mayor and due publication.

Duly passed, adopted and resolved by the Common Council and approved by the Mayor of the City of Berne, State of Indiana, on January \_\_\_\_\_, 2017.

**COMMON COUNCIL OF THE CITY OF BERNE**

Gregg A. Sprunger, President  
 Ronald N. Dull  
 Philip E. Provost  
 Curtis L. Wurster  
 Mark D. Wynn

**MAYOR AND PRESIDING OFFICER**

William F. McKean

**ATTEST:**

Gwendolyn J. Maller, Clerk-Treasurer