

**VILLAGE OF ELBERTA
TALL GRASS AND WEED ORDINANCE # ____**

An ordinance to secure the public health, safety and welfare of the residents and property owners, by the control and regulation of the height of tall grass and weeds in subdivided lands and upon lands along improved streets within the Village; to provide penalties for the violation thereof and to repeal all ordinances or parts of ordinances in conflict therewith.

**THE VILLAGE OF ELBERTA,
BENZIE COUNTY, MICHIGAN ORDAINS:**

SECTION 1. Title and Applicable Seasons.

This ordinance shall be known and cited as the Village of Elberta Tall Grass and Weed Ordinance, and shall be applicable and in full force and effect from May 1st through October 31st of each year.

SECTION 2. Purpose

The Village hereby finds that tall grass and weeds can have a blighting effect on neighborhoods and can provide a refuge for vermin and insects. The purpose of this ordinance is to secure the public health, safety and general welfare of the residents and property owners of the Village of Elberta by regulating the height grass and weeds is allowed to grow in certain areas of the Village in which more people reside in close proximity.

SECTION 3. Definitions

A. Grass: any type of grass or weed, but not including crops grown as a source of income, including but not limited to corn, oats or barley.

B. Weeds: "weeds" shall include Canada thistle (*Cirsium arvense*), dodders (any species of *Cuscuta*), mustards (charlock, black mustard and Indian mustard, species of *Brassica* or *Sinapis*), wild carrot (*Daucus carota*), bindweed (*Convolvulus arvensis*), perennial sowthistle (*Sonchus arvensis*), hoary alyssum (*Berteroa incana*), ragweed (*ambrosia elatior* 1) and poison ivy (*rhus toxicodendron*), poison sumac (*toxicodendron vernix*) or other plant, any of which is in the opinion of the Township Board, comes under the provisions of the Noxious Weeds Act, Public Act 359 of 1941, as amended (MCL 247.61, *et seq.*), including grass over eight (8) inches in height, other than that part of a vegetable or flower garden, is regarded as a common nuisance.

C. Owner: any person holding an ownership interest in land in the Village of Elberta upon which there is tall grass growing. For the purposes of this Ordinance, the name and address listed on the Village tax assessment roll shall indicate ownership interest in such land.

D. Occupant: any person who has the right to occupy a parcel of property due to being an owner or pursuant to a verbal or written lease or rental agreement with the owner or agent thereof

SECTION 4. Land Subject to Regulations

A. This ordinance applies to the following:

1. Lots in a platted subdivision with a structure.
2. Vacant lots within platted residential subdivisions in which buildings have been erected upon 60 percent or more of the lots, or
3. On parcels of land along improved streets in common usage within the Village,

to a depth of one hundred sixty five (165) feet or the depth of the ownership, whichever is the lesser.

B. This ordinance does not apply to:

1. Portions of lots used for flower gardens, shrubbery or vegetable gardens.
2. Naturally wooded areas, regulated wetlands or meadows.
3. Areas designated as undeveloped open space.

SECTION 5. Duty to Cut Grass

The owner and/or occupants of land to which this ordinance applies shall not allow tall grass or weeds to grow over eight inches (8") in height throughout the growing season, including grass and weeds in the right-of-way, and it shall be the duty of all owners and/or occupants of land located in the Village of Elberta either to cut or otherwise destroy by lawful means all tall grass and weeds, as defined in this ordinance, which are growing upon said property, before they reach a seed-bearing stage, and to prevent said weeds from perpetuating themselves and from becoming a detriment to public health. On an undeveloped lot, tall grass and weeds must be cut back at a distance of at least thirty (30) feet from the roadway so as to allow a clear line of site.

SECTION 6. Unlawful Acts

It shall be unlawful for the owner and/or occupant of any lot or parcel of land to which this ordinance applies to allow or maintain upon any portion of such lot or parcel any growth of tall grass or weeds as defined herein, or to permit the deposit or accumulation upon any portion of such lot or parcel of land, of any brush, yard debris, dead vegetation, or cut grass or weeds so as to create a nuisance due to unsightliness, an unhealthy or unsafe condition, or traffic hazard, or fire hazard. Growth of grass to a length greater than eight (8) inches shall be considered to be a nuisance for the purposes of this section.

SECTION 7. Enforcement

A. Enforcement Officer. This Ordinance shall be enforced by such persons who shall be so designated by the Village Council, who shall for purposes of this ordinance be the Village of Elberta Ordinance Enforcement Officer (OEO).

B. Right of Entry. The Ordinance enforcement officer and his or her authorized representatives are hereby empowered to enter upon any premises or land in the Village of Elberta for the purpose of inspecting, removing of and/or destroying of tall grass and weeds prohibited under this ordinance. No person shall molest or interfere with such person or person while they are engaged in carrying out the provisions of this ordinance.

C. Violation Notice. After inspection, if any property is determined to be in violation of this ordinance, a Violation Notice will be sent to the property owner and/or occupant of said premises in which the name appears in the last local assessment record of the Village. The notice shall be sent by both first class and/or by posting a copy of said notice on the property. The notice shall give the property owner fifteen (15) days from the date of the notice to cut the tall grass and weeds.

D. Failure to Comply. If the tall grass and weeds are not cut within fifteen (15)

days the OEO shall have the authority to enter upon the land and/or to cause the lawn to be mowed by an authorized representative who is hereby empowered to enter upon any premises or land in the Village of Elberta for the purpose of mowing tall grass and weeds in violation of this ordinance even if the property owner and/or occupant failed to actually receive said notice. The Village of Elberta, its agents and representatives shall not be responsible for damage to buildings,

vehicles, landscape, trees, shrubs, etc., during the mowing of property in violation of this ordinance.

E. Assessment of Costs. All expenses of such cutting, to include equipment usage, transportation, man-hours involved, and overhead, including any and all cost incurred in the removal or relocation of debris, junk or other miscellaneous obstructions which would be necessary or convenient to carry out the requirements of this Ordinance shall be paid by the owners of such land plus an administrative charge of fifteen (15%) percent, thereof per residential parcel, per cutting. After having a lot mowed, the Township shall then submit a bill to the property owner for the cost of the mowing. If the property owner does not pay the bill within sixty (60) days of the date of the invoice the cost of such payment shall be charged against the premises and it shall become a lien on the land or property assessed of the same character in effect as the lien created by general law for taxes, plus an additional delinquency fee of 10% per month until paid.

Section 8. Penalties

A. Any violation of this Ordinance shall be a Municipal Civil Infraction, subject to payment of a civil fine of not less than \$50.00, plus applicable costs and other sanctions for each violation as authorized by Section 21 of Act 359 of the Public Acts of 1947, as amended and the Village of Elberta Civil Infraction Enforcement Ordinance.

B. Repeat offenses under this ordinance shall be subject to increased fines as provided by this Section. As used in this Section, "repeat offense" means a second (or any subsequent) violation of the same requirement or provision of this Ordinance within any six (6) month period for which the person admits responsibility or is determined to be responsible. The increased fine for a repeat offense under this Ordinance shall be as follows:

1. The fine for any offense which is a first repeat offense shall be not less than \$250.00 plus costs.
2. The fine for any offense which is a second repeat offense shall be not less than \$500.00 plus costs.

C. Each day on which any violation of this Ordinance occurs or continues, constitutes a separate offense subject to separate sanctions.

D. If there is any evidence of retaliation by any offender against any complainant or witness, such evidence shall be communicated to the District Court. In sentencing any violator, the District Court or Magistrate shall first examine the evidence of retaliation, and if such be shown, shall consider such acts, including the amount of property damage, and sentence the violator accordingly, which sentence may include restitution for any damage.

Section 9. Declaration of Nuisance

Any violation of any provision of this Ordinance is hereby declared to be a nuisance and the Village may seek enforcement of the Ordinance by suit for injunction, damages, or other appropriate legal action, as against a nuisance, at the expense of the property owner under MCL 600.2940(3), including reasonable attorney fees. Any such civil action shall be in addition to any prosecution for violations of this Ordinance as a Municipal Civil Infraction, Commencement of any such proceedings shall not constitute an election of remedies.

Section 10. Severability

The several provisions of this ordinance are declared to be separate; if any Court

shall hold that any section or provision hereof is invalid, such holding shall not affect or impair the validity of any other section or provision of this ordinance.

Section 11. Effective Date

This ordinance shall be published within fifteen days as required by law and shall take effect twenty days after its publication.

Enacted at a regular meeting of the Elberta Village Council held on the 20th day of October, 2011.

Attest: _____
Sharyn Bower, Clerk
Village of Elberta

Published _____

Effective Date _____