

Ordinance 2003-OR- 06

**AN ORDINANCE FOR PROTECTION AND PRESERVATION OF AGRICULTURAL LAND  
WITHIN THE ZONING JURISDICTION OF THE CITY OF CHARLESTOWN, INDIANA**

It is HEREBY ORDAINED by the Common Council of the City of Charlestown, Indiana, as follows:

**Purpose**

The purpose of this ordinance is to enact provisions to protect and preserve the ability of owners whose lands are zoned for agricultural use and are located within the City of Charlestown, Indiana or that are subject to the zoning jurisdiction of the City to continue in the operation of farming and agriculturally related businesses without undue hardship.

**Definitions**

As used in this ordinance, the following definitions shall apply:

**Agricultural Use:** Is the use defined by City zoning ordinances, and amendments thereto.

**City:** The civil city of Charlestown, Indiana, a municipal entity defined as a third class city under the laws of the state of Indiana.

**Livestock:** Any domesticated animal used for any farming purpose and normally kept by those engaged in the business of farming.

**Partition Fence:** Shall have the same meaning as in IC 32-10-9 *et seq.*

**Discharge of Firearms to Defend Livestock and Property**

Notwithstanding any ordinance to the contrary previously enacted by the City Common Council, it shall not be unlawful for any landowner, or his family members, employees or agents, to discharge a firearm on land zoned for agricultural use, lying within the municipal limits of the City, or within 2 mile fringe zoning jurisdiction of the City, for the purpose of defending the real property or personal property of the landowner.

**Partition Fences**

The following five (5) sections of this Ordinance is modeled after IC 32-10-9 *et seq.* It is intended that these provisions of this ordinance be interpreted consistently therewith, when the language presented is similar.

**Sec. 1. Existing fences.** All fences now constructed and used by adjoining landowners as a partition fence on land that is zoned for agricultural use, which land lies within the 2 mile fringe

zoning jurisdiction of the City, unless specially agreed upon by such landowners, shall be deemed partition fences and shall be repaired, maintained and paid for as herein provided.

**Sec. 2. Agricultural Lands Inside City Zoning Jurisdiction** (a) It shall be the duty of all owners of land that is zoned for agricultural use, or those whose lands are directly adjacent to land that is zoned for agricultural use, whose lands lie within the municipal limits of the City, or within 2 mile fringe zoning jurisdiction of the City, to separate said land from adjoining lands by a partition fence to be constructed upon the line or lines dividing or separating said lands whether said lands were divided heretofore or may hereafter be divided.

(b) Except as hereinafter otherwise provided, or in case no division of said partition fence has been made between the landowners for the building or repairing or rebuilding of such partition fence, then in such case the landowner, whose land lies to the east of said fence, shall build the north half thereof and the landowner whose land lies to the west of said fence, shall build the south half thereof and if the landowner's land lies north of the fence to be built, rebuilt or repaired, he shall build, rebuild or repair the west half thereof, and if the land lies to the south of such fence, such landowner shall build the east half thereof.

(c) If either of such landowners shall have constructed one half (1/2 ) of any partition fence, other than the half prescribed in subsection (b) of this section, and shall have maintained such one half (1/2 ) of such partition fence for a period of not less than five (5) years, such landowners shall thereafter be entitled to continue to maintain such one half (1/2 ) of such fence, notwithstanding any of the provisions of subsection (b) of this section.

(d) If any landowner fails to build, rebuild or repair such fence after receiving notice as is hereinafter provided, the landowner shall be in violation of this ordinance, and the city Clerk Treasurer may cause to be built, rebuilt or repaired such fence as is hereinafter provided.

**Sec. 3. Defaulting landowner; description of lawful partition fence; floodgates across water courses.** All partition fences shall be built, rebuilt, kept in repair at the cost of the several landowners whose lands are enclosed or separated by such fences equally according to the proportion thereof such landowner may have along such line of fence. If any landowner, as above defined, shall fail or refuse to compensate for the building, rebuilding or repairing of his, her or their proportion of fence, any landowner interested in such fence, after having built, rebuilt or repairing his proportion of such fence, shall give to the defaulting landowner, his agent or tenant twenty (20) days' notice to build, rebuild or repair his proportion of such fence, as the case may be, and if such defaulting party shall fail to build, rebuild or repair such fence within said time, such landowner shall then notify the City Development Coordinator of such fact: provided, that where the fence sought to be established, rebuilt or repaired is on a township line, in such case, the complaining landowner or landowners shall notify the trustee of the township wherein the lands of the complaining landowner or landowners are located of the improvement he or they may desire made, and the City Development Coordinator shall have jurisdiction of such matter, unless disqualified as hereinafter provided, and may estimate the costs for such fence, building, rebuilding or repairing the same, as the case may be, and, within a reasonable time after being notified, the Development Coordinator shall make out a statement and notify such defaulting party of the probable cost of building, rebuilding or repairing such fence, as the case may be, and if after twenty (20) days, said fence is not built, rebuilt or repaired by such defaulting landowners, the Development Coordinator may build or repair such fence, as the case may be: provided, that the Development Coordinator shall use only the materials for such fences as are most commonly used by the farmers of such community. A lawful partition fence shall be a straight board and wire fence or a straight wire or a straight board fence or a picket fence four (4)

feet high, a straight rail fence four and one-half (4 1/2 ) feet high, a worm rail fence five (5) feet high, and all fences of every structure to be sufficiently tight and strong to hold hogs, sheep, cattle, mules and horses: provided, further, that if a ditch or creek crosses the division line between two (2) landowners, necessitating additional expense in the maintenance of the part over such stream, if such landowners can not agree upon the proportionate share of each, the Development Coordinator shall appoint three (3) disinterested citizens who shall apportion the partition fence to be built by each landowner; provided, further, that in all cases where a ditch or creek forms, covers or marks the dividing line, or any part thereof, of the lands of separate and different landowners of this state so that partition fences such as are required and provided for in this chapter can not be built and maintained on such dividing line, then, and in all such cases, such partition fences shall be built and maintained under the provisions of this chapter as near to such boundary line as may be, and each landowner shall be required, on his own land, to build a separate partition fence, and to maintain the same at his own cost: provided, further, that in all cases where partition fences, such as are required and provided for in this ordinance, cross any ditch or creek and, by reason thereof, it is impracticable to construct or maintain that portion of said fence as would cross said ditch or creek as a stationary fence, then, and in all such cases, there shall be erected, in lieu of such portion of said fence across said ditch or creek, and as a part of such partition fence, floodgates or other similar structures, sufficiently high, tight and strong to turn hogs, sheep, cattle, mules and horses or other domestic animals, and so constructed as to swing up in times of high water, and such floodgates or other similar structures shall be so built and constructed as to connect continuously such partition fences: and, provided, further, that if the building and maintenance of such floodgates or other similar structure occasions additional expenses and such landowners can not agree upon the character of floodgates or other similar structure, or upon the proportionate share of the cost thereof to be borne by each, the Development Coordinator, upon notice in writing from either landowner of such disagreement and the nature thereof, shall appoint three (3) disinterested citizens of the agriculturally zoned areas of the City, who shall determine the kind of structure and apportion the cost of such floodgate or other structure between such landowners, taking into consideration the parts and portion of such fence being maintained by each landowner. And the determination of a majority of such arbitrators of any matter or matters submitted to them shall be final and binding on each landowner. The compensation of such arbitrators shall be two dollars (\$2.00) each, which shall be paid by said landowners in the proportion they are ordered to bear the expense of such gate or structure. In case either or both of such landowners shall fail to construct or compensate for constructing the structure determined upon by such arbitrators in the proportion determined, within thirty (30) days from such determination, the Development Coordinator may proceed at once to construct such gate or structure and collect the cost thereof, including the compensation of such arbitrators, from such defaulting landowner or landowners, in the same manner as is provided for ordinary partition fences. And such floodgate or other structure shall be repaired, rebuilt or replaced in accordance with the determination of said arbitrators.

**Sec. 4. Expenses; construction and maintenance by City.** As soon as the Development Coordinator has had such fence built, rebuilt or repaired, he shall make out a certified statement in triplicate of the actual cost incurred by him in the building, rebuilding or repairing of such fence, one (1) copy to be handed to or mailed to the landowner affected by the work, one (1) copy to be retained by the Development Coordinator, and the other to be forwarded to the City Attorney, who may institute a legal action to place a lien on the obligated landowners real property if the balance due to the City has not been paid within 30 days of the substantial completion of the work of construction of the fence. Failure of a landowner to remit the balance

due on the statement within 30 days of the receipt of such a statement shall constitute a violation of this ordinance. Each day thereafter shall be a separate offense.

**Sec. 5. Construction and application of law.** This chapter shall be liberally construed in favor of the objects and purposes for which it is enacted and shall apply to all lands, whether enclosed or unenclosed, cultivated or uncultivated, wild or wood lot.

**Barbed Wire Fences**

Notwithstanding any ordinance to the contrary, any territory zoned for Agricultural use that is used for the purpose of enclosing livestock may be enclosed, in whole or part, by a barbed wire fence

**Penalties**

Any person or other legal entity that is found to have violated any provision of this Ordinance shall be subject to a fine of at least Fifty Dollars (\$50), up to Five Hundred Dollars (\$500) for each violation. Each day a violation continues is considered a separate violation.

**Miscellaneous Provisions**

**Effective date.** This ordinance shall become effective fourteen (14) days after its passage, approval and publication, if publication is required by law.

**Each Section Adopted Separately.** Each section of this ordinance is adopted separately. In the event that any provision, part or section of this ordinance is deemed to be illegal or invalid only that part or section shall be repealed. The remaining parts or sections of the ordinance shall remain in effect.

**Ordinance Subject To Other Laws.** This ordinance does not supercede Federal or State laws, statutes or regulations, except as allowed.

**ALL OF WHICH IS ORDAINED BY THE COMMON COUNCIL OF THE CITY OF CHARLESTOWN ON THIS 2nd DAY OF February 2003.**

	Voted In Favor	Voted Against	Abstained
<u>Bruce M. Boltorff</u> Bruce Boltorff	✓	_____	_____
<u>Michael Anthony Jackson</u> Michael Anthony Jackson	✓	_____	_____

<u>Ward Tackett</u> Ward Tackett	<u>✓</u>	<u>        </u>	<u>        </u>
<u>Terry Pierce</u> Terry Pierce	<u>✓</u>	<u>        </u>	<u>        </u>
<u>Ed Bolly</u> Ed Bolly	<u>✓</u>	<u>        </u>	<u>        </u>

SEEN AND APPROVED THIS 3rd DAY OF February 2003, BY:

G. Robert Hall  
Mayor G. Robert Hall

ATTEST:

2-3-03  
Date

Donna Coomer  
Donna Coomer, Clerk Treasurer