

4-3-1.1

SECTION 1.1

MODEL ILLEGAL DUMPING ORDINANCE

WHEREAS, improper disposal of solid wastes can be injurious to human health, plant and animal life; can contaminate surface and ground waters; can provide harborage to vermin and disease vectors; can interfere unreasonably with the enjoyment of life or property; can negatively impact the value of affected and adjacent properties; can degrade aesthetic appreciation of the natural environmental; and can significantly depredate current and future economic development potential of Morgan County;

WHEREAS, it is the desire and duty of the County Board of Commissioners to protect human health, natural resources and the environment, and the future economic development potential of Morgan County; and

WHEREAS, in the opinion of the county commissioners, it is necessary to enact this ordinance to eliminate illegal open dumping,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF MORGAN COUNTY, as follows:

ARTICLE I TITLE

This ordinance shall be titled "Illegal Dumping Ordinance", and may be cited as such. Reference shall be Ordinance No. 4-3-1.1.

ARTICLE II PURPOSE

The purpose of this ordinance is to prohibit illegal dumping of solid waste materials in Morgan County, to establish penalties for violations therefor, and to provide for the method of clean-up of open dumps. Improper disposal at recycling stations shall also be prohibited.

ARTICLE III DEFINITIONS

1) "Construction/demolition debris" shall mean any discarded construction or demolition materials including, but not limited to, untreated lumber, paneling, drywall, roofing, shingles, siding, plumbing and electrical components, doors, windows, floor coverings and cabinets.

2) "Contaminant" shall have the same definition as that of 329 IAC 2-2-1 (a)(2).

3) "Discarding" shall mean to abandon, deposit, desert, discharge, dispose, drop, dump, eliminate, emit, jettison, leave, pitch, place, put, scrap, spill throw or toss any item, any solid waste or derivative thereof, or any inherently wastelike material in a manner such that the discarded substance remains upon the land as solid waste.

4) "Dumping" shall mean:

a) the discarding or long-term storage of any items of solid waste commonly known as garbage, rubbish, refuse construction and demolition debris, household trash, appliances, diapers, food service wastes, tires, scrap metal, vehicle parts, implement parts and all other items and materials defined as "solid waste" below and in Indiana Code 13-7-1-22; and

b) the discarding of any vehicles which do not have value beyond scrap value and which are inoperable and unlicensed or which are considered abandoned due to the surrounding conditions.

5) "Garbage" shall mean all putrescible animal solid, vegetable solid, and semisolid wastes from processing, handling, preparation, cooking, serving, or consumption of food or food materials.

6) "Generation" shall mean the act or process of producing solid waste.

7) "Generator" shall mean the person whose actions or processes result in the production of solid waste.

- 8) "Health Officer" shall have the same meaning as the term "local health officer" as used in IC 16-1-4, et seq. and shall include his/her authorized agent.
- 9) "Inert solid waste" shall mean earth, rocks, fence wire, sheet metal, concrete, bricks, tiles or aged asphalt, natural wood, brush, leaves, wood chips or sawdust, any and all of which is free from contaminants.
- 10) "Long-term storage" shall mean the maintenance or containment of solid waste for a period of thirty (30) days or more.
- 11) "Open dump" shall mean the consolidation of solid waste from one or more sources or the disposal of solid waste at a single disposal site that does not fulfill the requirements of a sanitary landfill or other land disposal method as prescribed by law or regulations, and that exists without daily cover and without regard to the possibilities of contamination or surface or subsurface water resources, air, land, or other hazard or threat of hazard to the environment or
- 12) "Person" shall mean any individual, partnership, corporation, firm, company, organization, joint stock company, municipal corporation, city, school district or corporation, county, town, association, trust, estate, government unit or other legal entity.
- 13) "Scavenging" shall mean the uncontrolled and unauthorized removal of materials from solid waste at any point in the waste management system.
- 14) "Solid Waste" shall mean any yard waste, garbage, refuse, rubbish, sludge or other discarded or disposed materials, including solid, liquid or semi-solid, or contained gaseous material resulting from any operation, activity or source.
- 15) "Storage" shall mean proper temporary containment of waste materials for a period of no more than fifteen days or the standard interval of local commercial collection service, whichever is less.
- 16) "Waste storage container" shall mean a proper and suitable receptacle used for the temporary storage of solid waste while awaiting collection. Containers shall be designed to prevent escape or leakage of contents and should be resistant to scavenging animals.
- 17) "West Central Solid Waste District" shall mean the legally constituted solid waste district of which Morgan County is a member pursuant to Indiana Code 13-9.5-2.

ARTICLE IV PROHIBITED ACTS

1) Recycling facilities:

- a) No person shall discard any materials other than recyclables in any facility or container intended for collecting designated recyclable materials.
- b) No person shall conduct scavenging at any facility or container intended for collecting materials with value as a designated recyclable material.

2) Dumping:

- a) No person shall discard any solid waste along any roadway within Morgan County, unless it be in a proper solid waste storage container and is intended for collection and removal to a facility approved for handling such materials along a designated route.
- b) No person shall discard for final disposal or for use as fill material any inert solid waste without express consent of the property owner of the final disposal site, including county road rights-of-way.
- c) No person shall discard for final disposal or for use as fill material any inert solid waste which is mixed or

adulterated with any contaminants.

d) No person shall do any dumping or permit any dumping to take place at any location in Morgan County unless such location is an approved and properly permitted landfill site.

ARTICLE V PROPERTY OWNER RIGHTS AND RESPONSIBILITIES

- 1) It is the responsibility of all persons owning real property in Morgan County to sustain diligent and good faith efforts to protect the natural environment and prevent illegal dumping on their property. Persons owning real property in Morgan County shall not cause or allow the disposal upon their property of any solid waste materials.
- 2) Except as otherwise provided in this Article, no enforcement action may be taken under this ordinance against a landowner on whose land waste has been improperly disposed without the landowner's consent, unless there has been made a diligent and good effort to identify, locate and take enforcement action against a person or persons who appear likely to have committed or caused the improper disposal act(s).
- 3) Any landowner who in good faith provides information concerning a name, an address, or any other evidence of a responsible person's identity found in wastes improperly disposed on the landowner's property is not liable to said person for an action taken by enforcement authorities under this ordinance against the person as a result of information provided by the landowner.
- 4) The owner of property on which improper disposal acts have occurred may be included as a party of any enforcement action against a person who allegedly committed the violation so that the landowner may be ordered to allow the violator access to the land to remove and properly dispose of the wastes allegedly disposed in violation of this ordinance.
- 5) A landowner on whose land waste has been disposed in violation of this ordinance without the landowner's consent may, in addition to any other legal or equitable remedy available to the landowner, recover from the person responsible for the improper disposal reasonable expenses incurred by the landowner in removal.
- 6) A landowner who consents to or allows disposal of wastes generated by others upon his property, without making a diligent and good faith effort to prevent the improper disposal of wastes, and who fails to notify proper authorities of said improper acts of disposal within a reasonable period of time shall be subject to enforcement procedures, and shall be deemed the responsible party and shall be served notice for clean-up of all wastes deposited upon his property and removal for final disposal at an approved sanitary landfill, at the landowner's expense.
- 7) If a diligent and good faith effort by the health officer to identify, locate and take enforcement action against a person or persons who committed prohibited acts of waste disposal has been made and has failed to identify violators of acts prohibited herein, the owner of real estate upon which an open dump is located shall be held responsible for correcting and controlling any nuisance conditions which may occur as a result of the open dump.
- 8) Materials which provide identifying information regarding the generator shall constitute a rebuttable presumption that the generator has deposited solid waste without the express consent of the landowner and in violation of this ordinance. The presumption can be rebutted by proof that:
 - a) the person obtained the express consent of the landowner,
 - b) the person properly placed in solid waste in waste storage container for pick-up by a licensed waste hauler.

ARTICLE VI ENFORCEMENT AND ABATEMENT

- 1) It shall be the duty of the Morgan County Health Officer, the Morgan County Sheriff's Office, the Police Departments in Morgan County, the Morgan County Prosecutor's Office, the Morgan County Commissioners, and the Morgan County Attorney to enforce this ordinance. The Morgan County Health Officer is authorized to perform inspections in the furtherance of fulfilling his/her duty to enforce this ordinance. Any person violating any provision of this ordinance shall be subject to fines or other injunctive action as specified in this ordinance.
- 2) Violators of this ordinance shall be served a written initial notice of violation either in person or by any other manner reasonably calculated to result in actual notice, including certified mail. Such notice shall state the nature of the violation, order the abatement of the violation, indicate a method of abatement, which if satisfactorily completed will adequately abate the offending violation, and provide a reasonable time (fourteen to thirty days) for abatement of the violation.
- 3) Abatement of a violation must be accomplished in an environmentally safe and lawful manner by disposal of solid waste in an approved and properly permitted landfill.
- 4) If the violation is not satisfactorily abated within the specified time allowed, a second notice shall be served, in the same manner as specified for initial notices and containing the same information specified for initial notices. If the conditions prevail following the specified period of time, the matter shall be referred to the Morgan County Attorney and the Morgan County Prosecutor for appropriate legal action.

ARTICLE VII HEARINGS

Any person receiving any such notice of violation as described herein may demand, in writing, and shall be granted a hearing on the matter before the local health board. Conduct of the hearing shall be prescribed by regulations promulgated by the local health board. The local health board shall hear testimony and take evidence on the matter, following which the board shall sustain, modify or revoke the notice of violation issued by the Health Officer.

ARTICLE VIII PENALTIES AND SANCTIONS

- 1) The doing of any prohibited act, or the omission of any required act governed by this ordinance is declared to be a violation of this ordinance. Any person found to have violated this ordinance by a court of competent jurisdiction shall be fined in an amount up to Two Thousand Five Hundred Dollars (\$2,500.00). Each day of violation shall constitute a separate violation.
- 2) In addition to fines assessed, the Health Officer may request the court to assess court, clean-up and/or administrative costs expended by Morgan County in taking enforcement action.
- 3) The Health Officer shall also be entitled to seek injunctive or other relief through any appropriate county court to obtain an order to abate the open dump condition and prohibiting further and future dumping.

ARTICLE IX SEVERABILITY

Each section, subsection, sentence, clause and phrase of this ordinance is declared to be an independent section, subsection, sentence, clause and phrase, and the finding or holding of any section, subsection, sentence, clause and phrase to be unconstitutional, void, or ineffective for any cause shall not affect another section, subsection, sentence, clause and phrase, or part thereof.