

**AN ORDINANCE AMENDING CHAPTER 51 OF THE MORGAN COUNTY
CODE OF ORDINANCES CONCERNING ILLEGAL DUMPING AND WASTE**

WHEREAS, The Board of Commissioners of the County of Morgan ("Commissioners") is the executive and legislative body of Morgan County, Indiana ("County"), a political subdivision of the State of Indiana; and,

WHEREAS, in this role, the Commissioners are charged with administering the business of County government, which includes the need to take certain actions to protect the citizens of the County from conditions which are considered detrimental to public health, safety, and general welfare; and,

WHEREAS, the Commissioners previously adopted an Ordinance addressing the control of weeds, grass, and other vegetation, which is codified in Section 51.01 through 51.06 and Section 51.99; and,

WHEREAS, circumstances have evolved, and additional concerns have presented themselves, such that the Commissioners believe that the best interests of the citizens of the County are protected by amending the Ordinance to include additional public nuisance conditions that are negatively impacting property owners and all citizens in numerous ways; and,

WHEREAS, in addition to the inclusion of additional public nuisance conditions, the amended Ordinance provides an opportunity for property owners to correct potential public nuisance violations before the County pursues abatement activities; and,

WHEREAS, the Commissioners believe that amending the above-referenced Ordinance is prudent, and perhaps necessary, in order to best ensure the public health, safety, and general welfare of the citizens of the County and to continue to make the County an attractive place to live, work, and play.

NOW THEREFORE BE IT ORDAINED, by The Morgan County Board of Commissioners that Chapter 51 of the Morgan County Code of Ordinances shall be amended as follows:

1. The changes to Sections 51.01 through 51.05 consist mostly of technical corrections and minor changes, as indicated.
2. The changes to Sections 51.06 and 51.99 concerning Enforcement, Abatement, and Penalties are substantially rewritten and provide for more effective remedies Chapter 51 of the Morgan County Code of Ordinances is titled "Illegal Dumping Ordinance"
3. All other provisions of this Ordinance shall take effect at such time as the Ordinance is duly and lawfully adopted by the Morgan County Board of Commissioners and executed by its President.

4. All ordinances or parts of ordinances in conflict with provisions of this Ordinance are hereby repealed.
5. Should any Section, Paragraph, clause or phrase of this Ordinance be declared unconstitutional or invalid the remainder of said Ordinance shall continue in full force and effect.

IN WITNESS WHEREOF, ALL OF WHICH IS AGREED, ADOPTED, and SO
ORDAINED, this 1 day of November, 2021.

MORGAN COUNTY, INDIANA
BOARD OF COMMISSIONERS


DON ADAMS, President

ATTEST:


DAN BASTIN
Morgan County Auditor


KENNY HALE


BRYAN COLLIER

CHAPTER 51: ILLEGAL DUMPING/SOLID WASTE

§ 51.01 Title

§ 51.02 Purpose

§ 51.03 Definitions

§ 51.04 Prohibited acts

§ 51.05 Property owner rights and responsibilities

§ 51.06 Enforcement and abatement

§ 51.99 Penalty

§ 51.01 TITLE.

- A. This chapter shall be titled "Illegal Dumping Ordinance", and may be cited as such.
- B. Reference shall be to "Ord. 4-3-1.1, as amended Ord. 21-_____ " and/or "Chapter 51".

§ 51.02 PURPOSE.

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

§ 51.03 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CONSTRUCTION/DEMOLITION DEBRIS. 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.

CONTAMINANT. ~~Has the same definition as that of 329 I.A.C. 2-2-1(a)(2).~~ As defined in I.C. § 13-11-2-42, any solid, semi-solid, liquid, or gaseous matter, or any odor, radioactive material, pollutant (as defined by the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as in effect on January 1, 1989), hazardous waste (as defined in the federal Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), as in effect on January 1, 1989), any constituent of a hazardous waste, or any combination of the items described in this

section, from whatever source, that: (1) is injurious to human health, plant or animal life, or property; (2) interferes unreasonably with the enjoyment of life or property; or (3) otherwise violates (A) environmental management laws; or (B) rules adopted under environmental management laws. The term includes chemicals used in the illegal manufacture of a controlled substance (as defined in IC 35-48-1-9) or an immediate precursor (as defined in IC 35-48-1-17) of a controlled substance, and waste produced from the illegal manufacture of a controlled substance or an immediate precursor of the controlled substance.

DISCARDING. 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 waste-like material in a manner such that the discarded substance remains upon the land as solid waste.

DUMPING. 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 I.C. § 13-11-2-205; and 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.

GARBAGE. All putrescible animal solid, vegetable solid and semisolid wastes from processing, handling, preparation, cooking, serving or consumption of food or food materials.

GENERATION. The act or process of producing solid waste.

GENERATOR. The person whose actions or processes result in the production of solid waste.

HEALTH OFFICER. Has the same meaning as the term **LOCAL HEALTH OFFICER** as used in I.C. § 16-20-1-1 *et seq.*, and shall include his or her authorized agent.

INERT SOLID WASTE. 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.

LONG-TERM STORAGE. The maintenance or containment of solid waste for a period of 30 days or more.

OPEN DUMP. 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.

PERSON. 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.

SCAVENGING. The uncontrolled and unauthorized removal of materials from solid waste at any point in the waste management system.

SOLID WASTE. Any yard waste, garbage, refuse, rubbish, sludge or other discarded or disposed materials, including solid, liquid or semisolid or contained gaseous material resulting from any operation, activity or source.

STORAGE. Proper temporary containment of waste materials for a period of no more than 15 days or the standard interval of local commercial collection service, whichever is less.

WASTE STORAGE CONTAINER. 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.

§ 51.04 PROHIBITED ACTS.

A. Recycling facilities.

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

B. Dumping.

1. No person shall discard any solid waste along any roadway within the 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.
2. 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.
3. 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.
4. No person shall do any dumping or permit any dumping to take place at any location in the county unless such location is an approved and properly permitted landfill site.

- A. It is the responsibility of all persons owning real property in the 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 the county shall not cause or allow the disposal upon their property of any solid waste materials.
- B. Except as otherwise provided in this chapter, no enforcement action may be taken under this chapter 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).
- C. 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 chapter against the person as a result of information provided by the landowner.
- D. 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 chapter.
- E. A landowner on whose land waste has been disposed in violation of this chapter 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.
- F. A landowner who consents to or allows disposal of wastes generated by others upon his or her 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 or her property and removal for final disposal at an approved sanitary landfill at the landowner's expense.
- G. 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.
- H. 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 chapter. The presumption can be rebutted by proof that:

1. The person obtained the express consent of the landowner; and
2. The person properly placed in solid waste in waste storage container for pick-up by a licensed waste hauler.

§ 51.06 ENFORCEMENT AND ABATEMENT

- A. It shall be the duty of the County Board of Health and all County Health Officers to enforce this chapter.
 1. The County Health Officer is authorized to perform inspections in the furtherance of fulfilling his or her duty to enforce this chapter.
 2. Any person violating any provision of this chapter shall be subject to fines or other injunctive action as specified in this chapter.
- B. Upon receiving a complaint that asserts the existence of unlawful conditions that violate any part of this chapter, a County Health Officer shall:
 1. Investigate the allegation and verify to the greatest extent possible that a violation of this chapter has occurred.
 2. Upon confirmation that a violation confirmed, the County Health Officer shall complete a written Notice of Violation that shall include:
 - i. State the nature of the violation;
 - ii. Issue an Order that the violation be abated;
 - iii. Indicate a method for abatement and provide directions for the same; and
 - iv. Name the shortest reasonable time for abatement, and include what time period (15-30 days) you believe is reasonable that the abatement be completed.
 - v. 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.
- C. If the violation is not satisfactorily abated within the specified time allowed, a second Notice of Violation shall be served, in the same manner as specified for initial notices and containing the same information specified for initial notices.

- D. If the violation is still not abated after this period of time, the matter should then immediately be referred to the County Attorney for appropriate legal action.
- E. The County Attorney shall take immediate action to accomplish the abatement by filing an enforcement action in Court and requesting the Court schedule a hearing as soon as possible.
- F. The County Attorney may request, and the Court may Order any of the following:
1. Issuing an injunction.
 2. Entering a judgment
 3. Issuing an order and conditions under IC 16-41-9.
 4. Ordering the suspension or revocation of a license.
 5. Ordering an inspection.
 6. Ordering that a property be vacated.
 7. Ordering that a structure be demolished.
 8. Imposing a penalty not to exceed an amount set forth in IC 36-1-3-8(a)(10).
 9. Imposing court costs and fees under IC 33-37-4-2 and IC 33-37-5.
 10. Ordering the respondent to take appropriate action in a specified time to comply with the order of the local board of health or local health officer.
 11. Ordering a local board of health or local health officer to take appropriate action to enforce an order within a specified time.
 12. The County Attorney shall further ensure that the violator permanently eradicates the violation and shall ask the Court to Order that it remain free of any such violation and that the Court may authorize remediation acts be authorized to act immediately.

G. Miscellaneous Enforcement and Collection Matters.

1. The county attorney in which a local board of health or local health officer has jurisdiction shall represent the local health board and local health officer in the action unless the county executive, local board of health, or health and hospital corporation employs other legal counsel, or the matter has been referred through law enforcement authorities to the prosecuting attorney.
2. Cumulative remedy. This Chapter supplements and does not limit any other remedy or action available in law or equity regarding the subject matter hereof.
3. Failure to pay. If the owner fails to pay the Abatement Costs, If the owner fails to timely pay an invoice for Abatement Costs issued pursuant to this chapter, the Code Enforcement Official, or his or her designee, shall certify to the Morgan County Auditor the amount of the invoice for Abatement Costs, plus any additional administrative costs incurred in the certification of the same. The Morgan County Auditor shall place the total amount so certified on the tax duplicate for the property at issue, and the total amount, including any accrued

interest, shall be collected as delinquent taxes are and shall be disbursed to the General Fund of the County.

4. Abatement vendors. The Commissioners may invite and accept no less than two (2) reasonable bids for abatement vendors who shall be private businesses and not any department of the County. Said vendors shall provide abatement services as independent contractors for violations of this Chapter including the abatement of weeds and rank vegetation, garbage and junk, and the bids may be renewed and updated at various times when deemed appropriate by the Commissioners.
5. Funds Collected. Any and all Abatement Costs, penalties, and fines collected as a result of violations of and pursuant to this Chapter shall be deposited into the General Fund of the County. The Commissioners and County Council may, in their discretion and as circumstances may warrant, disburse these funds to the General Fund of the Planning and Zoning Department.
6. Statutory Lien. In addition to the collection procedures described above, the expenses incurred by the County in order to abate a public nuisance constitute a lien that attaches to the property when notice of the lien is recorded in the Office of the County Recorder. The lien is superior to all other liens except liens for taxes, in an amount that does not exceed: (1) \$10,000.00 for real property that contains one (1) or more occupied or unoccupied single or double family dwellings or the appurtenances or additions to those dwellings or is unimproved, or (2) \$20,000.00 for all other property.

§ 51.99 PENALTY

(A) In addition to the lien provisions outlined above for the payment of all Abatement Costs, which shall include any and all administrative costs, filing fees, reasonable attorney fees, or any other actual costs incurred by the Code Enforcement Officer, County Auditor, Board of Commissioners, abatement vendors, or any party related to the enforcement of this Chapter on behalf of the County in issuing the Violation Notice and taking whatever actions necessary to abate said violation(s), an owner may also be assessed a fine, in the discretion of the Code Enforcement Officer or Hearing Authority, as follows:

- 1) *First violation*: \$100.00;
- 2) *Second violation*: \$500.00; and
- 3) *Third and subsequent violations*: \$1,000.00.