

ORDINANCE NO. 06 -2007

ORDINANCE OF THE TOWN OF MORRISTOWN, INDIANA, GOVERNING NUISANCE  
SOLID WASTE ACCUMULATION, ILLEGAL DUMPING AND LITTERING

WHEREAS the Town of Morristown, Indiana ("Morristown") desires that the Shelby County Solid Waste Management District and its Compliance Officer oversee and enforce this Ordinance controlling nuisance solid waste accumulation, illegal dumping and littering.

WHEREAS this Ordinance is specifically designed to govern residential solid waste and does not apply to industrial solid waste.

WHEREAS the provisions of this Ordinance shall be enforced by the Shelby County Solid Waste Management District and its Compliance Officer.

WHEREAS the purpose of this Ordinance is to control improper solid waste disposal, to define nuisance solid wastes accumulation, illegal dumping, and littering, to establish violations thereof, to assess penalties with regard thereto, and to provide for the abatement and/or clean up of materials improperly accumulated, stored or disposed of in Morristown.

WHEREAS improper disposal of solid waste can be injurious to human health, and 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 environment; and can deplete economic developmental potential in Morristown.

WHEREAS it is the duty of the Morristown Town Council, the County Board of Commissioners and the Board of Directors of the Solid Waste Management District to protect human health, natural resources; the environment and economic development potential of Shelby County, including Morristown.

WHEREAS it is in the public interest to enact this Ordinance to eliminate nuisance solid waste accumulation, illegal dumping and littering and clean up public and private property in Morristown.

NOW THEREFORE BE IT ORDAINED BY THE MORRISTOWN TOWN COUNCIL, as follows:

SECTION ONE

Title: This Ordinance shall be cited as the "Nuisance Solid Waste Accumulation, Illegal Dumping and Littering Ordinance."

SECTION TWO

Purpose: The purpose of this Ordinance is to prohibit nuisance solid waste accumulation, illegal dumping and littering along roadways and on public and private property in Morristown, to establish penalties for violations thereof, and to provide for the clean up of solid waste that is not disposed in accordance with Indiana law. Littering and improper disposal at recycling stations shall also be prohibited. This Ordinance is intended to protect the citizens of Morristown from the burden of costs related to solid waste accumulation, illegal dumping, littering and clean up.

The primary intent of the Ordinance is to discourage illegal dumping and littering on public and private property, to promote clean up of nuisance solid waste, and to encourage the proper waste management alternatives of sanitary landfilling and recycling. Elimination of improper disposal is necessary to protect human health and the natural environment, to protect surface and ground waters from pollution and to protect the value of property from the negative effects of solid waste accumulation, dumping and littering. Fines and sanctions are meant to deter violations of this Ordinance.

### SECTION THREE

Definitions: The following definitions shall apply in the interpretation and enforcement of this ordinance.

- a) Accumulation/To Accumulate shall mean to heap, pile up, amass or collect waste improperly or in improper storage containers for a period exceeding 15 days or the standard interval of local commercial collection services, whichever is less.
- b) Abandoned Vehicle shall mean
  - 1) a vehicle that has remained on private property without the consent of the owner or person in control of that property for more than forty-eight (48) hours; or
  - 2) a vehicle located on private property that is at least three (3) model years old, is mechanically inoperable, and is left on private property, with or without the consent of the person in control of the property, continuously in a location visible from public property or public right-of-way for more than twenty (20) days. Mechanically inoperable shall mean a vehicle from which the engine, transmission, differential, wheels or any other part of the drive train or suspension has been removed so as to prevent the vehicle from being driven under its own power.
  - 3) Licensing of a vehicle shall not constitute a defense to the finding that it is an abandoned vehicle.
- c) Abate shall mean to end nuisance solid waste accumulation, illegal dumping and littering by removal, clean up and proper disposal.
- d) Contaminated shall mean un-rinsed containers with food or product residues, non-container glass materials, containers which contained oils, pesticides, fertilizers, herbicides, poisons or other hazardous materials, materials fouled with dirt or other substances foreign to their original contents or composition, wet or saturated newspapers, and any other conditions that render the materials unrecycleable.



- e) Discard shall mean to abandon, deposit, desert, discharge, dispose, drop, dump, eliminate, emit, jettison, leave, pitch, place, put, scrap, spill, leak, throw, or toss any item of solid waste or derivative thereof, or any inherent waste-like material in a manner such that the discarded substance remains upon the land as solid waste.
- f) Dumping/To Dump shall mean the discarding along county roadways or at any location other than a site of generation, any items of solid waste commonly known as garbage, rubbish, refuse, construction and demolition debris, household trash, baby diapers, food service wastes, old appliances, tires, scrap metal, vehicle parts, and all other items and materials defined as "solid waste" below.
- g) Construction/Demolition Waste shall mean any discarded construction or demolition materials including, but not limited to lumber, wood, paneling, drywall, roofing shingles, siding, plumbing, electrical, doors, windows, floor coverings and cabinets.
- h) Garbage shall mean all putrescible (rotten) animal solid, vegetable solid, and semi-solid wastes from the processing, handling, preparation, cooking, serving or consumption of food or food materials. Such materials carry the potential of harboring vector-borne diseases.
- i) Fill Material shall mean any material that is used for filling such as clean soil, clay, shale, gravel or sand. Concrete will be allowed if the maximum particle size is 24 inches or less in diameter and all protruding reinforcing steel is removed from the concrete particle.
- j) Generate shall mean the act or process of producing solid waste. "Generator" means the person whose actions or processes result in the unwanted solid waste materials.
- k) Hazardous Waste shall mean any waste, including but not limited to household hazardous wastes, used oils, and chemicals that because of its quantity, concentration, or physical, chemical, or infectious characteristics may: (1) cause or significantly contribute to an increase in mortality or increase in serious or incapacitating irreversible illness; (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, handled, disposed of or otherwise managed; (3) be nondegradable or persistent in the environment; (4) be biologically magnified; or (5) cause or tend to cause cumulative effects.
- l) Inert Solid Waste shall mean uncontaminated earth, rocks, rigid concrete, bricks, tiles, aged asphalt, uncontaminated natural wood, brush, leaves, grass clippings, wood chips and sawdust.
- m) Infectious Waste shall mean any waste that is capable of transmitting a communicable disease including but not limited to pathological waste (human tissues, blood, excreta and secretions), medical and laboratory wastes, contaminated or fouled bedding, bandages, dressings, diapers, contaminated animal carcasses, offal, excreta, body parts, and bedding, etc.

- n) Junk shall mean any of the following items which are considered abandoned, dismantled, discarded or otherwise unusable including, but not limited to vehicles, machinery, equipment, appliances or other household goods and furniture. The term shall also include component parts, such as engines, transmissions, drive train, suspension, fenders, doors, hoods, wheels, windshields and tires removed from vehicles or any other part of a vehicle.
- o) Littering shall mean discarding in any location other than a proper waste storage container any item of solid waste such as a can, bottle, cigarette butt, package, wrapper or any other material, excluding organic refuse such as a single apple core, banana peel or leftover food item. Littering may also include any item of waste material moved by wind, water or animals into a public way or any combination of these items exceeding a volume of one cubic foot.
- p) Public nuisance shall mean any condition or thing existing or allowed to exist that:
  - 1) Injures or endangers the comfort, health or safety of others or the environment;
  - 2) Unlawfully interferes with, obstructs or tends to destruct or renders dangerous for passage any public or private street, highway, sidewalk, alley, stream or ditch;
  - 3) Unreasonably interferes with the comfortable enjoyment of life and/or property, or is likely to depreciate the value of other's property.
- q) Open Dump shall mean the consolidation of solid waste from one or more sources or the discarding of solid waste at any location that does not fulfill the requirements of a sanitary landfill as proscribed by state law or regulations, and that exists without daily cover and without regard to the possibilities of contamination of surface or subsurface water resources, air, land or other hazard or threat of hazard to the environment or safety.
- r) Person shall mean, but is not limited to, an individual, partnership, firm, company, corporation, trust, estate, legal representative or agent.
- s) Recyclables shall mean materials segregated from the waste stream for the purpose of collection and reprocessing to recover and reuse as a materials resource. This shall include glass containers, newspapers, office papers, corrugated cardboard, aluminum and steel containers and certain plastic containers.
- t) Salvaging shall mean the controlled removal of reusable or recyclable waste materials from a solid waste disposal facility and implies consent of the owner of the waste materials.
- u) Scavenging shall mean the uncontrolled and unauthorized removal of materials from solid waste at any point in the waste management system.



- v) Shelby County Solid Waste Management District shall mean the territorial area described in Shelby County Ordinance #1991-3 and cited as Shelby County Code Article 3, Chapter 7 Section 9 (SCC 3-7-9), and for purposes of this Ordinance shall specifically include Morristown.
- w) Solid Waste shall mean any garbage, refuse, sludge or other discarded or disposed materials, including solid, liquid, or semi-solid or contained gaseous materials resulting from any operation, activity or source. This definition excludes hazardous and infectious wastes defined above.
- x) Storage shall mean the proper temporary containment of waste materials in a waste storage container for a period not to exceed 15 days or the standard interval of local commercial collection service, whichever is less.
- y) Waste Storage Container shall mean a proper and suitable receptacle used for the temporary storage of solid waste, infectious or hazardous wastes while awaiting collection. Containers shall be designed to prevent escape or leakage of contents and should be resistant to scavenging animals. Plastic bags, paper bags and corrugated boxes shall not be considered to be proper containers for outdoor storage of wastes.
- z) Vector shall mean any animal or substance capable of harboring and transmitting microorganisms or disease from one animal to another or to a human.

#### SECTION FOUR

The following acts shall constitute a violation of this Ordinance:

- 1) No person shall discard or dump construction/demolition waste, hazardous waste, infectious waste or solid waste along any public roadway, in or near any public or private river, lake, stream, ditch or on the property of another person.
- 2) No person shall conduct any activity on public or private land which results in the accumulation of construction/demolition waste, infectious waste, or solid waste, so as to unreasonably interfere with the public health, safety, peace and enjoyment of the general public and as such shall be deemed a public nuisance.
- 3) No person owning real property shall cause or consent to final disposal upon said property of solid waste materials (other than inert solid waste or fill material) that is generated by said person or by any other person, unless otherwise licensed or permitted as a disposal facility.
- 4) No person shall discard inert solid wastes on public property for final disposal or for use as fill material without the consent of the proper County Commissioners.

- 5) No person shall litter, nor permit any dependent minor or other person for whom he/she is legally responsible to litter, nor cause another person to litter.
- 6) No person shall discard any materials other than recyclables in any facility or container intended for collecting recyclables. Leaving recyclable material outside the recycling bin shall constitute illegal dumping.
- 7) No person shall deposit any contaminated recyclable materials in any County or Solid Waste Management District facility or container intended for collecting recyclable materials.
- 8) No person shall conduct scavenging of materials at any facility or container intended for collecting recyclable materials.
- 9) No person, either knowingly or unknowingly, shall contract with another party to engage in any acts prohibited by subsections #1 through #8 of this Section. A violation of this provision of this Ordinance shall be an offense of the same degree for the waste generator as the violation committed by the hired contractor.
- 10) No person shall store, accumulate or allow to remain on any private property any abandoned vehicle or junk which is visible from a public place or public right-of-way. It is hereby declared that any abandoned vehicle or junk is detrimental to the safety, health and welfare of the general public and community, tends to reduce the value of private property, and is detrimental to the economic welfare of the county and is hereby declared to be a public nuisance.

#### SECTION FIVE

Investigation: Upon receipt of any complaint or report of an alleged violation of this Ordinance, the Compliance Officer shall conduct an investigation of such complaint or report. In the event that the Compliance Officer determines that there is not a violation of this Ordinance, but believes that the activity may constitute a violation of a health ordinance or zoning ordinance, the Compliance Officer may forward a copy of the report of investigation to another county or Town agency for further review and investigation.

- a) Items contained in waste materials or recyclable materials, which bear information such as names and addresses, shall be considered as evidence for identifying the owner or generator of the discarded materials and shall constitute rebuttable evidence that the person whose name is found therein has violated this ordinance. Witness accounts or surveillance documentation of any acts prohibited herein shall be considered evidence to identify violators. Any other pertinent evidence, including photographs and identification, by license plate number may be considered to determine whether a violation of this Ordinance has occurred.
- b) 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 faith effort to identify, locate and take enforcement action against the person that committed or caused the violation.

- c) Any person who in good faith provides information concerning a name, a license number, or any other evidence of a responsible person's identity found in waste improperly disposed on either public or private land shall not be held liable to said person for an action taken by enforcement authorities against the person as a result of information provided.
- d) The Compliance Officer shall have the right to enter any premises for the purpose of performing any duties imposed upon the officer by the provisions of this Ordinance.

#### SECTION SIX

Warnings and Citations: The following persons are hereby authorized to issue warning and citations under this Ordinance:

- a) The Compliance Officer for the Shelby County Solid Waste Management District; or
- b) A police officer, deputy sheriff or other designated enforcement officer operating under a cooperative agreement with the District.
- c) A warning or citation shall be served by one of the following means reasonably calculated to give notice to the person alleged to have committed a violation followed by certified mail, return receipt requested: (1) in person; or (2) to a member of the person's family who is over the age of eighteen (18) years who resides at the person's residence.
- d) A warning issued under this Ordinance shall be on a form approved by the District Board which shall include
  - 1) A description of the location of the alleged violation;
  - 2) A brief description of the nature of the alleged violation together with the provision of this Ordinance alleged to have been violated
  - 3) The date and time when the alleged violation was observed or occurred;
  - 4) The name of the person issuing the warning and the date the warning was issued; and
  - 5) A statement that failure to correct the alleged violation within a specified time may result in the issuance of a citation and order to appear before the Compliance Board and the maximum penalty or fine that may be assessed if the person is adjudged guilty of violation of this Ordinance.
- e) A citation issued under this Ordinance shall be on a form approved by the District Board which shall include
  - 1) The items contained in d) 1-5, above; and
  - 2) A description of the rights of the person cited to request a hearing for review, review procedure, and possible penalties or fines for failure to appear at the hearing all as provided according to Section Seven of this Ordinance.

## SECTION SEVEN

### Enforcement, Abatement and Clean Up

- a) In matters involving a health and/or vector hazard, the Shelby County Health Department may conduct investigation and enforcement according to laws governing public health.
- b) In matters involving a zoning issue, the Office of the Plan Commission may conduct investigation and enforcement of the county zoning ordinance.
- c) The Shelby County Solid Waste Management District Board of Directors in conjunction with an appointed Solid Waste Management District Compliance Board shall be empowered to order the abatement of nuisance solid waste accumulation, illegal dumping and littering and to issue the orders and fines designated.
- d) Any person or persons identified in violation this Ordinance, shall be subject to the following schedule for abatement:
  - 1) The Compliance Officer shall notify the person of an alleged violation in accordance with Section Six c). Depending upon the extent of the violation, the notice will state that violation abatement must occur within a reasonable length of time, usually between ten (10) days and sixty (60) days, from the date of notice. If abatement does not occur within the stated time, the Shelby County Solid Waste Management District reserves the right to abate the nuisance through the use of private contractors or the public workforce.
  - 2) If a small amount of trash, litter or recycling is found on public land, designated County Highway employees or other designated agents may search the material for identification evidence and then properly dispose or recycle the material. Evidence will be forwarded to the Compliance Officer for further action.
  - 3) The owner of property on which improper disposal acts have occurred may be included as a party of an enforcement action against a person who committed the violation for the purposes of obtaining access to the land to clean up and properly dispose of the wastes.
  - 4) Either abatement of the violation or a request for appeal must be filed with the Compliance Board within the time frame designated in the notice for the identified person or property owner to avoid fines, an order to appear, or other legal action. Appeals will be heard pursuant to Section Eight.
  - 5) It shall not be a defense to this Ordinance that other persons have participated in the violation, and any person adjudicated to have violated this Ordinance may be held liable for all costs related to action to bring compliance with this Ordinance.

## SECTION EIGHT

### Penalties and Sanctions

- a) In all cases where a person or property owner is alleged to have violated this Ordinance, the Compliance Officer shall have the authority to issue all orders necessary, including but not limited to orders to appear before the Shelby County Solid Waste Management District Compliance Board, as appointed by the Solid Waste Management District Board



of Directors. Cases involving fines will be presented to the Compliance Board by the Compliance Officer or other designated issuing officer after due notice has been given. The Compliance Board shall have the authority to levy fines not to exceed three hundred dollars (\$300.00) per day up to a total of two thousand five hundred dollars (2,500.00) for each violation that remains unabated. Persons who are ordered to appear before the Compliance Board or District Board and who fail to appear may be subject to an additional fine of up to \$300.00.

- b) All expenses including fines and abatement costs incurred by the County or the Solid Waste Management District in enforcing this Ordinance shall become a lien on property owned by the person or persons as afforded by Ind. Code 36-1-6-2. The lien shall be placed and recorded on the property tax duplicate and collected from the owner as taxes are collected.
- c) All monies collected through the enforcement of this Ordinance shall be placed in a Non-Reverting Solid Waste Clean Up Fund in the form of an appropriation from the general fund pursuant to Ind. Code 36-7-10.1-4 and 36-7-10.1-5 and shall be dispersed through the Shelby County Solid Waste Management District for the enforcement of this Ordinance.

#### SECTION NINE

##### Right to Contest

- a) A person cited under this Ordinance is entitled to seek review of the violation order(s), penalty(ies) or both by filing a written petition for review to the Shelby County Solid Waste Management District, 1110 Amos Road, Suite C, Shelbyville, Indiana, 46176, postmarked within fifteen (15) working days of receipt of the violation order(s) and penalty(ies). "Working days" means Monday through Friday, but does not include Saturday, Sunday or legal holidays. If a petition for review is not timely filed, the violation order(s) and penalty(ies) shall be deemed final orders of the Shelby County Solid Waste Management District.
- b) Upon receipt of the petition for review, the Compliance Board will affirm, amend, or dismiss the violation order(s) and penalty(ies). The Compliance Board shall issue written findings based upon the evidence submitted by the Compliance Officer and information submitted by the person seeking review. Within thirty (30) days after receiving the petition for review, the Compliance Board shall mail by first-class United States mail, a copy of its findings to the petitioner. A petition for review will be certified to the District Board.
- c) If the petitioner disagrees with the findings issued by the Compliance Board, the petitioner may appeal the findings to the District Board. All appeals must be filed with the District Board not later than fifteen (15) days after the date of the findings. Upon receipt of the appeal, the District Board shall notify the petitioner of a hearing date. At a hearing before the Board, the Board may hear testimony and consider written evidence.

The Appellant does not have to be represented by counsel at the hearing, and the Board shall not be bound by rules of evidence. The Appellant must present sufficient evidence to rebut the presumption that a violation of the ordinance occurred. Within thirty (30) days following the hearing, the District Board shall issue written findings of fact and shall notify the appellant thereof. Failure of the appellant to appear at the hearing shall not prevent the Board from issuing findings. The written findings of the Board shall be deemed final orders and may be appealed to the Circuit or Superior Court. All appeals must be filed within fifteen (15) days from the final order or be forever barred.

#### SECTION TEN

Severability: Each section, sentence, clause and phrase of this Ordinance is declared to be an independent section, subsection, sentence and phrase, and the finding or holding of any section, subsection, sentence, clause or phrase to be unconstitutional, void or ineffective for any cause shall not affect any other section, subsection, sentence clause or phrase or part hereof. The District Board may modify this ordinance as deemed necessary.

#### SECTION ELEVEN

Administrative Rules and Policies: The District Board may establish written rules and policies, not inconsistent herewith to carry out the provisions of this Ordinance.

#### SECTION TWELVE

##### Applicability and Effective Date

- a) This Ordinance shall apply to the entirety of Morristown, Indiana.
- b) All portions of former ordinances in conflict with this Ordinance are hereby repealed or superseded. This Ordinance shall become in full force and effect from and after its adoption and publication as required by law.
- c) Any violation of the provisions of this Ordinance that occurred prior to the enactment of this Ordinance, and which was a violation of existing state law, shall not be exempted from enforcement under this ordinance.
- d) Nothing contained herein shall prevent or supersede the enforcement of any other ordinance or law by any other county department, board or agency.
- e) All changes and amendments to the Shelby County Waste Accumulations, Illegal Dumping and Litter Ordinance, Ordinance No. 2004-12, are hereby adopted and incorporated as if fully stated herein after being publicized and filed as required by law.

Approved and adopted by a vote of 3 to 0 on May 9, 2007.



Morristown Town Council.

By: Spur Keaton

By: Paul H. Bennett

By: Mike Dila

Attest: Ann M. Whit, Clerk-Treasurer