

**HOWARD COUNTY RECYCLING DISTRICT, INDIANA
HOWARD COUNTY
NUISANCE SOLID WASTE ACCUMULATION, ILLEGAL DUMPING AND
LITTERING
RESOLUTION 2008-02**

This is a resolution to control improper solid waste disposal, to define open dumping, nuisance solid waste accumulation and littering, to establish violations thereof, and to provide for clean-up of materials improperly disposed of in Howard County, Indiana.

WHEREAS, Section 36-8-2-4 of the Indiana Code provides that a government unit may regulate conduct that might endanger the public health, safety or welfare; and

WHEREAS, Section 36-9-30-35 of the Indiana Code prescribes proper methods of solid waste disposal, compliance and penalties; and

WHEREAS, Section 13-19-1-1 et.seq. of the Indiana Code prescribes Solid Waste Management policies, duties and prohibited actions;

NOW, THEREFORE, BE IT RESOLVED BY THE HOWARD COUNTY RECYCLING DISTRICT'S BOARD OF DIRECTORS, INDIANA, as follows:

Section One

Title

This resolution is titled, "Howard County Nuisance Solid Waste Accumulation, Illegal Dumping and Littering Resolution 2008-02."

Section Two

Purpose

The purpose of this resolution is to prohibit illegal dumping, nuisance solid waste accumulation and littering along roadways, and on public and private property in Howard County. This resolution establishes the Howard County Recycling District as the entity that investigates, files reports and enforces this resolution in conjunction with the Howard County Recycling District's Board of Directors.

Section Three

Definitions

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

The following definitions shall apply in the interpretation and enforcement of this resolution.

“ABANDONED VEHICLE:” Any, machinery, equipment, watercraft or trailer that has remained on private or public property without the consent of the owner or person in control of that property for more than forty-eight (48) hours and is mechanically inoperable.

Also, any vehicle, machinery, equipment, watercraft or trailer that is mechanically inoperable and continuously in a location visible from public property or public right-of-way, or visible from the immediate vicinity of private residences or businesses for more than twenty (20) days.

“ABATE:” To end or eliminate nuisance solid waste accumulation, illegal dumping, littering, or any other violation of this resolution by removal, clean up and proper disposal.

“CONSTRUCTION/DEMOLITION WASTE:” Any discarded construction or demolition materials including but not limited to, lumber, wood, paneling, drywall, roofing material, siding, plumbing, electrical wiring, doors, windows, furniture, floor coverings, fixtures and cabinets.

“CONTAMINATED:” Un-rinsed containers with food or product residues, non-container glass materials, materials with 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 condition which renders the materials un-recyclable.

“DISCARD:” To abandon, deposit, desert, discharge, dispose, drop, dump, eliminate, emit, 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.

“DUMPING / TO DUMP:” The discarding of any items of solid waste commonly known as garbage, rubbish, refuse, construction and demolition debris, household trash, baby diapers, food wastes, appliances, tires, scrap metal, vehicles or parts, and all other items and materials defined as “solid waste” below.

“ENFORCEMENT AUTHORITY:” The Compliance Officer of the Howard County Recycling District or some other person specifically designated by the Director of the Howard County Recycling District, including but not limited to, a police officer, a sheriff’s officer, a conservation officer, an appropriate representative of a state or local governmental department, or other “sworn” enforcement officer.

“FILL MATERIAL:” Any material that is used for fill such as soil, clay, shale, gravel, sand or concrete.

“GARBAGE:” Any animal solid, vegetable solid, and semi-solid wastes from the processing, handling, preparation, cooking, serving, or consumption of food or food materials.

“GENERATE:” The act or process of producing solid waste. "Generator" means the person whose actions or processes result in unwanted solid waste materials.

“HAZARDOUS WASTE:” Any waste, including but not limited to, household hazardous wastes, used automotive fluids or parts, solvents and chemicals that because of its quantity, concentration, or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or increase in serious irreversible, or incapacitating reversible illness or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, handled, disposed of or otherwise mismanaged.

“HOWARD COUNTY RECYCLING DISTRICT:” Includes all of the incorporated and unincorporated territory in the county.

“INERT SOLID WASTE:” Includes but is not limited to, uncontaminated earth, rocks, rigid concrete, bricks, tiles, aged asphalt, uncontaminated natural wood, brush, leaves, grass clippings, wood chips, or sawdust.

“INFECTIOUS WASTE:” 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.

“JUNK:” 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 but is not limited to, component parts, such as engines, transmissions, drive trains, suspension, fenders, doors, hoods, wheels, windshields and tires removed from vehicles or any other part of a motor vehicle.

“LITTER:” Any man-made or man-used waste, which, if deposited within the county otherwise than in a proper waste storage container, tends to create a danger to public health, safety, and welfare or tends to impair the environment or aesthetic well-being of the community. Litter shall include, but not be limited to, garbage, trash, refuse, debris, grass clippings, other lawn or garden waste, paper products, glass, metal, plastic or paper containers, or other waste material of an unsightly, unsanitary, nauseous or offensive nature. Littering may also include any item of waste material moved by wind, water or animals or any other combination of these items.

“MECHANICALLY INOPERABLE:” Any vehicle, machinery, equipment, watercraft or trailer which is in a condition that prevents it from being driven under its own power, or not able to be operated in its normal manner.

“NUISANCE:” Defined as set out in IC 34-1-52-1, to wit: whatever is injurious to health, or an obstruction to the free use of property, so as essentially to interfere with the comfortable enjoyment of life or property. Nuisance is any condition or thing existing or allowed to exist that

injures or endangers the comfort, health or safety of others or the environment; unlawfully interferes with, obstructs or tends to destruct or renders dangerous for passage on any public or private property, or is likely to depreciate the value of other's property.

“OF RECORD:” Recorded in the records of the Recorder of Howard County, Indiana, or in the records of the Auditor of Howard County, Indiana.

“OPEN DUMP:” 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, transfer station or other facility as prescribed by state law or regulations, and that exists without daily cover and without regard to the possibilities of contamination of surface or sub-surface water resources, air, land or other hazard or threat of hazard to the environment or safety.

“PERSON:” An individual, partnership, firm, company, corporation, trust, estate, legal representative or agent.

“PRIVATE PREMISES:” All property, including, but not limited to, vacant land or any land upon which is located one or more buildings or other structures designated or used for residential, commercial, business, industrial, institutional, or religious purposes, together with any yard, grounds, walks, driveways, fences, porches, or other structures or improvements appurtenant to the land, except any public place.

“PUBLIC PLACE:” Shall include but is not limited to, any and all streets and roads, curbs, gutters, sidewalks, alleys, or other public ways, any and all public parks, lakes, waterways, spaces, publicly owned rights-of-way, grounds, or buildings within the incorporated and unincorporated territory in Howard County pursuant to IC 13-21-3 except those areas excluded by each eligible entity as defined in an adopted ordinance related to this resolution.

“RECYCLABLES:” Materials segregated from the waste stream for the purpose of collection and reprocessing to recover and reuse as a material resource. This shall include, but is not limited to, glass containers, newspapers, office papers, corrugated cardboard, aluminum, steel containers and certain plastic containers.

“SALVAGING:” The controlled removal of reusable or recyclable waste material.

“SCAVANGING:” The uncontrolled and unauthorized removal of solid waste materials or recyclables at any point in the waste management system.

“SOLID WASTE:” Any garbage, refuse, sludge, or other discarded or disposed materials, including but not limited to, solid, liquid, or semi-solid or contained gaseous materials resulting from any operation, activity, or source.

“SUBSTANTIAL PROPERTY INTEREST:” Any right in real property that may be affected in a substantial way by actions authorized by this resolution, including a fee interest, a life estate interest, a future interest, a present possessor interest, or an equitable interest of a contract

purchaser, or a lease.

“WASTE STORAGE:” Proper temporary containment of waste materials in a waste storage container for a period not to exceed (ten) 10 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, infectious or hazardous wastes while awaiting collection or proper disposal.

“VECTOR:” Any animal, insect, substance or any other solid waste object of transfer capable of harboring and/or transmitting micro-organisms and/or insects or disease from one animal to another or to a human.

Section Four **Acts Prohibited**

No owner, occupant, tenant, or any person having a substantial property interest in any real or personal property within the Howard County Recycling District, shall maintain, create, cause, place, deposit, leave, or permit a nuisance to remain on such property, or upon any public place abutting such real estate or personal property.

The following acts shall constitute a violation of this resolution:

1. No person shall discard or dump litter, abandoned vehicles, junk, recyclables, garbage, construction/demolition waste, hazardous waste, infectious waste, inert solid waste along any public roadway or near any public or private river, lake, stream or ditch or on his or her property or the property of another person.
2. No person shall conduct any activity on public or private land which results in the accumulation of litter, abandoned motor vehicles, junk, recyclables, garbage, fill materials, construction / demolition waste, hazardous waste, infectious, inert solid waste, or solid waste so as to interfere with the public health, safety, peace and the comfortable enjoyment of life or property.
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 by the State of Indiana.
4. No person shall litter, nor permit any dependent minor or other person for whom he or she is legally responsible to litter, nor cause another person to litter.
5. No person shall discard any materials, other than recyclables, at any facility or in any container intended for collecting recyclables.
6. No person shall deposit any contaminated recyclable materials in or at any City, County or Recycling District facility or container intended for collecting recyclable materials.
7. No person shall conduct scavenging of materials at any facility or in any container intended for collecting recyclable materials.
8. No person, either knowingly or unknowingly, shall contract with another party to engage in any acts prohibited by subsections #1 through #7 of this Section. A violation of this provision of this resolution shall be an offense of the same degree for the waste generator

as the violation committed by the hired contractor.

9. No person shall store, accumulate or allow to remain on any private property, any abandoned vehicles, automobile parts, disassembled automobiles, automobiles without engines, plumbing and piping materials and parts, scrap metal, un-seaworthy or dilapidated boats, dilapidated, deteriorated, or non-operable jet skis, snowmobiles, bicycles, trailers, mopeds or junk, unless properly approved.
10. No person shall store, accumulate or allow to remain on any private property appliances, household items and tires outside of any structure.
11. No person shall have any waste water, filth, offal, garbage, rubbish, animal waste, human excrement, which is deposited, allowed or caused to be upon any public or private property, other than for the purpose of approved forms of composting.

Section Five

Investigation and Enforcement Authority

The Compliance Officer, or other specifically designated enforcement authority, shall have the right to enter onto any public or private property, excluding structures within the jurisdictional coverage of this resolution for the purpose of performing any duties imposed by the provisions of this resolution. The Compliance Officer is hereby authorized to issue warnings, citations, and abatement notices under this resolution.

1. Upon receipt of any complaint, report, or personal sighting of an alleged violation of this resolution, the Compliance Officer shall conduct an investigation of such complaint, report or personal sighting.
2. In the event that the Compliance Officer determines that there is not a violation of this resolution, but has reason to believe that the activity may constitute a violation of regulations enforced by other agencies, the Compliance Officer/s or designee/s may forward a copy of the report of investigation to another state, county or city agency for further review and investigation.
3. 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 rebuttal and be evidence that the person whose name is found therein has violated this resolution.

Section Six

Abatement notice

Where, upon inspection, reasonable cause is found that a violation of this resolution exists, the Compliance Officer shall issue a written abatement notice.

1. An abatement notice shall be served upon all known holders of substantial property interests in the real estate upon which the violation is alleged to exist.
2. The abatement notice under this resolution shall be on a form approved by the Howard County Recycling District's Board of Directors.
3. The abatement notice issued shall include the name of the person to whom the order is issued, a legal description or physical address of the location of the alleged violation, a brief description of the nature of the alleged violation together with the provision of the resolution alleged to have been violated, the date and time when the report was observed, occurred or

was filed, the name of the person issuing the warning, the date the warning was issued, the action the notice requires and potential fines for non-compliance.

4. The action that the abatement notice requires must be reasonably related to abatement of the conditions constituting the violation.
5. The period of time within which the action ordered is required to be accomplished, measured from the time when the abatement notice is served. The time allowed must allow a sufficient time, of at least 48 hours from the time the abatement notice is served, to accomplish the required action. If the notice allows more than 30 days to accomplish the action, the notice may require that a substantial beginning be made in accomplishing the action within the initial 30 day period following service of the notice.
6. A statement that the order becomes final ten calendar days after notice is served, unless a hearing is requested in writing by the owner of record, the tenant or occupant, or by a person holding a substantial property interest in the private premises upon which the nuisance is alleged to exist. The request for a hearing must be served upon the enforcement authority prior to the expiration of the aforementioned ten calendar day period.
7. A statement briefly indicating what action can be taken by the Howard County Recycling District or enforcement authority if there is non-compliance with the orders contained in the abatement notice.
8. The name, business address, and business telephone number of the enforcement authority.
9. Service of abatement notices shall be made by any of the following means:
 - A. Sending a copy of the notice by registered or certified mail to the residence or place of business or employment of the person to be notified, with return receipt requested.
 - B. Delivering a copy of the notice personally to the person to be notified.
 - C. Leaving a copy of the notice at the dwelling or usual place of abode of the person to be notified.
 - D. Posting a copy of the notice in a prominent place upon the premises where the nuisance is located.
 - E. If, after a reasonable effort, service cannot be obtained by any of the means described in subdivisions (9) (A.) through (D.), service may be made by publishing the notice in a newspaper of general circulation in the county in which the property subject to the notice is located. Publication shall be made one time.
10. The date when notice is considered given is:
 - A. The date left at the dwelling, date of personal service or date signed by certified mail.
 - B. Notice by publication is considered given on the date of publication.

Section Seven

When abatement notice is not required

Where, in the opinion of the enforcement authority, a nuisance exists which creates a substantial and imminent health or safety hazard requiring immediate abatement in order to protect health and safety, the enforcement authority, upon prior approval by the Director or Howard County Recycling District's Board of Directors, shall abate the nuisance without the necessity of issuing an abatement notice.

Section Eight

Hearings

Any owner, tenant or occupant, or person holding a substantial property interest in private premises upon which a nuisance is alleged to exist who disputes the existence of a nuisance, or disputes the nature of the abatement action ordered in the abatement notice, may, within (10) ten calendar days of service of the abatement notice, serve upon the enforcement authority a written request for a hearing. The written request does not need to be in any particular form, but shall clearly indicate that a hearing is requested, and shall set out the nature of the individual's disagreement with the content of the abatement notice.

Upon receipt of the written request for a hearing, the enforcement authority shall place the matter on the agenda of the Howard County Recycling District's Board of Directors for hearing. The Howard County Recycling District's Board of Directors shall function as hearing body to adjudicate the matter.

The Compliance Officer or designee shall give written notice to the party requesting the hearing of the date and time of the hearing. Such notice shall be given no less than (5) five calendar days prior to the date set for hearing.

At the hearing, which may be adjourned from time to time, it shall be the Compliance Officer's burden to go forward with evidence sufficient to demonstrate that a nuisance exists, and that the actions required are reasonably calculated to abate the nuisance within a reasonable period of time. The party requesting the hearing shall have the right to dispute the existence of the nuisance, the reasonableness of the remedy, or the reasonableness of the time allowed to remedial action. The party requesting the hearing may propose alternative remedies or time periods for remedial action, or alternate remediation plans.

All such hearings shall be open to the public pursuant to Indiana statutes on open meetings.

Upon conclusion of the presentation of evidence and oral argument, if any, the Howard County Recycling District's Board of Directors shall deliberate and render a decision either confirming, amending or rescinding the disputed content of the abatement notice.

All time parameters set out in the abatement notice for completion of compliance actions shall be tolled, pending the outcome of the Howard County Recycling District's Board of Directors decision. In cases where the actions of the enforcement authority are upheld, or are upheld as modified by the Howard County Recycling District's Board of Directors, it shall be the responsibility of the Howard County Recycling District's Board of Directors, in its decision, to establish time periods for completion of compliance activities held in abeyance during the hearing process.

Appeal.

Pursuant to Indiana Code 36-1-6-9(e), a person who received a penalty under this resolution may appeal the order imposing the penalty to a court of record in Howard County, Indiana no later than sixty (60) days after the day on which the order is entered.

Section Nine

Compliance with abatement notice

No additional fines shall be imposed once the abatement order has been satisfactorily complied with.

Section Ten

Failure to comply with abatement notice

Failure to comply with the orders set out in the abatement notice within the time periods set out therein, or within any extended time periods agreed to by the Compliance Officer shall constitute a violation of this section and shall render the individual upon whom the abatement notice was served liable to a fine as set forth by the Howard County Recycling District's Board of Directors. Each day's failure, neglect or refusal to abate the nuisance during the time period allowed for compliance shall constitute a separate offense under this section. The record owner of the premises upon which the nuisance is found to exist, shall be held liable for the payment of fines assessed under this section.

Section Eleven

Abatement by District

In addition to fines imposed under this resolution, in non-emergency situations where abatement is not accomplished immediately by the County, failure, neglect, or refusal of any party to abate a violation as required by the abatement notice shall authorize the enforcement authority to obtain the permission of the District Director or Howard County Recycling District's Board of Directors to abate the violation as set out in the abatement notice. Where such permission is sought, the Compliance Officer or designee shall file a copy of the abatement notice with the Recorder of Howard County, Indiana, to give constructive notice to subsequent purchasers that the real estate is subject to the costs associated with the abatement. Abatement may be accomplished by crews designated by the District if the work is within its capacity to accomplish, or the District may request quotes and award the job to the lowest responsible and responsive contractor. An accurate accounting shall be kept of all costs incurred in abating the nuisance. Upon completion of the abatement, a statement for costs incurred shall be forwarded to the record owner by certified mail. Should such costs remain unpaid thirty (30) calendar days after receipt by the owner of record, or upon return of the certified mail as undeliverable, appropriate legal action may be taken to compel payment of costs incurred. Any judgment for costs obtained shall be filed as a judgment lien against the real estate upon which the violation was abated.

Section Twelve

Penalty

In addition to any other costs imposed under this resolution, any person who is found to have violated this resolution, or willfully or negligently failed to comply with any provision of this resolution or with any orders issued hereunder, shall be fined not less than \$100, and no more than \$2,500 for each offense. Each day a violation shall occur or continue shall be deemed a separate and distinct offense.

Citations for violations of this resolution may be issued by the Enforcement Authority. The

Uniform Traffic Citation may be utilized for the purpose of evidencing violation of this resolution. Enforcement shall be in effect by the filing of a civil suit seeking judgment in the amount of the fine imposed, plus court costs.

All expenses including fines and abatement costs incurred by the Howard County Recycling District in enforcing this resolution or adopted ordinances by eligible entities related to this resolution shall become a lien on property owned by the person or persons as afforded by Indiana Code 36-1-6-2. The lien shall be placed and recorded on the property tax duplicated and collected from the owner as taxes are collected.

A clean up fund is hereby established in the operating budget of the Howard County Recycling District. This fund shall be established for the purpose of accounting and paying for the costs of investigating, enforcing and cleaning up properties in violation of this resolution.

In matters involving a health and/or vector hazard, the Howard County Recycling District Director, Compliance Officer/s or designees may conduct investigation and enforcement according to laws governing public health under the Director's supervision. The Director of the Howard County Recycling District may designate some other person as the enforcement authority to conduct investigation and enforcement according to laws governing public health as needed.

- A. The Howard County Recycling District's Board of Directors shall be empowered to order the abatement of nuisance solid waste accumulation, illegal dumping, and littering and to issue orders and fines as designated.
- B. Any person or persons identified violating this resolution, shall be subject to the following schedule for abatement:

The Compliance Officer/s or designee/s shall notify the person of an alleged violation. Depending upon the extent of the violation, the notice will state that violation abatement must occur within a reasonable length of time between ten (10) days and sixty (60) days, from the date of notice. If abatement does not occur within the stated length of time, the Howard County Recycling District Director reserves the right to abate the nuisance through the use of private contractors or the public workforce.

If a small amount of trash, litter or recycling is found on public land, designated County employees or other agents may search the material for identification evidence and then properly dispose or recycle the material. Evidence will be forwarded to the Enforcement Authority for further action.

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.

Either abatement of the violation or a request for appeal must be filed with the Howard County Recycling District's Board of Directors within the time frame designated in the notice for the

identified person or property owner to dispute fines, an order to appear, or other legal action.

Section Thirteen

Severability

Each section, subsection, sentence, clause and phrase of this resolution is declared to be an independent section, subsection, sentence, clause or 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 Howard County Recycling District may modify this resolution as deemed necessary.

Section Fourteen

Administrative Rules and Policies

The Howard County Recycling District may establish written rules and policies, not inconsistent herewith to carry out the provisions thereof.

Section Fifteen

Applicability and Effective Date

This resolution shall apply to the entirety of Howard County, Indiana Recycling District. This resolution may be adopted as an ordinance by any legislative body operating in Howard County.

1. All portions of former resolutions or ordinances in conflict herewith are hereby repealed or superseded. This resolution shall become in full force and effect from and after its adoption and publication as required by law.
2. Any violation of the provisions of this resolution that occurred prior to the enactment of this resolution, and which was a violation of existing state law, shall not be exempted from enforcement under this resolution.
3. Nothing contained herein shall prevent or supersede the enforcement of any other ordinance or law by any other Federal, State or Howard County Department, Board or Agency of Howard County, Indiana.

Resolution adopted by the Board of Directors of the Howard County Recycling District, by a vote of _____ in favor and _____ opposed on May 20, 2008.

THE BOARD OF DIRECTORS OF THE HOWARD COUNTY RECYCLING DISTRICT:

AYE

NAY

ATTEST:

Controller