

ORDINANCE NO. 8-2007

AN ORDINANCE PROVIDING FOR VOLUNTARY CURBSIDE
RECYCLING AGREEMENTS IN UNINCORPORATED
CLARK COUNTY, INDIANA

WHEREAS, the Board of Commissioners of Clark County, Indiana (“Board”) is the County Executive under I.C. 36-2-2-2 and serves as the Legislative body under I.C. 36-1-2-9 with authority to enact Ordinances for unincorporated Clark County outside of city and town limits (“the county”);

WHEREAS, for purposes of solid waste collection and collection of recyclable materials, the Board has authority to enact ordinances in unincorporated areas of Clark County, Indiana, outside the legal boundaries of cities and towns in the county;

WHEREAS, pursuant to the decision of Tipiecanoe Sanitary Landfill, Inc. v. Board of Com’rs of Tiptecanoe County (App. 1st Dist. 1983) 455 N.E. 2d, the Board has the legal authority to regulate the disposal of solid waste, including materials that may be recycled, in the above-designated areas of Clark County.

WHEREAS, pursuant to I.C. 36-8-2-10 a county unit may regulate the operation of businesses, crafts, professions and occupations in a manner that serves the local public interests;

WHEREAS, pursuant to I.C. 36-9-2-16 a county government __ may regulate the function of the service of collecting, processing and disposing of waste substances.

WHEREAS, a need exists to provide a system under which waste haulers conducting business in Clark County, Indiana, outside the boundaries of cities and towns (“unincorporated area” or “county” hereafter) for purposes of providing once a week curbside collection of recyclable materials and items, based upon individual arrangements, agreements and contracts reached between residential property owners/homeowners and such waste haulers.

WHEREAS, the Board has terminated mandatory recycling directives in the County and began plans in 2006 for transition to a voluntary program based upon individual choices of residential homeowners and owners in the county:

NOW THEREFORE BE IT ORDAINED BY THE BOARD AS FOLLOWS:

1. That the following definitions are made a part of this Ordinance;

a. **RECYCLING:** any process by which materials would otherwise become solid waste are collected, separated or processed and reused or returned to use in the form of raw materials for products, including refuse-derived fuel. This definition does not include incineration or combustion of materials for the recovery of energy.

b. **RECYCLABLE MATERIALS:** shall include newspaper, aluminum and steel cans, clear, green and brown container glass, HDPE and PEPE plastic bottles and jugs and other materials defined as recyclable by the Clark County Solid Waste Management District in written ordinances or official publications.

c. **WASTE HAULER:** any person, corporation or other entity engaged in the business of, or offering services for, the hauling, collection or transfer of waste, solid waste or recyclable materials within the geographic boundaries of the county, outside the boundaries of cities and towns in Clark County.

d. **SOLID WASTE:** any garbage, refuse, sludge and other discarded materials, including solid, liquid, semi-solid or containing gaseous materials resulting from industrial, commercial, mining, agricultural.

e. **HOUSEHOLD SOLID WASTE:** that waste usually associated with residential households, including garbage and trash generated by single and multi-family residences, hotels, motels, bunk houses, ranger stations, cruise quarters and recreational areas such as picnic areas, parks and campgrounds.

2. Effective _____, 2007, all waste haulers operating within the county must offer a basic package to all residential customers that include once-a-week curbside collection of residential waste and once-a-week curbside collection of recyclables.

3. Effective _____, 2007, all waste haulers must provide trucks, components on trucks and sufficient mechanical equipment ("equipment") to collect recyclable materials from each residential customer described in this Ordinance and to hold, haul and dispose of such materials in a manner that is separate and distinct from commercial activities of the hauler for purposes of collecting, hauling and disposing of solid waste.

4. Waste Haulers subject to this Ordinance may not commingle solid waste and recyclable materials in the same collection vehicle.

5. Within fifteen (15) prior to _____, 2007, all waste haulers subject to this Ordinance must provide, in writing, a statement of 2007 rates and rate schedules to be offered to individual homeowners who wish to make an agreement with such hauler for voluntary curbside recycling pick-up. A copy of such written statement must be delivered to the offices of the Board at that time. Thereafter, on or before January 10th of each year during which this Ordinance is in effect, all waste haulers must confirm their household recycling rates to the Board in writing annually for the ensuing year.

6. All waste haulers subject to this Ordinance are required to offer individual recycling pick-up agreements on a voluntary basis to residential homeowners and residential properties that are currently use, plan to use or will use in the future the solid waste pick-up and collection services of the hauler. No homeowner or residential solid waste customer is required to enter into such private agreement with any waste hauler. It shall be the voluntary choice of citizens and residential homeowners, individually ("customer"), to enter into and make a recycling collection and pick-up agreement with the hauler.

7. It shall be a violation of this Ordinance, specifically, to not have the necessary tools, trucks and equipment ("equipment") (described in paragraph 3 above) on any truck being operated by a waste hauler engaged in commercial activities in the County after _____, 2007. A separate violation occurs for each day after _____, 2007 that such equipment is not in place per truck.

8. It shall be a violation of this Ordinance for a waste hauler to refuse to offer an individual curbside recycling contract, agreement or arrangement ("residential agreement") to any residential homeowner in the county, specifically including those residential homeowners that previously utilized the former mandatory curbside recycling program previously provided by the Clark County Solid Waste Management District. All offers to enter into residential agreements must be tendered by a solid waste hauler within thirty (30) days after the effective date of this Ordinance. Each day of not making such offer in such time period shall be considered a separate violation per day.

9. Any hauler that does not comply with the terms of this Ordinance, in any respect, by _____, 2007 shall be subject to being issued a Citation by any officer of the Clark County Police Department, County Engineer or the Clark County Director of Weights and Measures. Such Citation shall institute the civil prosecution of an action for Ordinance Violation.

10. The Board shall assign an attorney to be authorized to civilly prosecute any Ordinance violation action instituted by a Citation described above. Such civil prosecution shall be styled "Clark County Indiana vs. (insert name of defendant Hauler)." The Ordinance Violation citation may be filed in any Clark County Circuit or Superior Court and the following procedures shall apply:

- a. Upon proof of an Ordinance violation, by a preponderance

of the evidence, the party found liable of violation shall have judgment entered in an amount of \$ _____ for each day of violation.

b. Upon proof of such Ordinance Violation, the party found liable shall also be required to pay the costs of the action, plus attorney's fees incurred by the County in pursuing the civil prosecution of the Ordinance Violation action.

c. The Court having jurisdiction over the Ordinance Violation action shall, as an additional remedy upon proof of violation, enter such orders that will enter such cease and desist orders as will bar the violating party from performing any solid waste or recyclable collection activities or business in the County until such time as written proof of cure of the Violation has been filed with the court, with copies of such written documentation delivered to the offices of the Board and to the office of the County Engineer.

d. Any hauler violating this Ordinance, after having the Violation proven by a preponderance of evidence as described above, shall be subject to the continuing jurisdiction of the court wherein such violation was proven for enforcement purposes and remedies which shall include all remedies available to a court of at law or in equity in Indiana.

11. This Ordinance shall be effective on _____, 2007, after publication required by law.

THIS ORDINANCE PASSED by unanimous vote of the Board on the ____ day of June, 2007. This Ordinance made effective as of the ____ day of _____, _____.

BOARD OF COUNTY COMMISSIONERS

By: _____
M. Edward Meyer

By: _____
Ralph Guthrie

By: _____
Mike Moore

ATTEST:

Clark County, Indiana Auditor