

COPY

ORDINANCE NO. 2005-10  
2005-10

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES  
OF WHITLEY COUNTY, INDIANA; MORE SPECIFICALLY  
AN ORDINANCE PERTAINING TO THE ACCUMULATION OF  
JUNK AND TRASH**

WHEREAS, the Board of Commissioners of Whitley County, Indiana (the "Commissioners") have determined that it would be beneficial to the citizens of Whitley County, Indiana to have a county ordinance regulating the accumulation of junk and trash within Whitley County (in addition to or in lieu of the existing provisions of the Zoning Ordinance of Whitley County, Indiana pertaining to the accumulation of junk and trash);

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners as follows:

Section 1: The following new Chapter 53 of Title V of the Whitley County Code of Ordinances, consisting of Sections 53.01 through 53.10, is hereby added to the Whitley County Code of Ordinances:

Chapter 53. Junk and Trash.

Section 53.01. Definitions. For purposes of this Chapter 53, Sections 53.01 through 53.10 (hereafter, this "Chapter"), the following terms shall have the following meanings:

- (a) "Accumulation of junk and trash" includes, but is not expressly limited to, the keeping or depositing on, or the scattering over the premises of any of the following:
  - (i) Junk, trash, garbage, litter, refuse, debris, lumber, wood, or brush.
  - (ii) Abandoned, discarded, or unused objects or equipment such as automobiles, mobile homes, trailers, campers, furniture, stoves, refrigerators, freezers, cans, or containers.
  - (iii) Motor vehicles in an inoperative condition, whether currently licensed or not. Any style or type of motor-driven vehicle which has defective or missing parts, is unable to move under its own power, and/or has been wrecked, dismantled, discarded, stripped, or is in such a condition as to be generally unfit for further use as a conveyance.
  - (iv) Automobile parts, including tires and any other portion or parts of any motor vehicle detached from the vehicle as a whole.
  - (v) Scrap metal or pieces or parts of steel, iron, tin, zinc, copper, aluminum, or any alloy thereof, whether covered with porcelain, plastic, rubber, or any other material, and whether intact or in parts.
- (b) "Completely enclosed building" means a building completely enclosed by a permanent roof and by solid exterior walls pierced only by windows and customary entrance and exit doors.

The term "completely enclosed building" does not include any: (i) vehicle, trailer (with or without wheels), or moveable device or equipment, (ii) open structures such as carport, porches, or fenced areas or (iii) a structure or garage that would otherwise qualify as a "completely enclosed building" under this Chapter if it is maintained in such a manner as to keep in public view the display of junk and trash in contravention of the intents and purposes of this Chapter.

(c) "Compost pile" means a pile, mound or heap (whether on the ground or in a container or structure) consisting solely of organic materials that are intentionally collected in order to create a compost material for gardening purposes.

(d) "Construction site" means any private or public property upon which repairs to existing buildings, construction of new buildings, or demolition of existing structures is taking place.

(e) "Debris" includes the remains of something broken down or destroyed, rough broken bits and pieces of stone, glass, wood, concrete, building materials after demolition, bits and pieces of rubbish or litter, and a heap of rock fragments.

(f) "Elements" means wind, weather or other condition, whether created by nature or man-made, which could reasonably be foreseen to carry litter from one place to another.

(g) "Enforcement Officer" means the person or persons designated as enforcement officer(s) in accordance with Section 53.07 of this Chapter.

(h) "Garbage" means any animal or vegetable waste and all other deleterious substances, such as but not limited to waste material and refuse from kitchens, residences, grocery stores, butcher shops, restaurants, cafes, hotels.

(i) "Junk" means any discarded or worn out materials or manufactured products, whether reuseable or salable or not.

(j) "Litter" means any uncontainerized man-made or man-used waste which, if deposited within the County tends to create danger to public health, safety, and welfare or to impair the environment of the people of the County. Litter may include, but is not limited to, any garbage, trash, refuse, confetti, debris, grass clippings or other lawn or garden waste, newspaper, magazine, glass, metal, plastic, paper container or other construction material, motor vehicle part, furniture, oil, carcass of a dead animal, or nauseous or offensive matter of any kind, or any object likely to injure any person or create a traffic hazard.

(k) "Open areas of the lot or premises" means any area of the lot or premises not within the confines of a completely enclosed building as defined by this Chapter.

(l) "Person" means any individual, firm, organization, association, partnership, trust, company, corporation, limited liability company or other entity.

(m) "Private premises" means any lot or tract of land, and any part thereof, whether

improved or unimproved, that is not a public place.

(n) "Public place" means any and all streets, sidewalks, boulevards, avenues, lanes, alleys or other public ways, and parks, squares, plazas, grounds and buildings frequented by the general public, whether publicly or privately owned, including but not limited to restaurants, shopping centers, fast food outlets, stores, hotels, motels, industrial establishments, office buildings, apartment buildings, housing projects, gas stations, hospitals, and clinics.

(o) "Refuse" means waste, rubbish, garbage, trash, or any material of any kind that has been discarded, rejected, cast aside, or thrown away as useless, except body wastes.

(p) "Responsible party" means, collectively: (A) the person(s) having a present interest legal title with respect to the premises on which a violation of this Chapter occurs; (B) any person(s) (such as a contract buyer) having an equitable title with respect to the premises on which a violation of this Chapter occurs; (C) any tenant having a possessory interest with respect to the premises on which a violation of this Chapter occurs; and (D) and any other person(s) in possession or control of the premises on which a violation of this Chapter occurs. All persons who constitute a responsible party (as defined above) are jointly and severally responsible for maintaining the premises in compliance with this Chapter.

(q) "Trash" means rubbish such as feathers, coffee grounds, ashes, tin cans, paper boxes, glass woods, shrubs, yard clippings, leaves, tree trimmings, and similar matter.

Section 53.02. Accumulation of Junk and Trash Prohibited. It is a violation of this Chapter for any person to permit the accumulation of junk and trash upon the open areas of any property within Whitley County, Indiana that is owned, leased and/or controlled by such person, except as provided in Section 53.03 of this Chapter. In the event of such a violation, each person who is a responsible party commits a violation of this Chapter.

Section 53.03. Exception for Certain Tracts. Notwithstanding anything in this Chapter to the contrary, the terms of this Chapter do not apply to any tract of land that is: (i) greater than twenty (20) acres in size; and (ii) located within a district zoned primarily for agriculture use (currently, the A-1 Agricultural District).

Section 53.04. Exception for Compost Piles. Notwithstanding anything in this Chapter to the contrary, it shall not be a violation of this Chapter to create and maintain a compost pile provided that:

- and
- (a) The compost pile does not occupy an area greater than ten feet by ten feet;
  - (b) The compost pile is at least 100 feet from any public road; and
  - (c) The compost pile is either: (i) at least 100 feet from any other tract of real estate (other than a tract described in Section 53.03 of this Chapter or (ii) completely screened by a fence or other man-made or natural screen such that the compost pile is not visible from any other tract of real estate (other than a tract described in Section 53.03 of this Chapter).

Section 53.05. Maintenance of Property.

(a) Private Premises. It shall be the duty of any person owning or controlling any private premises to maintain such private premises in a clean and orderly manner. It shall be a violation of this Chapter to abandon, neglect, or disregard the condition or appearance of any premises so as to permit the accumulation of junk and trash thereon.

(b) Public Places. It shall be the duty of any person owning or controlling any public place to keep the premises clean of all Junk, trash, garbage, litter, refuse, and debris and shall take measures, including daily cleanup of the premises, to prevent the accumulation of same or movement by the elements to adjoining properties. It shall be a violation of this Chapter to abandon, neglect, or disregard the condition or appearance of such premises so as to permit the accumulation of junk and trash thereon.

(c) Construction Sites. The property owners and contractors in charge of any construction site shall maintain the construction site in such a manner as to avoid the accumulation of junk and trash, nor be carried by the elements to adjoining properties. All junk, trash, and litter from construction or related activities shall be picked up at the end of each workday and placed in containers for regular removal.

Section 53.06. Violations Created by Others. In the event a condition occurs which constitutes a violation of this Chapter, each responsible party is deemed to have committed a violation of this Chapter regardless of whether or not such responsible party personally created or contributed to such condition.

Section 53.07. Enforcement Officer. The Enforcement Officer shall be designated (and may be changed from time to time) by resolution or ordinance of the Whitley County Board of Commissioners.

Section 53.08. Inspection. The Enforcement Officer or his or her authorized representatives, are hereby empowered to the fullest extent of the law, in the performance of their functions, to enter upon any land within Whitley County for the purposes of making inspections, examinations, and surveys, or to place and maintain thereon monuments, markers, notices, signs, or place cards in order to effect the provisions of this Chapter. The Enforcement Officer, or his or her authorized representative, shall present proper credentials when entering upon any land or structure for the purpose of this Chapter.

Section 53.09. Notice of Violation. In the event a violation is found to exist, the Enforcement Officer shall notify the owner or occupant of such premises of the existence of the violation and the steps that must be taken to correct the violation. Such notice shall be sent by registered or certified mail, return receipt requested, to the address tax duplicates for said real estate are sent. The written notice shall inform the owner: (a) that he must take steps to correct the violation within a time period, not less than ten (10) days, from the receipt of the notification, and (b) of the penalties involve if the owner fails to take such steps.

Section 53.10. Enforcement; Penalties: A responsible party who violates this Chapter shall be subject to one or more of the following:

(a) Local Ordinance Violation Penalty. A penalty in the amount of \$100.00. Each day that a violation exists shall constitute a separate violation for purposes of the penalty.

(b) Nuisance. The violation is declared a public nuisance and may be treated as such under all applicable laws and remedies pertaining to public nuisances.

(c) State Law. The violation may be enforced as an infraction or crime under any applicable state law, which may include:

- (i) Solid Waste - Indiana Code Section 36-9-30-35
- (ii) Weed Control - Indiana Code Section 15-3-4.6-6
- (iii) Littering (boats and boating) - Indiana Code Section 14-1-1-9
- (iv) Littering (generally) - Indiana Code Section 35-45-3-2

Section 2. Pursuant to Section 53.07 of the foregoing ordinance, Scott Wagner of the Whitley County Health Department is initially designated as the Enforcement Officer.

Section 3: All ordinances, or parts of ordinances in conflict with the provisions of Section 1 and Section 2 above are hereby repealed.

Section 4: This Ordinance shall be in full force and effect from and after its passage and approval by the Board of Commissioners on the date shown below.

Passed and adopted by the Board of County Commissioners of Whitley County, Indiana, this 30 day of June, 2005.

Bm Pethala  
President

James Pettigrew  
Commissioner

AL CEF  
Commissioner

ATTEST:

Linda J. Serig  
County Auditor