

ORDINANCE NO. 5-2006

AMENDED AND RESTATED ORDINANCE ESTABLISHING
NONREVERTING FUND
FOR PERMIT FEES AND BONDS,
Applicable to Persons Conducting
Solid Waste Hauling and
Disposal Services in Clark County Indiana

WHEREAS, the Board of Commissioners of Clark County (“Board”) is the legislative body of the County pursuant to I.C. 36-1-2-9. The Board also is the County Executive pursuant to I.C. 36-2-2-2 pursuant to section 2;

WHEREAS, County Ordinances 6-1982, 1-1983, 6-1986, 9-1993 and 11-1994 have been previously enacted by the Board providing for procedures and requirements in the county pertaining to Solid Waste Permits and the Solid Waste Permit Fund (currently existing and established as Fund No. 261 upon the records of the Auditor of Clark County (“Auditor”));

WHEREAS, a need exists to amend and restate all prior such Ordinances, which are incorporated by reference into this Ordinance, and to provide and confirm more detailed support of procedures for the issuance of solid waste hauling and service permits (“permits”) in Clark County, Indiana and for the payment of annual permit fees to engage in that business activity;

**NOW THEREFORE BE IT ORDAINED BY THE BOARD OF
COMMISSIONERS OF CLARK COUNTY, INDIANA AS FOLLOWS:**

1. The Board hereby establishes the following definitions:
 - (a) “Board” refers to the Board of Commissioners of Clark County, Indiana;
 - (b) “solid waste” means all describable and non-describable solid and semi-solid waste, except human excretion, but including garbage, rubbish, ashes, street cleaning, debris, dead animals offal and solid commercial, industrial and institutional waste;

(c) “solid waste disposal service” means actions conducted by any person, persons, or business, which, for consideration and business profit, offers to remove solid waste from any residence, apartment, condominium, business or other location within Clark County, Indiana;

(d) “Auditor” shall mean the Auditor of Clark County, Indiana;

(e) “enforcement officer” shall mean the Sheriff of Clark County, Indiana and any of the Sheriff’s deputies and shall also mean the franchise holder/operator at the Clark/Floyd Landfill (the “Operator”). This definition shall also include the county Engineer and the County Inspector for Weights and Measures;

(f) “commercial hauler” shall mean any entity, person, hauler, driver, business or group of persons (excluding municipal hauler within the exception of Paragraph 3 below) conveying, delivering or seeking to drive, convey or deliver solid waste within Clark County as part of a business, business operation or any operation for profit.

2. No person, persons or business entity shall engage in the above business activities or conduct solid waste disposal services within the boundaries of Clark County, Indiana without first obtaining a non-exclusive permit from the Board through the offices of the Board;

3. No city or town in Clark County, Indiana which provides solid waste disposal services shall be required to acquire a permit under this Ordinance if, in fact, the city is utilizing its own employees and equipment for providing such services;

4. The Board shall charge annually a fee of One Thousand Dollars (\$1,000.00) for each permit. Permits shall be purchased annually from the office of the Board on or before January 20th of each year. For larger commercial haulers using several trucks, there shall be an additional charge of \$10.00 per truck in order to meet the requirements hereof. Because of enactment of this Amended and Restated Ordinance, and for 2006 only, permits may be purchased from the office of the Board on or before May 15, 2006 (for 2006 only);

5. Any enforcement officer designated and identified above is hereby authorized to issue a written citation to any person attempting to provide solid waste disposal services in the County, after the permit deadline date passes and each year hereafter, without having a valid permit issued by the Board;

6. Upon the issuance of such citation by any such enforcement officer, the Board shall institute Ordinance violation procedures in any Circuit or Superior court of the County. Upon proving each daily violation of this Ordinance by a preponderance of the evidence, the violator shall be subject to a fine of not less than Two Hundred Fifty Dollars (\$250.00) and not more than One Thousand Five Hundred Dollars (\$1,500.00) for each violation proven, plus court

costs. Additionally, upon proving such violation of this Ordinance by a preponderance of the evidence, the Board shall be entitled to recover reasonable attorney's fees, as fixed and determined by the court, but not less than Two Hundred Fifty Dollars (\$250.00). The Board, in such case shall also be entitled to recover all case expenses and costs of litigation that have accrued in civilly prosecuting any individual violation of this Ordinance;

7. Each day any person, any group of persons or any business performs or attempts to perform solid waste disposal services within Clark County, Indiana without a permit required by this Ordinance and/or in violation of this Ordinance shall be considered a separate offense;

8. Any operator, person, or group of persons who fails to obtain the permit required by this Ordinance on or before the due date in 2006 and in each and every respective year thereafter shall be assessed a late application fee of One Hundred Fifty Dollars (\$150.00) per year;

9. All fees collected by virtue of this Ordinance shall be deposited in the Clark County, Indiana Solid Waste Permit and Bond Fund previously established under Ordinance 9-1993;

10. Said fund shall be non-reverting in nature and all proceeds received by operation of this Ordinance shall be deposited therein. Expenditures from said fund shall be determined, made and exclusively controlled by the Board of Commissioners of Clark County, Indiana without the necessity of appropriation;

11. Expenditures from said fund may be made for the following purposes:

(a) For the operating expenses, including supplies, of the permit fee and recordkeeping system that is contemplated and described in this Ordinance;

(b) For expenses connected to the operations of any offices wherein services and furtherance of the purposes and goals of this Ordinance are provided, as determined by the Board from time-to-time;

(c) For such other expenses pertaining to the operations of public services of Clark County, Indiana, or for the provision of professional services, or other services, provided to the Board or the County from time-to-time, as determined by the Board;

(d) For such other public expenses as are deemed appropriate and necessary to the public interest by the Board;

12. The Auditor is hereby directed to maintain and manage accurate accounting information concerning the receipts, expenditures and balances of this fund;

13. No County warrants are authorized to be issued for expenditures from this fund for payments of any monies except upon approval of a claim by the Board. No expenditures from this fund shall be made except in accord with this Ordinance;

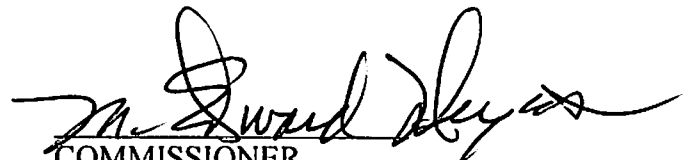
14. After publication, and certainly after April 15, 2006, the Operator shall give one free entry into the Landfill, for each commercial hauler appearing at Landfill, with a warning and advisory that no further access will be allowed to the Landfill without obtaining a permit under this Ordinance;

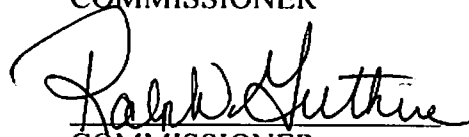
15. The staff of the Board shall timely give notice of issuance of all permits hereunder to the Operator. Any violation of this Ordinance by any person controlling access to the Clark-Floyd Landfill will be subject to the civil prosecution and penalty provisions of this Ordinance, by personal or corporate liability;

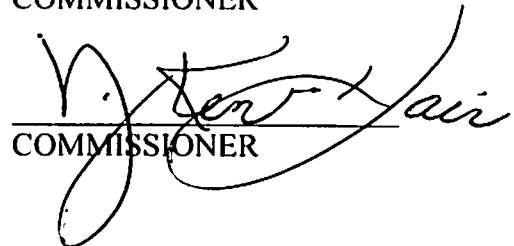
16. All prior Ordinances mentioned above, and all County Resolutions pertaining to this subject matter (if any) are incorporated into this Amended and Restated Ordinance. This Ordinance represents the recodification of all such prior Ordinances and Resolutions pertaining to this subject matter. Such prior enactments are not repealed by this Ordinance. The Board finds that requirements for obtaining the permit described in this Ordinance have never lapsed, and have never been negated, since the original enactment of an Ordinance requiring such permits.

17. That the terms of this Ordinance shall become operative and in force after publication as required by law;

THIS ORDINANCE UNANIMOUSLY APPROVED BY THE BOARD OF COMMISSIONERS OF CLARK COUNTY, INDIANA ON THE 20 DAY OF April, 2006.


COMMISSIONER


COMMISSIONER


COMMISSIONER

ATTEST:


AUDITOR, CLARK COUNTY, INDIANA