

3 AN ORDINANCE AMENDING CHAPTER 50: GARBAGE  
4 AND REFUSE OF THE CITY OF FORT WAYNE CODE  
5 OF ORDINANCES.

6  
7 NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE  
8 CITY OF FORT WAYNE, INDIANA:

9 SECTION 1. That CHAPTER 50: GARGABE AND REFUSE of the City  
10 of Fort Wayne, Indiana, Code of Ordinances of be amended as follows:

11 CHAPTER 50: GARBAGE AND REFUSE

12 Section

13 Collection and Disposal

14 50.01 Definitions

15 50.02 User fee for collection and disposal of residential municipal solid waste

16 50.03 Separate solid waste fund

17 50.04 Refuse storage containers and the storage of refuse

18 50.05 Location of refuse storage containers and recycling containers

19 50.06 Set-out time for refuse containers and recycling containers

20 50.07 Reserved

21 50.08 Reserved

22 50.09 Garbage user fee

23 Management of Yard Waste

24 50.10 Reserved

25 50.11 Yard waste prohibited from being placed in solid waste landfills

26 50.12 City utilities yard waste recycling facility

27 50.13 Fees

28 50.14 Enterprise fund

29 Collection of Recyclable Materials

30 50.15 Reserved

50.16 Recycling contractors authorized

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- 2           50.18 Manager to make rules and regulations

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- 18           D. Prehearing Procedures
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23           COLLECTION AND DISPOSAL

24           § 50.01 DEFINITIONS:

25           (A) Definitions. For the purpose of this chapter, the following definitions shall  
26           apply unless the context clearly indicates or requires a different meaning.

- 27           (1) AEROBIC. Living or occurring only in the presence of oxygen.
- 28           (2) BULKY WASTE. A large appliance, piece of furniture or non-freon appliance  
29           from a residential source with a weight or volume greater than that allowed  
30           for for a City Cart and accepted under set of requirements provided by the  
              Solid Waste Department.

- 1 (3) CITY CART. A 96-gallon or 48-gallon wheeled refuse cart, displaying the City  
2 Seal on the side, provided by the City of Fort Wayne.
- 3 (4) COMPOST PILE. A storage area for a mass of organic waste decaying through  
4 an aerobic degradation process under controlled conditions with the  
5 intention of using the resulting product as a soil conditioner. Materials in a  
6 compost pile include soil, paper products, yard waste, nondairy and nonmeat  
7 food products, and/or nonmeat-eating animal waste. A compost pile is kept  
8 in an orderly condition to control odors and to prevent the blowing of debris.  
9 A compost pile cannot be a potential transmission agent of disease or be  
10 maintained in such a way which will attract vectors, rats, or other vermin.
- 11 (5) CURB SIDE RECYCLING. Bi-weekly pick- up of discarded material as specified  
12 by the city including but not limited to newspapers, aluminum, glass, steel  
13 and plastic containers which can be separated from municipal solid waste for  
14 the purpose of recycling, but not including material generated from and  
15 commonly reused within an original manufacturing process.
- 16 (6) DISPOSE. To discard, abandon, cause to be or allow the removal of waste  
17 from the site of origination.
- 18 (7) FREON WASTE ITEM. An appliance or other waste item of a type which  
19 originally contained Freon or any other nonflammable gaseous or liquid  
20 fluorinated hydrocarbons used as a refrigerant, disposal of which is  
21 specifically regulated by the United States Environmental Protection Agency  
22 (USEPA).
- 23 (8) GARBAGE. Putrescible animal or vegetable waste resulting from the handling,  
24 preparation, cooking, serving or consumption of food including food  
25 containers.
- 26 (9) GARBAGE CAN LINER. Refuse bag designed to be placed in a refuse container  
27 or refuse storage container.
- 28 (10) HAZARDOUS WASTE. Waste designated as hazardous by the USEPA  
29 and/or the Indiana Department of Environmental Management (IDEM).
- 30 (11) LANDFILL. A solid waste management disposal facility as defined by  
state statute at which solid waste is deposited on or in the ground as an  
intended place of final location. LANDFILL does not include the following:
- (a) A site that is devoted solely to receiving one or more of the following:
    - (i) Fill dirt;
    - (ii) Vegetative matter subject to disposal as a result of landscaping,  
yard maintenance, land clearing, or any combination of  
activities referred to in this division;
    - (iii) Construction debris
  - (b) A facility receiving waste that is regulated under IC 13-13-1 et seq.

- 1 (12) MANAGER. The Solid Waste Manager of the city.
- 2 (13) MOBILE HOME COMMUNITY. This term shall be defined consistent  
3 with IC 16-41-27-4 and, for the purpose of this section, shall also include such  
4 areas containing less than five mobile homes when all other elements of that  
5 definition have been met.
- 6 (14) MOBILE HOME COMMUNITY OCCUPANCY RATE: 90% of the total  
7 number of buildable lots within a mobile home community.
- 8 (15) OCCUPANT. Any individual, living, sleeping, cooking or eating in or  
9 having possession of a dwelling unit.
- 10 (16) OWNER. Any one or more of the following:
- 11 (a) Any legal person who owns in fee simple, a parcel of real estate. This shall  
12 also include a legal person holding a life of tenancy in real property; i or
- 13 (b) The person identified as the owner or owners as reflected in the records of  
14 the Allen County Recorder's Office; or
- 15 (c) The purchaser or purchasers of such real estate under a contract for  
16 conditional sale of real estate; or
- 17 (d) The legal person or persons in control of the property as the personal  
18 representative, trustee, receiver or guardian of the owner.
- 19 (17) PERSON. An individual, partnership, corporation, limited liability  
20 company, sole partnership, association or any other legal entity of any kind  
21 whatsoever.
- 22 (18) RECYCLABLE MATERIAL. Materials defined by the Solid Waste  
23 Department as accepted for collection and processing by City recycling  
24 collection and processing contractors.
- 25 (19) RECYCLE. Process by which materials otherwise destined for disposal  
26 are collected, reprocessed and remanufactured.
- 27 (20) RECYCLING CONTAINER. City carts designated by the Solid Waste  
28 Department to be used for the collection of Recyclable Material.
- 29 (21) REFUSE. Discarded waste materials, in a solid or semi-solid state  
30 consisting of garbage, rubbish or a combination thereof.
- (22) REFUSE BAGS. Plastic sacks designed for refuse with sufficient wall  
strength to maintain physical integrity when lifted by top; securely tied at the  
top for collection, with a capacity not to exceed 33 gallons and a loaded  
weight not to exceed 35 pounds.
- (23) REFUSE CONTAINER. A 96-gallon or 48-gallon city cart or a  
watertight container constructed of metal or other durable material  
impervious to rodents and other animals with a tight-fitting lid.
- (24) REGULAR COLLECTION. The city's designated day for refuse,  
recycling and yard waste collection.

1 (25) RESIDENTIAL MUNICIPAL WASTE. This term shall include residential  
2 garbage, bulky waste, rubbish and refuse as above defined and shall be  
3 interpreted to be consistent with that definition as set out in the Indiana Code  
4 with the restriction that wastes from all industrial, office, commercial and  
5 institutional establishments are specifically excluded hereunder.

6 (26) RESIDENTIAL UNIT. A group of rooms located within a building or  
7 mobile home and forming a single inhabitable unit with facilities which are  
8 used or are intended to be used for living, sleeping, cooking and eating. This  
9 definition also includes complexes containing four or fewer separate or  
10 contiguous single-family dwelling units whose owner has not elected to  
11 procure commercial waste removal by a registered hauler.

12 (27) RUBBISH. Non-putrescible solid waste consisting of combustible and  
13 non-combustible materials including yard and garden waste but excluding  
14 hazardous wastes, infectious waste and tires.

15 (28) VEGETATIVE MATTER. Any yard or landscaping waste, or land-  
16 clearing waste, including leaves, grass, brush, limbs, and branches.

17 (29) YARD WASTE. Leaves, grass clippings, weeds, brush and other organic  
18 garden debris.

19 § 50.02 USER FEE FOR COLLECTION AND DISPOSAL OF RESIDENTIAL MUNICIPAL  
20 SOLID WASTE.

21 (A) Commencing January 1, 1997, the city shall assess a monthly solid waste fee  
22 for the service of collection and disposal of residential municipal waste and  
23 recyclable materials provided by the city.

24 (B) Such service shall be provided only to Residential Units as above defined,  
25 within the confines of the corporate limits of the city. The monthly fee shall be billed  
26 to each residential unit and collected in conjunction with other utility services  
27 provided by the city. When the utility account covers a building containing more  
28 than one single-family unit, said account shall reflect two monthly fees hereunder.  
29 Utility accounts for mobile home parks shall be billed on a 90% occupancy rate.

30 (C) The fees charged hereunder shall take priority over all other charges for  
utility services provided by the city. Partial payments shall first be applied to satisfy  
this service fee. Delinquent accounts shall be handled in the same manner as other  
utility accounts under Chapter 51 of this title.

(D) Assessment of this charge may be appealed by any utility user by filing a  
petition to appeal with the Solid Waste Manager along with verifiable  
documentation showing either that the property is assessed as commercial or that  
the fee is improperly assessed against a multi-unit property. The Solid Waste  
Manager's determination shall be reviewable by the Director of Public Works. The  
Director's decision shall be final and appealable. These administrative procedures  
shall be conducted consistent with IC 4-21.5-3, et seq. No dispute or appeal of said  
fee shall be a valid reason for non- payment until or unless said charge is deleted  
from the user's utility account by the city. In such case, any overpayment made

1 hereunder shall be applied as a credit to said user's utility account to satisfy charges  
2 for water and sewer usage and/or storm water service.

3 (E) Proper disposal of Freon waste items shall be the responsibility of the owner.

4 (1) It shall be unlawful for any person to leave or permit any abandoned,  
5 unattended or discarded freon waste item to remain outside of any dwelling,  
6 building or other structure, or within any unoccupied or abandoned building,  
7 dwelling or other structure under his/her control, for a period of greater than seven  
8 consecutive days.

9 (2) Failure to properly dispose of a freon waste item within a seven days shall  
10 constitute a nuisance under this section and shall be punishable by a fine of \$100  
11 per day.

12 (F) (1) The Board of Public Works shall have the responsibility and authority to  
13 adopt rules and regulations governing the implementation of this residential  
14 municipal waste collection and disposal program. Such responsibility and authority  
15 will include the appointment of an agent to collect charges due hereunder,  
16 including, but not limited to late payment charges, attorney fees and court costs  
17 added as a result of a delinquency on the utility account.

18 (2) The Board of Public Works shall have the authority to hire and/or contract  
19 for such collection and disposal services as provided by IC 36-9-30-8.

20 (G) Both the user fee and residential municipal waste collection and disposal  
21 program established hereunder shall be reviewed at least annually. The rate system  
22 shall be adjusted as necessary to provide sufficient funds to pay any and all contract  
23 fees for collection, hauling and/or disposal of residential municipal waste and all  
24 costs incidental to the program, but shall also strive to equitably assess charges in a  
25 manner conducive to voluntary recycling.

26 (Ord. G-53-92, passed 11-24-92; Am. Ord. G-11-94, passed 6-28-94; Am. Ord. G-24-  
27 94, passed 10-8-96; Am. Ord. G-25-96, passed 10-8-96; Am. Ord. G-21-98, passed 6-  
28 2-98; Am. Ord. G-38-07, passed 12-18-07)

29 § 50.03 SEPARATE SOLID WASTE FUND.

30 (A) All revenues collected by the city from:

- 31 (1) The monthly user fees;
- 32 (2) Reimbursement for clean-up costs;
- 33 (3) Missed collection liquidated damage penalty fees;
- 34 (4) The sale of recycled materials;
- 35 (5) Promotional fees; and

36 (6) Any other revenues associated with the city's solid waste and recycling  
37 contracts shall be deposited in a separate, non-reverting, perpetual fund.

1 (B) This fund shall be established for the purpose of accounting and paying for  
2 the costs of collecting, disposing, and recycling of solid waste. When necessary, the  
3 Common Council may approve additional operating transfers into this fund.

4 (Ord. G-11-94, passed 6-28-94; Am. Ord. G-38-07, passed 12-18-07; Am. Ord. G-36-  
5 11, passed 9-13-11)

6 § 50.04 REFUSE STORAGE CONTAINERS AND THE STORAGE OF REFUSE.

7 (A) The city will provide one 96-gallon cart to single family dwellings, and two  
8 96-gallon carts to multifamily dwellings (two - four units). Residences requesting  
9 and using a 48-gallon cart shall not set out extra bags or cans, except on an  
10 occasional (three - four times per year) basis. The city carts are the property of the  
11 City of Fort Wayne and are to remain at the dwelling unit at all times. Any individual  
12 who is found transporting carts in their vehicle, or possessing a cart without paying  
13 a rental fee will be prosecuted for theft.

14 (B) Additional refuse storage containers sufficient to meet the needs of the  
15 occupant of the dwelling unit shall be provided by the owner of the property.  
16 Additional city carts are available for rental through the city.

17 (C) All refuse (except a compost pile), refuse bags or garbage can liners must be  
18 stored in refuse storage containers from the time of generation through noon the  
19 day prior to the following week's regular collection day.

20 (Ord. G-24-96, passed 10-8-96; Am. Ord. G-38-07, passed 12-18-07) Penalty, see §  
21 50.99

22 § 50.05 LOCATION OF REFUSE STORAGE CONTAINERS AND RECYCLING  
23 CONTAINERS.

24 Between days of regular collection for solid waste items, the owner, occupant or  
25 agent for any commercial or residential property shall cause all refuse (including  
26 yard waste and bulky waste), recyclables (excluding leaves placed curbside as a part  
27 of the city's fall leaf collection) to be bagged or contained and stored on such  
28 property at a location which is not visible from the street. Compost piles, if any, on  
29 such properties shall be sheltered from street view. Garbage and recycling  
30 containers and carts provided by the city shall be stored between days of regular  
collection on the side of the principal structure on the property a minimum of ten  
feet back from the street side of such structure. No refuse or recyclables shall be  
stored and no compost pile shall be constructed at any location which impedes  
pedestrian or vehicular traffic on, over, through or along sidewalks, alleys, streets or  
other public rights-of-way. Garbage and recycling carts and containers which are  
located in alleys to facilitate alley collection may be stored in the alley provided  
such storage does not impede pedestrian or vehicular traffic in or along such alley  
and/or public right-of-way.

(Ord. G-24-96, passed 10-8-96; Am. Ord. G-38-07, passed 12-18-07; Am. Ord. G-21-  
10, passed 12-14-10) Penalty, see § 50.99

1 § 50.06 SET-OUT TIME FOR REFUSE CONTAINERS AND RECYCLING CONTAINERS.

2 (A) All residential garbage, recycling, and other collections will be made between  
3 the hours of 6:00 a.m. and 6:00 p.m. on the designated collection day. City Carts,  
4 refuse bags, garbage can liners, bulky waste, recycling containers, and  
5 biodegradable lawn bags (excluding leaves placed at the curb as part of the city's fall  
6 leaf collection) shall be set out at the refuse collection site, curbside or alley, on the  
7 designated collection day before 6:00 a.m. but no earlier than noon of the day  
8 preceding the regular collection day. The City Carts and any rejected items  
9 (excluding leaves placed at the curb as part of the city's fall leaf collection) shall be  
10 removed from the refuse collection site no later than noon on the day after the  
11 regular collection. The owner, tenant, lessee occupant, or agent of any property  
12 shall promptly clean up and remove any scattered solid waste, rejected items,  
13 recyclable material and/or yard waste (excluding leaves placed at the curb as part  
14 of the city's fall leaf collection) from the property before noon on the day after the  
15 scheduled date of regular collection. Missed collections that are a result of the  
16 contractors' negligence will be an exception to having solid waste materials  
17 removed from the refuse collection site no later than noon the day after the regular  
18 collection day.

19 (B) It shall be unlawful and a violation of this section to knowingly dispose of  
20 motor oil antifreeze, car batteries, and other toxic materials in with garbage and/or  
21 recycling collection.

22 (Ord. G-24-96, passed 10-8-96; Am. Ord. G-38-07, passed 12-18-07) Penalty, see §  
23 50.99

24 § 50.07 Reserved.

25 § 50.08 Reserved.

26 § 50.09 GARBAGE USER FEE.

27 (A) Effective January 1, 2025, the rate will reset to \$18.00 plus the CPI-U rate  
28 adjustments in 2023 and 2024, plus an additional 1% will be added to ensure a  
29 balance in the Solid Waste Fund. Once that is established, the rate will be adjusted  
30 annually on July 1, by the annual change (May to May) in the CPI-U expenditure  
category Series ID: CUUR0000SEHG - water, sewer and trash collection services, as  
published by the Department of Labor Bureau of Statistics, with a minimum  
adjustment of 3% to be applied to the prior year budget/rate. An additional 1% will  
then be added to ensure a balance in the Solid Waste Fund.

(B) Effective January 1, 2023, residents that choose to rent an additional 96-  
gallon or 48-gallon garbage cart will be assessed a \$4 per month fee per cart on  
their city utility bill. Existing additional garbage carts rates will be adjusted to  
reflect the new fee.

1 (Ord. S-89-99, passed 8-10-99; Am. Ord. S-84-00, passed 10-24-00; Am. Ord. G-16-  
2 04, passed 8-24-04; Am. Ord. G-38-07, passed 12-18-07; Am. Ord. G-22-10, passed  
3 12-14-10; Am. Ord. G-34-11, passed 8-23-11; Am. Ord. G-11-17, passed 5-23-17;  
4 Am. Ord. G-17-22, passed 10-11-22)

5 (C) All current fees schedules are listed within Code Section 41.07 of the City Code.

6  
7 MANAGEMENT OF YARD WASTE

8 § 50.10 Reserved.

9 § 50.11 YARD WASTE PROHIBITED FROM BEING PLACED IN SOLID WASTE  
10 LANDFILLS.

11 After July 1, 1996, no City of Fort Wayne resident shall dispose of vegetative  
12 matter resulting from landscaping maintenance or land-clearing to any solid waste  
13 landfill.

14 (A) Leaves are prohibited from the landfill. Leaves cannot be placed in the City  
15 Cart for collection. Leaves will be collected by the city Street Department loose or in  
16 biodegradable paper lawn bags during the fall collection season.

17 (B) Beginning January 1, 2000, vegetative matter resulting from landscaping  
18 maintenance may be set out for garbage collection. Grass clippings and other  
19 vegetative matter must be contained in City Cart(s), biodegradable paper lawn bags  
20 or plastic bags and must meet the requirements set forth by the Solid Waste  
21 Department.. Tree branches must be cut to three feet in length and placed in City  
22 Cart(s) or biodegradable paper lawn bags or plastic bags. Individual branches  
23 cannot exceed three inches in diameter.

24 Individual bags cannot exceed 35 pounds in weight.

25 (Ord. G-19-96, passed 8-13-96; Am. Ord. G-38-07, passed 12-18-07) Penalty, see §  
26 50.99

27 § 50.12 CITY UTILITIES YARD WASTE RECYCLING FACILITY.

28 The Division of City Utilities, through the Board of Public Works, shall annually  
29 determine the feasibility of operating a yard waste recycling facility at 6202 Lake  
30 Avenue open for use by the public during months when disposal of vegetative  
matter is a concern. If it is determined such a service should be made available, the  
Board of Works shall establish the calendar schedule for that year by resolution.

(Ord. G-97-05-29, passed 6-13-97; Am. Ord. G-38-07, passed 12-18-07)

1 § 50.13 FEES.

2 (A) The following fees are established for users of the city's yard waste recycling  
3 facility located at 6202 Lake Avenue, when it is deemed feasible to operate a site  
4 open to the public:

5 (1) Residential. \$20.00 per ton of material, pro-rated based on actual weight of  
6 material dropped off, with a minimum charge of \$1.00 per vehicle load.

7 (2) Non-residential (commercial, industrial, or municipal users). \$20.00 per ton  
8 of material, pro-rated based on actual weight of material dropped off, with a  
9 minimum charge of \$4.00 per vehicle load. Non-residential users may be offered  
10 discounts based on volume and frequency of use at the discretion of the City  
11 Superintendent or Deputy Director of Capital Assets-City Utilities.

12 (B) Commercial billings. Non-residential users of the yard waste recycling site  
13 may establish commercial accounts. Charges shall be computed and billed by the  
14 General Office of the City Utilities. Bills shall be rendered approximately monthly.  
15 For the purpose of this chapter, a month shall constitute 25 - 35 days.

16 (C) Collections, late charges and delinquency. City Utilities may bring a civil  
17 action to recover any delinquent charges together with interest at the statutory  
18 rate, the costs and disbursements of said action, reasonable attorney fees and any  
19 other remedy prescribed by law. All bills not paid on or before the due date  
20 indicated on the bill shall be subject to a collection or deferred payment charge  
21 consistent with those assessed to other delinquent City Utilities accounts.

22 (Ord. G-1-18, passed 2-27-18)

23 § 50.14 ENTERPRISE FUND.

24 Fees generated under § 50.13 shall be deposited into an enterprise fund  
25 established by City Utilities for the sole purpose of operating the yard waste  
26 recycling facility. Funds received from the Allen County Department of  
27 Environmental Management as partial reimbursement of City Utilities operating  
28 expenses shall also be deposited to this account. Any shortfall in the enterprise fund  
29 necessary to cover City Utilities' operating expenses in connection with the site shall  
30 be reimbursed to City Utilities from an appropriate Civil City account.

(Ord. G-06-97, passed 6-13-97; Am. Ord. G-38-07, passed 12-18-07)

COLLECTION OF RECYCLABLE MATERIALS

§ 50.15 Reserved.

(Ord. G-15-90, passed 7-10-90; Am. Ord. G-21-98, passed 6-2-98; Am. Ord. G-38-07,  
passed 12-18-07)

1 § 50.16 RECYCLING CONTRACTORS AUTHORIZED.

2 The city, through the Solid Waste Manager, is authorized to designate private solid  
3 waste haulers and others as authorized recycling contractors to operate recycling  
4 programs within the city.

5 (Ord. G-15-90, passed 7-10-90; Am. Ord. G-38-07, passed 12-18-07)

6 § 50.17 COLLECTION OF RECYCLABLE MATERIALS.

7 (A) The recycling collection date and recycling collection point for residential  
8 units shall be the unit's normal refuse collection date and collection point.

9 (B) Once the recyclable is placed at the designated collection location for  
10 collection by the authorized recycling contractor, the recyclable material may not be  
11 removed by anyone other than the property owner(s) or occupants(s). Removal of  
12 recyclable material after it has been placed at the collection location by anyone  
13 without authorization violates this section 50.17 and is subject to fine.

14 (C) Nothing in this subchapter shall limit the right of an individual person,  
15 organization or other entity to donate, sell or otherwise dispose of recyclable  
16 material.

17 (Ord. G-15-90, passed 7-10-90; Am. Ord. G-38-07, passed 12-18-07) Penalty, see §  
18 50.99

19 § 50.18 MANAGER TO MAKE RULES AND REGULATIONS.

20 The Solid Waste Manager shall have full and complete authority to make other  
21 rules and regulations, not inconsistent herewith, pertaining to the collection and  
22 disposal of recyclable material, as well as the administration thereof, as may be  
23 deemed advisable.

24 (Ord. G-15-90, passed 7-10-90; Am. Ord. G-38-07, passed 12-18-07)

25 ILLEGAL DUMPING

26 § 50.19 ILLEGAL DUMPING.

27 No person shall place, permit, or cause to be placed, any dirt, sand, gravel, clay,  
28 stone, rocks, rubbish, building rubbish, sawdust, shavings or trade or household  
29 waste, refuse, ashes, manure, garbage, rubbish or debris of any sort, or any organic  
30 or non-organic material, or other offensive matter to be dumped, deposited or  
otherwise disposed of in or upon any street, lot, park, public place or other area  
whether publicly or privately owned.

Revenues collected by the city for violation of this provision § 50.19 shall be  
deposited into the Solid Waste Fund.

1 (Ord. G-24-96, passed 10-8-96; AM. Ord. G-38-07, passed 12-18-07)

2 (Ord. G-04-02, passed 2-12-02; Am. Ord. G-38-07, passed 12-18-07) Penalty, see §  
3 50.99

4  
5 SOLID WASTE ADVISORY BOARD

6 § 50.20 ESTABLISHMENT.

7 There is hereby created an advisory board of municipal government known as the  
8 Solid Waste Advisory Board, hereinafter referred to as the Board.

9 (Ord. G-2-21, passed 2-9-21 )

10  
11 § 50.21 PURPOSE.

12 The purpose of the Board is to work with the City of Fort Wayne Solid Waste  
13 Department (the "Department") to ensure the effective operation of the City's solid  
14 waste and recycling collection services through the review and recommendation of  
best practices and policies. This purpose shall be accomplished by:

15 (A) Reviewing and advising the Department on the need for changes to collection  
rates established under this chapter;

16 (B) Reviewing the solid waste and recycling collection, sorting and disposal  
17 contracts and advising the Department on said contracts; and

18 (C) Reviewing and providing input on the annual solid waste budget.

19 (Ord. G-2-21, passed 2-9-21)

20  
21 § 50.22 MEMBERSHIP TERMS; OFFICERS.

22 (A) The Board shall consist of seven members. Membership of the Board and  
23 initial terms shall be as follows. All members shall be appointed or elected by the  
specific individual or entity named below.

24 Representation	Initial Term
25 Representation	Initial Term
26 Southeast Area Partnership	2 years
27 Southwest Area Partnership	2 years
28 Northeast Area Partnership	2 years
29 Northwest Area Partnership	2 years
30 Member of Fort Wayne Common Council	1 year
Member of Fort Wayne Common Council	1 year
Mayor's Office	1 year

1 (B) Terms shall be considered for a calendar year (or two calendar years as the  
2 case may be) and all appointments shall be made on or before January 15th in each  
3 year where the appointees' term has come to an end. Appointments shall be made  
4 within 30 days of the date of approval of this subchapter. The Mayor's appointment  
5 shall not be an employee of the City of Fort Wayne. The board members  
6 representing each of the area partnerships shall be elected by their members.

7 (C) The members of the Board shall within 30 days after the last initial  
8 appointment is made, meet and elect a Chairperson, Vice-Chairperson and  
9 Secretary.

10 (D) The Board shall meet quarterly and the Chairperson may schedule additional  
11 meetings as necessary for the Board to effectively conduct its business.

12 (E) Upon its organization, the Board shall initiate a thorough financial review of  
13 the Solid Waste Department. The Board shall not make any recommendations of  
14 said best practices, principles, or rate increases until the financial review has been  
15 completed and has reported its findings to the Administration and Common Council.  
16 If funds for the review are necessary, appropriations shall be made from the Solid  
17 Waste Department and/or the Solid Waste fund.

18 (F) The Solid Waste Department shall annually present to the Board its budget no  
19 less than 30 days prior to its adoption, and the Board shall promptly provide a copy  
20 to the Council Administrator.

21 (G) The Solid Waste Department shall not increase its staffing levels, promote  
22 staffing positions, or initiate any unbudgeted program exceeding \$25,000 annually  
23 without first presenting it to the Board.

24 (H) The Solid Waste Department shall quarterly present to the Board financial  
25 reports which compare the actual financials with the budget. The Solid Waste  
26 Department shall also present its annual financial report to the Board, and the  
27 Board shall promptly provide a copy to the Council Administrator.

28 (I) The Solid Waste Department shall not hire any third party consultant or  
29 PR/marketing firm without first presenting it to the Board.

30 (Ord. G-2-21, passed 2-9-21)

#### § 50.98 ENFORCING AUTHORITY.

The authority for enforcing this section will be with the Fort Wayne Police  
Department, the Department of Neighborhood Code Compliance, and the Solid  
Waste Department.

(Ord. G-24-96, passed 10-8-96; Am. Ord. G-38-07, passed 12-18-07)

1 § 50.99 PENALTY.

2 (A) Whoever shall violate any provision of this chapter shall, upon conviction, be  
3 fined not more than \$2,500. A separate offense shall be deemed committed each day  
4 such violation occurs or continues.

5 (B) Any person, violating any provision of §§ 50.02 shall be subject to a fine of  
6 \$100 per day.

7 (C) Any person violating any provision of 50.04 and 50.05 shall be subject to a  
8 fine of \$50 per day.

9 (D) Any person violating any provision of 50.06 shall be subject to a fine of \$100  
10 per day.

11 (E) Revenues collected by the city for violation of any provision of §§ 50.02  
12 through 50.19 shall be deposited into the Solid Waste Fund.

13 (F) Any person who violates or fails to comply with any provision of §§ 50.17 shall,  
14 upon conviction thereof, be fined not less than \$50 and not more than \$1,000. Said  
15 fine shall be paid to the Solid Waste Fund.

16 (G) Any person violating § 50.19 shall be subject to a fine of not less than \$500  
17 and not more than \$2,500 for the first violation and \$2,500 for each subsequent  
18 violation. Each day the violation occurs or continues to exist shall constitute a  
19 separate offense. All fines and costs collected by the city pursuant to this subchapter  
20 shall be placed in the Solid Waste Fund. Any person who provides evidence leading  
21 to the successful conviction of any person under this subchapter may be entitled to  
22 an equal portion of 50% of the fines collected from such person, firm, corporation or  
23 other legal entity. No city, county, state or federal employee or their immediate  
24 family members shall be eligible to receive a reward pursuant to this program.

(Ord. G-24-96, passed 10-8-96; Am. Ord. G-38-07, passed 12-18-07)

(Ord. G-15-90, passed 7-10-90; Am. Ord. G-04-02, passed 2-12-02; Am. Ord. G-38-  
07, passed 12-18-07)

25 **ADMINISTRATIVE POLICY**

26 **For Enforcing Chapter 50: Garbage and Refuse and Enforcement Procedures**

27 October 1, 1996

28 The purpose of Chapter 50: Garbage and Refuse is to control the disposal of waste to  
29 limit unsightly storage that blights neighborhoods and to prevent sources of  
30 habitation and food for vectors, rodents, and other vermin that present a hazard to  
the public health. To this end, enforcing departments shall attempt to gain voluntary  
compliance with the requirements of Chapter 50: Garbage and Refuse, and will issue  
tickets when necessary to attain compliance. The authority for enforcing §§50.04  
through 50.19 is with the Fort Wayne Police Department, the Department of  
Neighborhood Code Enforcement, the Energy and Environmental Services  
Department, and the Allen County Department of Public Health.

1                   **Order of Primary Responsibility for Compliance**

2                   Property Owner

3                   The property owner shall be responsible for obtaining and utilizing sufficient refuse  
4                   storage containers for the disposal of refuse (§50.04). If refuse storage containers  
5                   are absent, inadequate, or not rodent- proof, enforcing authorities shall cite the  
6                   property owner with a violation.

7                   Rental Property Move-Out Conditions

8                   In recognition that tenants sometimes move out of properties without giving due  
9                   and proper notice to property owners, special attention shall be given to such  
10                  situations when issuing citations. Any violations of Chapter 50: Garbage and Refuse,  
11                  except with regard to the provision of refuse storage containers, shall first cite the  
12                  occupant as the party with primary responsibility. If the property appears to be  
13                  vacant with a recent tenant move-out, the property owner shall be given seven days,  
14                  from when the city is notified of the problem, to comply with any and all violations.

15                  After the property is vacant for seven days, the property owner will be deemed to  
16                  be the party with primary responsibility for compliance with Chapter 50: Garbage  
17                  and Refuse and enforcing authorities shall cite the property owner with appropriate  
18                  violations.

19                  (Ord. G-38-07, passed 12-18-07)

20                  **(A) *Administrative adjudication provided.*** It is hereby declared to be the policy  
21                  of the City of Fort Wayne that solid waste violations may be subject to enforcement  
22                  in administrative proceedings as provided in this section and any person subject to  
23                  a fine under this chapter shall first have the right to dispute the fines and penalties  
24                  in an online process in accordance with the procedures established by the City  
25                  Clerk’s Office.

26                  **(B) *Hearing Officers; appointment and term; qualifications; conduct.***

27                  (1) The administrative adjudication of a solid waste citation under this section  
28                  shall be presided over by a Hearing Officer appointed by the Mayor. The Mayor may  
29                  appoint more than one Hearing Officer for contemporaneous terms as necessary to  
30                  address in an expeditious manner all citations referred to them pursuant to this  
31                  section. Nothing in this section shall prohibit an individual who is an employee of  
32                  the city from being appointed or serving as a Hearing Officer.

33                  (2) A Hearing Officer shall be appointed for a term of one year and until a  
34                  successor is appointed but shall serve at the pleasure of the Mayor. A Hearing  
35                  Officer may be reappointed for successive terms.

36                  (3) A Hearing Officer shall not preside over a hearing if the Hearing Officer  
37                  believes he or she is subject to disqualification, or if by motion of any party it  
38                  appears that the Hearing Officer is subject to disqualification, for:

- 39                          (a) Bias, prejudice, or personal interest in the outcome of a hearing;

1 (b) Knowledge of a disputed evidentiary fact which might influence the  
2 decision;

3 (c) Failure to dispose of any motion or hearing in an orderly and reasonably  
4 prompt manner after written request by a party; or

5 (d) Any cause for which a judge of a court may be disqualified.

6 (4) Except as to the subjects of hearing schedules and procedures, a Hearing  
7 Officer who does the following is disqualified under this section:

8 (a) Comments publicly on a hearing over which the Hearing Officer presides;  
9 or

10 (b) Communicates directly or indirectly with a party or other individual who  
11 has an interest in the outcome of a hearing, without notice and opportunity for all  
12 parties to participate in the communication;

13 **(C) *Notice of administrative hearing.***

14 (1) Whenever the City Clerk reports to the City Attorney determines that a  
15 person upon whom a solid waste citation was served pursuant to this chapter has:

16 (a) Appeared and denied the violation; or

17 (b) Failed to appear at the City Clerk's office within 60 days of issuance of the  
18 citation; or

19 (c) Failed to pay the specified civil penalty within 60 days after admitting the  
20 violation; the City Clerk may issue a notice of administrative hearing to the person  
21 upon whom the citation was served or to the person who is listed as the owner of  
22 the real property at which the violation occurred, according to the Allen County  
23 Recorder.

24 (2) Service of notice of administrative hearing shall be by United States mail to  
25 the respondent's last known address, or by personal service. The City Clerk shall  
26 keep a record of the time, date and manner of service.

27 (3) The City Clerk shall cause a copy of each notice issued pursuant to this  
28 section to be delivered to the Hearing Officer who will preside over the hearing.

29 (4) Each notice of administrative hearing shall include the following  
30 information:

(a) A caption for the hearing, which shall include the name of each party  
expected to participate in the hearing, and an official file or other reference number;

(b) A statement of the date, time and place of the hearing;

1 (c) A statement of the nature of the hearing, including the legal authority  
2 under which the hearing is to be held, and the parties' procedural rights at the  
3 hearing;

4 (d) A statement of the date, time and place of each alleged violation as stated  
5 on the citation, and the maximum penalty that can be imposed thereupon;

6 (e) A statement that a party who fails to respond to the notice of the hearing,  
7 or to participate in the hearing, may be held in default.

8 (5) Notice of administrative hearing shall be issued at least 20 days prior to the  
9 date of the hearing.

10 (D) ***Prehearing procedures.***

11 (1) Prior to the hearing, the Hearing Officer shall give the parties an opportunity  
12 to file documents or motions regarding matters such as continuances, discovery,  
13 and any other preliminary matters. At the time of filing, a party shall serve a copy of  
14 all filed items on each other party. Notice to the Solid Waste Department shall be  
15 sent to the address contained on the Notice of Hearing and shall contain the file or  
16 reference number referenced in subsection 4(a).

17 (2) Motions for continuance shall be filed no later than seven days before the  
18 date assigned for the hearing, unless the reason therefor is shown by affidavit to  
19 have occurred within the seven-day period.

20 (3) The Hearing Officer, upon request by any party or upon the Hearing Officer's  
21 own initiative, may issue subpoenas and discovery orders in accordance with the  
22 rules of procedure governing subpoenas and discovery in judicial proceedings. The  
23 party seeking the subpoena or order shall cause them to be served in accordance  
24 with these rules of procedure.

25 (E) ***Hearing procedures.***

26 (1) The Hearing Officer shall afford all parties the opportunity to participate in  
27 the hearing to the extent necessary for full consideration of all relevant facts and  
28 issues. A party may present evidence in the form of testimony, affidavits and  
29 documentation, engage in argument, and conduct cross-examination. A party may  
30 participate in person or by counsel at the party's own expense; if the party is not an  
individual or is incompetent to participate, then the party shall participate by a duly  
authorized representative.

(2) The city shall have the burden of proof that the respondent owns or rents  
the real property at which the citation was issued, and that this ordinance was  
violated. The burden may be sustained by a preponderance of the evidence;  
provided, however, that a citation, or a copy thereof, issued and bearing the manual  
or electronic signature of the official issuing the citation shall be prima facie  
evidence of the correctness of the facts specified therein.

1 (3) The Hearing Officer shall conduct the hearing in an informal manner and  
2 without strict adherence to the technical rules of evidence and procedure which  
3 govern judicial proceedings. The Hearing Officer shall rule on the admissibility of  
4 any offer of proof, and on other motions, and shall exclude evidence that is  
5 irrelevant, immaterial, unduly repetitious, or excludable on constitutional or  
6 statutory grounds. The testimony of each party and witness shall be made under  
7 oath or affirmation.

8 (4) The Hearing Officer may take official notice of any section of this Code, and  
9 any law or fact that could be judicially noticed in the courts. The Hearing Officer  
10 may call witnesses and conduct direct and cross-examination of any witness.

11 (5) The Hearing Officer shall cause an audio recording of the hearing to be made  
12 at the expense of the city.

13 (F) **Decision.**

14 (1) Upon the conclusion of each hearing or as soon thereafter as possible, but in  
15 no event later than five (5) business days after the conclusion of the hearing, the  
16 Hearing Officer, shall render a decision which includes a determination whether the  
17 respondent violated the ordinance as alleged on the citation, the amount of civil  
18 penalty which must be paid for each violation with instructions on when and how  
19 payment shall be made, and a statement of the parties' right to petition for review of  
20 the decision.

21 (2) The decision shall be based exclusively upon the evidence of record in the  
22 hearing and on matters officially noticed therein. The Hearing Officer's experience  
23 and specialized knowledge may be used in the evaluation of the evidence.

24 (3) The Hearing Officer shall cause each decision rendered pursuant to this  
25 section to be memorialized and maintained by the Solid Waste Department.

26 (4) A decision rendered pursuant to this section may be modified by the  
27 Hearing Officer who rendered it, upon the Hearing Officer's own initiative or by  
28 motion of any party. Any motion to modify a decision shall be filed within 30 days  
29 after the date of the decision.

30 (G) **Record of the hearing.** The record of each hearing under this section consists  
of the following and shall constitute the complete and exclusive record for review of  
a Hearing Officer's decision:

- (1) The notice of hearing;
- (2) The citations;
- (3) Any documents or motions filed or entered into evidence;
- (4) Any written orders, subpoenas, and decision of the Hearing Officer; and
- (5) The audio recording of the hearing.

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(H) *Petition for review of decision; time limitation.*

(1) A verified petition for review of the decision of a Hearing Officer may be filed in the Circuit or Superior court of Allen County within 30 days after the day on which the decision is rendered, in accordance with the Administrative Orders and Procedures Act.

(I) *Administrative hearing costs fee.* For each action that results in judgment against respondent for violation of this chapter, the Hearing Officer shall impose an administrative hearing cost fee of \$10.

**SECTION 2.** That this Ordinance is in full force and effect from and after its passage and any and all necessary approval by the Mayor.

\_\_\_\_\_  
Council Member

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_  
Malak Heiny, City Attorney

## CHAPTER 50: GARBAGE AND REFUSE

### Section

#### Collection and Disposal

- 50.01 ~~Definitions~~~~[Reserved]~~
- 50.02 User fee for collection and disposal of residential municipal solid waste
- 50.03 Separate solid waste fund
- 50.04 Refuse storage containers and the storage of refuse
- 50.05 Location of refuse storage containers and recycling containers
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- 50.07 ~~Reserved~~~~Enforcing authority~~
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#### Management of Yard Waste

- 50.10 ~~Reserved~~~~Definitions~~
- 50.11 Yard waste prohibited from being placed in solid waste landfills
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#### Collection of Recyclable Materials

- 50.15 ~~Reserved~~~~Definitions~~
- 50.16 Recycling contractors authorized
- 50.17 Collection of recyclable materials
- 50.18 Manager to make rules and regulations

#### Illegal Dumping

- 50.19 Illegal dumping
- ~~50.20—Illegal Dumping Fund~~

#### Solid Waste Advisory Board

- ~~50.20~~4 Establishment

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-

50.99 Penalty

Administrative Policy for Enforcing Chapter 50: Garbage and Refuse And Enforcement Procedures

A. Administrative adjudication provided

B. Hearing Officers; appointment and term; qualifications; conduct

C. Notice of Administrative Hearing

D. Prehearing Procedures

E. Hearing Procedures

F. Decision

G. Record of the hearing

H. Petition for Review; Time Limitation

COLLECTION AND DISPOSAL

§ 50.01 DEFINITIONS:[RESERVED.]

~~§ 50.02 USER FEE FOR COLLECTION AND DISPOSAL OF RESIDENTIAL MUNICIPAL SOLID WASTE.~~

(A) Definitions. For the purpose of this chaptersection, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(1)—AEROBIC. Living or occurring only in the presence of oxygen.

(2)—BULKY WASTE. A large appliance, piece of furniture or non-freon appliancewaste material from a residential source other than Freon waste items, construction debris or hazardous waste, with a weight or volume greater than that allowed for for a City

Cart and accepted under set of requirements provided by the Solid Waste Department, containers.

(3)—CITY CART. A 96-gallon or 48-gallon wheeled refuse cart, displaying the City Seal on the side, provided by the City of Fort Wayne.

(4)—COMPOST PILE. A storage area for a mass of organic waste decaying through an aerobic degradation process under controlled conditions with the intention of using the resulting product as a soil conditioner. Materials in a compost pile include soil, paper products, yard waste, nondairy and nonmeat food products, and/or nonmeat-eating animal waste. A compost pile is kept in an orderly condition to control ~~for~~ odors and to prevent the blowing of debris. A compost pile cannot be a potential transmission agent of disease or be maintained in such a way which will attract vectors, rats, or other vermin.

(5)—CURB SIDE RECYCLING. Bi-weekly pick-up of discarded material as specified by the city including but not limited to newspapers, aluminum, glass, steel and plastic containers which can be separated from municipal solid waste for the purpose of recycling, but not including material generated from and commonly reused within an original manufacturing process.

(6) DISPOSE. To discard, abandon, cause to be or allow the removal of waste from the site of origination.

(7)—FREON WASTE ITEM. An appliance or other waste item of a type which originally contained Freon or any other nonflammable gaseous or liquid fluorinated hydrocarbons used as a refrigerant, disposal of which is specifically regulated by the United States Environmental Protection Agency (USEPA).

(8)—GARBAGE. Putrescible animal or vegetable waste resulting from the handling, preparation, cooking, serving or consumption of food including food containers.

(9)—GARBAGE CAN LINER. Refuse bag designed to be placed in a refuse container or refuse storage container.

(10) —HAZARDOUS WASTE. Waste designated as hazardous by the USEPA and/or the Indiana Department of Environmental Management (IDEM).

(11) LANDFILL. A solid waste management disposal facility as defined by state statute at which solid waste is deposited on or in the ground as an intended place of final location. LANDFILL does not include the following:

(a) A site that is devoted solely to receiving one or more of the following:

(i) Fill dirt;

(ii) Vegetative matter subject to disposal as a result of landscaping, yard maintenance, land clearing, or any combination of activities referred to in this division;

(iii) Construction debris

(b) A facility receiving waste that is regulated under IC 13-13-1 et seq.

(12) \_\_\_\_\_ MANAGER. The Solid Waste Manager of the city.

(13) \_\_\_\_\_ —MOBILE ~~PARK~~-HOME COMMUNITY. This term shall be defined consistent with IC 16-41-27-4 and, for the purpose of this section, shall also include such areas containing less than five mobile homes when all other elements of that definition have been met.

(14) \_\_\_\_\_ MOBILE HOME COMMUNITY OCCUPANCY RATE: 90% of the total number of buildable lots within a mobile home community.

(15) \_\_\_\_\_ —OCCUPANT. Any individual, living, sleeping, cooking or eating in or having possession of a dwelling unit.

(16) \_\_\_\_\_ —OWNER. Any one or more of the following:

(a) ~~Any legal person who owns~~The owner or owners in fee simple, ~~of~~ a parcel of real estate. ~~This shall also include a legal person holding a life of tenancy in real property; including the life tenant or life tenants if any;~~ or

(b) The ~~person identified as the record~~ owner or owners as reflected ~~in the records of~~ by the Allen County Recorder's Office; or

(c) The purchaser or purchasers of such real estate under a contract for conditional sale ~~of real estate~~thereof; or

(d) The ~~legal~~ person or persons in control of the property as the personal representative, trustee, receiver or guardian of the owner.

(17) \_\_\_\_\_ PERSON. ~~An individual, partnership, corporation, limited liability company, sole partnership, association or any other legal entity of any kind whatsoever.~~

(18) \_\_\_\_\_ —~~RECYCLABLE MATERIAL~~RECYCLABLES. ~~Materials defined by the Solid Waste Department as accepted for collection and processing by City recycling collection and processing contractors.~~Items that are intended to be recycled.

(19) \_\_\_\_\_ —RECYCLE. Process by which materials otherwise destined for disposal are collected, reprocessed and remanufactured.

(20) \_\_\_\_\_ — RECYCLING CONTAINER. ~~City carts designated by the Solid Waste Department to be used for the collection of Recyclable Material.~~A container holding recyclables.

(21) \_\_\_\_\_ — REFUSE. Discarded waste materials, in a solid or semi-solid state consisting of garbage, rubbish or a combination thereof.

(22) \_\_\_\_\_ —REFUSE BAGS. Plastic sacks designed for refuse with sufficient wall strength to maintain physical integrity when lifted by top; securely tied at the top for

collection, with a capacity not to exceed 33 gallons and a loaded weight not to exceed 35 pounds.

(23) \_\_\_\_\_—REFUSE CONTAINER. A 96-gallon or 48-gallon city cart or a watertight container constructed of metal or other durable material impervious to rodents and other animals with a tight-fitting lid. ~~Any refuse container, other than a city cart, cannot exceed 33 gallons in capacity unless approved by the City Energy and Environmental Services Department.~~

(24) \_\_\_\_\_—REGULAR COLLECTION. The city's designated day for refuse, recycling and yard waste collection.

(25) \_\_\_\_\_—RESIDENTIAL MUNICIPAL WASTE. This term shall include residential garbage, bulky waste, rubbish and refuse as above defined and shall be interpreted to be consistent with that definition as set out in the Indiana Code with the restriction that wastes from all industrial, office, commercial and institutional establishments are specifically excluded hereunder.

(26) \_\_\_\_\_—RESIDENTIAL UNIT. A group of rooms located within a building or mobile home and forming a single inhabitable unit with facilities which are used or are intended to be used for living, sleeping, cooking and eating. This definition also includes complexes containing four or fewer separate or contiguous single-family dwelling units whose owner has not elected to procure commercial waste removal by a registered hauler.

(27) \_\_\_\_\_—RUBBISH. Non-putrescible solid waste consisting of combustible and non-combustible materials including yard and garden waste but excluding hazardous wastes, infectious waste and tires.

(28) \_\_\_\_\_ VEGETATIVE MATTER. Any yard or landscaping waste, or land-clearing waste, including leaves, grass, brush, limbs, and branches.

(29) \_\_\_\_\_—YARD WASTE. Leaves, grass clippings, weeds, brush and other organic garden debris.

#### § 50.02 USER FEE FOR COLLECTION AND DISPOSAL OF RESIDENTIAL MUNICIPAL SOLID WASTE.

(A) Commencing January 1, 1997, the city shall assess a monthly solid waste fee for the service of collection and disposal of residential municipal waste ~~and, collection and disposal of residential yard waste and bi-weekly collection of~~ recyclable materials ~~provided~~ rendered by the city.

(B) Such service ~~and fee~~ shall be ~~provided~~ rendered only to ~~R~~residential ~~U~~units as above defined, within the confines of the corporate limits of the city. The monthly fee shall be billed to each residential unit and collected in conjunction with other utility services

provided by the city. When the utility account covers a building containing ~~more~~<sup>greater</sup> than one single-family unit, said account shall reflect two monthly fees hereunder. Utility accounts for mobile home parks shall be billed on a 90% occupancy rate.

(~~C~~D) The fees charged hereunder shall take priority over all other charges for utility services provided by the city. Partial payments shall first be applied to satisfy this service fee. Delinquent accounts shall be handled in the same manner as~~consistent with~~ other utility accounts under Chapter 51 of this title.

(~~D~~E) Assessment of this charge may be appealed by any utility user by filing through a petition to appeal ~~with residential municipal waste user fee to~~ the Solid Waste Manager along with verifiable documentation showing either that the property is assessed as commercial or that the fee is improperly assessed against a multi-unit property, said user's residential unit is currently served by an approved refuse collection and disposal service other than that provided by the city. The Solid Waste Manager's determination shall be reviewable by the Director of Public Works. The Director's decision shall be final and appealable. These administrative procedures shall be conducted consistent with IC 4-21.5-3, et seq. No dispute or appeal of said fee shall be a valid reason for non-payment until or unless said charge is deleted from the user's utility account by the city. In such case, any overpayment made hereunder shall be applied as a credit to said user's utility account to satisfy charges for water and sewer usage and/or storm water service.

(~~E~~F) Proper disposal of Freon waste items shall be the responsibility of the owner ~~thereof.~~

(1) It shall be unlawful for any person to leave or permit any abandoned, unattended or discarded freon waste item to remain outside of any dwelling, building or other structure, or within any unoccupied or abandoned building, dwelling or other structure under his/her control, ~~any abandoned, unattended or discarded Freon waste item~~ for a period of greater than seven consecutive days.

(2) Failure to properly dispose of a ~~f~~Freon waste item within a seven days ~~period~~ shall constitute a nuisance under this section and shall be punishable by a fine of \$~~100~~<sup>50</sup> per ~~day~~<sup>violation</sup>.

(~~F~~G) (1) The Board of Public Works shall have the responsibility and authority to adopt rules and regulations governing the implementation of this residential municipal waste collection and disposal program. Such responsibility and~~which shall include the~~ authority will include the appointment of to appoint an agent to collect for the collection of the charges due hereunder, including, but not limited to and may provide for late payment charges, attorney fees and court costs ~~which may be~~ added as a result of to other charges ~~due should~~ a delinquency ~~occur~~ on the utility account.

(2) The Board of Public Works shall have the authority to hire and/or contract for such collection and disposal services as provided by IC 36-9-30-8.

(~~G~~H) Both the user~~The~~ fee and residential municipal waste collection and disposal program established hereunder shall be reviewed at least annually. The~~Said~~ rate system

shall be adjusted as necessary to provide sufficient funds to pay any and all contract fees for collection, hauling and/or disposal of ~~such~~ residential municipal waste and all costs incidental to the program, but shall also strive to equitably assess charges in a manner conducive to voluntary recycling.

(Ord. G-53-92, passed 11-24-92; Am. Ord. G-11-94, passed 6-28-94; Am. Ord. G-24-94, passed 10-8-96; Am. Ord. G-25-96, passed 10-8-96; Am. Ord. G-21-98, passed 6-2-98; Am. Ord. G-38-07, passed 12-18-07)

#### § 50.03 SEPARATE SOLID WASTE FUND.

(A) All revenues collected by the city from:

- (1) The monthly user fees;
- (2) ~~Any~~ reimbursement for clean-up costs;
- (3) Missed collection liquidated damage penalty fees;
- (4) The sale of recycled materials;
- (5) Promotional fees; and

(6) Any other revenues associated with the city's solid waste and recycling contracts shall be deposited in a separate, non-reverting, perpetual fund.

(B) This fund shall be established for the purpose of accounting and paying for the costs of collecting, disposing, and recycling of solid waste. When necessary, the Common Council may approve additional operating transfers into this fund.

(Ord. G-11-94, passed 6-28-94; Am. Ord. G-38-07, passed 12-18-07; Am. Ord. G-36-11, passed 9-13-11)

#### § 50.04 REFUSE STORAGE CONTAINERS AND THE STORAGE OF REFUSE.

(A) The city will provide one 96-gallon cart to single family dwellings, and two 96-gallon carts to multifamily dwellings (two - four units). Residences requesting and using a 48-gallon cart shall not set out extra bags or cans, except on an occasional (three - four times per year) basis. The city carts are the property of the City of Fort Wayne and are to remain at the dwelling unit at all times. Any individual who is found transporting carts in their vehicle, or possessing a cart without paying a rental fee will be prosecuted for theft.

(B) Additional refuse storage containers sufficient to meet the needs of the occupant of the dwelling unit shall be provided by the owner of the property. Additional city carts are available for rental through the city.

(C) All refuse (except a compost pile), refuse bags or garbage can liners must be stored in refuse storage containers from the time of generation through noon the day prior to the following week's regular collection day.

(Ord. G-24-96, passed 10-8-96; Am. Ord. G-38-07, passed 12-18-07) Penalty, see § 50.99

#### § 50.05 LOCATION OF REFUSE STORAGE CONTAINERS AND RECYCLING CONTAINERS.

Between days of regular collection for solid waste items, the owner, occupant or agent for any commercial or residential property shall cause all refuse (including yard waste and bulky waste), recyclables (excluding leaves placed curbside as a part of the city's fall leaf collection) to be ~~bundled~~, bagged or contained and stored on such property at a location which is not visible from the street. Compost piles, if any, on such properties shall be sheltered from street view. Garbage and recycling containers and carts provided by the city shall be stored between days of regular collection on the side of the principal structure on the property a minimum of ten feet back from the street side of such structure. No refuse or recyclables shall be stored and no compost pile shall be constructed at any location which impedes pedestrian or vehicular traffic on, over, through or along sidewalks, alleys, streets or other public rights-of-way. Garbage and recycling carts and containers which are located in alleys to facilitate alley collection may be stored in the alley provided such storage does not impede pedestrian or vehicular traffic in or along such alley and/or public right-of-way.

(Ord. G-24-96, passed 10-8-96; Am. Ord. G-38-07, passed 12-18-07; Am. Ord. G-21-10, passed 12-14-10) Penalty, see § 50.99

#### § 50.06 SET-OUT TIME FOR REFUSE CONTAINERS AND RECYCLING CONTAINERS.

(A) All residential garbage, ~~recycling and curbside recycling and yard waste other~~ collections will be made between the hours of ~~65:00~~ a.m. and ~~611:00~~ p.m. on the designated collection day. ~~City Carts, Refuse containers,~~ refuse bags, garbage can liners, bulky waste, recycling containers, and ~~biodegradable lawn bags/or yard waste containers~~ (excluding leaves placed at the curb as part of the city's fall leaf collection) shall be set out at the refuse collection site, curbside or alley, on the designated collection day before ~~65:00~~ a.m. ~~but~~ and no earlier than noon of the day preceding the regular collection day. The ~~City Carts, refuse containers, refuse bags, garbage can liners, bulky waste, recycling containers, and/or yard waste containers and any rejected items~~ (excluding leaves placed at the curb as part of the city's fall leaf collection) shall be removed from the refuse collection site no later than noon on the day after the regular collection. The owner, tenant, lessee occupant, or agent of any property shall promptly clean up and remove any scattered solid waste, rejected items, recyclable material and/or yard waste (excluding leaves placed at the curb as part of the city's fall leaf collection) from the property before noon on the day after the scheduled date of regular collection. Missed collections that are a result of the contractors' negligence will be an exception to having solid waste materials removed from the refuse collection site no later than noon the day after the regular collection day.

(B) It shall be unlawful and a violation of this section to knowingly dispose of motor oil antifreeze, car batteries, and other toxic materials in with garbage and/or recycling collection.

(Ord. G-24-96, passed 10-8-96; Am. Ord. G-38-07, passed 12-18-07) Penalty, see § 50.99

§ 50.07 ~~Reserved~~ENFORCING AUTHORITY.

~~—The authority for enforcing this section will be with the Fort Wayne Police Department, the Department of Neighborhood Code Enforcement, the Energy and Environmental Services Department and the Allen County Department of Public Health.~~

~~(Ord. G-24-96, passed 10-8-96; Am. Ord. G-38-07, passed 12-18-07)~~

§ 50.08 ~~Reserved~~UNSAFE BUILDING FUND.

~~—The revenues collected by the city for violation of any provision of §§ 50.04 through 50.06 shall be deposited into the Unsafe Building Fund.~~

~~(Ord. G-24-96, passed 10-8-96; Am. Ord. G-38-07, passed 12-18-07)~~

§ 50.09 GARBAGE USER FEE.

~~—(A) The solid waste user fee shall be adjusted to a monthly rate of \$7.20 beginning July 1, 1998.~~

~~—(B) The monthly single family residential household fee shall be \$9.75 per month, effective October 1, 2004.~~

~~—(C) The monthly two-to-four unit household fee shall be \$19.50 per month, effective October 1, 2004.~~

~~—(D) The monthly single family residential household fee shall be increased to \$11.24, effective January 1, 2008.~~

~~—(E) The monthly two-to-four unit household fee shall be increased to \$22.48 per month, effective January 1, 2008.~~

~~—(F) The monthly single family residential household fee shall be lowered to \$11 per month, effective January 1, 2011.~~

~~—(G) The monthly two-to-four unit household fee shall be lowered to \$22 per month, effective January 1, 2011.~~

~~—(H) Residents that choose to rent additional 96-gallon or 48-gallon carts will be assessed a \$2.00 per month fee per cart on their city utility bill.~~



\$15.80 \$15.80	3.50%	3.50%	0%	3.50% \$0.55	1.00% \$0.16	\$16.51	3.50% \$0.58	1.00% \$0.17	\$17.25
\$15.80 \$15.80	3.50%	6.00%	2.5% \$0.20	6.00% \$0.95	1.00% \$0.16	\$17.10	6.00% \$1.03	1.00% \$0.17	\$18.30
\$15.80 \$15.80	3.50%	8.00%	4.5% \$0.36	8.00% \$1.26	1.00% \$0.16	\$17.58	8.00% \$1.41	1.00% \$0.18	\$19.16

\* The full rate is being tiered in over an 30-month period, this sample table reflects the one-time adjustments to the January 1, 2024 and the July 1, 2024 rate that should avoid a deficit due to the unknown CPI-U during the six months prior to January 1, 2024.

(BN) Effective January 1, 2023, residents that choose to rent an additional 96-gallon or 48-gallon garbage cart will be assessed a \$4 per month fee per cart on their city utility bill. Existing additional garbage carts rates will be adjusted to reflect the new fee.

(Ord. S-89-99, passed 8-10-99; Am. Ord. S-84-00, passed 10-24-00; Am. Ord. G-16-04, passed 8-24-04; Am. Ord. G-38-07, passed 12-18-07; Am. Ord. G-22-10, passed 12-14-10; Am. Ord. G-34-11, passed 8-23-11; Am. Ord. G-11-17, passed 5-23-17; Am. Ord. G-17-22, passed 10-11-22)

(C) All current fees schedules are listed within Code Section 41.07 of the City Code.

## MANAGEMENT OF YARD WASTE

### § 50.10 ReservedDEFINITIONS.

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

—DISPOSE. To discard, abandon, cause to be or allow the removal of waste from the site of origination.

—LANDFILL. A solid waste management disposal facility as defined by state statute at which solid waste is deposited on or in the ground as an intended place of final location. LANDFILL does not include the following:

~~—(1) A site that is devoted solely to receiving one or more of the following:~~

~~—(a) Fill dirt;~~

~~—(b) Vegetative matter subject to disposal as a result of landscaping, yard maintenance, land clearing, or any combination of activities referred to in this division;~~

~~—(c) Construction debris.~~

~~—(2) A facility receiving waste that is regulated under IC 13-13-1 et seq.~~

~~—PERSON. An individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, municipal corporation, city, school city, town, school town, school district, school corporation, county, any consolidated unit of government, political subdivision, state agency, or any other legal entity.~~

~~—VEGETATIVE MATTER. Any yard or landscaping waste, or land-clearing waste, including leaves, grass, brush, limbs, and branches.~~

~~{Ord. G-19-96, passed 8-13-96; Am. Ord. G-38-07, passed 12-18-07}~~

#### § 50.11 YARD WASTE PROHIBITED FROM BEING PLACED IN SOLID WASTE LANDFILLS.

After July 1, 1996, no City of Fort Wayne resident shall dispose of vegetative matter resulting from landscaping maintenance or land-clearing to any solid waste landfill.

(A) Leaves are prohibited from the landfill. ~~Leaves cannot be placed in the City Cart for collection. In the fall, leaves cannot be placed out with the garbage for collection, loose or in biodegradable lawn bags.~~ Leaves will be collected by the city Street Department loose or in biodegradable paper lawn bags during the fall collection season.

(B) Beginning January 1, 2000, vegetative matter resulting from landscaping maintenance may be set out for garbage collection. Grass clippings and other vegetative matter must be ~~contained in City Cart(s), biodegradable paper lawn bags or plastic bags and must meet the requirements set forth by the Solid Waste Department, containerized in biodegradable paper lawn bags or refuse storage containers.~~ Tree branches must be cut to three feet in length and placed in ~~City Cart(s) or biodegradable paper lawn bags or plastic bags. Individual branches cannot exceed three inches in diameter.~~

~~refuse storage containers or bundled with string or twine. Bundles Individual bags cannot exceed 3560 pounds in weight. Individual limbs cannot exceed three inches in diameter.~~

(Ord. G-19-96, passed 8-13-96; Am. Ord. G-38-07, passed 12-18-07) Penalty, see § 50.99

#### § 50.12 CITY UTILITIES YARD WASTE RECYCLING FACILITY.

The Division of City Utilities, through the Board of Public Works, shall annually determine the feasibility of operating a yard waste recycling facility at ~~62025510~~ Lake Avenue open

for use by the public during months when disposal of vegetative matter is a concern. If it is determined such a service should be made available, the Board of Works shall establish the calendar schedule for that year by resolution.

(Ord. G-97-05-29, passed 6-13-97; Am. Ord. G-38-07, passed 12-18-07)

#### § 50.13 FEES.

(A) The following fees are established for users of the city's yard waste recycling facility located at 6202 Lake Avenue, when it is deemed feasible to operate a site open to the public:

(1) Residential. \$20.00 per ton of material, pro-rated based on actual weight of material dropped off, with a minimum charge of \$1.00 per vehicle load.

(2) Non-residential (commercial, industrial, or municipal users). \$20.00 per ton of material, pro-rated based on actual weight of material dropped off, with a minimum charge of \$4.00 per vehicle load. Non-residential users may be offered discounts based on volume and frequency of use at the discretion of the City Superintendent or Deputy Director of Capital Assets-City Utilities.

(B) Commercial billings. Non-residential users of the yard waste recycling site may establish commercial accounts. Charges shall be computed and billed by the General Office of the City Utilities. Bills shall be rendered approximately monthly. For the purpose of this chapter, a month shall constitute 25 - 35 days.

(C) Collections, late charges and delinquency. City Utilities may bring a civil action to recover any delinquent charges together with interest at the statutory rate, the costs and disbursements of said action, reasonable attorney fees and any other remedy prescribed by law. All bills not paid on or before the due date indicated on the bill shall be subject to a collection or deferred payment charge consistent with those assessed to other delinquent City Utilities accounts.

(Ord. G-1-18, passed 2-27-18)

#### § 50.14 ENTERPRISE FUND.

Fees generated under § 50.13 shall be deposited into an enterprise fund established by City Utilities for the sole purpose of operating the yard waste recycling facility. Funds received from the Allen County ~~Department of Environmental Management~~ **Solid Waste District** as partial reimbursement of City Utilities operating expenses shall also be deposited to this account. Any shortfall in the enterprise fund necessary to cover City Utilities' operating expenses in connection with the site shall be reimbursed to City Utilities from an appropriate Civil City account.

(Ord. G-06-97, passed 6-13-97; Am. Ord. G-38-07, passed 12-18-07)

## COLLECTION OF RECYCLABLE MATERIALS

### § 50.15 ~~Reserved~~ DEFINITIONS.

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

~~MANAGER. The Solid Waste Manager of the city.~~

~~RECYCLABLE MATERIAL. Ferrous and nonferrous (aluminum) cans, newspapers, glass bottles, aluminum foil and plates, catalogs and magazines, plastics #'s 1 and 2, empty steel paint cans, empty steel aerosol cans, cardboard, fiberboard, and mixed paper.~~

~~RECYCLING CONTAINER. The container(s) of any description that display the recycling symbol approved and issued by the Solid Waste Manager.~~

~~RESIDENTIAL UNIT. The place of abode of persons living separately or together.~~

(Ord. G-15-90, passed 7-10-90; Am. Ord. G-21-98, passed 6-2-98; Am. Ord. G-38-07, passed 12-18-07)

### § 50.16 RECYCLING CONTRACTORS AUTHORIZED.

The city, through the Solid Waste Manager, is authorized to designate private solid waste haulers and others as authorized recycling contractors to operate ~~curbside~~-recycling programs within the city.

(Ord. G-15-90, passed 7-10-90; Am. Ord. G-38-07, passed 12-18-07)

### § 50.17 COLLECTION OF RECYCLABLE MATERIALS.

(A) The recycling collection date and recycling collection point for residential units shall be the unit's normal refuse collection date and collection point.

(B) Once the recyclable is placed at the designated collection location for collection by the authorized recycling contractor, the recyclable material may not be removed by anyone other than the property owner(s) or occupants(s). Removal of recyclable material after it has been placed at the collection location by anyone without authorization violates this section 50.17 and is subject to fine. ~~Upon the placement of recyclable material at a designated curbside or recyclable collection location for collection by an authorized recycling contractor, the recyclable waste material shall become the property of the authorized recycling contractor.~~

~~—(C) During the 24-hour period commencing at 6:00 p.m. on the day preceding a day designated for collection of recyclable material, no person other than an authorized recycling contractor shall remove recyclable material which has been placed in a designated recycling container at a designated recycling collection location. Any and each such removal in violation hereof from one or more designated recycling collection containers placed at a designated recycling collection location during said 24-hour period shall constitute a separate and distinct offense.~~

(CD) Nothing in this subchapter shall limit the right of an individual person, organization or other entity to donate, sell or otherwise dispose of recyclable material.

(Ord. G-15-90, passed 7-10-90; Am. Ord. G-38-07, passed 12-18-07) Penalty, see § 50.99

#### § 50.18 MANAGER TO MAKE RULES AND REGULATIONS.

The ~~Solid Waste Manager~~Director of the Energy and Environmental Services Department shall have full and complete authority to make ~~such~~ other rules and regulations, not inconsistent herewith, pertaining to the collection and disposal of recyclable material, as well as the administration thereof, as may be deemed advisable.

(Ord. G-15-90, passed 7-10-90; Am. Ord. G-38-07, passed 12-18-07)

#### ILLEGAL DUMPING

#### § 50.19 ILLEGAL DUMPING.

No person, ~~their agent, employee or any person under their control, firm, corporation, or other legal entity~~ shall ~~place, permit, or cause to be placed, permit or place~~ any dirt, sand, gravel, clay, stone, rocks, rubbish, building rubbish, sawdust, shavings or trade or household waste, refuse, ashes, manure, garbage, rubbish or debris of any sort, or any organic or non-organic material, or other offensive matter to be dumped, deposited or otherwise disposed of in or upon any street, lot, park, public place or other area whether publicly or privately owned.

Revenues collected by the city for violation of this provision § 50.19 shall be deposited into the Solid Waste Fund.

(Ord. G-24-96, passed 10-8-96; AM. Ord. G-38-07, passed 12-18-07)

(Ord. G-04-02, passed 2-12-02; Am. Ord. G-38-07, passed 12-18-07) Penalty, see § 50.99

#### § 50.20 ILLEGAL DUMPING FUND.

~~An Illegal Dumping Fund is hereby established in the operating budget of the city. This fund shall be established for the purpose of accounting and paying for the costs of cleaning up illegal dumping sites.~~

~~{Ord. G-04-02, passed 2-12-02; Am. Ord. G-38-07, passed 12-18-07}~~

## SOLID WASTE ADVISORY BOARD

### § 50.2~~01~~ ESTABLISHMENT.

There is hereby created an advisory board of municipal government known as the Solid Waste Advisory Board, hereinafter referred to as the Board.

(Ord. G-2-21, passed 2-9-21 )

### § 50.2~~12~~ PURPOSE.

The purpose of the Board is to work with the City of Fort Wayne Solid Waste Department (the "Department") to ensure the effective operation of the City's solid waste and recycling collection services through the review and recommendation of best practices and policies. This purpose shall be accomplished by:

(A) Reviewing and advising the Department on the need for changes to collection rates established under this chapter;

(B) Reviewing the solid waste and recycling collection, sorting and disposal contracts and advising the Department on said contracts; and

(C) Reviewing and providing input on the annual solid waste budget.

(Ord. G-2-21, passed 2-9-21)

### § 50.2~~23~~ MEMBERSHIP TERMS; OFFICERS.

(A) The Board shall consist of seven members. Membership of the Board and initial terms shall be as follows. All members shall be appointed or elected by the specific individual or entity named below.

Representation	Initial Term
Representation	Initial Term
Southeast Area Partnership	2 years
Southwest Area Partnership	2 years
Northeast Area Partnership	2 years

Northwest Area Partnership	2 years
Member of Fort Wayne Common Council	1 year
Member of Fort Wayne Common Council	1 year
Mayor's Office	1 year

(B) Terms shall be considered for a calendar year (or two calendar years as the case may be) and all appointments shall be made on or before January 15th in each year where the appointees' term has come to an end. Appointments shall be made within 30 days of the date of approval of this subchapter. The Mayor's appointment shall not be an employee of the City of Fort Wayne. The board members representing each of the area partnerships shall be elected by their members.

(C) The members of the Board shall within 30 days after the last initial appointment is made, meet and elect a Chairperson, Vice-Chairperson and Secretary.

(D) The Board shall meet quarterly and the Chairperson may schedule additional meetings as necessary for the Board to effectively conduct its business.

(E) Upon its organization, the Board shall initiate a thorough financial review of the Solid Waste Department. The Board shall not make any recommendations of said best practices, principles, or rate increases until the financial review has been completed and has reported its findings to the Administration and Common Council. If funds for the review are necessary, appropriations shall be made from the Solid Waste Department and/or the Solid Waste fund.

(F) The Solid Waste Department shall annually present to the Board its budget no less than 30 days prior to its adoption, and the Board shall promptly provide a copy to the Council Administrator.

(G) The Solid Waste Department shall not increase its staffing levels, promote staffing positions, or initiate any unbudgeted program exceeding \$25,000 annually without first presenting it to the Board.

(H) The Solid Waste Department shall quarterly present to the Board financial reports which compare the actual financials with the budget. The Solid Waste Department shall also present its annual financial report to the Board, and the Board shall promptly provide a copy to the Council Administrator.

(I) The Solid Waste Department shall not hire any third party consultant or PR/marketing firm without first presenting it to the Board.

(Ord. G-2-21, passed 2-9-21)

§ 50.98 ENFORCING AUTHORITY.

The authority for enforcing this section will be with the Fort Wayne Police Department, the Department of Neighborhood Code Compliance, and the Solid Waste Department.

(Ord. G-24-96, passed 10-8-96; Am. Ord. G-38-07, passed 12-18-07)

§ 50.99 PENALTY.

(A) Whoever shall violate any provision of this chapter shall, upon conviction, be fined not more than \$2,500. A separate offense shall be deemed committed each day such violation occurs or continues.

(B) Any person, violating any provision of §§ 50.02 shall be subject to a fine of \$100 per day. ~~firm or corporation violating any provision of §§ 50.04 through 50.06 shall be subject to a fine of \$25 for the first violation and \$50 for each subsequent violation over the next 12 months.~~

~~(Ord. G-24-96, passed 10-8-96)~~

(C) Any person violating any provision of 50.04 and 50.05 shall be subject to a fine of \$50 per day. ~~who violates or fails to comply with any provision of §§ 50.16 through 50.18 shall, upon conviction thereof, be fined not less than \$50 and not more than \$1,000. Said fine shall be paid to the city's General Fund.~~

(D) Any person violating any provision of 50.06 shall be subject to a fine of \$100 per day.

(E) Revenues collected by the city for violation of any provision of §§ 50.02 through 50.19 shall be deposited into the Solid Waste Fund.

(F) Any person who violates or fails to comply with any provision of §§ 50.17 shall, upon conviction thereof, be fined not less than \$50 and not more than \$1,000. Said fine shall be paid to the Solid Waste Fund.

~~(G)~~ Any person, ~~partnership, corporation or other legal entity~~ violating § 50.19 shall, ~~upon conviction by the court~~, be subject to a fine of not less than \$500 and not more than \$2,500 for the first violation and \$2,500 for each subsequent violation. Each day the violation occurs or continues to exist shall constitute a separate offense. All fines and costs collected by the city pursuant to this subchapter shall be placed in the Solid Waste/Illegal Dumping Fund. Any person who provides evidence leading to the successful conviction of any person under this subchapter may be entitled to an equal portion of 50% of the fines collected from such person, firm, corporation or other legal entity. No city, county, state or federal employee or their immediate family members shall be eligible to receive a reward pursuant to this program.

(Ord. G-24-96, passed 10-8-96; Am. Ord. G-38-07, passed 12-18-07)

(Ord. G-15-90, passed 7-10-90; Am. Ord. G-04-02, passed 2-12-02; Am. Ord. G-38-07, passed 12-18-07)

City of Fort Wayne

**ADMINISTRATIVE POLICY**

for

**Enforcing Chapter 50: Garbage and Refuse and Enforcement Procedures**

October 1, 1996

The purpose of Chapter 50: Garbage and Refuse is to control the disposal of waste to limit unsightly storage that blights neighborhoods and to prevent sources of habitation and food for vectors, rodents, and other vermin that present a hazard to the public health. To this end, enforcing departments shall attempt to gain voluntary compliance with the requirements of Chapter 50: Garbage and Refuse, and will issue tickets when necessary to attain compliance. The authority for enforcing §§50.04 through 50.19 is with the Fort Wayne Police Department, the Department of Neighborhood Code Enforcement, the Energy and Environmental Services Department, and the Allen County Department of Public Health.

**Order of Primary Responsibility for Compliance**

Property Owner

The property owner shall be responsible for obtaining and utilizing~~providing~~ sufficient refuse storage containers for the disposal of refuse (§50.04). If refuse storage containers are absent, inadequate, or not rodent- proof, enforcing authorities shall cite the property owner with a violation.

~~Property Occupant~~

~~The occupant of the property shall bear the primary responsibility for all other aspects of compliance with Chapter 50: Garbage and Refuse. Enforcing authorities shall first cite the occupant (when property can reasonably be assumed to be occupied) for violations other than the provision of proper refuse storage containers.~~

Rental Property Move-Out Conditions

In recognition that tenants sometimes move out of properties without giving due and proper notice to property owners, special attention shall be given to such situations when issuing citations. Any violations of Chapter 50: Garbage and Refuse, except with regard to the provision of refuse storage containers, shall first cite the occupant as the party with primary responsibility. If the property appears to be vacant with a recent tenant move-out, the property owner shall be given seven days, from when the city is notified of the problem, to comply with any and all violations.

After the property is vacant for seven days, the property owner will be deemed to be the party with primary responsibility for compliance with Chapter 50: Garbage and Refuse and enforcing authorities shall cite the property owner with appropriate violations.

(Ord. G-38-07, passed 12-18-07)

**(A) Administrative adjudication provided.** It is hereby declared to be the policy of the City of Fort Wayne that solid waste violations may be subject to enforcement in administrative proceedings as provided in this section and any person subject to a fine under this chapter shall first have the right to dispute the fines and penalties in an online process in accordance with the procedures established by the City Clerk's Office.

**(B) Hearing Officers; appointment and term; qualifications; conduct.**

(1) The administrative adjudication of a solid waste citation under this section shall be presided over by a Hearing Officer appointed by the Mayor. The Mayor may appoint more than one Hearing Officer for contemporaneous terms as necessary to address in an expeditious manner all citations referred to them pursuant to this section. Nothing in this section shall prohibit an individual who is an employee of the city from being appointed or serving as a Hearing Officer.

(2) A Hearing Officer shall be appointed for a term of one year and until a successor is appointed but shall serve at the pleasure of the Mayor. A Hearing Officer may be reappointed for successive terms.

(3) A Hearing Officer shall not preside over a hearing if the Hearing Officer believes he or she is subject to disqualification, or if by motion of any party it appears that the Hearing Officer is subject to disqualification, for:

(a) Bias, prejudice, or personal interest in the outcome of a hearing;

(b) Knowledge of a disputed evidentiary fact which might influence the decision;

(c) Failure to dispose of any motion or hearing in an orderly and reasonably prompt manner after written request by a party; or

(d) Any cause for which a judge of a court may be disqualified.

(4) Except as to the subjects of hearing schedules and procedures, a Hearing Officer who does the following is disqualified under this section:

(a) Comments publicly on a hearing over which the Hearing Officer presides; or

(b) Communicates directly or indirectly with a party or other individual who has an interest in the outcome of a hearing, without notice and opportunity for all parties to participate in the communication;

**(C) Notice of administrative hearing.**

(1) Whenever the City Clerk reports to the City Attorney determines that a person upon whom a solid waste citation was served pursuant to this chapter has:

(a) Appeared and denied the violation; or

(b) Failed to appear at the City Clerk's office within 60 days of issuance of the citation;  
or

(c) Failed to pay the specified civil penalty within 60 days after admitting the violation; the City Clerk may issue a notice of administrative hearing to the person upon whom the citation was served or to the person who is listed as the owner of the real property at which the violation occurred, according to the Allen County Recorder.

(2) Service of notice of administrative hearing shall be by United States mail to the respondent's last known address, or by personal service. The City Clerk shall keep a record of the time, date and manner of service.

(3) The City Clerk shall cause a copy of each notice issued pursuant to this section to be delivered to the Hearing Officer who will preside over the hearing.

(4) Each notice of administrative hearing shall include the following information:

(a) A caption for the hearing, which shall include the name of each party expected to participate in the hearing, and an official file or other reference number;

(b) A statement of the date, time and place of the hearing;

(c) A statement of the nature of the hearing, including the legal authority under which the hearing is to be held, and the parties' procedural rights at the hearing;

(d) A statement of the date, time and place of each alleged violation as stated on the citation, and the maximum penalty that can be imposed thereupon;

(e) A statement that a party who fails to respond to the notice of the hearing, or to participate in the hearing, may be held in default.

(5) Notice of administrative hearing shall be issued at least 20 days prior to the date of the hearing.

(D) ***Prehearing procedures.***

(1) Prior to the hearing, the Hearing Officer shall give the parties an opportunity to file documents or motions regarding matters such as continuances, discovery, and any other preliminary matters. At the time of filing, a party shall serve a copy of all filed items on each other party. Notice to the Solid Waste Department shall be sent to the address contained on the Notice of Hearing and shall contain the file or reference number referenced in subsection 4(a).

(2) Motions for continuance shall be filed no later than seven days before the date assigned for the hearing, unless the reason therefor is shown by affidavit to have occurred within the seven-day period.

(3) The Hearing Officer, upon request by any party or upon the Hearing Officer's own initiative, may issue subpoenas and discovery orders in accordance with the rules of procedure governing subpoenas and discovery in judicial proceedings. The party seeking the subpoena or order shall cause them to be served in accordance with these rules of procedure.

(E) *Hearing procedures.*

(1) The Hearing Officer shall afford all parties the opportunity to participate in the hearing to the extent necessary for full consideration of all relevant facts and issues. A party may present evidence in the form of testimony, affidavits and documentation, engage in argument, and conduct cross-examination. A party may participate in person or by counsel at the party's own expense; if the party is not an individual or is incompetent to participate, then the party shall participate by a duly authorized representative.

(2) The city shall have the burden of proof that the respondent owns or rents the real property at which the citation was issued, and that this ordinance was violated. The burden may be sustained by a preponderance of the evidence; provided, however, that a citation, or a copy thereof, issued and bearing the manual or electronic signature of the official issuing the citation shall be prima facie evidence of the correctness of the facts specified therein.

(3) The Hearing Officer shall conduct the hearing in an informal manner and without strict adherence to the technical rules of evidence and procedure which govern judicial proceedings. The Hearing Officer shall rule on the admissibility of any offer of proof, and on other motions, and shall exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds. The testimony of each party and witness shall be made under oath or affirmation.

(4) The Hearing Officer may take official notice of any section of this Code, and any law or fact that could be judicially noticed in the courts. The Hearing Officer may call witnesses and conduct direct and cross-examination of any witness.

(5) The Hearing Officer shall cause an audio recording of the hearing to be made at the expense of the city.

(F) *Decision.*

(1) Upon the conclusion of each hearing or as soon thereafter as possible, but in no event later than five (5) business days after the conclusion of the hearing, the Hearing Officer, shall render a decision which includes a determination whether the respondent violated the ordinance as alleged on the citation, the amount of civil penalty which must be paid for each violation with instructions on when and how payment shall be made, and a statement of the parties' right to petition for review of the decision.

(2) The decision shall be based exclusively upon the evidence of record in the hearing and on matters officially noticed therein. The Hearing Officer's experience and specialized knowledge may be used in the evaluation of the evidence.

(3) The Hearing Officer shall cause each decision rendered pursuant to this section to be memorialized and maintained by the Solid Waste Department.

(4) A decision rendered pursuant to this section may be modified by the Hearing Officer who rendered it, upon the Hearing Officer's own initiative or by motion of any party. Any motion to modify a decision shall be filed within 30 days after the date of the decision.

(G) **Record of the hearing.** The record of each hearing under this section consists of the following and shall constitute the complete and exclusive record for review of a Hearing Officer's decision:

(1) The notice of hearing;

(2) The citations;

(3) Any documents or motions filed or entered into evidence;

(4) Any written orders, subpoenas, and decision of the Hearing Officer; and

(5) The audio recording of the hearing.

(H) **Petition for review of decision; time limitation.**

(1) A verified petition for review of the decision of a Hearing Officer may be filed in the Circuit or Superior court of Allen County within 30 days after the day on which the decision is rendered, in accordance with the Administrative Orders and Procedures Act.

(I) **Administrative hearing costs fee.** For each action that results in judgment against respondent for violation of this chapter, the Hearing Officer shall impose an administrative hearing cost fee of \$10.