

**BOARD OF COMMISSIONERS
DEARBORN COUNTY, INDIANA**

ORDINANCE 2018-_____

**AN ORDINANCE TO ADD TITLE XV, CHAPTER 155
TO THE DEARBORN COUNTY, INDIANA CODE OF ORDINANCES**

WHEREAS, the Dearborn County Board of Commissioners has authority, pursuant to its statutory and home rule powers, to amend the Dearborn County, Indiana Code of Ordinances; and

WHEREAS, the Dearborn County Board of Commissioners, pursuant to statutory authority as the duly elected County Executive for the County of Dearborn, State of Indiana, is tasked with the protection of the health and safety of its residents as well as the preservation of the local environment and ecosystem; and

WHEREAS, the Dearborn County Board of Commissioners now determines that creating Title XV, Chapter 155 of the Dearborn County, Indiana Code of Ordinances will best protect the health and safety of its residents and to preserve the environment and ecosystem, all of which is in the best interest of the citizens of Dearborn County.

NOW THEREFORE, BE IT ORDAINED by the Dearborn County Board of Commissioners, that an amendment be made to the Dearborn County, Indiana Code of Ordinances to add Title XV, Chapter 155 as follows:

TITLE XV – LAND USAGE

CHAPTER 155: ENVIRONMENTAL REGULATIONS

§ 155.01	Purpose
§ 155.02	Definitions
§ 155.03	Transportation and Placement of Certain Materials
§ 155.04	Application to Zoning Districts
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§ 155.01 PURPOSE

(A) Purpose of Environmental Regulations:

- (1) To protect the health, safety and general welfare of the citizens of Dearborn County, Indiana; and

- (2) To ensure the preservation and continued use and enjoyment of the environment and ecosystem; and
 - (3) To enhance property values and attract new residents; and
 - (4) To ensure the viability of the corporation limits; and
 - (5) It is deemed essential by the County that these protections be put in place and enforced.
- (B) These purposes are advanced through a prohibition against the importing of certain materials and storage, in any form, whether temporary or permanent in nature, within the corporate boundaries of Dearborn County.
- (C) It is the intention of the County through this Chapter to preserve and protect the public health and environment and to enforce these provisions as necessary to that end.

§ 155.02 DEFINITIONS

For the purpose of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words in the present tense include the future tense. The singular number includes the plural, and the plural, the singular. Terms not defined in this section shall have the meanings customarily assigned to them.

COUNTY. The County of Dearborn, State of Indiana.

COUNTY LIMITS. The corporate legal municipal boundaries of the County of Dearborn, State of Indiana. Said boundaries shall include all incorporated and unincorporated areas of the County.

COAL ASH. The definition of **COAL ASH** shall include all coal combustion residuals or CCRs, including Fly Ash, Bottom Ash, Boiler Slag, Flue Gas Desulfurization Material, fluidized bed combustion ash, cenospheres, scrubber residues. All such terms shall have their plain meaning as well as the meanings referenced by the EPA and IDEM. **Concrete which has been created utilizing coal ash shall not be considered *COAL ASH* for the purposes of this Ordinance.**

FILL MATERIAL means material used to fill in a depression or hole in the ground or create mounds or otherwise artificially change the grade or elevation of real property.

PERSON. Includes a company, a firm, a partnership, a limited liability company, or a corporation, as well as an individual.

PLACEMENT. Any offloading of any quantity, from a vessel, a vehicle or by a person, for any duration of time, whether intentional or accidental.

SHALL. The word **SHALL** means that it is mandatory.

TRANSPORTATION. The movement by any manner or means, whether by powered or unpowered vessel or vehicle, or by a person, via land, air or water, above or below ground.

§ 155.03 TRANSPORTATION AND PLACEMENT OF CERTAIN MATERIALS

The transportation of Coal Ash from outside the County limits to inside the County limits for the purpose of ~~placement~~ **usage as fill material** within the County limits shall be unlawful and prohibited. This is true for any duration of placement and any location within the County limits for any purpose, regardless of approval or permitting by any agency, including those of the State or Federal government.

§ 155.04 APPLICATION TO ZONING DISTRICTS

All zoning districts lying within the County limits are subject to the regulations herein. If there is a conflict between the requirements of the zoning district and the requirements of this Chapter, this Chapter shall apply.

§ 155.05 CONFLICT WITH OTHER LAWS

This Ordinance shall be given full force and effect for all actions taken within the County limits, and any conflict with any other laws, whether local, State or Federal in jurisdiction, shall be construed in favor of this Ordinance.

§ 155.06 EXCEPTIONS

- A. A variance to this prohibition may be requested by submitting the same in writing to the Dearborn County Board of Commissioners. The application shall state:
1. The identity and chemical composition of all prohibited materials to be transported.
 2. The amount of each prohibited material and the percentage composition as compared to other materials contained therein.
 3. The number of such shipments.
 4. The frequency of such shipments.
 5. The origin and destination of such shipments.
 6. The purpose of the transportation.
 7. The Party or Parties responsible for transportation and placement.

- B. The Dearborn County Board of Commissioners shall hear from the applicant, the general public, and any other persons deemed beneficial to decision-making, and after doing so shall deliberate and decide as to whether to grant a variance within thirty (30) days of the hearing.
- C. The Dearborn County Board of Commissioners shall base their decision on the following factors:
 - 1. Potential harm to the health of the citizens of the County.
 - 2. Potential harm to the environment of the County.
 - 3. Whether or not there are sufficient safeguards in place to guarantee the safety of human health and the environment.
- D. Denial of a variance may be reviewed by the County Superior or Circuit Court.
- E. Should a variance be granted by the Dearborn County Board of Commissioners, said variance shall be subject to the entire Dearborn County Zoning Ordinance which includes, but is not limited to, Article 8: Floodplain Regulations and Article 25: General Requirements, and specifically Section 2572 – Environmental Provisions.

§ 155.07 ENFORCEMENT

- (A) Any person, whether as principal, agent, owner, lessee, tenant, contractor, builder, architect, engineer, or otherwise, who violates any provision of this Chapter shall be immediately subject to its penalties.
- (B) The presence of any materials prohibited by this Chapter shall be *prima facie* evidence of a violation of these provisions, and subject the person or persons possessing the materials to its penalty provisions, along with the entity on whose behalf said person is operating.
- (C) The erection, construction, enlargement, alteration, repair, demolition, moving, or maintenance of any building, structure, or appurtenance which is begun, continued, or maintained contrary to any provisions of this Chapter is hereby declared to be a nuisance and in violation of this Chapter and unlawful.
- (D) The County may institute a suit for injunction in the Circuit Court or Superior Court of the County to restrain any person or government unit from violating any provision of this Chapter and to cause such violation to be prevented, abated, or removed. Such action may also be instituted by any property owner who is adversely affected by the violation of any provision of this Chapter.

- (E) Any violation of the provisions of this Chapter shall subject the violating party or parties to injunction and damages, including fines, cost of collection and attorney's fees. The violating party or parties shall also be liable for all costs of cleanup and remediation.
- (G) The remedies provided for in this section shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.
- (H) Any person or party aggrieved by a decision under this Chapter shall be entitled to judicial review.

§ 155.08 EFFECTIVE DATE

This Ordinance shall be effective immediately upon passage by the Dearborn County Board of Commissioners and shall be recorded in the Dearborn County, Indiana Code of Ordinances and published accordingly.

ALL OF WHICH IS ORDAINED by the Board of Commissioners of Dearborn County, Indiana this the ____ day of _____, 2018.

**BOARD OF COMMISSIONERS
DEARBORN COUNTY, INDIANA**

SHANE MCHENRY, President

ART LITTLE, Member

ATTEST:

JIM THATCHER, Member

**CONNIE FROMHOLD
County Auditor**