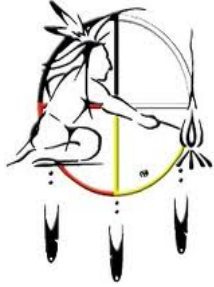


**FOREST COUNTY POTAWATOMI
COMMUNITY
SOLID WASTE AND
RECYCLABLES ORDINANCE
(AMENDED)**

CHAPTER 4-1 (__ / __ /20 __)



**FOREST COUNTY POTAWATOMI COMMUNITY
SOLID WASTE AND RECYCLABLES
ORDINANCE (AMENDED)**

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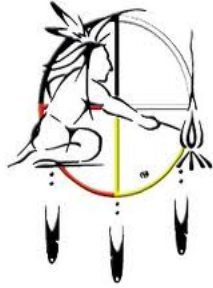
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**FOREST COUNTY POTAWATOMI COMMUNITY
SOLID WASTE AND RECYCLABLES
ORDINANCE (AMENDED)**

§ 1. General

1.1 Purpose

The purposes of this Ordinance are to prevent the deterioration of the environment and improve the standard of living, quality of life, health, safety, and welfare of Tribal Members and other persons by:

- (A) Regulating the disposal of Solid Waste.
- (B) Establishing a mandatory recycling program.

1.2 Authority

The Forest County Potawatomi Community General Council enacts this Ordinance pursuant to its authority granted under the Forest County Potawatomi Community Tribal Constitution, Article IV, §1(d).

1.3 Effective Date and Title

This Ordinance is hereby adopted immediately following the majority approval from the Forest County Potawatomi Community General Council and it shall be known as the Forest County Potawatomi Community Solid Waste and Recyclables Ordinance (Amended).

1.4 Sovereign Immunity

The Tribe, by adoption of this Ordinance, does not waive its sovereign immunity in any respect. Any Person acting under good faith of this Ordinance shall be immune from any civil liability arising out of such actions.

1.5 Amendment or Repeal

This Ordinance may be amended or repealed by a majority vote of the Forest County Potawatomi Community General Council. All rules and regulations heretofore adopted by the Forest County Potawatomi Community General Council or Executive Council which are in conflict with the provisions of this Ordinance are hereby repealed. Appendix A, approved by General Council

contemporaneously with this Ordinance, may be amended by Executive Council as needed hereafter, subject to Article V, Section 2 of the Constitution.

1.6 Jurisdiction

The Forest County Potawatomi Community Tribal Court shall have original jurisdiction over all proceedings under this Ordinance.

1.7 Interpretation

The Forest County Potawatomi Community Tribal Court shall defer to the Public Works Division's reasonable interpretation of this Ordinance, including the amount of any fine imposed or corrective action taken. The Court shall follow an "Abuse of Discretion" standard in any review of the Division's interpretation or action.

1.8 Others Voided

With the adoption of this Ordinance, the Solid Waste Ordinance, Chapter 4-1, and the Tire Dumps Ordinance, Chapter 4-2 are hereby voided.

§ 2. Definitions

For the purpose of this Ordinance, the following words and phrases shall have the meanings given to them in this Section and by law:

"Abuse of Discretion" is a standard of legal review that prohibits a reviewing court from reversing a prior decision, absent a definite and firm conviction that the prior decision represents a clear error of judgment upon a weighing of all relevant factors.

"Construction and Demolition (C/D) Waste" means all non-Hazardous Solid Waste resulting from construction and demolition activities. Materials generated from C/D Waste shall be further defined and updated in Appendix A.

"Contractor" means any person who accepts or submits a bid and holds a valid license to construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any building, highway, road, railroad, excavation, or other structure, project, development, or improvement to real property, or to do any part thereof. "Contractor" includes subcontractors, specialty Contractors, prime Contractors, independent Contractors, and any person receiving consideration for the general supervision and/or coordination of such a construction project except for remediation contracting. This definition shall govern without regard to whether or not the Contractor is acting in fulfillment of a contract. This definition shall not apply to services rendered by FCPC Tribal departments.

"Executive Council" means the Executive Council of the Tribe, as defined in Article III §6 of the Forest County Potawatomi Community Constitution with powers as defined in Article V.

“Hazardous Waste” means any waste defined as hazardous waste under the provisions of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, or under Appendix A, and includes but is not limited to, explosives, pathological wastes, pesticides, chemicals, and other toxic materials which are harmful to public health. Hazardous Waste shall be defined as a Solid Waste, but shall be subject to special regulation and treatment pursuant to this Ordinance and Appendix A.

“Household Hazardous Waste (HHW)” means household products that could be hazardous to the environment or human health including paints, solvents, cleaners, household batteries, household amounts—five (5) gallons or less—of petroleum products, insecticides, herbicides, anti-freeze, car batteries, television tubes/screens, computer screens, fluorescent bulbs, including ballasts that contain polychlorinated biphenyls (PCBs) and any other product produced for consumer use that could be hazardous to the environment. Household Hazardous Waste shall be defined as a Solid Waste, but shall be subject to special regulation and treatment pursuant to this Ordinance and Appendix A.

“Junk Vehicles” means any vehicle which is incapable of operation or use on the highway and which has no resale value except as a source of parts or scrap.

“Littering” means Solid Waste or Recyclables improperly placed so as to be a nuisance or health concern.

“Majority” means fifty percent (50%) plus one (1) of the annually established quorum of the Forest County Potawatomi Community General Council.

“Medical Waste” means Solid Waste that contains pathogens with sufficient virulence and in sufficient quantity that exposure of a susceptible human or animal to the Solid Waste could cause the human or animal to contract an infectious disease and other waste that contains or may be mixed with infectious waste produced at a health care facility or business.

“Non-Tribal Member” shall mean any Person who is not an enrolled Member of the Forest County Potawatomi Community.

“Person” means any individual, firm, governmental unit, organization, partnership, corporation or company.

“Public Works Division Administrator or a designee” means any Person designated to act in that capacity by Executive Council for administration and enforcement of this Ordinance.

“Recyclables” means materials that can be recovered from a waste stream for reuse. Recyclables will be further defined and updated in Appendix A.

“Sharps” means hypodermic needles, syringes with needles, scalpel blades, lancets, broken glass or rigid plastic vials and laboratory slides, including any unused or disinfected sharps that are being discarded.

“Solid Waste Collector” means any Person who collects, transports, or gathers Solid Waste and Recyclables for the purpose of disposal or transfer off of Tribal lands.

“Solid Waste” means all putrescible and non-putrescible solid, semisolid and liquid waste, including but not limited to garbage, trash, refuse, paper, rubbish, ashes, industrial waste, construction and demolition waste, abandoned vehicles and parts thereof (including tires), discarded home and industrial appliances, manure, vegetable or animal solid and semisolid waste, other discarded solid, liquid and semisolid waste from a wastewater treatment plant, water supply treatment plant or air pollution control facility or other discarded containerized gaseous material resulting from industrial, commercial, mining or agricultural operations, or community activities. Solid Waste shall not include solid or dissolved material in domestic sewage; solid or dissolved material in irrigation return flows; industrial discharges that are point sources subject to permits under 33 U.S.C.A. §1342; or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 42, U.S.C.A. §§2011, et seq.

“Solid Waste Disposal” means the collection, temporary storage, and processing of Solid Waste.

“Transfer Facility” means a site where Hazardous Waste, Recyclables, and Solid Waste are collected and sorted in preparation for processing and/or transfer off of Tribal Lands.

“Tribal Court” means the Forest County Potawatomi Community Tribal Court.

“Tribal Lands” or “Reservation” means, for the purposes of this Ordinance, any trust lands located within Forest County, Wisconsin.

“Tribal Member” means any enrolled Member of the Forest County Potawatomi Community.

“Tribe” or “Tribal” means the Forest County Potawatomi Community.

“Vector” means insect or animal which transmits infectious diseases from one Person or animal to another.

§ 3. Solid Waste Disposal and Recycling Program

With the adoption of this Ordinance, the General Council establishes a comprehensive Solid Waste Disposal and Recycling program. The Rules and Regulations for the temporary storage, collection, and disposal of Solid Waste and Recyclables shall be contained in Appendix A. All Solid Waste and Recyclables presented for collection, whether at the roadside, at a designated Solid Waste and Recyclables collection site, or at the Transfer Facility shall be treated as provided in this Section.

3.1 Storage

The owner or occupant of any residence, business establishment, or industry shall be responsible for the sanitary storage of all Solid Waste and Recyclables accumulated at that residence, business establishment, or industry on the Tribal Lands.

- (A) All household Solid Waste and Recyclables shall be stored in collection totes provided by the Public Works Division or as otherwise provided in Appendix A. The collection totes must be placed at curbside on the scheduled collection day unless otherwise noted in Appendix A. It shall be unlawful to mix Solid Waste and Recyclables set out for collection.
- (B) Any Solid Waste or Recyclables generated by or at a business establishment or industry located on Tribal Lands shall be stored in a sanitary manner in containers appropriate for the type(s) of Solid Waste or Recyclables generated by or at that location. It shall be unlawful to mix Solid Waste and Recyclables set out for collection by the Tribe or a Contractor.
- (C) All Solid Waste and Recyclables containers shall be maintained to prevent the creation of a nuisance or unsanitary conditions. Containers that are broken or otherwise fail to meet this standard shall be replaced with acceptable containers in accordance with Appendix A. Solid Waste or Recyclables deemed too large or unsuitable for storage shall be stored consistent with requirements established in Appendix A.
- (D) The Public Works Division shall maintain a current list of materials that are defined as Recyclables (in Appendix A) if discarded. Any such Recyclables shall be stored in a receptacle designated for that purpose and/or as provided in Appendix A.
- (E) Hazardous Waste and/or Hazardous Household Waste, pending disposal, shall be stored as provided in Appendix A or applicable federal regulations.
- (F) Unless otherwise provided for differently in a written rental agreement or lease, the tenant of any building or facility shall be responsible for the provision and maintenance of containers as specified in Appendix A.
- (G) Nothing in this Ordinance shall prohibit resident homeowners from engaging in limited composting for personal use. Commercial composting shall be allowed for agriculturally based Tribal owned businesses only if approved by Executive Council. All composting must be in accordance with guidelines contained in Appendix A.

3.2 Collection/Transportation

- (A) The Solid Waste Collector shall be responsible for the safe and sanitary collection and transportation of all Solid Waste and Recyclables as indicated in Appendix A.
- (B) The Solid Waste and Recyclables shall be covered and secured at all times during transport to assure they are not dropped from the transport vehicle.

- (C) If spillage should occur, the Solid Waste Collector shall immediately pick up the spillage and return it to the vehicle or container, and properly clean the affected area.
- (D) For spillage of Hazardous Solid Waste and/or Household Hazardous Waste, the Solid Waste Collector shall immediately notify those persons/entities identified in Appendix A.

3.3 Delivery and Processing of Solid Waste and Recyclables at Transfer Facility

- (A) Any Person delivering Solid Waste or Recyclables to the Transfer Facility shall ensure that such Solid Waste or Recyclables are placed in the bin, container, or area specifically designated for that type of Solid Waste or Recyclables at the Transfer Facility. It shall be unlawful to deliver mixed Solid Waste and Recyclables to the Transfer Facility.
- (B) No Person shall deliver Solid Waste or Recyclables to the Transfer Facility except during the hours listed in Appendix A, or at a time scheduled through the Public Works Division. Depositing Solid Waste or Recyclables outside of the Transfer Facility gate shall be considered littering, and is strictly prohibited.
- (C) Solid Waste and Recyclables shall be stored, and the Transfer Facility shall be maintained, so as to prevent the creation of a nuisance, unsanitary condition, potential health hazard or the proliferation of Vectors.
- (D) Recyclables at the Transfer Facility shall be sorted and prepared for transfer.
- (E) In the event a public health or environmental emergency arises at the Transfer Facility, the manager shall immediately notify those persons/entities identified in Appendix A.

3.4 General Prohibitions

- (A) Littering on Tribal Lands is strictly prohibited.
- (B) No Non-Tribal Member shall dispose of Solid Waste or Recyclables on Tribal Lands. This restriction shall not apply to the following persons/situations:
 - 1. Non-Tribal Members living in Tribal households;
 - 2. Tribal employees engaged in their duties, (including minimal personal use);
 - 3. Minimal personal use by patrons of Tribal enterprises;
 - 4. Minimal personal use by visitors to Tribal departments/facilities.
- (C) Tribal Members not residing on Tribal Lands may transport Solid Waste and Recyclables generated from their residence to the Transfer Facility during business

hours. All Solid Waste and Recyclables transported to the Transfer Facility shall follow the requirements set forth in this Ordinance and Appendix A.

- (D) No Person shall:
- (1) Burn any Solid Waste or Recyclables.
 - (2) Dispose of any sewage or human waste except into an approved Tribal or non-Tribal governmental sanitary sewage system, or individual sanitary system constructed and operated in accordance with applicable Tribal standards or Indian Health Service specifications.
 - (3) Dispose of any Medical or Infectious Waste on Tribal Lands.
 - (4) Dispose of any Sharps except into an approved Sharps container or similar sanitary medical container. Such containers may only be disposed of in accordance with applicable Health & Wellness Center and/or Federal regulations (see Appendix A).
 - (5) Dispose of Construction/Demolition Waste generated by a Contractor on Tribal Lands, unless the Person is notified otherwise by the Tribe. Tribal Members generating Construction/Demolition waste from their own property may dispose of such Construction/Demolition Waste at the Transfer Facility.
 - (6) Store Junk Vehicles in plain sight.
 - (7) Store Junk Vehicles, whether in plain sight or not, without draining or removing any potentially hazardous fluids or materials.

§ 4. Enforcement

- (A) The Public Works Division Administrator or his/her designee in the Public Works Division shall be authorized to enforce this Ordinance by taking the following enforcement actions:
- (1) Refuse pickup and/or issue a written warning notifying the homeowner/tenant/business that Solid Waste/Recycling is not being properly sorted or stored at the residence/business according to the requirements of this Ordinance;
 - (2) In case of violation (including repeated non-compliance), by any Person, issue citations on citation forms approved by Executive Council. The penalty for any citations issued pursuant to this Ordinance will be in accordance with a fine schedule approved by Executive Council on an annual basis.

- (B) For minor violations, notice shall be sent to the violator prior to the issuance of any citations. If, after giving notice, the non-compliance issue has not been resolved, the Tribal Public Works Division Administrator may issue a citation. Nothing in this section shall be construed to require written notice prior to the issuance of a citation for any serious or repeated violation of this Ordinance.
- (C) For any citations that remain unpaid or for financial loss to the Tribe caused by a violation, the Tribal Public Works Division Administrator shall request the Tribal Prosecutor to file a summons and complaint with Tribal Court for the amount of the fine imposed, the amount of any damages incurred by the Tribe, or the cost of removal and/or remediation, in accordance with the Debts Owed to the Tribe Ordinance.
- (D) The Tribal Prosecutor may issue a summons and complaint for violations of the Ordinance pursuant to the Tribal Court Code.
- (E) The Person served notice or issued a citation shall have five (5) business days from receipt of citation or summons and complaint to file an appeal with Tribal Court with supporting evidence. If Tribal Court finds in favor of the Person, all costs and forfeitures associated with the disposal methods shall be dismissed and the Person shall be reimbursed for any payments made. If the Tribal Court finds in favor of the Tribal Public Works Division, the Court may require the Person to pay all costs and forfeitures in its Order. The Tribal Court's decision shall be final.
- (F) Violation of any provision of this Ordinance may be subject to a civil forfeiture not to exceed \$500.00, including per day for continuing violations. For violations that cause significant environmental harm, a civil forfeiture of up to \$25,000.00 may be imposed, including per day for continuing violations.
- (G) Repeated violations by a homeowner/tenant/business may also be punishable by termination of a residential or business lease, in accordance with the Realty Ordinance.
- (H) The Tribal Prosecutor may seek an Order of Removal in Tribal Court for any Person whose property is deemed an environmental hazard pursuant to this Ordinance.

§ 5. Variances

The Executive Council may issue variances to the requirements of this Ordinance. Executive Council may consider any undue hardships upon the applicant which prevents full compliance, in the interest of health and safety of its community members.

§ 6. Severability

If any provision of this Ordinance or its application to any Person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance. This Ordinance can be given effect without the invalid provisions or applications and to this end the provisions of this Ordinance are considered to be severable.

Appendix A (attached)

Legislative History for Forest County Potawatomi Community Solid Waste and Recyclables Ordinance (Amended):



Recommended by the Ordinance Department	06/17/1993
Approved by Executive Council.....	(/ /)
Approved by General Council Resolution: (No. GC-009-93)	12/04/1993
Ordinance Department notified of amendments	12/06/2006
Recommended amended Ordinance by the Ordinance Department.....	
Pulled from General Council for further review	12/14/2011
Recommended by the Ordinance Department	
Approved by Executive Council.....	
1993 Ordinance repealed and amended Ordinance approved by General Council Resolution: (No. GC-__ - __).....	