

**Substitute Bill No. 53-17**

**ORDINANCE NO. 10538-17**

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF SOUTH BEND, INDIANA, AMENDING THE SOUTH BEND MUNICIPAL CODE AT CHAPTER 16, ARTICLE 2, SECTIONS 16-6 THROUGH 16-9, AND 16-12; ARTICLE 3, AT SECTION 16-24; ARTICLE 6, AT SECTION 16-48(m); ARTICLE 8, AT SECTIONS 16-55-56 AND 16-59 (b), TO ADDRESS PROCEDURES AND SPECIAL FEES RELATED TO TRASH, REFUSE, AND OTHER SOLID WASTE COLLECTION AND DISPOSAL**

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**STATEMENT OF PURPOSE AND INTENT**

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In recent years, the City enacted changes to its trash, refuse and solid waste ordinance, contained within Chapter 16 of the South Bend Municipal Code, most recently, in 2015 (Ord. No. 10400-15 and 10401-15) to require use of yard waste containers. Since these recent ordinance amendments, the City has identified inefficiencies and abuses with the collection and disposal process. This ordinance clarifies and reorganizes the fee structure, reduces the fee for yard waste collection, and introduces a return trip and contamination fee to address some of the problems that have arisen.

This ordinance also clarifies and improves the language of pertinent sections of the South Bend Municipal Code.

It is in the best interest of the City that this ordinance be adopted.

**NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF SOUTH BEND, INDIANA as follows:**

**SECTION I.** Chapter 16, Article 2, Sections 16-6 through 16-9 and Section 16-12 of the South Bend Municipal Code shall be amended to read in their entirety as follows:

**CHAPTER 16 - REFUSE**

**ARTICLE 2. - COLLECTION AND DISPOSAL**

**Sec. 16-6. - Collection of residential refuse; exceptions; fees.**

- (a) The City shall have exclusive jurisdiction over and the exclusive right to control the collection and disposal of residential refuse within the boundaries of the City of South Bend. The City may exercise its exclusive jurisdiction and right to control residential refuse by providing collection and disposal services itself, or the City may, through its Board of Public Works, contract with or formally permit others to provide collection and disposal services on its behalf. No residential refuse, as defined in this Chapter, shall be collected or disposed of except by the City or by a person or company under contract with or permitted by the City to provide such services.
- (b) Exceptions and exemptions:
- (1) Nothing in this Chapter shall prevent any person who generates or produces residential refuse on property owned or leased by such person from separating recyclable materials from such residential refuse and either; (1) maintaining title to such recyclable materials for ~~his~~ their own use; or (2) disposing of such recyclable materials by participating in a recycling program; or by sale or gift; provided, however, that such separation and disposition neither creates a public nuisance, nor is otherwise injurious to the public health, welfare and safety.
  - ~~(2) Nothing in this Chapter shall prevent a person from purchasing or receiving by gift recyclable materials for processing or other use; provided, however, that it shall be a violation of this section for any person to scavenge or remove recyclables from or near bins placed for removal of recyclables by the City or its contractor.~~
  - ~~(2)(3)~~ Nothing in this Chapter shall prevent the removal from residential premises of discarded building materials, trees, brush and other vegetation resulting from the activities of building contractors, commercial tree trimmers or commercial lawn services; provided, however, that such residential refuse so removed that falls within the definition of yard waste shall either be disposed of at the City's Organic Resource Facility as provided in article 4, below, collected by the City or shall be otherwise recycled in a manner approved by the Director of the Department of Public Works.
  - ~~(3)(4)~~ Nothing in this Chapter shall prevent a person from contracting with a private contractor for the removal of appliances, furniture, tree limbs, demolition debris or other waste that would require special equipment or special scheduling for removal by the Bureau Division of Solid Waste.
- (c) The City shall charge the owner or occupant of each occupied residence within the City for the collection and disposal of residential refuse according to the following schedule:
- (1) Rates and Charges

<u>MONTHLY RATES</u>		
	<u>2016</u>	<u>2017*</u>
<u>Within City of South Bend Limits:</u>		
<u>Family Dwellings:</u>		

<del>—One family dwelling</del>	<del>\$11.52 (1)</del>	<del>\$12.48</del>
<del>—Two family dwelling**</del>	<del>18.06 (1)</del>	<del>19.57</del>
<del>—Three Family dwelling**</del>	<del>24.61 (1)</del>	<del>26.66</del>
<del>—Four Family Dwelling**</del>	<del>31.16 (1)</del>	<del>33.76</del>
<del>—Senior rate***</del>	<del>6.91 (1)</del>	<del>7.49</del>
<del>—Commercial</del>	<del>13.82</del>	<del>16.22</del>
<del>Outside City of South Bend Limits:</del>		
<del>—Residential</del>	<del>13.82</del>	<del>16.22</del>
<del>—Residential Senior***</del>	<del>8.64</del>	<del>9.36</del>
<del>—Additional Trash Container (per container)</del>	<del>6.55</del>	<del>7.09</del>
<del>—Yard Waste Bin****</del>	<del>16.00</del>	<del>16.00</del>

<u><b>MONTHLY RATES</b></u>	
<u>One-family dwelling</u>	<u>\$12.48</u>
<u>One-family dwelling Outside City of South Bend Limits</u>	<u>\$16.22</u>
<u>Two-family dwelling**</u>	<u>\$19.57</u>
<u>Three-Family dwelling**</u>	<u>\$26.66</u>
<u>Four Family Dwelling**</u>	<u>\$33.76</u>
<u>Senior rate***</u>	<u>\$7.49</u>
<u>Senior rate*** Outside City of South Bend Limits</u>	<u>\$9.36</u>
<u>Commercial</u>	<u>\$16.22</u>
<u>Yard Waste Weekly Service****</u>	<u>\$2.00</u>

<u>Additional Trash Container (per container)</u>	<u>\$7.09</u>
<u>Additional Yard Waste Container (per container) ****</u>	<u>\$2.00</u>
<b><u>Fees Per Incident</u></b>	
<u>Tote Replacement Fee</u>	<u>\$50.00</u>
<u>Special Trash Collection per cubic yard</u>	<u>\$20.00</u>
<u>Special Yard Waste Collection per cubic yard</u>	<u>\$10.00</u>
<u>Return Trip Fee</u>	<u>\$10.00</u>
<u>Contamination Fee</u>	<u>\$10.00</u>
<u>Administrative Fee</u>	<u>\$10.00</u>

\* Until further amended.

\*\* With one water meter.

\*\*\* Where one resident/occupant of the account ~~the head of the household~~ has submitted to the Board of Public Works proof of address and proof of being age sixty-five (65) or older. No owner age 65 or older of multiple properties may claim more than one senior discount.

\*\*\*\* ~~Annual e~~Charge for the yard waste season which is billed monthly for weekly service during the months of April through November ~~eight (8) months of the year.~~

- (2) The City shall provide, contract with others, or, by permit, allow others to provide specialized collection services, which allow for collection of residential refuse from areas other than curbside or alley side. If the City provides specialized collection services, itself, or by contract with others, the monthly charge for such service shall be set by the South Bend Common Council. If specialized collection services are provided by a permittee of the City, the monthly charge shall be subject to negotiation between the customer and the permittee; and such fee shall be collected by the permittee. The services provided by the permittee shall be governed by rules and regulations adopted by the Board of Public Works.
- (3) The City may provide or contract with others to provide curbside collection of recyclables. If such collection is performed by the City, the fee for such service may be set by the Board of Public Works after a public hearing to a fee reflective of the actual cost to the City of providing such service. If the service is performed by a contractor selected pursuant to a public bid process, the monthly fee for such service to the public

may be determined by the bid or may be set by the Board of Public Works ~~as set out above.~~

- (4) Special Collection, such as the pick-up of appliances, furniture and other miscellaneous items: Appliances, furniture and other miscellaneous items which, in the opinion of the Director ~~manager~~ of the Division of Solid Waste ~~Bureau of Solid Waste~~, require special equipment or special scheduling, shall be picked up by the City from residential customers subject to the following charges:

(1) Each month, the first large item or cubic yard (for example, appliance, sofa, etc.) shall be free. Each additional item or cubic yard shall follow the rate structure set forth in Sec. 16-6(c)(1). ....No Charge

~~(2) Second large item or ½ cubic yard of construction and demolition debris .....\$ 10.00~~

~~(3) Per cubic yard .....20.00~~

~~(4) Per truck load (18 cubic yards) .....420.00~~

The Director of the Division of Solid Waste ~~Manager of the Bureau of Solid Waste~~ shall, upon request, provide the customer with an estimated removal cost. In such a case, the items will be removed by the Division ~~Bureau~~ only after acceptance by the customer of the estimated removal costs.

~~(d) If the City elects to charge a fee for the collection of recyclables, the City may do so in a manner set forth in Sec. 16(c)(1). The City shall charge the owner or occupant of each occupied single-family residence and individual unit within a multifamily residence of up to four (4) units the sum of one dollar and ninety-seven cents (\$1.97) per month for the collection of recyclables.~~

~~(e) Charges for City collection of residential refuse and recyclables shall be added to the residential unit's water meter charges and collected as are bills for water services.~~

~~(d) (f)~~ It is the responsibility of the owners, occupants or tenants of abutting property to keep all alleys used by any sanitation vehicles clean, orderly and passable at all times.

#### **Sec. 16-7. - Collection of refuse; commercial and industrial.**

- (a) The collection of refuse and a proper system for disposal of the same may be undertaken by any person, organization or corporation for all commercial, retail, industrial, professional, apartment, institutional or governmental units subject to the provisions of this Chapter and under the supervision of the Department of Public Works. The term "apartment units" as used in this section refers to multi-building apartment complexes and to individual apartment buildings with more than four (4) separate apartments or living units per building.
- (b) It is the responsibility of every owner, tenant or lessee to provide a proper system for collection and disposal of refuse for all commercial, retail, industrial, professional, apartment, institutional, or governmental units at least once a week subject to the provisions of this Chapter.
- (c) The collection of commercial or industrial waste, refuse, trash and garbage of any kind, type or nature shall not be the responsibility of the City, but if the City elects to may engage in such collection activities, the fee shall be set by the Board of Public Works.

**Sec. 16-8. - Use of any City-furnished refuse containers required; disabled customer exception; nonrecurring charge for new users; separation of yard waste; and required use of City-furnished yard waste containers; paper or other biodegradable bags.**

- (a) ~~Each single family, two family, three family and four family dwelling shall be provided by the City with one (1) solid waste container for each family unit.~~ It shall be the duty of the dwelling occupant to keep the cover of ~~the this~~ container tightly fitted when refuse is contained in the container, and to remove the container from the collection site promptly after collection by the City and no later than twenty-four (24) hours thereafter. No container other than the one provided by the City shall be used for solid waste removal, and all refuse must be placed in the container and moved to the place of pickup by 6:00 a.m. on the designated collection date. If the customer does not receive the regularly scheduled weekly service through no fault of the City, customer shall be charged a "Return Trip" fee as set forth in Sec. 16-6(c)(1). Should the solid waste refuse of a dwelling habitually exceed the limits of the furnished solid waste container, the City may require the dwelling occupant to use a second City-furnished container ~~or the dwelling unit occupant may choose to use a second City-furnished container at the rate set forth in Sec. 16-6(c)(1) additional charge of six dollars and fifty-five cents (\$6.55) per month (in 2016), and seven dollars and nine cents (\$7.09) per month (in 2017 and thereafter) on a mandatory year to year basis as provided in Subsection (d) of this section.~~
- (b) No person shall deposit refuse in any solid waste container in a manner which prevents complete closure of the container's cover or deposit refuse on top of such container in a manner that interferes with opening of the container, nor shall any person pile or stack refuse against such a container. No person shall deposit refuse in any solid waste container that will contaminate the waste stream. Should it be determined by the City's Solid Waste Division that the customer deposited contaminate in the solid waste container, the customer shall receive a warning from the City's Solid Waste Division. If the customer continues to deposit such contaminate, customer shall be charged a contamination fee as set forth in Sec. 16-6(c)(1).
- (c) It is the duty of a dwelling occupant to maintain the container in clean condition after each removal of container contents and to remove any litter from the area surrounding the container.
- (d) The initial container furnished to owners, agents or occupants of dwellings as provided in this section shall be free of charge. New or subsequent dwelling owners, agents or occupants, shall pay an initial nonrecurring service ~~fee of ten dollars (\$10.00)~~ set forth in Sec. 16-6(c)(1), to cover the City's administrative cost of delivery and furnishing the refuse container. Should a container become substantially damaged or otherwise incapable of effective use through no fault of the City, a new container may be provided at the actual tote replacement fee set forth in Sec. 16-6(c)(1). ~~cost.~~ Any dwelling unit using more than one (1) refuse container or habitually having refuse exceeding capacity of the furnished container shall be required to use ~~lease~~ a second container at the rate set forth in Sec. 16-6(c)(1). In the event that a tote is stolen, and the resident is able to provide evidence of a police report related to such theft, the City shall supply one (1) free replacement tote per calendar year. The tote is expected to remain at the dwelling. Should the customer move, the customer is expected to either contact the City's Solid Waste Division and arrange for a pick-up of the tote or leave the tote at the

~~dwelling, for a year to year term at the lease rate of six dollars and fifty five cents (\$6.55) per month (in 2016), and seven dollars and nine cents (\$7.09) per month (in 2017 and thereafter).~~

- (e) Disabled persons or persons needing assisted service who satisfy the following conditions are exempt from the requirement that refuse containers be taken to the curb for emptying on the designated collection dates, and for such persons, the containers may be placed at the front of the dwelling. To be exempt a disabled person or a person needing assisted collection must provide the following to the Director of Solid Waste within one (1) year of seeking assisted service:
- (1) Submit physician's written statement attesting to customer's inability to physically move container to the curb for collection and return it after collection and the probable duration of that disability; and
  - (2) Submit customer's written, signed statement that there is no person in the household who is able to physically move the container to the curb for collection and return it after collection.
- (f) Yard waste as defined herein, shall be collected by the City on a weekly basis for disposal and recycling at the City's Organic Resource Facility provided it is placed in containers furnished by leased from the City. Each owner, occupant or lessee of any single or multifamily dwelling shall separate and keep separate any yard waste from the remainder of the residential refuse for collection. ~~As of April 1, 2016~~ Yard waste shall not be placed in plastic bags for collection. Such yard waste shall be placed in containers furnished by leased from the City, or may be placed for special pick-up only, in paper or other biodegradable bags. Additionally, special pick-up may be scheduled for any tree limbs and brush of a diameter of less than four (4) inches which shall be bundled together in lengths of forty-eight (48) inches or less, ~~or for tree limbs and brush in excess of these dimensions~~, or for large quantities of yard waste, excluding tree limbs in excess of six inches in diameter and stumps. Nothing in this section shall prohibit any person from recycling yard wastes on their own property for their own use or from giving such yard waste to another for recycling or use; provided, however, that such recycling neither creates a public nuisance nor is otherwise injurious to the public health, welfare or safety. Nothing in this section shall be construed to prohibit the deposit of leaves in a neat and careful manner in the tree lawn or any street in the autumn during the period designated by the Department of Public Works for collection.
- (g) ~~Commencing January 1, 2016 the owner, O~~ccupant or lessee of any single or multifamily dwelling who desires City service of weekly yard waste pick-up and removal must participate in the City's yard waste program and use a City issued yard waste container. ~~lease from the City a yard waste container with capacity for either forty five (45) or ninety six (96) gallons of yard waste. The fee lease rate no matter which size container shall be two dollars (\$2.00) per month for the months of April through November, or sixteen dollars (\$16.00) per year. Should such container become substantially damaged or otherwise incapable of effective use through no fault of the City, the resident lessee may be responsible for the replacement of the container at actual cost.~~ Yard waste not placed in a City issued containers ~~leased from the City~~ will not be eligible for weekly pick-up and will be eligible only for special pick-up scheduled by the owner, occupant or lessee of any single or multifamily dwelling.

(h) The owner, occupant or lessee of any single or multifamily dwelling who desires special **pick-up** of yard waste shall schedule such **pick-up** with the City's Solid Waste Division Organic Resource Facility through the 311 Call Center subject to the following charges set forth in Sec. 16-6(c)(1). ~~on a per month basis:~~

(1) Each month, the first large item or cubic yard (equates to 10 thirty-gallon paper bags) shall be free of charge. Each additional item or cubic yard shall follow the rate set forth in Sec. 16-6(c)(1).

~~(1) Up to one (1) cubic yard (equivalent of ten (10) thirty (30) gallon garbage bags).....No charge~~

~~(2) Subsequent pick up(s) of up to one half (1/2) cubic yard .....\$ 10.00~~

~~(3) Each cubic yard or more than one half (1/2) cubic yard thereafter .....20.00~~

~~(4) Per truckload (18 cubic yards) .....420.00~~

**Sec. 16-9. – All residential waste collections excluding special trash or yard waste.** ~~, including garbage Garbage and trash to be collected in containers only.~~

Collections by the City shall be made only of residential refuse that is contained in City issued containers or as otherwise set out in section 16-8, above. In no event shall City collectors pick up, rake or sweep up garbage or household trash from the ground, except as provided in section 16-57.

**Sec. 16-12. - Placement of garbage, yard waste, recycling and trash containers for collection.**

(a) Containers for residential refuse shall be placed in such places as to be readily accessible for the removal or emptying by the City and placed in such a manner and in such a place that such containers will not constitute a public nuisance in any respect.

(b) Where alley collections are to be made as exceptions to curbside collection, such containers shall be placed within ~~five (5)~~ **two (2)** feet of the alley line at the time and day of collection, but shall not at any time be placed within the limits of the alley itself. ~~In those areas where, in the opinion of the Department of Public Works, collection by alley is not practical or feasible, or in those areas where no alleys exist at all, the containers shall be placed for collection in compliance with the rules and regulations that shall be adopted by the Department of Public Works.~~

(c) ~~In those areas where alley collection is not available and~~ curbside collection refuse containers are ~~allowed~~ to be placed within two (2) feet of the curb, on the front yard or tree lawn for collection, such containers shall not be placed on the front yard or tree lawn area before 12:00 noon on the day prior to collection, and must be removed from the front yard or tree lawn area on the day of collection. Placing or leaving refuse containers on such areas at any other times shall constitute a public nuisance under Section 16-53 of this Chapter.

(d) Residential refuse shall be placed for collection at the residence at which it was generated. It shall be a violation of this section for any person to place refuse for collection by the City or its contractor that was not generated at that residence or by the occupants or guests of that residence.



**SECTION II.** Chapter 16, Article 6, Sections 16-48(m) of the South Bend Municipal Code shall be amended to read in its entirety as follows:

**ARTICLE 6. - DISPOSAL SITES AND SANITARY LANDFILLS**

(Sections. 16-40-47 No changes)

**Sec. 16-48. - Sanitary landfill operation requirements.**

(Subparts (a) through (l), and (n) through (q)—no changes )

- (m) Scavenging shall be permitted only if salvaged material is removed from the site daily and does not interfere with the orderly operation of the landfill. This Section in no way precludes the right of a landfill operator to prevent scavenging as a part of ~~their~~ ~~his~~ operational standards.

**SECTION III.** Chapter 16, Article 8, Sections 16- 55, 56, and Section 59 (b) of the South Bend Municipal Code shall be amended to read in its entirety as follows:

**Sec. 16-55. - Notice prior to abatement by City.**

The Board of Public Works or its designee shall give forty-eight (48) hours' notice, in writing, to remove from any real or personal property within the City any object or condition which is deemed to be a public nuisance under Section 16-53 of this article. Such notice shall be given to the owner of record or ~~their~~ ~~his~~ agent, and to any tenant or occupant of the property upon which nuisance exists. Notice to the record owner may be mailed to ~~their~~ ~~his~~ last known address. Notice to any tenant or occupant may be given by posting same in a prominent place upon the premises where the nuisance is located.

**Sec. 16-56. - Failure to comply with notice to abate.**

Failure, neglect, or refusal by the record owner or ~~their~~ ~~his~~ agent, or the tenant or occupant, to comply with the terms of the notice given pursuant to Section 16-55 shall constitute a violation of this article. Each day's failure, neglect or refusal to abate the nuisance following notice pursuant to Section 16-55 shall constitute a separate offense under this Article.

**Sec. 16-59. - Removal of vegetation.**

- (a) *Definitions.* As used in this section, "weeds and rank vegetation" means grass and weeds over nine (9) inches high, but not including small trees and bushes.
- (b) *Notice.* The Department of Code Enforcement shall give forty-eight (48) hours' notice, in writing, to remove from any real or personal property within the City weeds and rank vegetation. Such notice shall be given to the owner of record or ~~their~~ ~~his~~ agent and to any tenant or occupant of the property upon which the weeds and rank vegetation exists. Notice to the record owner may be mailed to the last known address of the record owner. Notice to any tenant or occupant may be given by posting the same in a prominent place upon the premises where the weeds and rank vegetation exists.

**SECTION IV.** This ordinance shall be in full force and effect from and after its passage by the Common Council, approval of the Mayor and any publication required by law.

Passed on September 11, 2017 by the Common Council of the City of South Bend, Indiana.

Presented to approved and signed by Mayor Peter Buttigieg on September 19, 2017.

Approved: Tim Scott, President of the Common Council

Kareemah Fowler, City Clerk