



Kent County Solid Waste Management Ordinance

Preamble

An Ordinance to implement portions of the Kent County Solid Waste Management Plan, as amended and as adopted pursuant to Part 115 (Solid Waste Management) of Michigan's Natural Resources and Environmental Protection Act, Public Act 451 of 1994; to protect and promote the public health, safety and welfare of Kent County residents by regulating the collection, transportation and disposal of solid waste and the proper management of previously closed landfills; to establish conditions for solid waste hauler licenses; to provide an incentive to recycle, thereby reducing the volume of waste; to preserve and improve the environment; and to establish a County-wide regulatory surcharge to fund the cost of implementing portions of the County's solid waste management program, specifically, the cost of maintaining, managing and remediating closed county landfills and operating the County's household hazardous waste program. This Ordinance is intended to be consistent with the Michigan Court of Appeals decision *County of Saginaw v. John Sexton Corporation of Michigan*, 232 Mich. App. 202 (1998).

Article 1. Short Title

This Ordinance shall be known, and may be cited, as the "Kent County Solid Waste Management Ordinance." All article, section, and other topical headings are for reference only and shall not be construed to be part of this Ordinance.

Article 2. Authority

2.1 Authority

The Kent County Solid Waste Management Ordinance is adopted under the authority of M.C.L. § 46.11 (County Boards of Commissioners) and M.C.L. § 324.11501 *et seq.* (Solid Waste Management), including, but not limited to, M.C.L. § 324.11520, and M.C.L. 123.731 *et seq.* (County Department and Board of Public Works).

2.2 Purpose

Michigan's solid waste law, Part 115 of the Natural Resources and Environmental Protection Act, contemplates and requires local regulation of Solid Waste disposal through the

implementation of County Solid Waste Management Plans. The purpose of this Ordinance is to implement portions of the County's approved Solid Waste Management Plan and to otherwise exercise the health and police powers of the County in order to: protect and promote the public health, safety and welfare of Kent County residents by regulating the licensing, collection, transportation and disposal of Solid Waste; provide for regulatory surcharges to cover the cost of properly managing closed landfills and operating the County's household hazardous waste program; promote the County's recycling program in order to reduce the volume of waste sent to landfills; and, overall, to preserve and improve the environment through proper waste and landfill management.

Article 3. Definitions

The following definitions shall apply in the interpretation and enforcement of this Ordinance:

3.1 Institutional refers to any property use that is not Residential, and includes, but is not limited to, industrial, retail, business, and government facilities. Hospitals, hotels, and campgrounds are also Institutional facilities. Apartments, condominiums and similar multi-unit properties may be either Residential or Institutional, for purposes of this Ordinance, as set forth in the definition of Residential.

3.2 County Enforcing Agency means the County Department of Public Works, which is responsible for administering and enforcing this Ordinance within the County's political boundaries.

3.3 Disposal Facility means an incinerator, landfill, transfer facility or processing plant used for the disposal or handling of Solid Waste.

3.4 In-County Solid Waste means Solid Waste that was generated within the boundary of Kent County.

3.5 Licensed Waste Hauler means a Person licensed pursuant to this Ordinance to haul Solid Waste.

3.6 Notice of Violation means a written notice to a Person that is in violation or is suspected to be in violation of this Ordinance. The Notice of Violation shall contain a description of the violation, what must be done to remedy the violation, and the time frame in which such corrective measures must be taken.

3.7 Person means an individual; sole proprietorship; partnership; association; business; company; limited liability company; corporation, public or private; or municipality, including a city, township, village or county.

3.8 Recyclable Material shall have the meaning as defined in Part 115 (Solid Waste Management) of the Michigan Natural Resources and Environmental Protection Act, M.C.L. 324.11501 *et seq.*

3.9 Residential or Residence refers to a place or dwelling where people live, eat, and sleep for extended periods of time, such as a single family home. For purposes of this Ordinance, an apartment complex, condominium project, dormitory, nursing home, assisted living center, or similar multi-unit property is considered a collection of separate Residences, based on the number of units, if waste is managed in separate cans, bags, bins or carts used by each dwelling unit individually; or is considered as one Institutional property if the waste is managed in roll-offs, dumpsters or other large containers that are shared by multiple residents.

3.10 Solid Waste shall have the meaning as defined in Part 115 (Solid Waste Management) of the Michigan Natural Resources and Environmental Protection Act, M.C.L. 324.11501 *et seq.*

3.11 Vehicle means a truck or trailer used to haul Solid Waste. A truck that tows a trailer need not be separately licensed unless the truck itself is used to carry Solid Waste.

3.12 Waste Hauler means any Person engaged, in whole or in part, in collecting and transporting Solid Waste anywhere in Kent County, including, but not limited to, waste management businesses, contractors, and manufacturers. Waste Hauler does not include:

3.12.1 Individuals: An individual or private citizen that transports his or her own Solid Waste.

3.12.2 Self-Hauled Small Quantities: A business, association, or non-profit organization that transports its own Solid Waste in Vehicles that have a carrying capacity of less than six cubic yards.

3.12.3 Small Quantity Contractor Waste: Builders and construction contractors and subcontractors that transport Solid Waste from job sites in Vehicles that have a carrying capacity of less than six cubic yards.

3.12.4 Persons Outside the County: A Person that only collects Solid Waste that is generated outside the County.

Article 4. Administration

4.1 County Enforcing Agency

The County Department of Public Works is the County Enforcing Agency responsible for administering and enforcing this Ordinance within the County's political boundaries.

4.2 Relief from Personal Responsibility

The County Enforcing Agency, or any County employee or officer charged with duties and responsibilities pursuant to this Ordinance, while acting within the scope of their authority, are hereby relieved from all personal liability for damages to persons or property resulting from the exercise or discharge of their duties. Any civil or criminal action brought against an officer or employee of the County, while acting within the scope of authority granted under this Ordinance, may be defended by the legal representative of the County until final termination of proceedings.

If a judgment for damages is awarded against the above mentioned officers or employees as a result of a civil action for personal injury or property damage caused while acting within the scope of the individual's employment or while acting within the scope of authority of this Ordinance, the County may pay, or compromise, the judgment.

4.3 Powers and Duties of the County Enforcing Agency

It shall be the responsibility of the County Enforcing Agency to implement and enforce the provisions of this Ordinance, and in doing so, to perform the following duties:

4.3.1 Review Waste Hauler License Applications: Applications for licenses required by this Ordinance shall be submitted to the County Enforcing Agency on the forms provided by the County Enforcing Agency and shall contain all required and/or necessary information to allow the County Enforcing Agency to evaluate the application. The County Enforcing Agency is not required to evaluate incomplete applications or applications submitted without the required or necessary information or supporting documentation.

4.3.2 Enter into Contracts with Disposal Facilities: The County or County Enforcing Agency may enter into contracts with Disposal Facilities located outside the County in order to provide for the collection and remittance of the Weight Payments described in Article 7, consistent with this Ordinance.

4.3.3 Issue Licenses: The County Enforcing Agency shall issue licenses when applicable provisions of this Ordinance have been fulfilled.

4.3.4 Maintain Records: Records for and related to all active Waste Hauler licensees shall be available for public inspection during regular business hours. Upon written request, copies of documents may be furnished at cost to any Person consistent with the policy of the Board of Commissioners and the Freedom of Information Act, M.C.L. 15.231 *et seq.*, as amended.

4.3.5 Enforcement: The County Enforcing Agency shall enforce this Ordinance in accordance with article 8.

4.3.6 Official Copies: The County Clerk's Office shall maintain one official copy of this Ordinance, which shall be available for public inspection during regular office hours.

4.3.7 Inspections: The County Enforcing Agency is empowered to conduct periodic inspections of property, Vehicles, and records related to the transportation or disposal of Solid Waste in order to determine compliance with this Ordinance. Nothing in this Ordinance shall be interpreted to require the County Enforcing Agency to inspect property or Vehicles for any other purpose.

4.3.8 General Powers. The County Enforcing Agency may establish guidelines and policies concerning the interpretation of this Ordinance, may prepare forms, instructions, or other written materials, and may enter into agreements, contracts or other arrangements with government entities or other Persons, as necessary or appropriate to assist the County Enforcing Agency in

carrying out its powers and duties under this Ordinance, unless prohibited by law. All such guidelines, policies, forms, agreements, contracts or other materials or arrangements must be consistent with this Ordinance.

Article 5. Solid Waste Hauler Licenses

5.1 Solid Waste Hauler Licenses

Beginning on January 1, 2016, all Waste Haulers and their Vehicles shall be licensed and have an authorized identification placard or sticker affixed to any Vehicle used for hauling Solid Waste, in accordance with the terms of this Ordinance. The County shall only license Waste Haulers consistent with, and as authorized by, the Kent County Solid Waste Management Plan.

5.2 License Application

An application for a new or renewed Waste Hauler license shall include the applicant's name and mailing address, the location or locations from which the business or service is operated, a general description of each Vehicle, including trailers, that will be used to haul Solid Waste, a contact name and phone number, proof of insurance, and any other information required by the County Enforcing Agency to demonstrate that the Waste Hauler can meet the requirements of this Ordinance. The County Enforcing Agency shall make available a license application form for this purpose.

5.3 License Application Fee

Each application for a new or renewed Waste Hauler license shall be accompanied by a license application fee approved by the Kent County Board of Commissioners by resolution.

5.4 License Term and Renewal

A license granted pursuant to this Ordinance shall be effective for a period of one year. If a Person desires to renew a license, the Person shall file an application for renewal with the County Enforcing Agency at least sixty days prior to expiration.

5.5 Refusal to License, Suspension or Revocation of License

The County Enforcing Agency may refuse to license, or suspend or revoke a Person's license, if the Person: did not provide complete or accurate information on the Person's license application; fails to implement corrective measures set forth in a Notice of Violation; fails to charge, pay or remit the regulatory surcharge or Weight Payment in the amount and within the time period required by article 7; or exhibits a continuing pattern of violations of this Ordinance.

Any decision to refuse to license or suspend or revoke a license shall be explained in writing by the County Enforcing Agency to the Person in question. That Person may appeal the denial, suspension or revocation to the County Board of Public Works by filing a written request for an

appeal within five business days following receipt of the County Enforcing Agency's written explanation. In the event of an appeal, the County Board of Public Works shall hold a public hearing within 60 days of receipt of receiving the written request for an appeal and shall have the power to reverse, affirm or modify the decision of the County Enforcing Agency. The Board of Public Works shall make its final determination, in writing, within thirty-five days from the hearing date. If a Person requests an appeal, that Person may continue waste hauling operations until the Board of Public Works makes its final determination.

5.6 Exceptions to Licensing

The following Vehicles are exempt from the licensing requirements of this Ordinance:

5.6.1 Multi-Use Vehicles. Any Vehicle that is used predominantly for activities other than Solid Waste hauling, but that may be used, from time to time, to haul Solid Waste. A Vehicle that is used predominantly to haul Solid Waste shall be licensed, even if it is sometimes used for other activities.

5.7 Transferability

A Waste Hauler license issued pursuant to this Ordinance is not assignable or transferrable.

5.8 Not Exclusive

The licensing and other requirements set forth in this Ordinance are not intended to exclude or preempt additional solid waste licensing requirements, fees, or other related requirements imposed by any city, village, township, or municipal authority.

Article 6. Solid Waste Hauler Requirements

6.1 Vehicles

The Solid Waste carrying portion of a Vehicle used to transport Solid Waste shall be designed, maintained and operated to prevent the accidental discharge of its contents. Vehicles used to haul Solid Waste shall be cleaned at intervals frequent enough to maintain a sanitary condition, as free from disagreeable odor as possible, and so as not to cause a nuisance or attract vermin. The name of the company licensed pursuant to this Ordinance shall appear on the outside of every licensed Vehicle.

6.2 Loading

Solid Waste shall be loaded into a Vehicle in such a manner that minimizes the spillage of materials. Where accidental spillage does occur from the Vehicle, the driver shall be responsible for assuring that the material is picked up as soon as possible and the area suitably cleaned.

6.3 Insurance

A Person that is licensed to haul Solid Waste pursuant to this Ordinance shall maintain at least the following types and amounts of insurance coverage, and shall maintain all other insurance policies required by state and federal law.

Commercial General Liability:	\$1,000,000 per occurrence/\$2,000,000 aggregate
Motor Vehicle Liability:	Statutory No-Fault Coverage \$1,000,000 per occurrence combined single limit for bodily injury and property damage
Worker's Compensation:	Statutory
Employer's Liability:	\$100,000 per occurrence

The required policies shall be with companies licensed or approved to do business in the State of Michigan with ratings of B+ or better from A.M. Best Company. Proof of insurance shall be provided to the County Enforcing Agency upon request.

Article 7. Surcharge

7.1 Surcharge

A surcharge is imposed as set forth below and as set forth on the Surcharge Schedule approved by the Kent County Board of Commissioners by resolution. In order to encourage recycling, the surcharge applies to Solid Waste only, not Recyclable Materials. The surcharge shall be collected by Waste Haulers, passed through to Disposal Facilities by paying a surcharge-based "Weight Payment," and remitted to the County on a quarterly basis by the Disposal Facilities. Surcharges and Weight Payments shall be collected beginning on the date set forth on the initial Surcharge Schedule approved by the Kent County Board of Commissioners.

7.2 Hauler Surcharge Requirements.

7.2.1 Surcharge Billing. A Licensed Waste Hauler shall charge to its Solid Waste customers in Kent County the surcharges set forth on the Surcharge Schedule. Once collected, the surcharge is non-refundable. The surcharge shall be designated or described on the customer bill, invoice, contract, e-mail billing notice or sign-up website as the "Kent County Solid Waste Surcharge" or "County Surcharge."

7.2.2 Collection. A Licensed Waste Hauler is not responsible for collecting surcharges that a customer has failed or refused to pay.

7.2.3 Payment to Disposal Facility. A Licensed Waste Hauler shall accurately track and report to any Disposal Facility the quantity of In-County Solid Waste in each load transported to the Disposal Facility and pay to the Disposal Facility the Weight Payment set forth on the Surcharge Schedule. Payment may be made at the gate or by invoice, as agreed to by the Licensed Waste Hauler and Disposal Facility.

7.2.4 Payment to County. If a Disposal Facility refuses to charge or collect the Weight Payment for any amount of In-County Solid Waste, then the Licensed Waste Hauler shall keep a record of

that amount and remit the Weight Payment directly to the County on a quarterly basis. The Licensed Waste Hauler shall make such records available to the County Enforcing Agency for inspection upon request.

7.2.5 *True Up*. The County Enforcing Agency shall provide a process and means by which, on at least an annual basis:

Refund: Waste Haulers may request and receive a refund of overpayments made by Waste Haulers to the County due to customers failing to pay the surcharge or other circumstances.

Remittance: The County Enforcing Agency may collect underpayment from a Waste Hauler, due to the amount of surcharges collected by the Waste Hauler exceeding the amount of payments made to the County either as a Weight Payment or as a direct payment to the County.

The true up process shall be described on the Surcharge Schedule. Any refund or remittance that is not sought within the time period specified on the Surcharge Schedule is waived.

7.3 Disposal Facility Surcharge Requirements.

By the date set forth below, a Disposal Facility shall remit to the County the amount of all Weight Payments that it collected from Licensed Waste Haulers during the prior quarter:

<u>Quarter:</u>	<u>Payment Due by Following:</u>
January – March	April 30
April – June	July 31
July – September	October 31
October – December	January 31

A Disposal Facility is not responsible for collecting Weight Payments that Licensed Waste Haulers have failed to pay. With each quarterly remission, a Disposal Facility shall report to the County Enforcing Agency the name of any Licensed Waste Hauler who refused to pay the Weight Payment or whose payment of Weight Payments is delinquent by more than 30 days, and the amount of such payment or payments. The County, at its discretion, may seek to collect any amount owed directly from the Licensed Waste Hauler or take other action authorized by this Ordinance.

A Disposal Facility shall remit the amount due under this article by check or money order or other means approved by the County Enforcing Agency.

7.4 Records

A Licensed Waste Hauler shall keep records of the number of Residences and Institutional containers serviced by quarter, the amount of all surcharge payments collected from its customers, and the amount of all Weight Payments made to Disposal Facilities, and allow the County Enforcing Agency, or those persons acting on its behalf, to inspect and audit such

records upon request. These records shall be adequate to enable the County Enforcing Agency to make a true up determination pursuant to subsection 7.2.5.

7.5 Adjustment of Surcharge and True Up Process, Administrative Fee

7.5.1 Adjustment of Surcharge and True Up Process. The surcharges required by this article are intended to approximate the cost of implementing certain portions of the County's Solid Waste Management Plan, specifically: meeting regulatory and financial assurance requirements for closed landfills, including regulations related to closure and post-closure care of the landfills; operating the County household hazardous waste program; and implementing and enforcing this Solid Waste Management Ordinance. By March 1, 2018, and at least once every two years thereafter, the Board of Public Works shall review the costs associated with these programs and recommend surcharge and Weight Payment adjustments to the County Enforcing Agency so that a) the amount of the surcharges approximates the costs listed above, b) the Weight Payment passes the surcharges through to the Disposal Facilities, and c) true up procedures provide a reasonable method and means for Waste Haulers and the County to seek refunds or remittances. Any increases or decreases to the surcharges required by this article shall be approved by the Kent County Board of Commissioners by resolution, and shall not take effect until at least 90 days after such approval.

7.5.2 Administrative Fee. The County may establish an administrative fee to help cover and offset reasonable administrative costs incurred by Disposal Facilities and Licensed Waste Haulers in implementing the surcharge. Any such administrative fee shall be set forth on the Surcharge Schedule approved by the Kent County Board of Commissioners by resolution, and be payable to Disposal Facilities or Licensed Waste Haulers as a credit, reimbursement, hold-back, or refund. If, for the time period covered by the administrative fee, a Licensed Waste Hauler or Disposal Facility collects surcharges or Weight Payments in an amount that is less than the administrative fee, then the administrative fee for that Licensed Waste Hauler or Disposal Facility shall not exceed the amount collected.

7.6 Deposit and Use

The County shall deposit all fees and surcharges received into the Landfill Legacy Costs/HHW Fund, which has been specially created for this purpose. Money from this fund shall be used solely for the purpose of meeting regulatory and financial assurance requirements for legacy landfills, including regulations related to closure and post-closure care of the landfills; operating the County household hazardous waste program; and implementing and enforcing this Solid Waste Management Ordinance. Within one year of the effective date of this Ordinance, and at least annually thereafter, the Department of Public Works will produce and make available to Disposal Facilities and Licensed Waste Haulers a financial report providing an overview of revenue and expenses, operating budgets, and the fund balance for the Landfill Legacy Costs/HHW Fund.

7.7 Failure to Make Required Payments

A Disposal Facility or Waste Hauler that fails to meet the requirements of this article is subject to enforcement pursuant to article 8 and the Licensed Waste Hauler is subject to possible suspension or revocation of the Waste Hauler's License in accordance with section 5.5.

7.8 Exceptions

No Weight Payment is due or collectible if the Weight Payment has already been paid for the In-County Solid Waste, including, but not limited to, when the Weight Payment was paid at a transfer station prior to transporting the In-County Solid Waste to a landfill, or when the Weight Payment was paid for In-County Solid Waste at an incinerator and ash resulting from that In-County Waste is transported to a landfill.

The following activities shall also be exempt from the surcharge or any Weight Payment:

7.8.1 No Charge for Services. The Waste Hauler does not charge for its services, including, but not limited to, when a Waste Hauler agrees to donate waste hauling and disposal services for a charitable event.

7.8.2 Clean-Up Events. Solid Waste is being collected and transported as part of a neighborhood, community, stream or river clean-up event.

Article 8. Enforcement

8.1 Enforcement

This Ordinance shall be enforced by the County Enforcing Agency. The County Enforcing Agency may use any enforcement method or technique available under law and as set forth in this Ordinance, including, but not limited to, the issuance of a Notice of Violation and/or issuance of a municipal civil infraction citation to any Person who violates this Ordinance. The County Enforcing Agency may take other legal action deemed appropriate against any Person that violates this Ordinance, including action to enforce payment of any surcharges due under this Ordinance. A violation of this Ordinance shall be a municipal civil infraction, as authorized under Chapter 87 of 1961 PA 236, as amended, and other applicable laws. Each day that a violation exists constitutes a separate infraction.

8.2 Fines, Penalties and Injunction

A Person who violates this Ordinance, any Notice of Violation, or cease and desist order issued under this Ordinance, is responsible for a municipal civil infraction and may be ordered to pay a civil fine of not less than \$250.00, and not more than \$2,500.00, plus all costs of enforcement, including court costs and attorney's fees, for each infraction. A default in payment of a civil fine or costs ordered under this article may be remedied by any means authorized under the Revised Judicature Act of 1961, M.C.L. 600.101 *et seq.* Notwithstanding the existence or pursuit of any other remedy, the County may maintain an action in a court of competent jurisdiction for monetary damages and may request an injunction or other relief against a Person

to restrain or prevent violations of this Ordinance. Fines levied and paid pursuant to legal action undertaken by the County Enforcing Agency shall be deposited with the County and shall be used for enforcement of this Ordinance or implementation of the County's Solid Waste Management Plan.

Article 9. Severability

If any article, section, subsection, paragraph, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

Article 10. Effective Date

This Ordinance shall take effect 30 days following its acceptance by the Kent County Board of Commissioners and shall be published in a newspaper of general circulation in Kent County. The licensing requirement shall not take effect until the date set forth in section 5.1.

STATE OF MICHIGAN }
County of Kent

I, **MARY HOLLINRAKE**, Clerk of the Circuit Court of said County of Kent do hereby certify that the above and foregoing is a true and correct transcript of: an ordinance adopted by the Kent County Board of Commissioners at their meeting held Thursday, July 30, 2015

compared by me with the original, now on record in the office of the Clerk of said County and Court, and of the whole of said original record.

In Testimony Whereof, I have hereunto set my hand and official seal at the City of Grand Rapids, in said county, this September 14, 2015.

MARY HOLLINRAKE, Clerk

By

Mary Hollinrake