

## **Delta County Solid Waste Management Ordinance**

### **Preamble**

An Ordinance to implement portions of the Delta 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 Delta 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 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 and managing the County's landfills, open and closed. This Ordinance is intended to be consistent with the Michigan Court of Appeals' decision in *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 "Delta 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 Delta 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 Delta County residents by regulating the licensing, collection, transportation, and disposal of Solid Waste; provide for regulatory surcharges to cover the cost of properly maintaining and managing the County's landfills, open and closed; 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 material 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 Delta County Solid Waste Management Authority ("DSWMA"), which is responsible for managing the County's landfills and recycling and materials management systems and enforcing this Ordinance within the County's political boundaries.

**3.3 Disposal Facility** means a landfill or transfer facility 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 Delta 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 Surcharge Schedule** shall mean the categorical volume surcharge rates periodically set by DSWMA through resolution and designed to fund the purposes of this Ordinance as set forth above.

**3.12 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 the Solid Waste of other persons in Delta County. Waste Hauler does not include:

*3.13.1 Individuals:* An individual or private citizen who transports his or her own Solid Waste.

*3.13.2 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 6 cubic yards.

*3.13.3 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 10 cubic yards.

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

## **Article 4. Administration**

### **4.1 County Enforcing Agency**

The DSWMA is the primary Enforcing Agency responsible for administering and enforcing this Ordinance within the County's political boundaries. The Delta County Sheriff's Department may also issue notices of violation or tickets to enforce this Ordinance.

### **4.2 Relief from Personal Responsibility**

The County Enforcing Agencies as defined above, including employee or officer or deputy 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, deputy or employee of the County or County Enforcing Agency, 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, deputies 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 or DSWMA 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 Issue Licenses:* The County Enforcing Agency shall issue licenses when applicable provisions of this Ordinance have been fulfilled.

*4.3.3 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 non-proprietary, non-confidential documents may be furnished at cost to any Person consistent with the policies of the DSWMA and the exemptions of the Freedom of Information Act, M.C.L. § 15.231 *et seq.*, as amended.

*4.3.4 Enforcement:* The County Enforcing Agency shall enforce this Ordinance in accordance with Article 8.

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

*4.3.6 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.

*4.3.7 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 July 1st, 2018, 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. DSWMA shall only license Waste Haulers consistent with, and as authorized by, the Delta County Solid Waste Management Plan and this Ordinance.

### **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 DSWMA by resolution.

### **5.4 License Term and Renewal**

A license granted pursuant to this Ordinance shall be effective for a period of one year, provided the license is not revoked or suspended pursuant to Section 5.5, below. 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, 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 Board of the DSWMA 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 Board of the DSWMA shall hold a public hearing within 60 days of receipt of the written request for an appeal and shall have the power to reserve, affirm, or modify the decision of County Enforcing Agency. The Board of DSWMA shall make its final determination, in writing, within 35 days from the hearing date. If a person requests an

appeal, that Person may continue waste hauling operations until the Board of DSWMA 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.

## **5.9 Load Limits**

Any Waste Hauler who is not actively licensed under this Ordinance shall not be eligible for an exemption from seasonal road weight restrictions imposed by the Delta County Road Commission or Michigan Department of Transportation.

# **Article 6. Solid Waste Hauler Requirements**

## **6.1 Vehicles, Trailers and Containers**

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 prominently on the outside of every licensed Vehicle, Trailer and all company waste Containers and Carts. For purposes of this requirement, the Waste Hauler shall be in compliance if the company name is in letters of equal or greater size than required by the US DOT for commercial motor vehicle lettering.

## **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:	\$100,00 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 with a license application and 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 DSWMA by resolution. In order to encourage recycling, the Surcharge applies to Solid Waste only, not Recyclable Materials. The Surcharge shall be calculated on volume or tons in categories and fees approved by the DSWMA in its fee resolution. The Surcharge shall be collected by Waste Haulers and passed to the DSWMA on a quarterly basis. Surcharges shall be collected beginning on the date set forth on the initial Surcharge Schedule approved by the DSWMAs.

### 7.2 Hauler Surcharge Requirements

*7.2.1 Surcharge Billing:* A Licensed Waste Hauler shall charge to its Solid Waste customers in Delta 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 "Delta 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, but only if the Waste Hauler has not collected any portion of its own hauling fees for the same period. Otherwise, the revenues received by the Licensed Waste Hauler from the customer for that period for its own services and the surcharge shall be pro-rated. The County Enforcing Agency, at its discretion, may seek to collect any amount owed directly from the customer or take any other action authorized by this Ordinance.

*7.2.3 Payment:* A Licensed Waste Hauler shall accurately track and report to the DSWMA the number of customers, the type and yardage volume of containers subject to the Surcharge in the categories contained in the Surcharge Schedule as well as the amount of Surcharge imposed and collected. This report and the collected Surcharge shall be remitted within fifteen (15) days at the end of each quarter. Failure to timely make such Surcharge payments shall subject the Waste Hauler to interest at the rate of ten (10) percent per annum.

*7.2.4 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 DSWMA either as a Weight Payment or as a direct payment to the DSWMA.

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.

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

### **7.3 Records**

A Licensed Waste Hauler shall keep internal records of the number of residential, commercial, institutional and industrial customers serviced by quarter, the amount of all such Surcharge payments collected from its customers in categories established in the Surcharge Schedule 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 7.2.4

### **7.4 Adjustment of Surcharge and True Up Process, Administrative Fee**

*7.4.1 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: developing, maintaining and operating the County's open and closed landfills including the financial assurance related to closure and post-closure care of the landfills; and implementing and enforcing this Solid Waste Management Ordinance and its other purposes. By July 1st, 2018, and at least once every year thereafter, the DSWMA shall review the costs associated with these programs and recommend Surcharge adjustments so that the Surcharge and tipping fees at the County Landfill together efficiently and effectively cover the costs of meeting the purposes of this Ordinance as discussed above. Any



increases or decreases to the Surcharges required by this article shall be approved by the DSWMA by resolution, and shall not take effect until at least ninety (90) days after such approval.

## **7.5 Deposit and Use**

The DSWMA shall deposit all fees and Surcharges received into the County Surcharge Account which is an account in the DSWMA's general fund and which has been specially created for this purpose. Money from this fund shall be used solely for the purpose of meeting the purposes of this Ordinance. Within one year of the effective date of this Ordinance, and at least annually thereafter, the DSWMA will produce and make available to the Licensed Waste Haulers a financial report providing an overview of revenue and expenses, operating budgets, and the fund balance of the County Surcharge Account.

## **7.6 Failure to Make Required Payments**

A 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.

# **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 Delta County Board of Commissioners and shall be published in a newspaper of general circulation in Delta County. The licensing requirement shall not take effect until the date set forth in Section 5.1.

STATE OF MICHIGAN     )

COUNTY OF DELTA     )

I, NANCY KOLICH, Clerk of the County of Delta, do hereby certify that the above and foregoing is a true and correct transcript of an ordinance adopted by the Delta County Board of Commissioners at its meeting held March 6, 2018, compared by me with the original, now on record in the office of the Clerk of Delta County and of the whole of said original record.

In Testimony Whereof, I have hereunto set my hand and official seal of the County of Delta, this March 6, 2018.

NANCY KOLICH, Clerk

By \_\_\_\_\_