

MEMORANDUM

TO: Board of Commissioners

FROM: Jeannine McCrumb, Compliance Specialist

CC: Josh Estey, Director of Compliance

DATE: March 16, 2020

RE: Solid Waste Management Ordinance (SWMO) amendments – summary of public input and request for adoption

At the Board of Commissioners' meeting on February 26, 2020, a resolution was passed authorizing the initiation of a public comment process to solicit feedback on proposed changes to the Solid Waste Management Ordinance.

Staff issued a press release on February 28, 2020 announcing a public meeting and comment period for the proposed changes. Staff also sent a meeting notice and copy of the proposed changes to all member municipalities. The meeting was held on March 11th at 4:30 p.m. and no members of the public attended. We also did not receive any written public comment on the proposed changes. Staff recommends adoption of the proposed amendments as summarized below:

- Page 13, Section 4.4; Page 15, Section 4.7 – Amending language to allow administrative approval of license applications.
- Page 15, Section 4.6 H.3) – Amending language to clarify which haulers are subject to unit-based pricing/rates and amending due date for submittal of that information concurrent with Hauler License application process.
- Page 25, Section 11.1; Page 26 Sections 11.2 and 11.3 – Amending upper limit of civil penalty to \$800.00 as is permissible under state statute (24 V.S.A. § 2297a).

Following adoption, a summary of the ordinance changes will be posted in at least 5 public places as well as on our website and will be published in the District's designated newspaper. Any persons not in favor of the ordinance have the opportunity to petition the Board for reconsideration (must be signed by >5% of voters). If no such petition is received, the amendments are considered final effective June 7, 2020 or 60 days from date of Board meeting.

Resolution –

Be it resolved that the Board of Commissioners adopts the Solid Waste Management Ordinance amendments as presented.

- C. Transfer/Disposal Facility License. A Transfer/Disposal Facility License shall be required for any Person, other than 1) Self-Haulers, 2) Drop-Off Facilities, 3) Vermont State certified categorical Disposal Facilities, and 4) Mobile Solid Waste Collection Operations, to accept, receive, or allow the acceptance or receipt in the District of any Solid Waste destined for Disposal.
- D. Scale License. A Scale License shall be required for any Scale used to document the delivery, Transport, or shipment of Solid Waste generated or delivered within the District and destined for Disposal.

4.2. Validity of License. Each License shall be valid for a period not to exceed one year and the License shall expire annually on July 1. Persons meeting the applicable requirements may apply for and hold more than one License.

4.3. License Fees. The fees for Licenses required under this Ordinance shall be determined by the Board of Commissioners. The District and any member municipality of the District are exempt from the License fees for the Management of Solid Waste generated in their municipal operations, utilizing their own facilities, vehicles, or approved employees' vehicles.

4.4. Licensing Process. The General Manager will establish the requirements for each type of License. A Person seeking a License shall obtain a License application from the District ~~office.~~ License applications may be obtained in person during normal business hours at the District's office ~~or,~~ may be requested by mail, ~~may be downloaded from the District's~~ website, or may be completed electronically on the District's website. The Applicant shall complete the License application ~~under oath~~ and shall provide the License application, together with all supporting materials requested in the License application, to the District. ~~Member municipalities may renew Hauler's Licenses by way of e-mail, facsimile, or telephone.~~

Within thirty (30) days of receipt of a completed License application, the ~~Executive Board-District~~ shall make a determination on the License application, and the District shall thereafter notify the Applicant in writing whether the License application is ~~1) accepted, 2) conditionally accepted subject to the Applicant's fulfillment of any number of conditions and/or requirements, or 3) denied and the reason(s) for denial~~ accepted or denied. If denied, the reason for denial will be included in the notification. If the ~~Executive Board~~ District ~~denies~~ a License application, the Applicant may request a hearing before the ~~Board of Commissioners~~ Executive Board for a new determination of whether the License application shall be accepted or denied. The request must be in writing and must be submitted to the General Manager of the District no later than ten (10) days after receipt of the notice of denial of the application. If a request is not so filed, the District's determination shall be deemed final. If a hearing is held, then within thirty (30) days of such hearing, the Executive Board shall issue a decision on licensure. If a request is not so filed, the Executive Board's determination shall be deemed final.

Commented [JM1]: My understanding is conditional approval was a means to have the Board approve prior to receipt of all materials. This will no longer be necessary.

Commented [JM2]: Revised per comment from R. Orr prior to release for public meeting and comment– she noted need for deadline on request for new determination by Board. Staff agreed.

4.5. Temporary Hauler's Vehicle Permit. The General Manager or his or her designee may issue a Temporary Hauler's Vehicle Permit to: 1) a Hauler who has submitted a completed Hauler's License Application and is waiting for approval of such license or 2) a licensed Hauler for short-term use of a rented or borrowed vehicle. Temporary Hauler's Vehicle Permits will be

yard trimmings or food scraps, special pickups for bulky items, or backdoor service, are permitted.

- 2) Residential Rates for Self-Haulers. Drop-Off, Transfer, and Disposal Facilities shall offer a base unit of Disposal service of 33 gallons or less or offer service by weight of municipal Solid Waste destined for Disposal that is delivered by residents to their Facility. Facilities shall charge per unit of municipal Solid Waste destined for Disposal and shall charge the same fee per each additional equal unit of Solid Waste destined for Disposal. Fees for collection of residential Mandatory Recyclables shall be combined in the fees charged for Solid Waste destined for Disposal. Facilities may charge Self-Haulers for Mandatory Recyclables delivered without Solid Waste destined for Disposal.
- 3) Filing of Pricing System. ~~Commencing May 1, 2015, and As part of the license application process on or before May 1 of each year thereafter, as a condition of a Hauler's License, Haulers offering residential service shall submit evidence that their residential unit-based pricing schedule meets the requirements for unit-based pricing. Unit-based rates must be in effect by July 1, 2015.~~

4.7. Designation in Hauler's License. Each Hauler's License shall designate the allowable destinations for all Solid Waste that is collected, transferred, or transported under the License. The ~~Executive Board~~District reserves the right to modify any and all Licenses previously issued upon notice to the holder of such applicable License that it may not dispose of Solid Waste at a Facility if the District finds that such Facility has failed to operate in compliance with all material laws, regulations, and permits applicable to such Facility or the operator of such Facility has been found to have engaged in Unlawful Conduct.

4.8. Commercial Hauler Requirements. Commercial Haulers must abide by the following requirements:

- A. Every vehicle used by the Commercial Hauler or on the Commercial Hauler's behalf in the collection, Transfer, Transport, or Disposal of Solid Waste shall be prominently labeled with an identification number provided by the District. For each such vehicle, the District shall provide to the Hauler two decals bearing the CSWD Hauler's License number for that vehicle. The decals shall be affixed to the front doors on the right and left sides of the vehicle or at such other locations on the vehicle as the District may designate. The Commercial Hauler shall maintain the decals in a clean and legible condition. Failure to label a vehicle or maintain such decals as set forth in this Section shall constitute Unlawful Conduct.
- B. Commercial Haulers shall pay in full all bills due the District within such period of time as the District Board of Commissioners, by resolution, policy, or rule, may designate. After the expiration of such period, payment from any Commercial Hauler with unpaid bills remaining shall be due immediately upon

this Ordinance or any other ordinance or regulations adopted by the District, the District shall attempt to limit any inspection to no more than one hour.

10.3. False Statements and Failure to File Data. Any Person filing or causing to be filed, making or causing to be made, or giving or causing to be given any certificate, affidavit, representation, information, testimony, or statement, which is willfully false or willfully omits to state material facts, or any Person willfully failing to file data that the District, by rule or otherwise, may require shall have committed Unlawful Conduct.

10.4. Diversion Reporting Requirement. A Person in the District that directly ships any Solid Waste, including Recyclables and Compostables, that exceeds an aggregate amount of two (2) tons annually, to Facilities that do not hold a District License shall report to the District the material type, quantity, and destination for all materials shipped for each calendar year. The required data shall be submitted annually by March 1 of the following year.

ARTICLE XI PENALTIES

11.1. Penalties for Unlawful Conduct. Any Person who engages in any Unlawful Conduct shall be subject to a civil penalty of not more than ~~Five-Eight~~ Hundred Dollars (~~\$500800~~) for each violation or, if lower, the maximum amount allowed by law. Each instance of Unlawful Conduct shall be a separate violation. In the event of other Unlawful Conduct which is deemed “continuing”, the Person who engages in such conduct shall be subject to a civil penalty of not more than ~~Five-Eight~~ Hundred Dollars (~~\$500800~~), plus not more than One Hundred Dollars (\$100) for each succeeding day, or, if lower, the maximum amounts allowed by law. All penalties for Unlawful Conduct under this Ordinance shall be paid to the District.

Commented [JM3]: I have upped the \$500 amount to \$800 per 24 V.S.A. § 2297a. The \$100 per day has not changed.

In addition, the District may direct any Person subject to this Ordinance to abate hazards or nuisances created as a result of the Unlawful Conduct or, if such Unlawful Conduct was found to have caused contamination or damage to any land or property, to restore such land or property to the condition existing before the Unlawful Conduct.

In determining the amount of civil penalty to be ordered, the District shall consider the following:

- A. The degree of actual or potential impact on public health, safety, welfare, and the environment resulting from the violation.
- B. Whether the Person has cured the violation.
- C. The presence of mitigating circumstances.
- D. Whether the Person knew or had reason to know the violation existed.
- E. The Person's record of compliance.