

Chapter 128: GARBAGE AND RUBBISH

[HISTORY: Art. I comes from L.L. No. 10-1970, adopted 2-17-1970,¹ effective 2-19-1970; Art. II comes from Ord. No. 46 adopted 3-3-1959, effective 4-1-1959; Art. III comes from L.L. No. 61-1985, adopted 6-18-1985, effective 6-28-1985; Art. IV comes from L.L. No. 72-1986, adopted 9-30-1986, effective 10-6-1986; Art. V comes from Section 3 of L.L. No. 58-1989, adopted 6-27-1989, effective 7-3-1989; Art. VI comes from L.L. No. 42-1992, adopted 9-22-1992, effective 9-28-1992. Art. II was renumbered by L.L. No. 25-1970, adopted 4-21-1970, effective 4-24-1970.]

[1]:
Editor's Note: This local law repealed former Article I, Collection and Disposal, adopted 11-13-1962 by Ord. No. 50, as amended.

Chapter 128: GARBAGE AND RUBBISH

Article I Solid Waste Collection and Disposal

§ 128-1 Definitions.

§ 128-2 Accumulation and dumping prohibited.

§ 128-3 Exception to collection by collection and disposal district.

§ 128-4 Charges, rates or fees.

§ 128-5 Collection and disposal supervised by D.P.W.

§ 128-6 Precollection practices in collection districts.

§ 128-7 Collections.

§ 128-8 Landscape permits.

§ 128-9 Excessive accumulation of refuse in the Town.

§ 128-10 Licensing of private refuse collection by private carting firms, including licensing of vehicles used for such purpose.

§ 128-11 License issuance.

§ 128-12 License plate.

§ 128-13 Surrender of license plates.

§ 128-14 Licensee identification.

§ 128-15 Sale, transfer or assignment of a licensed private refuse collection vehicle.

§ 128-16 Licensing fees.

§ 128-17 Establishment of an Advisory Committee on Private Collection to assist the Town Board.

§ 128-18 General powers of the Advisory Committee, on private collection and disposal.

- § 128-19 Appeals.
- § 128-20 Hearings.
- § 128-21 Regulations for operation of private refuse collection vehicles in the Town of Hempstead.
- § 128-22 Penalties for offenses.

Article II Littering

- § 128-23 Definitions.
- § 128-24 Litter in public places.
- § 128-25 Placement of litter in receptacles.
- § 128-26 Sweeping litter into gutters prohibited.
- § 128-27 Merchant's duty to keep sidewalks free of litter.
- § 128-28 Litter thrown by persons in vehicles.
- § 128-29 Truck loads causing litter.
- § 128-30 Litter in parks.
- § 128-31 Litter in lakes and fountains.
- § 128-32 Throwing or distributing handbills in public places.
- § 128-33 Placing handbills on vehicles.
- § 128-34 Depositing handbills on uninhabited or vacant premises.
- § 128-35 Distribution of handbills where property posted.
- § 128-36 Distributing handbills at inhabited private premises; exception.
- § 128-37 Dropping litter from aircraft.
- § 128-38 Litter on occupied private property.
- § 128-39 Owner to maintain premises free of litter.
- § 128-40 Litter on vacant lots.
- § 128-41 (Reserved)
- § 128-42 Penalties for offenses.

Article III Dumping of Refuse and Garbage

- § 128-43 Dumping on vacant lots or streets prohibited.

§ 128-44 _Acceptance of solid waste generated outside of Town.

§ 128-45 _Penalties for offenses.

Article IV Solid Waste Management

§ 128-46 _Legislative declaration.

§ 128-47 _Statement of policy; conflict with other provisions.

§ 128-48 _General provisions.

§ 128-49 _Definitions.

§ 128-50 _Commissioner to supervise and regulate transportation of solid waste.

§ 128-51 _Commissioner to supervise and regulate collection in certain districts.

§ 128-52 _Disposal regulations; construal of provisions.

§ 128-53 _Additional licensing requirements and administration.

§ 128-54 _Hazardous waste and unacceptable waste.

§ 128-55 _Recycling.

§ 128-56 _Charges.

§ 128-57 _Enforcement; penalties for offenses.

§ 128-58 _Publication of regulations.

§ 128-59 _Effect on other provisions.

§ 128-60 _Severability.

Article V Maintenance of Premises

§ 128-61 _Accumulation of garbage, litter, refuse, rubbish or rubble; height of lawns, weeds or brush.

§ 128-62 _Notice of violation.

§ 128-63 _Compliance with notice.

§ 128-64 _Enforcement.

§ 128-65 _Penalties for offenses.

Article VI Recycling

§ 128-66_Policy.

§ 128-67_Findings.

§ 128-68_Definitions.

§ 128-69_Supervision and regulation in certain districts.

§ 128-70_Residential recycling.

§ 128-71_Multiresidential complex recycling.

§ 128-72_Mandatory commercial, industrial and institutional recycling.

§ 128-73_Use of yard waste.

§ 128-74_Recycling collection permit application; duration of permit; renewal.

§ 128-75_Recycling center permit; duration; renewal.

§ 128-76_Construction and demolition debris processing permit; duration; renewal.

§ 128-77_Report of recyclables collected.

§ 128-78_Report by independent sanitary districts and incorporated villages.

§ 128-79_(Reserved)

§ 128-80_Fees; additional license required.

§ 128-81_Unlawful activities.

§ 128-82_Suspension and revocation of permits; notice.

§ 128-83_Review Board; hearings.

§ 128-84_Penalties for offenses.

§ 128-85_Severability.

Enter search term...



Code

[New Laws Index](#)

Email

Print

Search Selected

Chapter 128:_GARBAGE AND RUBBISH

Article I:_Solid Waste Collection and Disposal

[Adopted 12-17-1970 by L.L. No. 10-1970, effective 2-19-1970]

Chapter 128: GARBAGE AND RUBBISH Article I: Solid Waste Collection and Disposal

§ 128-1 Definitions.

§ 128-2 Accumulation and dumping prohibited.

§ 128-3 Exception to collection by collection and disposal district.

§ 128-4 Charges, rates or fees.

§ 128-5 Collection and disposal supervised by D.P.W.

§ 128-6 Pre-collection practices in collection districts.

§ 128-7 Collections.

§ 128-8 Landscape permits.

§ 128-9 Excessive accumulation of refuse in the Town.

§ 128-10 Licensing of private refuse collection by private carting firms, including licensing of vehicles used for such purpose.

§ 128-11 License issuance.

§ 128-12 License plate.

§ 128-13 Surrender of license plates.

§ 128-14 Licensee identification.

§ 128-15 Sale, transfer or assignment of a licensed private refuse collection vehicle.

§ 128-16 Licensing fees.

§ 128-17 Establishment of an Advisory Committee on Private Collection to assist the Town Board.

§ 128-18 General powers of the Advisory Committee, on private collection and disposal.

§ 128-19 Appeals.

§ 128-20 Hearings.

§ 128-21 Regulations for operation of private refuse collection vehicles in the Town of Hempstead.

§ 128-22 Penalties for offenses.

§ 128-1 Definitions.

For the purpose of this Article, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number; and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

ASHES

The residue from the burning of wood, coal, coke or other combustible materials.

COLLECTION VEHICLE

A vehicle designed, built and used for the purpose of collecting refuse.

COLLECTION DISTRICT or DISPOSAL DISTRICT

The facility operated by the Town of Hempstead, a refuse disposal district or a refuse and garbage district, excluding, however, any sanitary district, for the collection or disposal, or both, of garbage, ashes, rubbish and other existing solid waste matter.

COMMERCIAL AREA

Any area where business, industrial or light manufacturing enterprises are located or operating, or any area not classified as residential.

D.P.W.

Refers to the Town Commissioner of Sanitation or his Deputy Commissioner or any other designated representative of the Town Commissioner of Sanitation.

[Amended 9-14-1976 by L.L. No. 65-1976, effective 9-20-1976]

GARBAGE

Putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food, and readily combustible material such as paper, cardboard, wood, excelsior, cloth, food cans, glass or plastic food containers and bottles.

HOLIDAY

That day in which a holiday is officially celebrated and recognized by the Town Board.

LITTER

Garbage, refuse or rubbish, as may be defined herein, and other waste material which is thrown or deposited and which tends to create a danger to the public health, safety and welfare.

OPERATE

To pick up, collect, load or otherwise perform collection of refuse.

PERSON

Any person, firm, partnership, association, corporation, company or organization of any kind.

PRIVATE PROPERTY

Any property other than that used as a public highway.

REFUSE

All putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish and ashes.

RESIDENTIAL AREA

An area primarily zoned and occupied for residential purposes.

RUBBISH

Nonputrescible solid wastes (excluding ashes) consisting of both combustible and noncombustible wastes, such as yard clippings, metals, wood, glass, bedding, crockery and similar materials.

SANITARY DISTRICT

A district established pursuant to an act of the New York State Legislature or pursuant to Chapter 273 of the Laws of 1939, otherwise known as the Nassau County Civil Divisions Act.

SOLID WASTE

All material described as garbage, rubbish and ashes, as previously defined.

TOWN

The unincorporated area of the Town of Hempstead.

WEED

A naturally propagated plant of no value and of rank growth that tends to overgrow.

[Added 6-27-1989 by L.L. No. 58-1989, effective 7-3-1989]

§ 128-2 Accumulation and dumping prohibited.

A.

The owner, lessee, tenant or other person having the management or control of or occupying any lot or plot of land in the Town, excluding any location designated by the Town Board for solid waste disposal or any location controlled or under the jurisdiction of any sanitary district, shall keep his land at all times free and clear of any accumulation of ashes, rubbish, refuse, garbage, offal or any offensive substances, except such as are deposited in containers or are otherwise secured as provided for in this chapter for the collection and disposal by D.P.W. or by any sanitary district.

B.

It shall be an offense hereunder for any person to deposit, throw, cast or bury ashes, rubbish, refuse, garbage, offal or any offensive substances on any vacant lot or plot of land in the Town.

C.

Litter baskets. D.P.W. or any sanitary district shall place on sidewalks, parking areas or on any other public places litter baskets as may be required. It shall be an offense hereunder for a person to deposit refuse accumulated on or about private property in such litter baskets instead of depositing said refuse in the refuse receptacles used for the collection thereof.

§ 128-3 Exception to collection by collection and disposal district.

A.

Sanitary district jurisdiction. Except as otherwise provided hereunder, it shall be an offense for any person to collect, convey or dispose of any refuse accumulated in a sanitary district.

B.

Exception for actual producers. This chapter shall not prohibit the actual producers of refuse or the owners of premises upon which refuse has accumulated, from personally collecting, conveying, and disposing of such refuse, provided such producers or owners comply with the provisions of this chapter and with any other governing law or ordinance.

C.

Exception for private collectors. This chapter shall not prohibit duly licensed private collectors from hauling such refuse over Town streets and highways, provided such private collectors shall comply with the provisions of this chapter and with any other governing law or ordinance.

D.

Exception: landscapers and gardeners. Any person engaged in the occupation or business of landscaping, landscape contracting, landscape gardening, general building construction or demolition shall not be prohibited under this chapter from performing such occupation or conducting such business within the Town without obtaining a private refuse collection license, as hereinafter provided. However, such person shall perform, function and operate vehicles incidental to such occupation or business in such manner as to prevent the discharge or littering of materials relating to said business or occupation upon any public highway in the Town. The disposal of such materials so conveyed shall be only at a location designated by the Town Board, or at a location authorized and controlled by or under the direct jurisdiction of any sanitary district in the Town.

E.

Scrap or salvage activity. Any person engaged in the business or occupation of dealing in scrap or salvageable material in the Town shall not be prohibited under this chapter from conveying or transporting scrap or salvageable material over public highways without having obtained a private refuse collection license, as hereinafter provided. However, such salvageable material to be conveyed or transported shall have been

previously bundled, tied or otherwise sufficiently packaged for transportation in such manner as to prevent the discharge or littering of scrap or salvageable materials upon any public highway.

F.

Other waste collection. A private refuse collection license, as hereinafter provided, shall not be required of any person engaged in the business of collecting meat, fat or bone waste in the Town for rendering purposes, provided, however, that such collection shall be performed in a manner which will not suffer or permit such waste to be discharged upon private property or upon any public highway.

§ 128-4_Charges, rates or fees.

A.

Charges, rates or fees, other than amounts assessed or levied and collected as district taxes, shall not be imposed or collected for the collection of refuse or garbage in any collection or disposal district, except in accordance with this section and except as provided hereunder.

B.

When a governmental agency owns or occupies premises which are within the geographical limits of any collection and disposal authority administered by D.P.W. but which premises are not assessed by said authority and the governmental agency is not entitled to refuse or garbage collection service as a matter of law, the authority may render such service to such premises for such monthly charge as the authority shall estimate as representative of the cost to such authority of such collection, to be billed the agency in arrears on the last day of each month and payable by the 20th day of the following month.

C.

D.P.W. may accept refuse material from incorporated villages within the Town and from other municipal agencies, or from persons who may require the use of disposal facilities maintained by D.P.W., and shall, from time to time, recommend to the Town Board the rates or charges to be made for the disposal of refuse material. Charges shall be by weight, volume or other equitable measure and shall, if necessary, vary with quantity of material or frequency of use of the disposal site by the purveyor of the material. D.P.W. shall maintain an annual authorization from incorporated village requesting or requiring full-or part-time refuse disposal services, and such authorization shall provide for the payment to D.P.W. for services rendered pursuant to the then prevailing disposal rates.

D.

Rates for the disposal of refuse other than that prescribed in Subsection C above shall be established by D.P.W. These rates shall be based on the weight of material, the size of truck or any other means used to determine quantity consistent with all users, as may be directed by D.P.W. from time to time, which shall be authorized to make changes in these rates, provided there is a posting of a rate change made at least 30 calendar days prior to the effective date. Said posting shall be at the scale room area or the entrance control area of each disposal site maintained by D.P.W.

§ 128-5_Collection and disposal supervised by D.P.W.

A.

All refuse accumulated in a collection district shall be collected, conveyed and disposed of under the supervision of D.P.W., which shall have the authority to make regulations concerning the days of collection, type and location of waste containers and such other matters pertaining to the collection, conveyance and disposal as shall be found necessary, and to change and modify the same, after notice as required by law, provided that such regulations are not contrary to the provisions hereunder.

B.

D.P.W. may provide for the disposal of refuse collected by a sanitary district as well as for the disposal of refuse collected by a private refuse collector licensed hereunder, or by those persons who are not required to be licensed for infrequent and occasional disposal of refuse, all at a site owned and maintained by D.P.W. for the disposal of refuse, and D.P.W. shall have the authority to make regulations with respect thereto.

C.

The disposal of the refuse shall be by incineration or other means consistent with accepted practices as prescribed by D.P.W. or any other governmental agency having authority to control or regulate such facilities.

D.

Regulations as to hours of operation at the disposal site, the type and volume of materials considered to be acceptable or any other regulations concerning the control of refuse shall be established, modified and revised by D.P.W. from time to time, as operational conditions may require.

E.

D.P.W. may reject any and all refuse brought for disposal by a sanitary district, a private licensed collector or by persons not required to be licensed as described above, if, in the opinion of D.P.W., such material was not collected in the Town, or if the material cannot be efficiently, effectively or economically disposed of.

§ 128-6 Precollection practices in collection districts.

A.

Separation of refuse. Garbage, ashes and other kinds of refuse shall be placed and maintained in separate containers except that refuse in the form of newspaper waste (discarded newspapers) shall be placed and maintained for pickup, collection and recycling as hereinafter provided. After adequate notice has been published, posted and publicized, for a respective collection district or particular collection area, it shall be mandatory for persons who are owners, lessees or occupants of residential dwellings and persons hereinafter described in the enumerated subdivisions of this section, to separately bundle newspapers for pickup, collection and recycling. Said newspaper waste shall be compacted and securely bundled, tied and packed as hereinafter described in Subsection A(1) of this section. When refuse in the form of discarded newspapers is placed within the vicinity of the curb for pickup, collection and recycling, it shall become the property of D.P.W., and any person other than an owner, lessee or occupant or representative of D.P.W., or a person acting on behalf of any religious, charitable or veteran's organization having a charities registration number with the New York State Department of Social Services, who picks up said refuse for his own use, shall be guilty of an infraction against this section.

[Amended 5-4-1971 by L.L. No. 45-1971, effective 5-10-1971]

(1)

Persons having management or control over any land or buildings used exclusively as a residential domicile for not more than four families shall provide sufficient receptacles to hold garbage, ashes or rubbish ordinarily accumulated by the occupants of such land or buildings over a period of 96 consecutive hours. Any waste material, other than garbage, which cannot be readily deposited in receptacles, may be compacted and securely bundled, tied or packed so as to be easily handled, but not weighing more than 75 pounds and not likely to be scattered, and, when packed and secured, placed alongside such receptacle, and not to exceed dimensions of two feet by two feet by four feet.

(2)

Receptacles provided for in Subsection A(1) of this section shall be watertight, kept covered with a cover and maintained in a sanitary condition by periodic cleaning. Such receptacles shall not exceed 30 gallons' capacity and, when filled, not exceed 75 pounds in total weight.

(3)

Receptacles containing garbage or rubbish shall be free of water or wetted materials.

(4)

Persons either occupying or having the management or control of any land or building used in the following manner shall provide sufficient commercial-type refuse containers having no less than three cubic yards and no more than six cubic yards' capacity: residential occupancy in excess of four families, including such continuous or attached structures commonly referred to as "condominiums"; schools (public or private); firehouse; church or other house of worship; public library; veteran or fraternal organization building, or any building occupied by a department or division of government of the Town of Hempstead. Such persons shall provide for a suitable on-site location readily accessible by equipment of D.P.W. for the emptying of such commercial containers, and shall further provide sufficient receptacles to store garbage and rubbish in separate receptacles which would ordinarily be accumulated by the occupants of such land, building or buildings during a ninety-six-consecutive-hour period. The commercial containers required by this subsection shall be of a type and kind compatible to and capable of performing their function by the use of such standard equipment as may be operated by D.P.W.

(5)

Persons either occupying or having the management or control of any land or building which by the computations of maximum quantities to be collected as provided for in this chapter are in excess of 400 gallons shall provide for the exclusive use of such land or building or part thereof sufficient commercial receptacles no less than three cubic yards' and no more than six cubic yards' capacity during a ninety-six-consecutive-hour period. The commercial containers required hereunder shall be of a type and kind compatible to and capable of performing their function by the use of such standard equipment as may be operated by D.P.W. However, the container volume to be provided under the provisions of this section shall not be in excess of the next larger container of equivalent measure.

B.

Refuse containers or receptacles; duty to provide and maintain in safe and sanitary condition.

(1)

Refuse containers shall be provided by the owner, tenant, lessee or occupant of the premises and shall be maintained in good condition. Any container that does not conform to the provisions of this chapter or that may have ragged or sharp edges or any other defect liable to hamper or injure the person collecting the contents shall be promptly replaced upon notice. D.P.W. shall have the authority to refuse collection for failure to comply herewith.

(2)

Garbage containers shall be commercially manufactured for that purpose, equipped with suitable handles and tight-fitting covers, and shall be watertight.

(3)

Ash containers shall be made of metal and have a capacity of not more than 10 gallons.

(4)

Rubbish containers shall be commercially manufactured for that purpose, equipped with suitable handles and tight-fitting covers.

(5)

Plastic (polyethylene) bags may be used for all refuse, including leaves, provided such bags are securely tied at the top and are not overfilled and not torn, ripped or otherwise not capable of being lifted and placed in refuse truck. Maximum-size bag for garbage, 30 gallons; maximum-size bag for leaves only, 55 gallons.

C.

Points of collection.

(1)

In residential areas where curb service is provided, refuse containers shall be placed for collection in a visible and accessible area between the sidewalk line and the curblin immediately in front of the premises.

(2)

In residential areas where rear-door service is provided, containers of garbage shall be placed adjacent to the main building (dwelling), and containers of rubbish shall be placed at the curb area described in Subsection **C(1)** above. Rubbish will not be collected if located inside any building or structure or behind locked gates.

(3)

In commercial areas of any collection district, refuse shall be collected only from the curb area of the public highway immediately in front of such premises. No D.P.W. vehicle shall cross over or enter upon private property in any collection district for the purpose of collecting refuse.

§ 128-7 Collections.

Except as otherwise provided hereunder, D.P.W. shall collect all refuse as often as possible during prescribed specified hours; collection shall be made from receptacles when placed on or in front of any premises at such accessible locations as shall be approved by D.P.W., which shall have the right to omit collections from any premises where a vicious dog is permitted to run at large or where D.P.W. employees are subject to any unnecessary danger or hazard.

A.

Residential.

(1)

Collection from residential areas is restricted to the hours 6:30 a.m. to 6:30 p.m., Monday through Saturday, on scheduled days.

(2)

All refuse shall be in a container commercially manufactured for this purpose, not exceeding 45 gallons in size, having a tight-fitting cover and a maximum filled weight of 75 pounds; except that garden refuse and rubbish will be accepted in wooden boxes, baskets or pails with handles.

[Amended 10-22-1996 by L.L. No. 64-1996, effective 10-28-1996]

(3)

Quantities of refuse to be collected are limited as follows:

(a)

Garbage. The equivalent of two thirty-gallon containers each scheduled collection day.

(b)

Rubbish. On the second and third collection days of each week only, the equivalent of two thirty-gallon containers and no more than six tied bundles of twigs or branches two feet by two feet by four feet in length or six fifty-five-gallon plastic bags. Exception: on the first scheduled collection day after a legal holiday, no rubbish shall be collected, due to the double volume of garbage to be collected. In rear-door collection areas, rubbish

shall be collected at the curb on designated rubbish days in volumes indicated herein. No rubbish shall be collected in any week in which a legal holiday falls on Monday through Friday inclusive of such week, due to the double volume of garbage to be collected.

(c)

Ashes. Ashes must be thoroughly water-quenched and placed in a fireproof metal receptacle weighing not more than 70 pounds filled, and placed with rubbish for collection.

(d)

Christmas trees shall be placed at the curb area and shall be collected by regular collection or special collection during the month of January each year. Trees do not have to be cut to meet length requirement described in Subsection (3)(b) above.

(e)

Leaves. Leaves shall be collected on the second and third collection days of each week, except in holiday weeks, from the curb area of all districts, when leaves are in containers suitable for handling and placing of leaves in refuse truck.

(f)

Large household items. All large household items such as furniture, refrigerators, etc., shall be collected from the curb area only and by special vehicle, by appointment with D.P.W.

B.

Commercial. The following restrictions apply to collection practices of collection districts and are not to apply to private collection operations unless otherwise prescribed in the chapter:

(1)

Collection from commercial or business areas is restricted to the hours of 7:00 a.m. to 6:00 p.m., Monday through Saturday, on scheduled days.

(2)

All refuse shall be in a container commercially manufactured for that purpose, not exceeding 30 gallons in size except as otherwise prescribed hereunder, and having a tight-fitting cover, with a maximum filled weight of 75 pounds.

(3)

Quantities. The maximum amount of garbage and rubbish which will be collected on each scheduled collection day is based on the size of the building and as follows: The first 5,000 square feet, two thirty-gallon containers or the equivalent; each additional 10,000 square feet or fraction thereof, one additional thirty-gallon container or the equivalent. Exclusions in the computations for determining volume shall be all basements, rooms attached, sheds and other accessory use areas of subject buildings, and other locations not primarily used in the conduct of the commercial enterprise.

(a)

Exceptions as to maximum amounts. The computed maximum amounts to be collected above shall not apply to buildings or use of buildings as follows: schools, (private or public); fire-houses; houses of worship; public libraries; veteran or fraternal organization buildings; Town of Hempstead department or divisional buildings.

C.

Prohibitions, restrictions and regulations.

(1)

Use of barrels, drums, kegs, cardboard boxes or cloth bags for containing garbage or rubbish is prohibited.

(2)

No refuse shall be placed for collection before 7:00 p.m. on the day prior to collection.

(3)

Empty receptacles shall be removed from the curb area within three hours after collection.

(4)

Refuse receptacles shall be stored on property only on a location adjacent to a principal or accessory use building, but in no event shall such receptacle be stored forward of the front building line of the principal structure.

(5)

It shall henceforth be illegal for any person to construct, place or build facilities for the storage of receptacles below property grades (underground). The owners or occupants of such properties wherein such underground receptacles have existed prior to January 1, 1963 shall be required to remove any such refuse receptacle from its underground container prior to regular collection schedules. No containers shall be serviced unless and until such receptacle has been removed from its existing underground storage location.

(6)

Receptacles shall not be placed for collection inside or within any building, accessory use building or garage.

(7)

No employee of D.P.W. in the course of his duties shall be required to enter a building or structure to gather or collect any refuse. No employee shall accept or receive any tip or gratuity for the performance of this duties or solicit money for any purpose in connection therewith.

§ 128-8_Landscape permits.

A.

No person engaged in the business or occupation of landscape gardening shall be permitted the use of the disposal site maintained by D.P.W. unless and until he has applied for and received an annual landscape disposal permit. This permit, to provide for the disposal of certain organic material, will be issued by D.P.W. for each fiscal year commencing April 1 and expiring March 31, without additional charge other than that required for said permit. D.P.W. shall cause a set of rules and regulations to be published and thereafter distributed and issued with each permit, governing and limiting the use thereof and prescribing additional fees which may be required. Changes in said rules and regulations for the aforesaid fiscal period may be made, provided notice of such change is posted 30 days prior to an effective date at the scale room or entrance control area of all disposal sites maintained and operated by D.P.W.

B.

No person engaged in the business or occupation of landscape gardening or in the performance of such work in the care and maintenance of properties, including, but not limited to, grass cutting, raking, tree pruning and general lawn care, shall perform or conduct such business or occupation in such a manner as to leave the residual of the performance of such work on, about or around the property where such work has been performed.

[Amended 3-6-2012 by L.L. No. 26-2012, effective 3-13-2012]

§ 128-9_Excessive accumulation of refuse in the Town.

A.

Any accumulation of refuse and any waste building materials in excess of ordinary household accumulation thereof, resulting from failure of any person to comply with any provision of this chapter or from his failure to take advantage of the regular collection service maintained by any collection and disposal district, shall be removed by such person at his or her own expense.

B.

On scheduled days, D.P.W. will collect amounts of all classes of refuse from the premises in accordance with the limitations set forth pursuant to this chapter, but where abnormal amounts are placed for collection. D.P.W. reserves the right to refuse the material, to defer the collection, to collect the material in part, or to make a special collection thereof at charges authorized by D.P.W.

C.

Trees, tree branches and trimmings, large bushes, logs, etc., shall be securely tied in bundles not in excess of 75 pounds nor more than four feet in length and 24 inches in any other dimension; trees, tree branches and trimmings, large bushes, logs, etc., not reduced to size nor bundled as provided in this section, will be collected by special collection at charges authorized by D.P.W. and then only when the material can be readily loaded on a collection vehicle by the (2) men.

D.

D.P.W. is hereby authorized and directed to establish charges for special collection, based on the personnel equipment required therefor plus a reasonable overhead.

§ 128-10_Licensing of private refuse collection by private carting firms, including licensing of vehicles used for such purpose.

A.

Except in the case of municipalities, sanitary districts or collection districts, school districts or fire departments, it shall be unlawful for any person to operate, engage in, conduct or cause the operation of a business engaged in the collection of garbage or disposal of refuse, offal, dead animals and similar materials or any other offensive or noxious material without having first obtained a Town license as well as a permit, if required, pursuant to the provisions of the Public Health Ordinance of the Nassau County Health Department. Every license issued hereunder shall be issued as of the first day of January or subsequent day of issuance and shall expire on the 31st day of December next succeeding said date, unless sooner suspended or revoked by the Town Board.

B.

License procedure. Every person who desires to engage in or conduct the business of the collection of garbage, refuse and similar material within the Town shall file a written, verified application with the Town Clerk on forms provided for that purpose, verifying the following information.

C.

Application form to provide:

(1)

The name and address of the applicant, specifying, in the case of any unincorporated association, the names and addresses of each member thereof, and, in the case of any corporation, the names and addresses of each officer and director thereof.

(2)

If the applicant conducts business under a trade name or if the applicant is a partnership, the application for a license must be accompanied by a copy of the trade name or partnership certificate duly certified by the Clerk of the county in whose office the certificate was filed.

(3)

The age and citizenship of the applicant and each member thereof if an unincorporated association, and each officer and director thereof if a corporation.

(4)

The experience of the applicant and each member thereof, if an unincorporated association, and each director and officer thereof if a corporation, in the business of collection and disposal of refuse and similar material.

(5)

The number of collection vehicles to be operated by the applicant and a description of each such vehicle, including the ownership of the vehicle, the make, year, model of chassis and body type, the cubic capacity or tare weight, and color of vehicle, the current New York State registration number, and the community or communities in which the vehicle will operate.

(6)

The approximate volume and tonnage each vehicle will handle per day.

(7)

The location of any and all terminals proposed to be used by the applicant for the storage of licensed vehicles.

(8)

The applicant's proposed daily route and pickup schedule for each area and building to be serviced in the Town, excluding incorporated villages. This subsection shall not apply to such routes and special districts as are provided for by contract with the Town or to collections made incidental to the operation of a business other than the collection of refuse.

[Amended 3-6-2012 by L.L. No. 26-2012, effective 3-13-2012]

(9)

The name, address and telephone number, both day and night, of the applicant or the person in charge of the business.

(10)

A listing of the present customers serviced by each vehicle.

(11)

The hours and days each vehicle will operate within the Town.

(12)

Any other relevant information the Town Clerk may require.

D.

Additional requisites for obtaining and holding a license.

(1)

Photographs. Two individual photographs of the applicant taken within 30 days prior to the date of the application, 1 1/2 inches by 1 1/2 inches in size, which must be a true likeness of the applicant, showing neck, shoulders and uncovered head.

(2)

Fingerprinting. Applicant must be fingerprinted under the direction and supervision of the Town Clerk.

(3)

Police investigation. The Town Clerk shall refer the application to the Nassau County Police Department for investigation and report thereon.

(4)

Ownership of corporate stock of licensee. All capital stock of a corporate licensee shall be issued only to and in the name of the true owner thereof. A person shall not hold stock in a corporate licensee, directly or indirectly, for the use or benefit of another person.

(5)

Change of ownership of corporate stock. In the event of any change of ownership of any of the capital stock of a corporate licensee, the licensee of record must notify the Town Clerk of such change within three days after such change occurs.

(6)

Insurance. Before a license may be issued by the Town Clerk, each applicant shall file with the Town Clerk proof of the following insurance coverage, consisting of a certificate of the insurance carrier:

[Amended 3-6-2012 by L.L. No. 26-2012, effective 3-13-2012]

(a)

Workmen's compensation insurance.

(b)

Disability benefits insurance.

(c)

Public liability insurance with minimum limits of \$1,000,000 for each person injured and \$3,000,000 for each accident.

(d)

Property damage insurance in the sum of \$500,000.

(7)

Deposit. Before a license may be issued by the Town Clerk, each applicant shall place a cash deposit of \$1,000 with the Town Clerk.

(a)

In the event that a licensee fails to pick up and remove any of the materials described herein, in accordance with the licensee's route and pickup schedule as filed with the Town Clerk, within 24 hours of the day provided therein, the D.P.W. may cause such pickup and removal to be made, and all costs incurred in connection therewith shall be deducted from said cash deposit. In addition, should a licensee fail to make payment for all Town disposal charges within 10 days after such charges are billed, the Town Comptroller may deduct the amount of such charges from the cash deposit to be applied against all amounts then due and owing for use of Town disposal facilities.

(b)

The said cash deposit shall at all times be maintained by each licensee in the sum of \$1,000, and upon the failure of any licensee to maintain said deposit after three days' notice and demand therefor, the Town Clerk may forthwith suspend the license of any such licensee. In addition, for any violation of this subdivision, such

licensee shall be subject to suspension or revocation of his license and all other penalties provided herein. This subdivision shall apply only to those licensees engaged in the business of the private collection of refuse.

(8)

Duty to keep records. Every licensee shall keep complete and accurate books of account with respect to the operation of his business, in which shall be entered and shall show, among other things, all income derived or received from each of his customers and/or other sources, together with details of all expenses disbursements made or incurred in the operation of his business. Such books of account shall be kept current on a monthly or quarterly basis and brought up-to-date not later than 30 days after the expiration of such period. All such records shall be retained by the licensee for at least three years.

(9)

Right of inspection. The Town Clerk shall have the right to inspect books of account and records maintained by the licensee.

E.

Granting or revoking licenses by the Town Clerk.

(1)

A license shall be issued to an applicant not previously engaged in the business of private refuse collection or for the operation of existing private refuse collection facilities by a licensed applicant, unless the Town Clerk is satisfied:

(a)

All character references have been reviewed and approved.

(b)

Applicant has sufficient experience to function as a licensee.

(c)

Applicant is financially responsible.

(d)

Issuance of a license to an applicant who will not tend toward destructive competition in a market already adequately served.

(e)

Issuance of a license which is in the public interest.

(2)

Additional reasons for license refusal, suspension or revocation. A license will be refused, suspended or revoked where one or more of the following situations is found to exist:

(a)

That the applicant or licensee has failed and refused, without reasonable cause, to collect and dispose of garbage and rubbish, except in a situation where a contract has been lawfully terminated.

(b)

That the applicant or licensee has failed to account or pay, without reasonable cause, any disposal bills to D.P.W. or other disposal agencies.

(c)

That the applicant or licensee has failed to reasonably fulfill his obligations as a private refuse collector to a customer.

(d)

That the applicant or licensee is insolvent or has made a general assignment for the benefit of creditors or has been adjudged a bankrupt, or a money judgment has been secured against him upon which an execution has been returned wholly or partly unsatisfied.

(e)

That the applicant or licensee has failed to keep and maintain records or has refused to allow the inspection thereof as otherwise provided in this chapter.

(f)

That the applicant or licensee has violated any of the provisions of this chapter.

(g)

That the applicant or licensee has ceased to operate as a private refuse collector for which a license was previously issued.

(3)

Decision filed. Whenever an application for a license is granted, denied, suspended or revoked, the Town Clerk shall file a written memorandum stating the reasons for the granting, denial, suspension or revocation, as the case may be, of the particular license, together with transcripts or other written information applicable thereto.

§ 128-11_License issuance.

If the Town Clerk shall find from the statements contained in the application that the applicant is qualified and able to conduct the business of collection of refuse and similar material and conforms to the provisions of this chapter and the rules and regulations adopted hereunder, then the Town Clerk shall issue a license stating the name and address of the applicant, the number of collection vehicles the applicant is authorized to operate, and the date of the issuance thereof, which license shall be for the calendar year in which the license is issued.

§ 128-12_License plate.

The Town Clerk, when issuing a license, shall also issue a metal vehicle license for each collection vehicle, which shall be firmly affixed on the left-hand side of each vehicle near the cab thereof.

§ 128-13_Surrender of license plates.

Upon the sale, dissolution, suspension or discontinuance, whether voluntary or involuntary, of the business of a licensee, it shall be the duty of such licensee to forthwith surrender to the Town Clerk the license issued to him, together with all plates issued thereunder.

§ 128-14_Licensee identification.

Each vehicle licensed pursuant to this chapter shall have on the outside of each door of the cab the name and address of the licensee in letters not less than four inches in height either painted thereon or otherwise securely affixed thereto.

§ 128-15_Sale, transfer or assignment of a licensed private refuse collection vehicle.

A.

In the event of the sale, transfer or assignment of the right, title and interest of a licensed private refuse collection vehicle, the seller, transferor or assignor shall be required to surrender the license to the Town Clerk within five days after such sale, transfer or assignment, together with a sworn statement giving particulars

regarding the sale, transfer or assignment, including the name and address of the purchaser, transferee or assignee.

B.

In the event the new owner, transferee or assignee of the vehicle or vehicles previously licensed, as provided herein, desires to have said license reissued in his name, he shall file an application in the manner provided herein.

§ 128-16_Licensing fees.

[Amended 3-9-2004 by L.L. No. 25-2004, effective 3-22-2004]

A.

Each application for a license as herein provided shall be accompanied by a fee of \$550 for an owner's license, to cover the cost of investigation, which fee is not returnable.

B.

For each vehicle licensed, the fees shall be as follows:

(1)

When approved: \$220, per vehicle.

(2)

Upon renewal of license: \$220, per vehicle.

(3)

For substitution of a vehicle: \$110.

(4)

For a lost medallion: \$55.

§ 128-17_Establishment of an Advisory Committee on Private Collection to assist the Town Board.

A.

There is hereby established an Advisory Committee on Private Collection to assist the Town Board, hereinafter referred to as the "Committee." The Committee shall be composed of a member of the Town Board, D.P.W., the Town Attorney, a representative of the waste removal industry and an attorney representing the Waste Removal Institute of Nassau and Suffolk Counties, Inc., or other recognized waste removal industry organizations.

B.

Two members of the Committee shall be appointed Chairman and Vice Chairman respectively. The members of the Committee, the Chairman and the Vice Chairman shall be appointed by and serve at the pleasure of the Town Board.

§ 128-18_General powers of the Advisory Committee, on private collection and disposal.

The Committee shall have the following powers and functions:

A.

Make rules for the conduct of the Committee's business.

B.

Meet from time to time at a time and place designated by the Chairman.

- C.
Keep minutes of Committee proceedings.
- D.
Conduct informal meetings, forums, workshops and seminars on the subject of waste removal.
- E.
Assist the Town Board in the drafting of legislation concerning private collection by waste removal dealers.
- F.
Act as an advisory board on appeals of decisions rendered by the Town Clerk which denied, suspended or revoked an application for a license.
[Repealed 9-14-1976 by L.L. No. 65-1976, effective 9-20-1976]
- G.
Recommend maximum prices, charges or fees allowable for private collection from commercial establishments within the Town.
- H.
Recommend the manner of performing the removal of waste material from commercial establishments.
- I.
Act as mediator in any controversy or issue that may arise among or between waste removal dealers operating within the Town.

§ 128-19 Appeals.

[Amended 9-14-1976 by L.L. No. 65-1976, effective 9-20-1976]

- A.
The holder of any license which has been suspended or revoked and any applicant who shall have been denied a license under this chapter may apply for a review of the action of the Town Clerk as hereinafter provided:
- (1)
The application for review shall be in writing, signed and acknowledged by the applicant, and shall state the ground or grounds on which the applicant claims that the determination of the Town Clerk was erroneous.
- (2)
Said application shall be filed with the Town Clerk by the applicant within 20 days after notice of denial of his application by the Town Clerk has been mailed to him or delivered to him in person.
- (3)
Upon the filing of the application, a hearing shall be held thereon, pursuant to the provisions of § 128-20 hereof.
- (4)
At the hearing, as hereinafter provided, the Review Board shall consider the applicant's application upon the record before the Town Clerk in connection with the Town Clerk's consideration thereof and, in its discretion, may receive new or additional evidence in support thereof or in opposition thereto.
- B.
The Review Board, after the hearing, may affirm the action of the Town Clerk or direct the Town Clerk to issue a proper license, pursuant to this chapter.

§ 128-20_Hearings.

[Amended 9-14-1976 by L.L. No. 65-1976, effective 9-20-1976]

Whenever it shall be provided herein that a hearing shall or may be held with respect to any matter:

A.

The hearing shall be held on a date, at a place and hour designated by the Presiding Supervisor.

B.

The Town Clerk shall give notice thereof, stating the name and address of the applicant or license holder concerned, the subject matter of the hearing and the date, place and hour thereof designated therefor, by mailing a copy thereof to the applicant or license holder concerned at the address shown upon the most recent application of such applicant or licensee, at least 10 days prior to said hearing.

C.

If an applicant or licensee requests a hearing, the Presiding Supervisor shall designate two or more members of the Town Board to conduct said hearing as a Review Board.

D.

The applicant or license holder involved shall be entitled to be represented by legal counsel and to present such competent and material testimony or other evidence in his own behalf as may be relevant to the subject matter of the hearing.

E.

All witnesses shall be sworn and examined under oath.

§ 128-21_Regulations for operation of private refuse collection vehicles in the Town of Hempstead.

A.

It shall be unlawful to dispose of any refuse collected within the Town of Hempstead at any location other than that so designated by the Town Board, or at such locations authorized, controlled and under the jurisdiction of the Board of Commissioners of any sanitary district in the Town of Hempstead.

B.

Private collection vehicles shall operate only between 7:00 a.m. and 6:30 p.m., Mondays through Saturdays, excluding holidays as otherwise provided.

C.

No collections whatsoever shall be made on Sundays or the following holidays:

New Year's Day

Memorial Day

Independence Day

Labor Day

Thanksgiving Day

Christmas Day

D.

Garbage collection vehicles shall be completely enclosed and watertight.

E.

Rubbish collection vehicles wherein no garbage is transported may be of an open refuse collection type, provided that such vehicle is fitted with a suitable canvas or other cover to prohibit any material being discharged from it while the vehicle is in transit.

F.

Collections are to be made in such manner as not to permit debris, litter and the like from the collection procedure to fall upon property, public or private, or upon any highway within the Town of Hempstead.

G.

Vehicles designed or known as "rear loaders" or "rear load packers" shall be completely closed in transit, either by use of the exterior closing door fitted as part of a body style or by the use of the closing mechanism in those units not having as a standard or an accessory a separate exterior door.

H.

All accessory doors, including the main loading door, shall be closed in travel on public highways unless the subject vehicle is engaged in a continuous servicing of adjacent structures on said highway.

I.

All private collection vehicles shall perform and operate on Department of Public Works' properties in accordance with the rules and regulations of the Department of Public Works.

J.

Collection vehicles shall be subject to inspection at any time by authorized representatives of the Department of Public Works, peace officers or Nassau County Police, for the purpose of enforcement of this chapter. All persons or their employees shall be required to give aid and cooperation when required by such personnel in the performance of the enforcement of this chapter.

K.

Collection vehicles shall be kept clean and sanitary both inside and out. Where, as required in the collection practice, containers of one cubic yard or more are used, such containers shall be cleaned and sanitized no less than once per week.

L.

All vehicles shall be properly identified by the person operating such vehicles, including name and address.

M.

It shall be unlawful for any private licensed collector or a person not required to be licensed under this chapter, to deliver to any Town of Hempstead refuse disposal facility any material not collected or generated within the geographic limits of the Town of Hempstead.

[Added 1-25-1983 by L.L. No. 15-1983, effective 1-31-1983]

N.

It shall be unlawful for any private licensed collector or a person not required to be licensed under this chapter, to deliver to any Town of Hempstead refuse disposal facility any material set forth or in violation of Parts 360 and 366 of Title 6 of the official compilation of the New York Codes, Rules and Regulations under the statutory authority of Article 27, Title 9 of the New York State Environmental Conservation Law.

[Added 1-25-1983 by L.L. No. 15-1983, effective 1-31-1983]

§ 128-22_Penalties for offenses.

A.

Any person or persons, association or corporation committing an offense against this chapter or any section thereof, except § **128-10**, is guilty of a violation, punishable by a fine not exceeding \$500 or imprisonment for a period not exceeding 15 days for each such offense, or by both such fine and imprisonment.

[Amended 5-10-2005 by L.L. No. 45-2005, effective 5-31-2005]

B.

An offense against any provision of § **128-10** of this chapter is a Class B misdemeanor, punishable by a fine not exceeding \$1,000 or imprisonment for a period not exceeding three months, or by both such fine and imprisonment.

[Amended 5-10-2005 by L.L. No. 45-2005, effective 5-31-2005]

C.

Each day an offense against this chapter shall be permitted to exist shall constitute a separate offense.

§ 128-23 Definitions.

For the purposes of this article, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

AIRCRAFT

Any contrivance now known or hereafter invented, used or designated for navigation or for flight in the air. The word "aircraft" shall include helicopters and lighter-than-air dirigibles and balloons.

AUTHORIZED PRIVATE RECEPTACLE

A litter storage and collection receptacle as required and authorized in the Sidewalk Ordinance of the Town of Hempstead.⁽¹⁾

COMMERCIAL HANDBILL

Any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper, booklet or any other printed or otherwise reproduced original or copies of any matter of literature:

A.

Which advertises for sale any merchandise, product, commodity or thing.

B.

Which directs attention to any business or mercantile or commercial establishment or other activity for the purpose of either directly or indirectly promoting the interest thereof by sales.

C.

Which directs attention to or advertises any meeting, theatrical performance, exhibition or event of any kind, for which an admission fee is charged for the purpose of private gain or profit; but the terms of this clause shall not apply where an admission fee is charged or a collection is taken up for the purpose of defraying the expenses incident to such meeting, theatrical performance, exhibition or event of any kind, when either of the same is held, given or takes place in connection with the dissemination of information which is not restricted under the ordinary rules of decency, good morals, public peace, safety and good order; provided, that nothing contained in this clause shall be deemed to authorize the holding, giving or taking place of any meeting, theatrical

performance, exhibition or event of any kind without a license, where such license is or may be required by any law of this state or under any ordinance of this Town.

D.

Which, while containing reading matter other than advertising matter, is predominantly and essentially an advertisement and is distributed or circulated for advertising purposes or for the private benefit and gain of any person so engaged as advertiser or distributor.

GARBAGE

Putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

LITTER

"Garbage," "refuse" and "rubbish" as defined herein and all other waste material which, if thrown or deposited as herein prohibited, tends to create a danger to public health, safety and welfare.

NEWSPAPER

Any newspaper of general circulation as defined by general law, any newspaper duly entered with the Post Office Department of the United States in accordance with federal statute or regulation, and any newspaper filed and recorded with any recording officer as provided by general law; and in addition thereto, shall mean and include any periodical or current magazine regularly published with not less than four issues per year and sold to the public.

NONCOMMERCIAL HANDBILL

Any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, newspaper, magazine, paper, booklet or any other printed or otherwise reproduced original or copies of any matter of literature not included in the aforesaid definitions of a commercial handbill or newspaper.

PARK

A park, reservation, playground, beach recreation center or any other public area in the Town owned or used by the Town and devoted to active or passive recreation.

PERSON

Any person, firm, partnership, association, corporation, company or organization of any kind.

PRIVATE PREMISES

Any dwelling, house, building or other structure designed or used either wholly or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, grounds, walk, driveway, porch, steps, vestibule or mailbox belonging or appurtenant to such dwelling, house, building or other structure.

PUBLIC PLACE

Any and all streets, sidewalks, boulevards, alleys or other public ways, and any and all public parks, squares, spaces, grounds and buildings.

REFUSE

All putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles and solid market and industrial wastes.

RUBBISH

Nonputrescible solid wastes consisting of both combustible and noncombustible wastes, such as yard clippings, leaves, wood, glass, bedding, crockery and similar materials.

TOWN

Unincorporated areas in the Town of Hempstead.

VEHICLE

Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, including devices used exclusively upon stationary rails or tracks.

[1]:

Editor's Note: See Ch. 181, Part I, Sidewalks.

§ 128-24 Litter in public places.

No person shall throw or deposit litter in or upon any street, sidewalk or other public place within the Town except in public receptacles, in authorized private receptacles for collection, or in official Town rubbish pits.

§ 128-25 Placement of litter in receptacles.

Persons placing litter in public receptacles or in authorized private receptacles shall do so in such a manner as to prevent it from being carried or deposited by the elements upon any street, sidewalk or other public place or upon private property.

§ 128-26 Sweeping litter into gutters prohibited.

No person shall sweep into or deposit in any gutter, street or other public place within the Town the accumulation of litter from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying property shall keep the sidewalk in front of their premises free of litter.

§ 128-27 Merchant's duty to keep sidewalks free of litter.

No person owning or occupying a place of business shall sweep into or deposit in any gutter, street or other public place within the Town the accumulation of litter from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying places of business within the Town shall keep the sidewalk in front of their business premises free of litter.

§ 128-28 Litter thrown by persons in vehicles.

No person, while a driver or passenger in a vehicle, shall throw or deposit litter upon any street or other public place within the Town or upon private property.

§ 128-29 Truck loads causing litter.

No person shall drive or move any truck or other vehicle within the Town unless such vehicle is so constructed or loaded as to prevent any load, contents or litter from being blown or deposited upon any street, alley or other public place. Nor shall any person drive or move any vehicle or truck within the Town, the wheels or tires of which carry onto or deposit in any street, alley or other public place, mud, dirt, sticky substances, litter or foreign matter of any kind.

§ 128-30 Litter in parks. [1]

No person shall throw or deposit litter in any park within the Town except in public receptacles and in such a manner that the litter will be prevented from being carried or deposited by the elements upon any part of the park or upon any street or other public place. Where public receptacles are not provided, all such litter shall be carried away from the park by the person responsible for its presence and properly disposed of elsewhere as provided herein.

[1]:

Editor's Note: See Ch. 78, Parks.

§ 128-31 Litter in lakes and fountains.

No person shall throw or deposit litter in any fountain, pond, lake, stream, bay or any other body of water in a park or elsewhere within the Town.

§ 128-32_Throwing or distributing handbills in public places.

No person shall throw or deposit any commercial or noncommercial handbill in or upon any sidewalk, street or other public place within the Town. Nor shall any person hand out or distribute or sell any commercial handbill in any public place. Provided, however, that it shall not be unlawful on any sidewalk, street or other public place within the Town for any person to hand out or distribute, without charge to the receiver thereof, any noncommercial handbill to any person willing to accept it.

§ 128-33_Placing handbills on vehicles.

No person shall throw or deposit any commercial or noncommercial handbill in or upon any vehicle. Provided, however, that it shall not be unlawful in any public place for a person to hand out or distribute, without charge to the receiver thereof, a noncommercial handbill to any occupant of a vehicle who is willing to accept it.

§ 128-34_Depositing handbills on uninhabited or vacant premises.

No person shall throw or deposit any commercial or noncommercial handbill in or upon any private premises which are temporarily or continuously uninhabited or vacant.

§ 128-35_Distribution of handbills where property posted.

No person shall throw, deposit or distribute any commercial or noncommercial handbill upon any private premises if requested by anyone thereon not to do so, or if there is placed on said premises in a conspicuous position near the entrance thereof, a sign bearing the words "No Trespassing," "No Peddlers or Agents," "No Advertisement," or any similar notice indicating in any manner that the occupants of said premises do not desire to be molested or have their right of privacy disturbed or to have any such handbills left upon such premises.

§ 128-36_Distributing handbills at inhabited private premises; exception.

A.

No person shall throw, deposit or distribute any commercial or noncommercial handbill in or upon private premises which are inhabited, except by handing or transmitting any such handbill directly to the owner, occupant or other person then present in or upon such private premises. Provided, however, that in case of inhabited private premises which are not posted, as provided in this Article, such person, unless requested by anyone upon such premises not to do so, may place or deposit any such handbill in or upon such inhabited private premises if such handbill is so placed or deposited as to secure or prevent such handbill from being blown or drifted about such premises or sidewalks, streets or other public places, and except that mailboxes may not be so used when so prohibited by federal postal law or regulations.

B.

The provisions of this section shall not apply to the distribution of mail by the United States, nor to newspapers (as defined herein), except that newspapers shall be placed on private property in such a manner as to prevent their being carried or deposited by the elements upon any street, sidewalk or other public place or upon private property.

§ 128-37_Dropping litter from aircraft.

No person in an aircraft shall throw out, drop or deposit within the Town any litter, handbill or any other object.

§ 128-38 Litter on occupied private property.

No person shall throw or deposit litter on any occupied private property within the Town, whether owned by such person or not, except that the owner or person in control of private property may maintain authorized private receptacles for collection in such a manner that litter will be prevented from being carried or deposited by the elements upon any street, sidewalk or other public place or upon any private property.

§ 128-39 Owner to maintain premises free of litter.

The owner or person in control of any private property shall at all times maintain the premises free of litter; provided, however, that this section shall not prohibit the storage of litter in authorized private receptacles for collection.

§ 128-40 Litter on vacant lots.

No person shall throw or deposit litter on any open or vacant private property within the Town, whether owned by such person or not.

§ 128-41 (Reserved) ^[1]

[1]:
Editor's Note: Former § 128-41, Clearing of litter from open private property, was repealed 5-5-2009 by L.L. No. 43-2009, effective 5-15-2009.

§ 128-42 Penalties for offenses.

[Amended 2-20-1968, effective 3-18-1968]

A.

Any person or persons, association or corporation committing an offense against this article, or any section or provision thereof, is guilty of a violation punishable by a fine not exceeding \$500 or imprisonment for a period not exceeding 15 days for each such offense, or by both such fine and imprisonment.

[Amended 5-10-2005 by L.L. No. 45-2005, effective 5-31-2005]

B.

Each day such violation continues or is permitted to continue shall constitute a separate violation punishable as herein provided.

§ 128-43 Dumping on vacant lots or streets prohibited.

No person, firm, association or corporation shall throw, cast, lay, bury or leave or direct, suffer or permit any servant, agent or employee to throw, cast, lay, bury or leave, any ashes, offal, dead animals, vegetables, garbage, dross, cinders, shells, straw, shavings, paper, dirt, filth, broken glasswares, crockery, bottles, domestic furniture, packing crates, metal, rubber, tires, abandoned vehicles or any other refuse or rubbish of any kind whatsoever, in or upon any vacant lot or plot, except where ashes or dirt may be used for filling-in purposes under a permit secured from the department or bureau having jurisdiction thereof, or in or upon any street or road in the Town of Hempstead, and any such dumping shall constitute an unclassified misdemeanor.

§ 128-44 Acceptance of solid waste generated outside of Town.

[Amended 3-6-2012 by L.L. No. 26-2012, effective 3-13-2012]

Nothing in this article shall be construed to prohibit the acceptance of waste generated outside of the Town at solid waste facilities located within the Town that are otherwise licensed and authorized to accept such waste in accordance with New York State law.

§ 128-45 Penalties for offenses.

[Amended 5-10-2005 by L.L. No. 45-2005, effective 5-31-2005]

Any person or persons, association or corporation committing an offense against this article, or any section or provision thereof, is guilty of an unclassified misdemeanor punishable by a fine not exceeding \$1,500 or imprisonment for a period not exceeding one year for each such offense, or both such fine and imprisonment.

Severability.

§ 128-46 Legislative declaration.

[Amended 3-6-2012 by L.L. No. 26-2012, effective 3-13-2012]

It is hereby declared that, in the exercise of control and regulation of the collection, transportation and disposition of solid waste on a Town-wide basis, the Town is exercising essential and proper governmental functions in accordance with the clearly articulated and affirmatively expressed policy of the State of New York as contained in Chapter 797 of the Laws of 1985 of the State of New York. The exercise of the control and regulation of the collection, transportation and disposal of solid waste on a Town-wide basis is necessary for the fulfillment of the governmental responsibilities and objectives set forth in the Local Solid Waste Management Plan of the Town of Hempstead adopted pursuant to New York State Environmental Conservation Law § 27-0707. This article is intended, among other public purposes, to assure the environmentally safe and secure disposal of the solid waste of the Town, to provide a basis to comprehensively monitor the generation of solid waste in the Town, to assist in planning for the future collection and disposal needs of the Town, to assist in the enforcement and implementation of the provisions of this chapter governing the recovery of recyclable materials, to provide incentives for the source separation of recyclable materials from the solid waste of the Town, and to provide a stable and sufficient revenue source for the administration of the solid waste programs of the Town.

§ 128-47 Statement of policy; conflict with other provisions.

[Amended 3-6-2012 by L.L. No. 26-2012, effective 3-13-2012]

A.

It is the policy of the State of New York with respect to the collection, transportation and disposition of solid waste in the Town of Hempstead to displace competition with regulation or monopoly public service. Notwithstanding the provisions of any general, special or local law to the contrary, the Town is authorized to adopt, and hereby does adopt, and amend a local law which shall provide for the management on a Town-wide basis of all solid waste generated within the Town.

B.

It is the policy of the Town of Hempstead, in accordance with the solid waste management policies of the State of New York, to reduce the amount of solid waste generated; reuse material for the purpose for which it was originally intended or recycle material that cannot be reused; recover energy from solid waste that cannot be economically or technically reused or recycled; and dispose of solid waste that is not being reused, recycled or from which energy is not being recovered by land burial or other means approved by law. This article is

intended to advance and support the policies expressed in the Town of Hempstead Solid Waste Management Plan, and to assist the Town in the fulfillment of its responsibility to provide solid waste disposal services for the Town of Hempstead Solid Waste Disposal District. The Town is the recognized planning unit for all incorporated villages and unincorporated areas within the Town, with the exception of the Village of New Hyde Park, which lies partially within the Town of North Hempstead and uses disposal facilities of the Town of North Hempstead. This article shall apply to all areas within the Town that are subject to the Town of Hempstead Solid Waste Management Plan.

C.

It is the policy of the Town of Hempstead, in the adoption, implementation and enforcement of this article, to treat all persons subject to its provisions in a fair and impartial manner, without regard to their location or legal residence within or without the boundaries of the Town of Hempstead or the State of New York or other state, and where all or a portion of the solid waste generated within the Town is directed to a particular place or facility for disposal or processing, said waste shall be delivered to the custody and control of the Town as a public agency for disposal or processing to be undertaken by the Town or such contractors or agents employed by the Town for such purposes. The Town Board reserves the right to implement the provisions of this article in stages, and to authorize such exceptions to its provisions as are appropriate and consistent with the Town's Local Solid Waste Management Plan, taking into account the existing and future disposal capacities of Town Solid Waste Management Facilities, and the solid waste management programs and practices of the municipalities and the private sector operating within the Town.

D.

This article implements the policies expressed in said Chapter 797 of the Laws of 1985 of the State of New York and shall be construed, where applicable, to supplement all other provisions of Chapter 128 of the Town Code. Any inconsistency or conflict between another provision of this chapter and this article and regulations adopted hereunder shall be resolved in favor of this article and in favor of any regulations adopted hereunder. This article and regulations adopted hereunder shall supersede any enactment, local law or regulation enacted by the Town or any municipality within the Town inconsistent herewith.

§ 128-48 General provisions.

[Amended 3-6-2012 by L.L. No. 26-2012, effective 3-13-2012]

It is found and declared that:

A.

The Town hereby intends to regulate and control the collection, transportation and disposal of all solid waste, by whomever collected, within the Town and municipalities within the Town and to establish standards and promulgate regulations to accomplish such control.

B.

With respect to the collection, transportation and disposal of solid waste, within the Town of Hempstead, pursuant to this article and regulations adopted hereunder, competition is displaced with regulation or monopoly public service.

C.

All provisions of this article or regulations hereunder shall be consistent with standards established pursuant to the New York State Environmental Conservation Law.

D.

The Town hereby intends to exclusively control all solid waste collected within the Town and all energy and materials derived therefrom, including without limitation the collection, transportation and disposal of solid waste at a Town Solid Waste Management Facility or Facilities for storage or processing or for any other disposition or handling.

E.

The Town hereby provides for the establishment and collection of charges as compensation for the disposal of such solid waste.

F.

The Town is authorized by the laws of the State of New York to supervise and regulate, by the implementation of appropriate permit procedure and contractual agreements, the collection, transportation and disposal of all or part of any solid waste generated within the Town and municipalities within the Town.

G.

The Town is authorized to execute a municipal service agreement requiring it to cause all acceptable solid waste generated within its boundaries to be delivered to a Town Solid Waste Management Facility.

H.

The Town is authorized by the laws of the State of New York to collect a charge for the disposition of solid waste and to enter into agreements to provide for same.

I.

The Town hereby claims such rights, as may be necessary to implement Chapter 797 of the Laws of 1985 and this article, to all solid waste within the Town and municipalities within the Town placed for collection by the residents and commercial industrial establishments and to exclusively commit said waste and energy and materials derived therefrom to any Town Solid Waste Management Facility.

J.

The policy of the Town is to reduce, where practicable, the volume of solid waste that must be disposed of by the Town by means of resource recovery and to extract available energy from such solid waste. In furtherance of this policy, and to pursue its the governmental interests in the management of solid waste, the Commissioner may, from time to time, procure through procedures prescribed by law, the services of qualified persons to provide necessary skill and equipment and to operate and maintain Town Solid Waste Management Facilities capable of producing energy from the combustion of solid waste, and to provide such other services as the Town may require.

K.

The Town Board hereby enacts this article to implement the above-stated rules, policy and declaration. By this Article IV, the Town Board intends to confer upon the Commissioner the power to adopt regulations which will implement this chapter, any municipal service agreement executed by the Town, including a service agreement with a solid waste management facility or other facility and any intermunicipal agreement relating to solid waste, and to implement the goals set forth in Chapter 797 of the Laws of 1985 of the State of New York and this Chapter 128 of the Town Code and to ensure compliance with any obligation incurred by the Town pursuant to the herein-mentioned laws or agreement executed thereunder. To the extent that any provisions of this article have previously been declared ineffective or void due to conflict with the provisions of Article I, section 8, clause 3 of the United States Constitution, such provisions, as herein amended, are hereby reenacted and given full force and effect.

§ 128-49 Definitions.

[Amended 3-6-2012 by L.L. No. 26-2012, effective 3-13-2012]

For the purpose of this article, the terms used herein are defined as follows:

ACCEPTABLE SOLID WASTE

That portion of solid waste which is authorized by law or regulation for acceptance at Town Solid Waste Management Facilities and is collected and disposed of, or caused to be collected and disposed of, through private or municipal collection and shall include residential, commercial, governmental and light industrial waste, as may vary from time to time, including but not limited to garbage, trash, rubbish and vegetable waste.

COLLECTION DISTRICT

A district operated by the Town which was established, pursuant to the Town Law of the State of New York, as amended, and the Nassau County Civil Divisions Act, as amended, to provide solid waste and recyclables collection, but not disposal, services for the properties defined in the legislation establishing such district, including Collection Districts 3, 4 and 5, together with such other districts as may be created by the Town in the future. The term Collection District shall not include Districts 1, 2, 6, 7 and 14 or any Independent Sanitary District which is governed by a separate Board of Commissioners.

COMMISSIONER

The Town Commissioner of Sanitation, a Deputy Commissioner or any other designated representative of the Town Commissioner of Sanitation.

CONSTRUCTION AND DEMOLITION DEBRIS

Shall have the meaning set forth in 6 NYCRR 360-1.2(b)(38) as the same shall be modified and amended from time to time.

DISPOSAL DISTRICT

The Town of Hempstead Refuse Disposal District, a district established pursuant to the Town Law of the State of New York, as amended, and the Nassau County Civil Divisions Act, as amended, to provide solid waste and recyclables disposal services for the properties defined in the legislation establishing such district.

HAZARDOUS WASTE

Waste by reason of its composition or character which is harmful, toxic or dangerous or is hazardous waste, as defined in either the Solid Waste Disposal Act, 42 U.S.C. § 6901 et seq., as amended from time to time, and the regulations thereunder or under applicable New York statutes and the regulations thereunder.

INDEPENDENT SANITARY DISTRICT

A district established pursuant to an act of the New York State Legislature or pursuant to Chapter 273 of the Laws of 1939, otherwise known as the Nassau County Civil Divisions Act, but does not include a Collection District.

MUNICIPALITY

A political subdivision within the State of New York having a separate corporate existence, including for purposes of this article, an incorporated village, and an Independent Sanitary District as defined herein.

MUNICIPAL SERVICE AGREEMENT

An executed contract between the Town and a municipality, which provides for solid waste disposal services.

NYSDEC

The New York State Department of Environmental Conservation.

PERSON

Any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

RECYCLABLE MATERIAL OR RECYCLABLES

That portion of solid waste determined by the Commissioner to be reusable or recoverable for value, including newspapers, cardboard, glass bottles and jars, metal food and beverage cans, plastic food and household product containers made from high-density polyethylenes or polyethylene terephthalate plastics, yard waste, metal recyclables, construction and demolition debris and shall further include office paper and cardboard generated from a commercial establishment. In addition to these materials, the Commissioner may determine a material to be recyclable for which there are economic markets for alternate uses.

RECYCLING CENTER

Any facility designated and operated solely for the receiving and storing of source-separated or post-separated designated recyclable materials.

SOLID WASTE

Shall have the meaning set forth in 6 NYCRR 360-1.2(a), as the same shall be modified and amended from time to time.

SOLID WASTE MANAGEMENT PLAN

The Town of Hempstead Local Solid Waste Management Plan and Comprehensive Recycling Analysis dated March 1993, as approved by the New York State Department of Environmental Conservation, and as subsequently updated, amended, or renewed.

SOURCE-SEPARATE

To separate recyclable materials from the solid waste stream at the point of waste generation.

TOWN

The Town of Hempstead as a political subdivision and municipal corporation organized under the laws of the State of New York, including all constituent agencies, departments, and special taxing, assessment and service districts administered by the Town Board of the Town of Hempstead.

TOWN SOLID WASTE MANAGEMENT FACILITY

Any facility employed beyond the initial solid waste collection process, including but not limited to transfer stations, storage areas or facilities, sanitary landfills, waste-to-energy or resource recovery facilities, incinerators, recycling centers, and composting facilities, that is owned or operated by the Town of Hempstead, or is situated on property owned by the Town and is operated by an entity under contract with the Town of Hempstead and which is obligated pursuant to such contract to receive and process solid waste delivered by the Town of Hempstead or by the Town on behalf of the Town of Hempstead Refuse Disposal District.

UNACCEPTABLE WASTE

Any waste or other material that is not authorized for acceptance at any Town Solid Waste Management Facility by permit, law or regulation.

YARD WASTE

Grass clippings, leaves, bundles of twigs or branches, brush, tree trunks, logs, stumps all up to six inches in diameter, natural holiday trees and wreaths and other general tree and lawn or garden waste that is not contaminated by garbage or refuse.

§ 128-50 Commissioner to supervise and regulate transportation of solid waste.

[Amended 3-6-2012 by L.L. No. 26-2012, effective 3-13-2012]

The Commissioner shall be responsible for the supervision and regulation of the collection, transportation and disposition of all solid waste originated, generated or located within the Town and the municipalities therein and to establish, from time to time, such regulations as may be necessary. The Commissioner shall act pursuant to the standards established in this article.

§ 128-51 Commissioner to supervise and regulate collection in certain districts.

[Amended 3-6-2012 by L.L. No. 26-2012, effective 3-13-2012]

The Commissioner shall be solely responsible for the supervision and regulation of the collection of all solid waste originated, generated or located within Town Solid Waste Collection Districts Nos. 3, 4 and 5 and to establish from time to time, such regulations as may be necessary. The Commissioner shall act pursuant to the standards established in this article.

§ 128-52 Disposal regulations; construal of provisions.

[Amended 3-6-2012 by L.L. No. 26-2012, effective 3-13-2012]

The disposal of solid waste generated within the Town of Hempstead and municipalities located therein must be controlled by the Town for the protection of the public health, safety and welfare. Thus it is found and required that:

A.

All acceptable solid waste, other than construction and demolition debris, yard waste and recyclables regulated pursuant to Article VI of this chapter, that is generated or originated within the Town, including municipalities located wholly therein, subject to such exemptions as provided in Subsection B below, shall be delivered to a Town Solid Waste Management Facility determined by the Commissioner for processing, transport and/or disposal.

B.

The Commissioner shall exempt from the provisions of Subsection A above, all acceptable solid waste collected by or on behalf of municipalities (including, for purposes of this section, Independent Sanitary Districts) that are not located within the Disposal District, provided that such municipality shall demonstrate that it has made disposal arrangements for solid waste, recyclable material and yard waste that are consistent with the Solid Waste Management Plan of the Town of Hempstead; and any and all persons or facilities employed by, or under contract with such municipality are authorized by law to accept the solid waste or other materials delivered by such municipality. An exemption granted pursuant to this section shall remain in effect pending a material change in the Town's Local Solid Waste Management Plan and/or a material change in the solid waste services provided by the municipality that results in an inconsistency with the Solid Waste Management Plan or the employment of persons or facilities that are not authorized by law to accept the materials delivered by the municipality. A municipality receiving an exemption pursuant to this section shall provide regular reports to the Commissioner of all tonnage and materials collected and disposed by such municipality, said reports to be in a format determined by the Commissioner.

C.

Except as may be provided by the Commissioner, no person required to hold a license pursuant to this chapter or regulation adopted hereunder, may dispose of any solid waste within the Town or at a facility designated by the Town without such a license.

D.

No person holding or required to hold a license pursuant to Chapter 128 shall deposit, deliver, store or process any solid waste generated or originated within the Town at other than a Town Solid Waste Management Facility or other facility approved by the Town.

E.

Nothing contained in this chapter shall be deemed or interpreted to prohibit any municipality located within the Town from engaging in the collection or transportation of solid waste originated, generated or located within

such municipality; provided, however, that all solid waste so collected and transported shall be disposed of only at a Town Solid Waste Management Facility pursuant to Subsection A, or pursuant to an exemption granted by the Commissioner pursuant to Subsection B above.

F.

Nothing contained in this chapter shall be deemed or interpreted to prohibit the Town or municipalities from adopting or implementing programs to reduce the volume of solid waste, including composting and recycling programs.

G.

Notwithstanding the provisions of this article, no license shall be required for the collection, within the Town, and/or disposal, at a recycling center, of recyclables, within the Town pursuant to a recycling program adopted by the Town or a municipality.

H.

Nothing contained in this chapter shall be deemed or interpreted to exempt any person from any other applicable permit or licensing requirements or rules or regulations not inconsistent with this article of the Town, municipalities within the Town or any other governmental entity.

I.

Except as may be provided by the Commissioner, no person shall enter into a contract for collection, transportation or disposal of solid waste generated within the Town, including municipalities, with a person required to be licensed, pursuant to this chapter or regulations adopted hereunder, unless such person holds such a license.

J.

The Commissioner shall have the authority to suspend enforcement of this section in the event of an emergency or other circumstance prohibiting the acceptance of waste at a Town Solid Waste Management Facility.

K.

Upon application to the Commissioner, the Commissioner may permit a licensee, prior to delivery to the Town Solid Waste Management Facility, to examine and remove components of the solid waste, which are more appropriately recycled. This is subject to state and federal rules, regulations and statutes governing same.

(1)

Notwithstanding any other provision of this article, the Commissioner may, upon written application therefor, authorize a licensee to deliver waste collected within the Town to an authorized facility for the post-collection recovery of recyclable materials, if the Commissioner finds that such delivery will substantially supplement recovery of recyclables generated by a customer where the source separation of recyclables by such customer is inadequate or impractical; and the licensee provides an accounting of the materials recovered and an acceptable plan for the disposal of nonrecyclable materials collected from the same source. Any application for such approval shall specify the customers to be served and the collection routes and facilities to be employed, together with such other information as the Commissioner may reasonably require, and provided further that all activity authorized shall be in compliance with applicable state and federal laws, rules and regulations. The Commissioner may, on a case-by-case basis, attach reasonable conditions to any such approval, and may revoke an approval if he finds that the approval has not resulted in a substantial recovery of recyclables materials, that nonrecyclable solid waste is not being disposed of pursuant to the approved plan, or that any other violation of law has occurred.

§ 128-53 Additional licensing requirements and administration.

[Amended 3-6-2012 by L.L. No. 26-2012, effective 3-13-2012]

A.
Reporting of route and schedule changes. All persons granted licenses for the collection of solid waste pursuant to § 128-10 shall, upon request from the Commissioner, provide a list of any changes to the daily route and pickup schedule set forth in the permit application. Such list shall be in writing and provided to the Commissioner within five calendar days of the request. The Commissioner shall promptly notify the Town Clerk of any such changes.

B.
Global Positioning System. In the event the Commissioner determines that a licensee is failing to comply with the provisions of this article, he may require as a condition of retention of the license that the licensee install a Global Positioning System in all licensee's vehicles. Within 30 days of receiving notification from the Commissioner that such a requirement is being imposed, the licensee shall install and maintain equipment provided by the Commissioner for the tracking of collection vehicles by satellite or other means. Such equipment shall be coordinated with equipment and systems maintained by the Department to provide real-time locations for all licensee collection vehicles operating within the Town. It shall be the responsibility of the licensee to bear the cost of the GPS system. There shall be a charge for the GPS unit and installation, which charge shall be paid by licensee prior to the installation by the Department's vendor. In addition, there shall be an annual monitoring fee which shall be established annually by the Commissioner and billed on a monthly basis. This section shall not apply to roll-off vehicles used for the collection of construction and demolition debris. Failure to pay for the cost of the GPS system or the monthly monitoring fee shall result in revocation of the license upon 30 days' notice to licensee.

C.
Container registration. All persons granted licenses for the collection of solid waste pursuant to § 128-10 shall provide, in addition to the information required pursuant to § 128-10C, a list of all containers, including compactor-containers, provided to nonresidential or multiunit residential customers in the Town for the collection of solid waste, together with the volume of each container and the frequency of collection. The Department shall provide an identification decal or medallion for each registered container, which shall be affixed to the container by the licensee. The Commissioner is authorized to charge a fee of \$2.50 per container for the issuance of an identification decal or medallion. The placement of an unregistered container for the collection of solid waste at any location within the Town shall be prohibited. This section shall not apply to the use or placement of open roll-off containers for the collection of construction and demolition debris.

§ 128-54 Hazardous waste and unacceptable waste.

[Amended 3-6-2012 by L.L. No. 26-2012, effective 3-13-2012]

A.
No hazardous waste or unacceptable waste shall be delivered by any person to a solid waste management processing facility or any other disposal facility designated by the Town.

B.
Solid waste not acceptable for disposal at Town Solid Waste Management Facilities are:

(1)
Hazardous wastes.

(2)

Wastes designated by NYSDEC as having an adverse impact on air quality.

(3)

Sewage sludge or free liquids.

(4)

Infectious waste, including but not limited to laboratory waste and surgical wastes.

(5)

Such other waste as the Commissioner may subsequently, by regulation, designate.

§ 128-55 Recycling.

The Commissioner shall, from time to time, promulgate regulations relating to source separation and recycling which shall:

A.

Implement a plan or policy of source separation and volume reduction.

B.

Promote source separation and volume reduction in conformity with and in furtherance of New York State policy relative thereto.

§ 128-56 Charges.

[Amended 3-6-2012 by L.L. No. 26-2012, effective 3-13-2012]

The charges for use of Town Solid Waste Management Facilities shall be fixed, from time to time, by the Commissioner.

§ 128-57 Enforcement; penalties for offenses.

[Amended 3-6-2012 by L.L. No. 26-2012, effective 3-13-2012]

A.

It shall be the responsibility of the Commissioner, in consultation with the Town Attorney, to enforce the provisions of this article and all rules and regulations promulgated hereunder. Such enforcement shall be by such legal or equitable proceedings, including without limitation damages or for injunction or specific performance, brought in the name of the Town of Hempstead, as may be provided or authorized by law.

B.

Any person who violates any of the provisions of or who fails to perform any duty imposed by this article or any rule or regulations promulgated pursuant thereto or any final determination or order of the Commissioner or Town Board made pursuant to this chapter shall be liable for a civil penalty not to exceed \$1,500 for a first offense. For a second violation occurring within three years of the first, a penalty not to exceed \$2,000 will be assessed. A third violation occurring within five years of the first will call for a revocation of all licenses and permits issued pursuant to this chapter. In the case of any violation established hereunder, in addition to any civil penalty imposed, or in lieu of the revocation of the license of the violator, the Commissioner may impose reasonable conditions upon the license held by the violator in order to aid in enforcement of this article or to address any special circumstances recognized in connection with the violation.

C.

Proceedings to establish violations of this article in which license revocation is not authorized shall be held before the Commissioner or his/her designee. Proceedings to establish violations of this article that may result in the revocation of the license of the person charged shall be held in accordance with the hearing procedures set forth in § 128-83 of this chapter.

D.

In all proceedings to enforce the provisions of this article, there shall be rebuttable evidentiary presumptions that:

(1)

The placement of a solid waste container that is marked or identified with the name of any person holding or required to hold a license for the collection of solid waste pursuant to this chapter at any location within the Town shall be presumptive evidence that such person is providing solid waste collection service at said location.

(2)

Evidence of solid waste in a container located in the Town as described in Subsection D(1) above, and subsequent observation of the same container empty, shall be presumptive evidence that solid waste was collected from the container by the person whose name is marked on the container.

(3)

The failure to deliver solid waste to a Town Solid Waste Management Facility within three days of the collection of such solid waste from any location within the Town shall be presumptive evidence of a violation of § 128-52D of this article.

E.

In all proceedings to enforce the provisions of this article, the person accused shall have the right to be represented by counsel. Witnesses shall be examined under oath and subject to cross-examination. A stenographic record shall be kept. Evidence submitted shall be relevant and may include evidence as to the past performance of the license holder. Hearsay evidence shall be admissible, but shall be accorded such weight as the presiding officer deems appropriate, consistent with its reliability. Findings of fact shall be made by the presiding officer, in writing, upon a preponderance of the evidence.

§ 128-58 Publication of regulations.

Regulations, pursuant to this chapter, shall be promulgated in accordance with the procedures set forth in this section. The Commissioner shall:

A.

Publish notice of the proposed regulations in at least one newspaper of general circulation.

B.

Allow a thirty-day period to receive comments on such proposed regulations and an additional five days to review such comments before publishing a final notice of such regulations.

C.

Prior to the effective date of such regulations, submit to the Town Clerk final notice of such regulations with comments filed pursuant to this section, findings relating to material substantive elements in such comments and a justification for the necessity of such regulations.

§ 128-59 Effect on other provisions.

[Amended 3-6-2012 by L.L. No. 26-2012, effective 3-13-2012]

Pursuant to Chapter 797 of the Laws of 1985 of the State of New York, this article takes precedence over and shall supersede any inconsistent provisions of any local law enacted by the Town or any municipality within the Town.

§ 128-60 Severability.

If any provision of this Article or the rules and regulations promulgated hereunder or any directive, order or instruction given by anyone authorized to enforce this Article shall be adjudged to be invalid by any court of competent jurisdiction, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the particular provision, rule or regulation involved.

§ 128-61 Accumulation of garbage, litter, refuse, rubbish or rubble; height of lawns, weeds or brush.

[Amended 6-19-2007 by L.L. No. 62-2007, effective 7-18-2007; 5-5-2009 by L.L. No. 43-2009, effective 5-15-2009]

A.

It shall be unlawful for any owner, agent of such owner, and/or any person, firm or corporation in possession of any improved real property within the Town to permit:

(1)

Lawns, weeds, grass or brush of any kind to obtain a height in excess of eight inches.

(2)

Garbage, litter, refuse, rubbish or rubble to accumulate thereon.

(3)

Planting, growing and/or maintaining of bamboo, whether originating on said property or encroaching thereon from any neighboring property. The term "bamboo" shall be defined as any tropical or semi-tropical grass of the genera Bambusa, Dendrocalamus or of any other related genera.

[Added 7-10-2012 by L.L. No. 55-2012, effective 7-25-2012]

B.

It shall be unlawful for any owner, agent of such owner, and/or any person, firm or corporation in possession of any vacant unimproved real property within the Town to permit:

(1)

Lawns, weeds, grass or brush of any kind to obtain a height in excess of eight inches.

(2)

Garbage, litter, refuse, rubbish or rubble to accumulate thereon.

(3)

Planting, growing and/or maintaining of bamboo in or upon the ground, whether originating on said property or encroaching thereon from any neighboring property. The term "bamboo" shall be defined as any tropical or semi-tropical grass of the genera Bambusa, Dendrocalamus or of any other related genera.

[Added 7-10-2012 by L.L. No. 55-2012, effective 7-25-2012]

§ 128-62 Notice of violation.

[Amended 6-19-2007 by L.L. No. 62-2007, effective 7-18-2007; 5-5-2009 by L.L. No. 43-2009, effective 5-15-2009]

The Sanitation Department of the Town of Hempstead is hereby authorized and empowered to notify the owner or agent, as indicated on the tax records maintained by the Town of Hempstead Receiver of Taxes, and/or person in control of any property found not to be in conformance with the provisions of § 128-61 of said violation. Service of a copy of the notice of violation shall be served upon such owner, agent of such owner and/or any person, firm or corporation lawfully occupying or controlling said property by personal service or by certified mail, postage paid, return receipt requested, and addressed to such person's last known address as indicated on the tax records maintained by the Town of Hempstead Receiver of Taxes; and, if by certified mail, a copy of the notice shall be posted on the premises.

§ 128-63 Compliance with notice.

[Amended 6-19-2007 by L.L. No. 62-2007, effective 7-18-2007; 5-5-2009 by L.L. No. 43-2009, effective 5-15-2009]

The person served with a notice of violation shall be permitted five days from such service to eliminate the accumulation of garbage, litter, refuse, rubbish or rubble, and/or excessive height of lawns, weeds, grass or brush of any kind.

A.

Action upon noncompliance. Upon the failure, neglect or refusal of any owner or agent so notified to properly cure the violation, which may be dangerous to the public health, safety or welfare, within five days after receipt of written notice provided for in § 128-62 above, or within two days after the date of such notice in the event the same is returned to the Sanitation Department because of its inability to make delivery thereof, provided the same was properly addressed to the last known address of such owner or agent, as indicated on the tax records maintained by the Town of Hempstead Receiver of Taxes, the Sanitation Department is hereby authorized and empowered to dispose of such garbage, litter, refuse, rubbish or rubble or to enter and cut and clear the excessive weeds, grass or brush and dispose of same.

B.

Charge included in tax bill. When the Town has effected the cutting, trimming or removal of the offending grass, weeds or brush or has removed the garbage, litter, refuse, rubbish or rubble accumulated upon the property, the actual cost thereof, plus accrued interest at the rate of 6% per annum from the date of the completion of the work, if not paid by such owner prior thereto, shall be charged to the owner of such property on the next regular tax bill forwarded to such owner by the Town, and said charge shall be due and payable by said owner at the time of payment of such bill.

C.

Filed statement constitutes lien. The Sanitation Department shall cause to be filed in the office of the Town Clerk a sworn statement showing the cost and expense incurred for the work, the date the work was done and the location of the property, by school district, section, lot and block, on which said work was done, and the name of the reputed owner thereof. The filing of such sworn statement shall constitute a lien on the property, and shall remain in full force and effect for the amount due in principal and interest, plus costs of court, if any, for collection, until final payment has been made. Thereafter, a notice shall be sent to the owner, as appears on the tax records maintained by the Town of Hempstead Receiver of Taxes, demanding payment within 20 days after receipt of notice. If payment is not received, then said costs and expenses shall be collected in the manner fixed by law for the collection of taxes and, further, shall be subject to a delinquent penalty of 6% in the event same is not paid in full on or before the date the tax bill upon which said charge appears becomes delinquent. Sworn statements filed in accordance with the provisions hereof shall be prima facie evidence that all legal formalities have been complied with and that the work has been done properly and satisfactorily, and shall be full notice to every person concerned that the amount of the statement, plus interest, constitutes a

charge against the property designated or described in the statement, and that the same is due and collectible as provided by law.

§ 128-64 Enforcement.

The Commissioner of the Department of Sanitation and his duly appointed representatives shall be responsible for the enforcement of this article.

§ 128-65 Penalties for offenses.

A.
Any person committing an offense against any of the provisions of this article shall be guilty of a violation punishable by a fine of not more than \$500 or by imprisonment for not more than 15 days, or by both such fine and imprisonment.

[Amended 5-10-2005 by L.L. No. 45-2005, effective 5-31-2005]

B.
Each day's continued offense against this article shall constitute a separate additional offense.

§ 128-66 Policy.

A.
The Town of Hempstead declares that the reduction of the amount of solid waste and the conservation of recyclable materials are important public concerns.

B.
It is the policy of the Town Board to reduce the amount of solid waste generated, to reuse material for the purpose for which it was originally intended or recycle material that cannot be reused, to recover energy from solid waste that cannot be economically or technically be reused or recycled and to ensure that only treatable solid waste is delivered to the Town of Hempstead waste-to-energy facility. The separation and collection of newspaper, glass, cans, plastic containers, yard waste and other materials for recycling from a residential premises and these materials, together with office paper and cardboard from commercial, industrial and institutional establishments in the Town, will protect and enhance the Town's physical and visual environment as well as promote the health, safety and well-being of persons and property within the Town.

C.
By adoption of this chapter, the Town ensures conformance with the New York State Solid Waste Management Act of 1988^[1] and facilitates the development and implementation of a solid waste management plan for the Town. The promotion and use of recyclable materials, goods produced from recyclable materials and goods which facilitate recycling will further serve the same purpose by encouraging and facilitating recycling.

[1]:

Editor's Note: See Environmental Conservation Law, § 27-0106 et seq.

§ 128-67 Findings.

The Town of Hempstead finds that:

A.
The Town of Hempstead is the accepted planning unit for the development of a Solid Waste Management Plan (SWMP) and a Comprehensive Recycling Analysis (CRA) required by the New York State Department of Environmental Conservation in connection with permits to accept solid waste at the Hempstead Resource Recovery Facility (HRRF) or a Town solid waste transfer station.

B.

The Town has identified residential, multiresidential complexes and commercial recyclables to be separated from the waste stream. Independent sanitary districts and incorporated villages which are part of the Town SWMP and CRA should adopt recycling laws and/or practices compatible with the Town regulations set forth in this Article.

C.

Based on existing markets for alternate uses, the Town has identified newspapers, glass bottles and jars, metal food and beverage containers, plastic food and household products, high-density polyethylenes and polyethylene terephthalate containers, yard waste, metal objects and construction and demolition debris as reusable or recyclable products that must be separated from all Town solid waste. Cardboard and office paper have been additionally identified for commercial recycling.

D.

Independent sanitary districts and incorporated villages located within the geographical boundaries of the Town should adopt or implement similar laws or regulations to comply with this Article and New York State Law.

E.

All provisions of this Article or regulations hereunder shall be consistent with standards established pursuant to the New York State Environmental Conservation Law.

F.

The Town will accept and market all recyclables material, except yard waste and construction and demolition debris from independent sanitary districts and incorporated villages upon the execution of an intermunicipal agreement between the Town of Hempstead and the governing body of each entity.

G.

Commercial establishments who elect not to participate in a curbside recycling collection program in Town Solid Waste Collection Districts Nos. 3, 4 and 5 must collect and market their own recyclables.

H.

By enacting this Article VI, the Town Board confers upon the Commissioner the power to adopt regulations which will implement this Article and any municipal recycling agreement to further the goals of this Article and to determine, from time to time, when economic markets for alternate use for materials hereunder identified and other recyclable products exist.

§ 128-68 Definitions.

As used in this Article, the following words or phrases shall have the meanings annexed to each:

BULKY WASTE

Furniture (other than metal), mattresses, carpeting, heavy lumber, logs in excess of six inches in diameter weighing less than 75 pounds and measuring less than four feet in length and similar burnables. Tires and car batteries are excluded from collection.

CANS

Containers comprised of aluminum, tin, steel or a combination thereof which contain or formerly contained only food and/or beverage substances.

CARDBOARD

All corrugated cardboard normally used for packing, mailing, shipping or containerizing goods, merchandise or other material, but shall not mean wax-coated or soiled cardboard.

CONSTRUCTION AND DEMOLITION DEBRIS

Bricks, concrete and other masonry materials, soil, rock, wood, wall coverings, plaster, drywall, plumbing fixtures, nonasbestos insulation, roofing shingles, asphaltic pavement, glass mirrors, windows, housewares, etc., electric wiring and components and metal that is incidental to any of the above.

ECONOMIC MARKETS FOR ALTERNATE USES

Those markets that exist when the full avoided costs of proper collection, transportation and disposal of source-separated materials are equal to or greater than the costs of collection, transportation and sale of said materials less the amount received from the sale of said materials.

GLASS

Includes all clear (flint), green and brown (amber) colored glass containers.

METAL RECYCLABLES

Includes but are not limited to major appliances, steel file cabinets, hot-water heaters, water storage tanks, steel doors and windows, water softeners, oil storage tanks, lawnmowers, snowblowers, bicycles, metal bedsprings, furnaces, metal furniture and small metal appliances, tools and utensils. Propane tanks are excluded from "metal recyclables" as defined herein.

MULTIRESIDENTIAL COMPLEX

Four or more residential units located on a single property or continuous properties under common ownership, control or management. For this purpose, "residential unit" shall mean an enclosed space consisting of one or more rooms designed for use as a separate residence, and shall include, but not be limited to, an apartment, condominium unit, townhouse cooperative unit, mobile home, living unit in a group home and room or set of rooms in a boardinghouse, but shall not include rooms within a single-family residence, motel or hotel.

NEWSPAPER

Includes newsprint and all newspapers and newspaper advertisements, supplements, comics and enclosures.

OFFICE PAPER

All high-grade office paper, fine paper, bond paper, xerographic paper, mimeo paper, duplication paper, school paper, junk mail, computer paper, but shall not mean newspaper, was paper, plastic- or foil-coated paper, styrofoam wax-coated food and beverage containers, carbon paper, blueprint paper, food-contaminated paper, soiled paper and cardboard.

PLASTIC CONTAINERS

Containers composed of high-density polyethylenes, polyethylene terephthalate or other specific plastics as the Commissioner may designate which contain or formerly contained only food and/or beverage and/or household substances.

RECYCLABLE MATERIAL

Includes newspapers, glass bottles and jars, metal food and beverage cans, plastic food and household product containers made from high-density polyethylenes or polyethylene terephthalate plastics, yard waste, metal recyclables, construction and demolition debris and shall further include office paper and cardboard generated from a commercial establishment. In addition to these materials, the Commissioner may determine a material to be recyclable for which there are economic markets for alternate uses.

RECYCLING CENTER

Any facility designated and operated solely for the receiving and storing of source- or post-separated designated recyclable materials.

SOURCE-SEPARATE

To separate recyclable materials from the solid waste stream at the point of waste generation.

TOWN SOLID WASTE COLLECTION DISTRICTS

Solid Waste Collection Districts Nos. 3, 4 and 5 located within the unincorporated areas of the Town of Hempstead.

YARD WASTE

Grass clippings, leaves, bundles of twigs or branches, brush, tree trunks, logs, stumps, all up to six inches in diameter, natural holiday trees and wreaths and other general tree and yard or garden waste.

§ 128-69 Supervision and regulation in certain districts.

A.

The Commissioner shall be solely responsible for the supervision and regulation of the collection of recyclable materials generated or located within Town Solid Waste Collection Districts Nos. 3, 4 and 5 and establish from time to time, such regulations as may be necessary.

B.

The Commissioner shall act pursuant to the standards established in this Article.

§ 128-70 Residential recycling.

A.

There shall be mandatory source separation of newspapers, glass bottles and jars and metal food and beverage cans, plastic food and household product containers made from high-density polyethylenes or polyethylene terephthalate plastics, yard wastes, metal recyclables and construction and demolition debris.

B.

Methods of collection:

(1)

The Department of Sanitation shall provide recycling containers to each household located within a Town solid waste collection district.

(2)

It shall be the responsibility of all residents to separate recyclables from all residential solid waste and place them out for collection in accordance with the following procedures:

(a)

Prior to placement for collection and removal, glass, metal and plastic containers shall be cleaned, contents removed therefrom and caps removed and discarded.

(b)

Glass, metal and plastic containers shall only be placed in the recycling container provided.

(c)

Newspapers shall be either tied with string or placed in a paper bag and set at the curb beside the recycling container.

(d)

Metal recyclables other than can containers shall be separated from residential solid waste. An appointment for a special pickup date shall be arranged with the Department of Sanitation when a considerable amount of material has been separated. Propane tanks will not be acceptable for collection.

(e)

Construction and demolition debris will be collected by special collection through a special pickup arranged with the Department of Sanitation.

(f)

Yard waste must be separated from residential waste and placed at the curb for collection on the yard waste only collection day established by the Department of Sanitation. Residents are permitted to leave grass clippings on the lawn. Commercial landscape gardeners must remove the products of their work from the premises if not left on the lawn for recycling.

(3)

The Commissioner is empowered to designate the day of the week or scheduled date on which recyclables shall be collected.

§ 128-71_Multiresidential complex recycling.

In addition to the regulations for recycling at residential premises, the following regulations shall also apply to multiresidential complexes:

A.

The Department of Sanitation shall survey each multiresidential complex and determine the best method of storage, collection and removal of recyclables.

B.

The Commissioner shall be empowered to declare that because of size, configuration or physical layout, a central storage area for collection must be established at a location approved by the Commissioner.

C.

The Commissioner may direct that large appropriately colored plastic containers or commercial-type containers be used for the storage and collection of recyclables. These containers will be supplied by the owner and must be compatible with Department collection equipment.

D.

Curbside collection will be required unless otherwise approved by the Commissioner.

E.

The Commissioner is empowered to designate the day of the week or scheduled date on which recyclables shall be collected.

§ 128-72_Mandatory commercial, industrial and institutional recycling.

A.

In addition to those materials required to be recycled in residential and multiresidential complexes, including newspapers, glass, cans, plastic containers, yard waste, metal and construction and demolition debris, commercial establishments shall additionally be required to recycle cardboard and office paper where there exist economic markets for alternate uses for cardboard and office paper.

B.

A commercial establishment may, upon written application to the Commissioner, request relief from the requirements of Subsection A above. Upon receipt of such application, the Commissioner shall conduct a survey of such commercial establishment to determine if there is sufficient generation to warrant recycling of all identified recyclable materials and/or economic markets for alternate uses. If there is insufficient generation and/or insufficient economic market for alternate uses of a particular recyclable material, the Commissioner may issue an exemption.

C.

Arrangements for collection of newspaper, glass, cans and plastic containers shall be made either with the Department of Sanitation in accordance with Subsections D and E below or a private recycler in accordance with Subsection G.

D.

The Commissioner is empowered to designate the day of the week or scheduled date on which recyclables shall be collected by the Department of Sanitation.

E.

The Commissioner may direct that large appropriately colored plastic containers be utilized for curbside collection of newspaper, glass, cans and plastic containers by the Department of Sanitation.

F.

The arrangement for collection of office paper and cardboard shall be the responsibility of the person who owns, manages or operates the commercial, industrial or institutional establishment at which these materials are generated (the "generator") or the person contractually obligated to the generator to arrange for collection and disposal of its solid waste. Said arrangements may include, without limitation, direct marketing of office paper and cardboard, recycling contracts with permitted solid waste collector/haulers for separate collection, contracts with other persons for separate collection of any or all office paper and cardboard recyclables or direct delivery to a recycling center.

G.

Generators of recyclable material who use private carters or recyclers for collection and marketing of recyclable materials must be provided with sufficient containers by such private carters or recyclers to meet the requirements of this Article.

H.

Commercial establishments shall provide written reports on a monthly basis to the Commissioner containing the following information: the identity of the recycler; the types of materials being recycled; the quantities of the various materials recycled; and the markets for the various materials, in order to provide updates and essential information to the Town Solid Waste Management Plan.

§ 128-73 Use of yard waste.

Nothing in this Article shall be construed as preventing any person from utilizing yard waste for compost, mulch or other agricultural, horticultural, gardening or landscaping purposes.

§ 128-74 Recycling collection permit application; duration of permit; renewal.

A.

A recycling collection permit application shall be made to the Department of Sanitation, in writing, on the form prescribed by the Commissioner, which shall contain the following information:

(1)

The name and address of the applicant; specifying, in the case of any unincorporated association, the names and addresses of each member thereof, and, in the case of any corporation, the names and addresses of each officer and director thereof.

(2)

If the applicant conducts business under a trade name or if the applicant is a partnership, the application for a license must be accompanied by a copy of the trade name or partnership certification duly certified by the Clerk of the county in whose office the certificate was filed.

(3)

The age and citizenship of the applicant and each member thereof, if an unincorporated association, and each officer and director thereof if a corporation.

(4)

The experience of the applicant and each member thereof, if an unincorporated association, and each director and officer thereof, if a corporation, in the business of collection and disposal of refuse and similar material.

(5)

The number of recyclable collection vehicles to be operated by the applicant and a description of each such vehicle, including the ownership of the vehicle, the make, year, model of chassis and body type, the cubic capacity or tare weight and color of vehicle, the current New York State registration number and the community or communities in which the vehicle will operate.

(6)

The location of any and all terminals proposed to be used by the applicant for the storage of licensed vehicles and recyclables.

(7)

The applicant's proposed pickup schedule for buildings to be serviced in the Town. Within 30 days of any changes in the pickup schedule, the same shall be reported, in writing, to the Commissioner.

(8)

The name, address and telephone number, both day and night, of the applicant or the person in charge of the business.

(9)

A listing of the present customers serviced.

(10)

The hours and days each vehicle will operate within the Town.

B.

The Commissioner reserves the right to request additional information on the application for a permit which may be reasonable and necessary to properly process the permit application.

C.

The Commissioner shall examine said application for compliance with provisions of this Article. The Commissioner shall act to approve or deny the application and shall notify the applicant, in writing, of the permit application decision.

D.

A recycling collection permit shall be valid for a period of one year and renewable on an annual basis.

§ 128-75 Recycling center permit; duration; renewal.

A.

Application.

(1)

An application for recycling center permit shall be made in writing, on the form prescribed by the Commissioner.

(2)

The application shall contain all relevant information described and required for a permit for the collection of recyclables as stated in § 128-74.

(3)

No permit shall be granted unless the applicant provides a valid transfer station operating permit issued by the New York State Department of Environmental Conservation for the proposed site and further provides evidence that all applicable building zone ordinances and Building Code requirements of the Town of Hempstead have been satisfied.

B.

A recycling center permit shall be valid for a period of one year and renewable on an annual basis.

§ 128-76 Construction and demolition debris processing permit; duration; renewal.

A.

A permit application for a construction and demolition debris processing permit shall be in writing on the form prescribed by the Commissioner.

B.

The permit application shall contain all relevant information described and required for a permit for the collection of recyclables as stated in § 128-74.

C.

No permit shall be issued unless the applicant provides a valid construction and demolition facility operating permit issued by the New York State Department of Environmental Conservation for the proposed site and further provides evidence that all applicable building zone ordinances and Building Code requirements of the Town of Hempstead have been satisfied.

D.

The granting of a permit shall require the applicant to provide the Commissioner written reports on a monthly basis containing the following information:

(1)

Gross tons of construction and demolition debris received from Town locations; and

(2)

Gross tons of the various recyclables removed from the construction and demolition delivered from Town locations, including but not limited to concrete, asphalt, wood, paper and metals.

E.

A construction and demolition debris processing permit shall be valid for one year and renewable on an annual basis.

§ 128-77 Report of recyclables collected.

Upon the granting of a permit for the collection of recyclables, the person to whom such permit has been granted shall provide to the Commissioner written reports on a monthly basis containing the following information:

A.

Gross tons of recyclables, by type collected.

B.

Locations of all commercial stops serviced during the particular month of each commodity recycled.

C.

Disposal location for recyclables collected.

§ 128-78_Report by independent sanitary districts and incorporated villages.

Independent sanitary districts and incorporated villages which dispose of solid waste at the Town of Hempstead solid waste management facility in accordance with this chapter shall provide monthly written reports to the Commissioner on the quantities of the various recyclables collected and marketed by all municipal and private carters and recyclers under their jurisdiction.

§ 128-79_(Reserved) ^[1]

[1]:

Editor's Note: Former § 128-79, Exemption for recyclable material, as amended, was repealed 3-6-2012 by L.L. No. 26-2012, effective 3-13-2012.

§ 128-80_Fees; additional license required.

A.

For each application for a permit for collection of recyclables pursuant to § 128-74, the fee shall be \$50. Such fee shall be nonrefundable.

B.

For each application for a permit for a recycling center pursuant to § 128-75, the fee shall be \$100. Such fee shall be nonrefundable.

C.

For each application for a permit for construction and demolition debris processing pursuant to § 128-76, the fee shall be \$100. Such fee shall be nonrefundable.

D.

For any vehicle used in connection with a permit issued pursuant to §§ 128-74 and 128-75, the fee for each vehicle shall be \$100.

E.

There shall be a fee of \$50 for each vehicle used in connection with a permit issued pursuant to §§ 128-74 and 128-75 upon the renewal of such a permit.

F.

There shall be a fee of \$10 for each substitution of vehicle used in connection with a permit issued pursuant to §§ 128-74 and 128-75.

G.

There shall be a fee of \$25 for the processing of a lost permit.

H.

Any vehicle licensed for the collection of solid waste in the Town of Hempstead shall require a separate and additional license if additionally utilized for the collection of recyclables.

§ 128-81_Unlawful activities.

It shall be unlawful for:

A.

Any person, other than those authorized in a Town solid waste collection district, incorporated village or independent sanitary district, to collect any recyclable materials without first obtaining a recycling collection permit pursuant to § 128-74.

B.

Any person to operate a recycling center for the separation of Town waste without first obtaining a recycling center permit pursuant to § 128-75.

C.

Any person to operate a construction and demolition debris processing facility without first obtaining a construction and demolition debris processing permit pursuant to § 128-76.

D.

Any person to violate or to cause or assist in the violation of any provision of this Article or any implementing rule or regulation promulgated by the Commissioner.

E.

Any person to hinder, obstruct, prevent or interfere with the Department employees or any other authorized persons in the performance of any duty under this Article or in the enforcement of this Article.

F.

Any person to collect solid waste from a residential premises and dispose of solid waste which consists of recyclable materials combined with other forms of solid waste.

G.

Any person to place recyclable material in a container that is destined for collection as acceptable solid waste for delivery to a Town solid waste management facility.

H.

Any person to place any materials that are unacceptable for treatment at a waste-to-energy facility into a container that contains acceptable solid waste and is destined for processing at said facility. This includes, but is not limited, to metals, construction and demolition debris, tires, bulky waste, medical waste and hazardous waste.

§ 128-82_Suspension and revocation of permits; notice.

A.

The Commissioner shall have the authority to suspend or revoke any permit issued under this Article in the following instances:

(1)

Where the Commissioner determines that there has been any false statement or material misrepresentation contained in any part of the application upon which the permit was based;

(2)

Where the holder of a permit is insolvent or has made a general assignment for the benefit of creditors or has been adjudged a bankrupt or a money judgment has been secured against him upon which an execution has been returned wholly or partly unsatisfied;

(3)

Where the Commissioner determines that the permit was issued in error and should not have been issued in accordance with the requirements of this Article and/or other applicable law; or

(4)

Where the holder of a permit has violated any provision of this article.

B.

A permit suspended by the Commissioner may remain suspended for such period of time that the Commissioner deems reasonable up to and including 90 days. During the period that the permit is suspended, the holder thereof shall cease and desist from all activities permitted under the permit.

C.

A written notice of suspension and a written notice of revocation of a permit shall be served upon the holder of the permit. Said notice shall be served personally or by certified mail, return receipt requested, addressed to such person's last-known address; and if by certified mail, a copy of the notice shall be posted on the permit holder's premises as stated in the permit application.

§ 128-83_Review Board; hearings.

A.

There hereby is constituted a Review Board, which shall consist of the senior ranking Deputy Commissioner of the Department of Sanitation, the Commissioner of the Highway Department and the Town Clerk. The senior ranking Deputy Commissioner shall be Chairman of the Board. The Commissioner shall have the authority to appoint such Deputy Commissioner other than the Deputy Commissioner designated as a member of this Board or other representative from the Department of Sanitation to act in place of any Board member who may, from time to time, be unable or unavailable to perform the duties of Board member.

B.

The holder of any permit which has been suspended or revoked and any applicant who shall have been denied a permit under this article may apply for a review of the action of the Commissioner by the Review Board.

C.

The application for review shall be in writing, signed and acknowledged by the applicant, and shall state the ground or grounds on which the applicant claims that the determination of the Commissioner was erroneous.

D.

Said application shall be filed with the Review Board by the applicant within 20 days after notice of denial of the application or suspension or revocation of the permit by the Commissioner.

E.

Upon the filing of the application, a hearing shall be held pursuant to the provisions hereof.

F.

The Chairman shall give notice thereof stating the name and address of the applicant or permit holder concerned, the subject matter of the hearing and the date, place and time thereof designated therefor, by mailing a copy thereof to the applicant or permit holder concerned at the address shown upon the most recent application of such applicant or licensee, at least 10 days prior to said hearing.

G.

At the hearing, as hereinafter provided, the Review Board shall consider the applicant's application upon the record before the Commissioner in connection with the Commissioner's consideration therefor and, in its discretion, may receive new or additional evidence in support thereof or in opposition thereto.

H.
The applicant or permit holder involved shall be entitled to be represented by legal counsel and to present such competent and material testimony or other evidence in its own behalf as may be relevant to the subject matter of the hearing.

I.
All witnesses shall be sworn and examined under oath.

J.
The Review Board, after the hearing, may affirm the action of the Commissioner or direct the Commissioner to issue a proper permit pursuant to this article.

§ 128-84 Penalties for offenses.

A.
Notice of violation.

[Amended 5-10-2005 by L.L. No. 45-2005, effective 5-31-2005]

(1)
For a first offense against any provision of this article, except § 128-79 or 128-81A, B or C, the Commissioner shall cause to be served a written notice of violation upon the person determined to be in violation and/or the owner, occupant or person having control of the premises upon which the violation exists to comply with the provisions of this article. Such person and/or owner, occupant or person having control of the premises shall have 15 days from the date of the written notice of violation to comply with the provisions of this article.

(2)
The written notice of violation shall be by personal service or by certified mail, postage paid, return receipt requested, and addressed to such person's last-known address; and, if by certified mail, a copy of the notice shall be posted on the premises.

B.
For a second offense against any provision of this article, except § 128-79 or 128-81A, B or C, a civil penalty of \$100 shall be imposed, and/or the Town of Hempstead or any other authorized person collecting solid waste generated within this Town may refuse to collect solid waste from any person who has clearly failed to separate recyclable materials designated under § 128-70, 128-71 or 128-72, and the Town may refuse to accept solid waste containing recyclable material designated under an applicable section of this article at any solid waste disposal facility owned or operated by the Town.

[Amended 5-10-2005 by L.L. No. 45-2005, effective 5-31-2005]

C.
For a third offense and any additional offenses committed thereafter against any provision of this article, except for § 128-79 or 128-81A, B or C, a civil penalty of \$250 shall be imposed for each offense, and/or the Town of Hempstead or any other person collecting solid waste generated within this Town may refuse to collect solid waste from any person who has clearly failed to separate recyclable material designated under § 128-70, 128-71 or 128-72, and the Town may refuse to accept solid waste containing recycling materials designated under an applicable section of this article at any solid waste disposal facility owned or operated by the Town.

[Amended 5-10-2005 by L.L. No. 45-2005, effective 5-31-2005]

D.

For a first offense committed against § 128-79 or 128-81A, a civil penalty of \$500 shall be imposed.

[Amended 5-10-2005 by L.L. No. 45-2005, effective 5-31-2005]

E.

For a second offense and any additional offenses committed against § 128-79 or 128-81A, a civil penalty of \$1,000 shall be imposed.

[Amended 5-10-2005 by L.L. No. 45-2005, effective 5-31-2005]

F.

For a first offense committed against § 128-81B or C, a civil penalty of \$5,000 shall be imposed.

[Amended 5-10-2005 by L.L. No. 45-2005, effective 5-31-2005]

G.

For a second offense and any additional offense committed thereafter against § 128-81B or C, a civil penalty of \$10,000 shall be imposed.

[Amended 5-10-2005 by L.L. No. 45-2005, effective 5-31-2005]

H.

Each day of continued violation shall constitute a separate additional offense.

I.

A civil penalty shall be served in the same manner as a notice of violation.

J.

In addition to the penalties stated herein, any holder of a permit pursuant to § 128-74, 128-75 or 128-76, may be subject to permit suspension or revocation pursuant to § 128-82.

K.

In addition to the penalties provided herein, the Town of Hempstead may commence an action or proceeding, including but not limited to the initiation of an injunctive action in a court of competent jurisdiction to compel compliance with the provisions of this article.

§ 128-85 Severability.

If any clause, sentence, paragraph, subdivision, section or part of this article is adjudged invalid by a court of competent jurisdiction, the judgment shall not affect, impair or invalidate the remainder of this article but shall be confined in its operation to the clause, sentence, paragraph, section or part of this article that shall be directly involved in the controversy in which such judgment shall have been rendered.