

## **Chapter 177. SOLID WASTE MANAGEMENT**

**[HISTORY: Adopted by the Town Board of the Town of Smithtown 12-3-1991 as L.L. No. 11-1991. *Editor's Note: This local law superseded former Ch. 177, Garbage, Rubbish and Refuse, as amended, adopted as follows: Part 1, 12-22-1964; Part 2, 12-9-1986. Amendments noted where applicable.*]**

### **Article V. Recycling**

#### **GENERAL REFERENCES**

Recycling Committee — See Ch. [61](#).  
Cleanup of handbills — See Ch. [181](#).  
Junkyard and junk dealers — See Ch. [194](#).  
Property maintenance — See Ch. [221](#).  
Streets and sidewalks — See Ch. [245](#).  
Abandoned vehicles — See Ch. [293](#).  
Abandoned vessels — See Ch. [303](#).  
Water pollution — See Ch. [315](#).

### **Article I. General Provisions**

#### **§ 177-1. Title.**

This chapter shall be known as and may be cited as "Solid Waste Management Law of the Town of Smithtown."

#### **§ 177-2. Intent and purpose.**

It is hereby found that in the exercise of sound management and the supervision and control over the storage, collection, transportation, processing and disposal of solid wastes, the Town of Smithtown is exercising a central and proper governmental function in accordance with the express policy of the State of New York and that the powers and duties enumerated herein constitute proper Town purposes to benefit the health, safety and general welfare of the Town of Smithtown and its residents. Therefore, pursuant to the Town Law, General Municipal Law and the Municipal Home Rule Law of the State of New York for the purpose of providing on a townwide basis for the management, supervision and control of the collection, transportation, processing and disposal of all solid waste generated or existing within the Town of Smithtown, including without limitation the power to require the segregation of wastes and to require the delivery of solid waste to such solid waste management facility as may be designated by the Town Board from time to time, the Town Board of the Town of Smithtown does hereby adopt this chapter to promote the health, safety and general welfare of the Town of Smithtown.

#### **§ 177-3. Applicability.**

The provisions of this chapter shall apply to residential and commercial solid waste and the collection thereof. In the event that any conflict between the provisions of this chapter and a contract by and between a carter and the Town of Smithtown exists, the conflicting provision of the contract shall prevail.

## § 177-4. Definitions.

[Amended 12-9-1991 by L.L. No. 12-1991; 12-21-1993 by L.L.No. 11-1993; 1-10-1995 by L.L. No. 1-1995]

As used in this chapter, the following terms shall have the meanings indicated:

### **ACCEPTABLE WASTE**

Only solid waste acceptable at specific Town-designated facilities, including but not limited to garbage, trash, rubbish, refuse, construction and demolition materials and yard waste that are normally disposed of by and collected from residential, commercial, industrial, governmental or community facilities or institutional establishments, except that "acceptable wastes" shall not include unacceptable waste and recyclables.

### **ASHES**

The combustion residue from the burning of combustible substances, such as wood, coal, ash and papers, as well as refuse from fires to structures and glass, crockery, sweepings, dust, brick, metal and other inorganic material.

### **BULK ITEMS**

Nonputrescible items and materials, which include large items of building rubble and tree stumps not exceeding 40 pounds in weight, but not including household bulk items.

### **CLEAN FILL**

Material consisting of concrete, steel, wood, sand, dirt, soil, glass, construction and demolition debris and other recognizable inert material.

### **COLLECT**

To pick up, collect, remove, load or otherwise perform the collection of solid waste, acceptable wastes, unacceptable wastes or hazardous waste. The picking up, collection, removal, loading or transporting upon or across roads within the Town of Smithtown of solid wastes, acceptable wastes, unacceptable wastes or hazardous wastes shall constitute prima facie evidence of operating, engaging in, conducting or causing the operation of or engaging in the business of or a business engaged in the collection or disposal of solid waste.

### **COMMUNITY FACILITY**

Includes but is not limited to airports, heliports, bus passenger shelters, cemeteries, churches or similar places of worship, parish houses or convents, day camps, day-care centers, golf courses, country clubs, hospitals, nursing homes, convalescent homes or rest homes, horsemanship schools, stables for the boarding, sale and/or training of horses, membership clubs, nursery schools, parks, playgrounds or recreational areas or facilities operated by a municipality, public libraries, museums, public passenger transportation stations or terminals, public utility facilities, schools of whatever kind or nature which are accredited by the New York State Education Department and swimming or boating clubs.

### **CONSTRUCTION AND DEMOLITION (C & D) DEBRIS**

Uncontaminated solid waste resulting from the construction, remodeling, repair and demolition of utilities, structures and roads and uncontaminated solid waste resulting from land clearing. Such waste includes but is not limited to bricks, concrete and other masonry materials, soil, rock, wood (including painted, treated and coated wood and wood products), land clearing debris, wall coverings, plaster, drywall, plumbing fixtures, nonasbestos insulation, roofing shingles and other roof coverings, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes, empty buckets 10 gallons or less in size and having no more than one inch of residue remaining on the bottom, electrical wiring and components containing no hazardous liquids and pipe and metals that are incidental to any of the above. Solid waste that is not "C & D

debris" (even if resulting from the construction, remodeling, repair and demolition of utilities, structures and roads and land clearing) includes but is not limited to asbestos waste, garbage, corrugated container board, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, fluorescent lights, carpeting, furniture, appliances, tires, drums, containers greater than 10 gallons in size, any containers having more than one inch of residue remaining on the bottom and fuel tanks. Specifically excluded from the definition of "construction and demolition debris" is solid waste (including what otherwise would be "construction and demolition debris") resulting from any processing technique, other than that employed at a New York State Department of Environmental Conservation (NYSDEC) approved C & D debris processing facility, that renders individual waste components unrecognizable, such as pulverizing or shredding. Also, waste contained in an illegal disposal site may be considered "C & D debris" if the New York State Department of Environmental Conservation determines that such waste is similar in nature and content to "C & D debris."

### **COMPACTION FACTOR**

An empirical multiplier applied to those accounts serviced by mechanical compactor-type containers. The purpose of this factor is to equate the yards of compacted material to yards of noncompacted material. The compaction factor for loose and noncompacted material shall be as determined by the Town of Smithtown Solid Waste Coordinator.

**[Added 6-10-1997 by L.L. No. 3-1997]**

### **CONTAINER**

Any receptacle from which or in which solid waste is collected by commercial waste collectors. Such containers shall include but not be limited to front, side and rear load dumpsters, roll-off boxes, transfer trailers, compactors, refuse cubicles, garbage cans, barrels and trash bags.

**[Added 6-10-1997 by L.L. No. 3-1997]**

### **CONTAINER YARD**

One cubic yard of solid waste container capacity.

**[Added 6-10-1997 by L.L. No. 3-1997]**

### **DISPOSAL SERVICE UNIT (DSU)**

A unit equal to one container yard.

**[Added 6-10-1997 by L.L. No. 3-1997]**

### **DSU RATE (DSUR)**

That rate, per disposal service unit, utilized in calculating nonresidential disposal fees.

**[Added 6-10-1997 by L.L. No. 3-1997]**

### **DUMPSTER**

A solid waste storage or collection container which is designed to be emptied by tipping or lifting into a garbage truck or container by use of mechanical arms or pulleys on the truck or container.

### **EXPLOSIVES**

A chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustible units or other ingredients in such proportions, quantities or packing that an ignition by fire, by friction, by concussion, by percussion or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life, limb or property.

### **GARBAGE**

Putrescible solid waste which includes offal, filth, dead animals, refuse, animal or vegetable matter, wastepapers, household refuse or other waste incident to and resulting from the use, preparation, cooking and consumption of food.

#### **GRASS**

Green lawn clippings.

#### **HAZARDOUS WASTE**

Pathological, biological, septic, cesspool or other human wastes, human and animal remains, radioactive and toxic waste and other wastes which, according to any applicable law from time to time in effect, are defined or classified as hazardous or as requiring special handling in their collection, storage, treatment or disposal, including those described in 40 CFR 261.3 promulgated by the United States Environmental Protection Agency pursuant to the Resource Conservation Recovery Act of 1976, 90 Stat. 2806, 42 U.S.C. § 6901, such as, without limitation, cleaning fluids, crankcase oils, cutting oils, paints, acids, caustic poisons, drugs and refuse of similar nature.

#### **HIGH MANAGERIAL AGENT**

An individual or member of an unincorporated association or partnership or an officer of a corporation or any other agent, servant, employee, spouse, child or in-law in a position of comparable authority with respect to the formulation of a policy of the unincorporated association partnership or corporation or the supervisor in the managerial capacity of subordinate employees.

#### **HOUSEHOLD BULK ITEMS**

Nonputrescible items and materials which include household appliances, which are commonly found within the confines of a residential home, which include such items as but not limited to refrigerators, dishwashers, washing machines, dryers, compactors and hot-water heaters; furniture, such as but not limited to couches, chairs, love seats, tables, bookshelves; and rugs and carpeting. "Household bulk items" shall not be deemed to include material or debris generated as a result of household renovation or alteration projects, as well as radiators, windows, construction lumber or material.

#### **LIQUID WASTE**

The liquid and waste solids contained in subsurface sewerage disposal systems and appurtenances, waste, sludge generated at sewerage treatment plants, wastewater from laundry operations, industrial wastewater and material which requires a State Pollutant Discharge Elimination System (SPDES) permit.

#### **LITTER**

All solid waste which is deposited in any location other than a container or device used for the collection or storage of solid waste.

#### **LOW-DENSITY WASTE GENERATOR**

All commercial, industrial, institutional and multifamily operations or establishments which generate low-density solid waste as determined by the Solid Waste Coordinator of the Town of Smithtown.

**[Added 5-12-1998 by L.L. No. 4-1998]**

#### **MEDICAL WASTE**

Includes but is not limited to the following: hypodermic needles, intravenous tubing with or without the needles attached, syringes, test tubes, blood samples, pipettes, lances, scalpels, smears, blood gauze wraps, pathological waste, human blood, cultures, human body parts or tissues and/or any material defined as medical waste in the Federal Medical Waste Tracking Act of 1988.

#### **MINIMAL WASTE GENERATOR**

All commercial, industrial, institutional and multifamily operations or establishments that generate minimal amounts of solid waste as determined by the Solid Waste Coordinator of the Town of Smithtown, which waste is commonly disposed of utilizing containers such as plastic bags, bundles, boxes, paper bags, garbage pails or other means, excluding dumpsters or rolloff containers.

**[Added 5-12-1998 by L.L. No. 4-1998]**

#### **NEWSPAPER**

A publication made of newsprint but shall not be construed to mean magazines, periodicals or other paper products of any nature whatsoever.

#### **NONRESIDENTIAL**

All commercial, industrial, institutional and multifamily operations or establishments, whether totally or partially occupied, or any other use which results in the generation of solid waste or wherein commercial solid waste is being or is capable of being generated. This term shall exclude all dwellings as served by the Town of Smithtown's Residential Collection Districts.

**[Added 6-10-1997 by L.L. No. 3-1997]**

#### **ON-DEMAND SERVICE WASTE GENERATOR**

Irregular and infrequent collection service of commercial, industrial, institutional and multifamily operations or establishments as determined by the Town of Smithtown Solid Waste Coordinator.

**[Added 5-12-1998 by L.L. No. 4-1998]**

#### **OPERATOR**

Any individual, corporation, department, bureau or other entity duly authorized by the Town Board of the Town of Smithtown to manage, operate or run a designated solid waste management facility and who or which has the authority and knowledge to make and implement decisions regarding operating conditions at the facility.

#### **PERMANENT DUMPSTER OR ROLL-OFF**

Any dumpster or roll-off located pursuant to an approved site plan.

#### **PERSON**

Includes any person or corporation, including the officers, directors, stockholders and trustees thereof, copartnership, unincorporated associations or owner or owners, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or agent directly or indirectly in control of a building within the confines of the Town, as defined herein.

#### **RECYCLABLES**

Solid waste that exhibits the potential to be used repeatedly in place of a virgin material, and shall include the following:

A. All glass containers.

B. All metal cans and containers.

C. Newspaper.

D. Corrugated cardboard.

E. Office paper.

F. Magazines.

G. Plastics, No. 1 and No. 2 types.

H. All scrap metals.

## **RESOURCE RECOVERY PLANT**

The mass burn solid waste disposal resource recovery and energy-generating facility in the Town of Huntington which is jointly used by the Town of Smithtown pursuant to a municipal cooperation agreement dated December 19, 1989 by and between the towns as amended from time to time.

## **ROLL-OFF**

Any garbage collection vehicle or device in which the container portion is not covered by a permanently affixed nonopening cover and in which the container portion can be removed from the chassis to facilitate either dumping or loading.

## **ROLL-OFF CONTAINER SERVICE**

Service of providing solid waste containers for the collection of solid waste.

## **SERVICED CONTAINER YARDS (SCY)**

The actual monthly container yards serviced by a licensed commercial hauler. Serviced container yards shall be computed by using the following formula:

$N \times Y \times CF \times WCF \times 4.33 = \text{Serviced Container Yards (SCY) per month}$			
Where:			
N	=	Number of containers.	
Y	=	Container size in cubic yards (Fractional yards shall be rounded to the nearest 0.25 (25/100) yard.	
CF	=	Compaction factor.	
WCF	=	Weekly collection frequency.	
4.33	=	Monthly conversion factor.	
SCY	=	Serviced container yards.	

## **SOLID WASTE**

All putrescible and nonputrescible materials or substances discarded or rejected as having served their original intended use or as being spent, useless, worthless or in excess to the owner at the time of such discard or rejection, including but without limitation garbage, refuse, litter, rubbish, industrial waste, commercial waste, sludge, ashes, contained gaseous material, incinerator residue, construction and demolition debris, landscaping debris, grass, leaves, brush, discarded automobiles and offal, but not including solid or dissolved material and domestic sewerage or substances and materials in noncontainerized gaseous form. Recyclables or recycling material are also "solid waste" within the meaning of this chapter.

## **SOLID WASTE CONTAINER**

A solid waste storage and collection container of two cubic yards or greater in capacity which is designed to be emptied by a forklift or a forklift truck or any other device which can move, lift or transport such container.

## **SOLID WASTE MANAGEMENT FACILITY**

The Municipal Services Facility on Old Northport Road in the Town of Smithtown, the mass burn solid waste disposal resource recovery and energy-generating facility in the Town of Huntington

which is to be jointly used by the Town of Smithtown and the Town of Huntington, together known as the "towns," pursuant to a municipal cooperation agreement dated December 19, 1989, by and between the towns and any other similar facility, plant, work system, building, structure, improvement, machinery, equipment, fixture or other real or personal property which is to be used, occupied or employed for the receiving, transporting, storage, processing or disposal of solid waste or the recovery by any means of any material or energy product or resource therefrom, including but not limited to recycling centers, transfer stations, baling facilities, rail hall or maritime facilities, processing systems, sanitary landfills, resource recovery facilities, steam- and electric-generating and transmission facilities, including auxiliary facilities to supplement or temporarily replace such facilities, and facilities for compacting, composting or pyrolyzation of solid wastes, incinerators and other solid waste disposal reduction or conversion facilities and resource recovery equipment and disposal equipment, as defined in Subdivisions 4 and 5 of § 51-0903 of the Environmental Conservation Law of the State of New York, as the same may be amended from time to time.

#### **SOURCE SEPARATION**

The segregation or separation of recyclables from the solid waste stream for separate collection, sale or other disposition at the point of origin.

#### **STORAGE**

The containment of any solid waste such that it does not constitute disposal of that waste.

#### **TEMPORARY DUMPSTER OR ROLL-OFF**

Any dumpster or roll off, other than a permanent dumpster or roll off.

#### **TOWN**

All areas within the jurisdictional and corporate boundaries of the Town of Smithtown, inclusive of any incorporated village.

#### **TOWN CLERK**

The Town Clerk of the Town of Smithtown.

#### **UNACCEPTABLE WASTE**

Material which is likely to cause damage to or adversely effect the operation of any facility designated by the Town pursuant to this chapter or which may constitute a threat to health or safety or which the acceptance of may cause a violation of law or permit condition applicable to any Town-designated facility. Such "unacceptable waste" includes but is not limited to explosives (dynamite, hand grenades, blasting caps, ordnance, fireworks, etc.), liquid wastes (gasoline, kerosene, turpentine, ether, naphtha, acetate, propane, butane, paints, alcohol, acids, caustics, sewage or process wastewaters, leachate, cesspool wastes and all inflammable or volatile liquids), offal, tar-sealed drums, pressurized containers, propane tanks, tires, hazardous waste (as defined under federal, state and/or local laws and regulations), pathological waste, infectious waste, radioactive waste, human remains, animal remains and toxic waste.

#### **WHITE GOODS**

All major household kitchen appliances, to include washing machines, dryers, stoves, refrigerators, freezers, dishwashers and home garbage compactors.

#### **YARD WASTE**

Includes leaves, brush and grass, and can be generalized into the following major components: grass, organic yard/garden cleanup material, leaves, brush, branches, thatch, tangled brush piles, vines, plant trimmings, dead trees and logs, trees with limbs and tops intact, stumps and root debris.



**[Amended 12-19-1991 by L.L. No. 12-1991; 12-21-1993 by L.L. No. 11-1993]**

A. It shall be unlawful for any person in the Town of Smithtown to engage in the business of storing, collecting, carting or transporting, segregating or sorting solid waste or recyclables of any kind or nature from or on the premises of any person or providing roll-off, dumpster, shopbox, compactor or open container service within the Town of Smithtown without first having secured a license from the Town Clerk.

B. In the event that any dumpster, roll-off, shopbox or compactor is located within the borders of the Town of Smithtown, said dumpster, roll-off, shopbox or compactor shall be required to be permitted pursuant to the provisions of this chapter, and said dumpster, roll-off, shopbox or compactor shall have affixed to it the carter's name, phone number and license number properly affixed thereto.

C. It shall be unlawful for any person to allow or permit an unlicensed dumpster, roll-off or compactor on their premises, and allowing such shall constitute a violation of this chapter.

**§ 177-6. License requirements; appeals.**

**[Amended 9-7-1993 by L.L. No. 7-1993; 12-21-1993 by L.L. No. 11-1993; 4-5-1994 by L.L. No. 4-1994; 7-22-2003; 10-6-2009 by L.L. No. 5-2009]**

A. In order to obtain a license to collect, store, cart, transport, segregate or sort or provide roll-off or open container service for solid waste in the Town of Smithtown, a verified application shall be made to the Department of Public Safety setting forth the following information:

(1) The name and residence address of the applicant. If the applicant is a corporation, partnership or other business entity, the applicant shall also provide the name and address thereof and the names and residence addresses for all principals, officers, directors, partners and members.

(2) The residence and business addresses of the applicant during the past five years. If the applicant is a corporation, partnership or other business entity, the applicant shall also provide the business and residence addresses for all principals, officers, directors, partners and members.

(3) The applicant's business(es) for the past five years. If the applicant is a corporation, partnership or other business entity, the applicant shall also provide the business(es) for all principals, officers, directors, partners and members for the past five years.

(4) If employed by the owner of a licensed vehicle, the name and address of such employer, together with credentials establishing the exact relationship.

(5) If for a vehicle license, a description of the vehicle, together with the license number or other means of identification, including a copy of vehicle registration and insurance card.

(6) The applicant shall provide a New York State sales tax number.

(7) Individual photographs (three of each principal, each two inches by two inches).

(8) The applicant shall furnish the Department of Public Safety with a full set of the applicant's fingerprints.

(a) The applicant shall be charged a fee of \$140, which fee shall include the cost for a full search and retain from the Division of Criminal Justice Service. Said fee shall be collected by the Town of Smithtown.

**[Amended 12-17-2009 by L.L. No. 6-2009]**

(b) The Department of Public Safety shall take the applicant's fingerprints and forward said prints to the Division of Criminal Justice Service for a complete criminal background and investigation upon receipt of the appropriate fee.

(c) The Director of the Department of Public Safety shall review all information provided by the Division of Criminal Justice Service in connection with the applicant's criminal background and investigation.

(9) If the applicant is a corporation, partnership or other business entity, the applicant shall furnish the name, address, and date of birth of each and every principal, officer, director, partner, and member, as well as the percent of ownership interest of each such person, and an affidavit from each such person describing his or her duties and responsibilities.



(10) The applicant shall provide a record of a prior conviction or convictions of any crime for which the applicant plead or was found guilty. If the applicant is a corporation, partnership or other business entity, it shall also provide a record of a prior conviction or convictions of any crime for which it plead or was found guilty.

(11) The applicant shall provide a list of any and all pending lawsuits to which it is a party and an explanation of each pending lawsuit, including any civil, criminal or administrative proceeding.

(12) The applicant shall provide any other information or documentation required by the Town Clerk and/or Department of Public Safety for the purpose of implementing the intent of this chapter.

B. All applications and documentation shall be submitted to the Department of Public Safety by December 31 of each year preceding the year for which the applicant seeks a license and/or permit. Upon receipt of any such application and documentation, the Department of Public Safety shall review same and shall verify the truth and accuracy of said application and documentation. The Department of Public Safety, in order to establish the truth or accuracy of the information contained in the application, may request any information pertinent to the processing of said application and may, as necessary, request any additional information during the application process and for the entire term of said permit. If the Department of Public Safety cannot confirm the truth or accuracy of said material contained in the application; or if it determines that a material misrepresentation is contained therein; or if the applicant shall have been convicted of a misdemeanor or felony which is determined to render the applicant unfit to carry on the aforesaid operation; provided, however, that proper consideration is given to New York State Correction Law §§ 701 through 703-b and §§ 751 through 753 in making any such determination; or if it determines the applicant to be unfit or incapable of properly conducting the aforesaid operation, it shall issue a report to the Town Clerk, who shall deny said application. The Town Clerk shall notify the applicant within 30 days after receipt of a completed application as to whether the application shall be approved or denied. If the application is denied and the applicant has been operating with in the Town prior to the denial, then the applicant shall discontinue all operations within the Town of Smithtown within 15 days of such notification. An applicant who is denied a permit hereunder may request a review by the Town Board, which shall, upon such request, review the basis for such denial and shall determine whether such denial shall be affirmed or reversed.

C. The Town Clerk shall keep a record of all licenses issued.

#### § 177-7. Commercial good faith deposit.

A.

**[Amended 12-21-1993 by L.L. No. 11-1993] As a condition to receiving a license pursuant to the provisions of this chapter, each carter or applicant shall provide and maintain at all times with the Town of Smithtown a cash deposit or bond in the amount of:**

(1) Twenty-five thousand dollars if the carter or applicant has not been previously licensed to cart in the Town of Smithtown; or

(2) The greater amount of \$25,000 or \$75 multiplied by the highest monthly tonnage disposed of in the Town of Smithtown for the previous 12 months if the carter or applicant has experience or a track record legally doing solid waste business in the Town of Smithtown for the 12 months immediately preceding the date of application.

B. The Town shall evaluate the amount of solid waste disposed of by each carter or licensee every three months and recalculate the bond or cash deposit to reflect an amount equal to the greater of \$25,000 or 75 times the highest monthly tonnage disposed of during the 12 months immediately preceding the date of recalculation.

C. The licensee shall be required to maintained at all times the cash deposit or bond reflecting the correct amount as calculated by the Town. If the cash deposit or bond is an amount different than the recalculated amount or less than the required amount for whichever reason, then the licensee shall appropriately adjust the

bond or cash deposit to reflect the recalculated or correct amount within seven days after being so notified by the Town Comptroller.

D. Said good faith bond or cash deposit shall be returned to the licensee within 30 days after the Town Board has received knowledge of the termination of the licensee or revocation of the license, less any moneys due pursuant to the terms of this chapter. If said license is revoked pursuant to the revocation provisions provided herein, said good faith deposit shall be forfeited to the Town of Smithtown.

E. If the nature of the commercial carter's business is limited to the handling of only recyclables and no use of the Town-designated disposal facility is required under this chapter, then said commercial good faith bond or deposit shall not be required; and further

**[Added 12-21-1993 by L.L. No. 11-1993]**

(1) The commercial carter will be required to submit a sworn statement to the Town indicating that the nature of the commercial carter's business is limited to the handling of only recyclables and that no use of the Town-designated disposal facility is necessary; and

(2) The commercial carter will be required to comply with all other applicable provisions of this chapter.

### **§ 177-8. Insurance.**

Prior to a license being issued by the Town Clerk, each applicant shall file with the Town Clerk proof of the following insurance coverage:

A. Certificate of insurance.

B. Workmen's compensation insurance.

C. Disability benefits insurance.

D. Public liability and property damage insurance. For public liability, the minimum limits shall be \$1,000,000 for any one accident subject to a limit of \$500,000 for any one person; and for damage to property of others, the limits of coverage shall be \$500,000 for all accidents, subject to a limit of \$250,000 for any one accident. The insurance policy shall name the Town of Smithtown as additional insured. Said policies of insurance as referenced in this section shall remain in full force and effect for the duration of the license. In the event that said license fails to renew any of said policies of insurance, it shall form the basis for a revocation and/or denial of said license.

**[Amended 12-21-1993 by L.L. No. 11-1993]**

### **§ 177-9. License and permit fees.**

**[Amended 12-19-1991 by L.L. No. 12-1991]**

The license required to engage in the business of storing, collecting, carting, transporting, segregating or sorting or providing roll-off service or open container service for solid waste of any kind from the premises of any person in the Town of Smithtown shall be issued by the Town Clerk upon the payment of a fee of \$750 for the first vehicle applied for by any licensee and \$350 for each additional vehicle applied for by any licensee with a tare weight in excess of 6,000 pounds for each calendar year or fraction thereof. Every vehicle shall require a license.

### **§ 177-10. License, permit and route not transferable.**

A. Any license or permit issued pursuant to the provisions of this chapter shall not be transferred or assigned to any person or used by any person other than the licensee or permittee to whom it was issued.

B. Any transfer of routes or customers or servicing of the same by the licensee or any exchanging of routes or customers with another licensee or other entity or unlicensed entity working under the name of or with the

licensee within the Town of Smithtown shall be a violation of this chapter unless a written notice is mailed to the customers and the Town of Smithtown within 10 days of the transfer or exchange.

C. Any subcontracting out, transfer or assignment of routes and/or stops shall not be permitted unless the Town Clerk or the Town Clerk's designee is notified, in writing, by certified mail, at least 10 days prior to said subcontracting, transfer or assignment. Any transfer, assignment or subcontract must be to a carter duly licensed in the Town of Smithtown and is subject to approval by the Town Clerk, which shall not be unreasonably withheld. Any subcontracting of any routes or stops must be to a completely independent and unaffiliated corporation or legal entity.

**[Added 12-21-1993 by L.L. No. 11-1993]**

(1) Failure to notify the Town of any transfer, assignment or subcontract will be a violation of this chapter.

(2) Any transfer, assignment or subcontract must be for a period of at least 30 days. In the event of an emergency or if a carter is unable to tend to its stops, a route may be temporarily transferred. In the event that a carter is claiming an emergency transfer, the carter is obligated to notify the Town Clerk within eight hours of the emergency situation. Said notice shall be in writing, sent to the Town Clerk by certified mail or facsimile transmission. Said emergency shall not exceed two days unless approval is obtained from the Town Clerk's office.

**§ 177-11. Posting of licenses and permits.**

**[Amended 12-21-1993 by L.L. No. 11-1993]**

A. It shall be unlawful for any person to engage in the business of storing, collecting, carting, transporting, segregating or sorting or providing roll-off or open container service for solid waste of any kind in the Town of Smithtown unless the permit number issued by the Town of Smithtown and attesting to the issuance of the required license or permit is displayed in a conspicuous place upon the container used for such purpose.

B. Unless otherwise regulated by contract with the Town, license and/or permit numbers shall be conspicuously and permanently displayed upon all open roll-off containers in letters or numbers not less than three inches in height and of a contrasting color to the roll-off or open container.

C. Only permit numbers issued and affixed by the Town of Smithtown shall be valid.

**§ 177-12. Vehicle requirements.**

A. Each applicant shall produce each vehicle for which a license is required for an inspection at a time and place to be named by the Department of Public Safety. No application will be processed by the Town Clerk for the issuance of a license until the vehicle or vehicles have been produced for the above purposes at the time and place fixed by the Department of Public Safety.

**[Amended 9-7-1993 by L.L. No. 7-1993; 12-21-1993 by L.L. No. 11-1993]**

B. No license shall be issued for the use of any vehicle for the collection of solid waste unless it is a packer-type closed body roll-off or equal or a compartmentalized or sorter vehicle or equivalent for recyclables. The name of the owner and permit holder of each vehicle shall be permanently inscribed (no magnetic shields, emblems or similar devices shall be used) on the driver's door or for roll-off containers on the first panel at 1/2 container height in legible lettering of not less than three inches in height and of contrasting color to the body or roll-off.

C. Certified copies of title, registration and/or lease agreements shall be presented to any enforcement employee, director, attorney or their duly designated deputies and assistants of the Town of Smithtown upon request.

D. All vehicles shall be kept in a sanitary condition and shall be subject to inspection by such persons as the Department of Public Safety may designate. It shall be unlawful to store or garage any vehicle containing solid waste of any kind.

**[Amended 9-7-1993 by L.L. No. 7-1993]**

E. Every collection vehicle shall be maintained, operated and used at all times only in full compliance with all applicable provisions of federal, state and local law and this Code and all other applicable rules and regulations adopted thereunder. Every collection vehicle shall be loaded at all times in such a manner and by such methods as to prevent the release or discharge of dust and to prevent the spilling of solid or liquid waste upon the sidewalks or streets, and every operator of a vehicle shall remove immediately from the sidewalks or streets all solid waste spilled, littered or thrown thereon in loading operations or in the handling and return of receptacles or while traveling. Failure to comply with the provisions of this section shall be deemed a violation of this chapter.

F. An identification card issued by the Department of Public Safety of the Town of Smithtown or employees of a designated solid waste management facility shall be given to each vehicle and shall be kept with said vehicle at all times. Upon request of any Town employee or employee of a designated solid waste management facility, said identification card shall be presented to the employee.

**[Amended 9-7-1993 by L.L. No. 7-1993]**

**§ 177-13. Term of license or permit.**

A. A license issued pursuant to this chapter shall be for the calendar year or fraction thereof for which it was issued, unless revoked or surrendered earlier. There shall be no apportionment or pro rata cost of any fee in any calendar year.

B. A permit issued pursuant to this chapter shall be for the calendar year from January 1 through December 31 or fraction thereof for which it was issued, unless revoked or surrendered earlier.

C. All applications for a license issued pursuant to this chapter shall be applied for on or before November 30 of the year preceding the year which for a license is sought.

**[Amended 12-21-1993 by L.L. No. 11-1993]**

**§ 177-14. Surrender of license or permit.**

If a licensed or permitted vehicle is sold or transferred, the license or permit for said vehicle is void at the moment of sale or transfer, and the licensee or permittee must surrender the license or permit held for it to the Town Clerk within 10 days.

**§ 177-15. Routes.**

The Town Board shall have the right to route any and all vehicles to and from such solid waste management facility as may be designated for the disposal of solid waste and/or acceptable waste, and it shall be unlawful for any vehicle to use any route not authorized by the Town Board.

**§ 177-16. Failure to collect solid waste.**

It shall be the duty of each licensee to effect the collection of solid waste on the routes and days set forth on the license application. In the event of the failure of the licensee to effect said collections within 24 hours after the due date of said collections or failure to collect solid waste within a time period otherwise set forth in this chapter, the Town reserves the right to perform said collections on behalf of the licensee and to deduct the cost of the same from the deposit made by the licensee with the Town of Smithtown. The Town of Smithtown shall have the further right to revoke any license for the failure of the licensee to meet this duty and requirement. In the event that the Town Board shall be required to perform said collections and to deduct the cost of the same from the deposit made by the licensee, the licensee shall be required to make an additional deposit with the

Town Comptroller in an amount equal to that so deducted within 14 days of receipt of written demand from the Town Comptroller. In the event that the Town Comptroller notifies the Town Board that the licensee has failed to make the additional deposit with the Town Comptroller within the required 14 days, the Town Board may suspend the licensee license until such time as the licensee shall make the required additional deposit with the Town Comptroller.

#### § 177-17. Origin and destination of solid waste.

A. All acceptable waste generated within the Town of Smithtown shall be collected, transported and delivered to such solid waste management facility or facilities within or outside the Town as the Town Board may designate by resolution at least 10 days prior to the effective date thereof.

B. No person authorized to collect or transport acceptable waste within the Town of Smithtown shall dispose of acceptable waste generated within the Town of Smithtown except at a solid waste management facility designated by the Town Board pursuant to this section.

C. No person shall dispose of any acceptable waste except in a designated manner pursuant to the provisions of this chapter and at a solid waste management facility designated by the Town Board for the disposal of the material sought to be disposed.

D. The Town Board shall provide notice of any such designation or change of designation at least 10 days prior to the effective date thereof.

E. All vehicles or containers containing acceptable waste and Town-owned solid waste originating or generated within the Town of Smithtown shall proceed directly to a solid waste management facility designated by the Town Board. No salvaging, mixing, sorting, removal or disposal of the waste other than prescribed herein shall be permitted. No acceptable waste or Town-owned solid waste shall be removed from any vehicle unless at a solid waste management facility designated by the Town Board.

#### § 177-18. Ownership of materials; unauthorized pickups.

A. Ownership of all solid waste shall vest irrevocably upon the Town of Smithtown or duly authorized agent the moment the solid waste or recyclables are placed or located at the curb, street line or immediately adjacent to the roadway or within any easement owned by the Town of Smithtown which parallels any street, road or highway.

B. All acceptable waste placed in dumpsters or roll-offs shall be disposed of according to the provisions of this chapter and at a solid waste management facility designated by the Town Board.

C. It shall be unlawful for any person without authority of the Town to collect, pick up, remove or cause to be removed or in any manner interfere with or disturb any solid waste or portions thereof from any premises.

D. The Town Board shall provide notice of any such designation or change of designation at least 10 days prior to the effective date thereof.

E. All vehicles or containers containing acceptable waste and Town-owned solid waste originating or generated within the Town of Smithtown shall proceed directly to a solid waste management facility designated by the Town Board. No salvaging, mixing, sorting, removal or disposal of the waste other than prescribed herein shall be permitted. No acceptable waste or Town-owned solid waste shall be removed from any vehicle unless at a solid waste management facility designated by the Town Board.

F. All receptacles may be put out for pickup no more than 12 hours prior to pickup and must be removed no later than 12 hours after pickup. The receptacles must be stored away from public view so as not to cause unsightliness and public blight. All receptacles for pickup shall be placed at house street address frontage.

**[Added 12-21-1993 by L.L. No. 11-1993]**

#### § 177-19. Underground receptacles.

It shall be unlawful for any person to maintain underground receptacles for the deposit or storage of solid waste.

#### [§ 177-20. Notice required for carter changes.](#)

Each carter shall give the Town of Smithtown and the operator of the facility three weeks' written notification of any changes in such carter's operation which would have a material effect on delivery schedules or weight records and shall include the effective date or dates of such changes. These include but are not limited to the following:

A. A change in name and/or mailing address.

B. A change in telephone number.

C. A change in the trucks and containers brought into the facility.

D. A change in the number of deliveries or clients.

E. Any change, deletion or addition of officers, directors, principals or shareholders of a corporation or partners of a partnership.

#### [§ 177-21. Failure to pay bill; license suspension.](#)

A licensee or carter's license and dumping privileges at any designated solid waste management facility shall be suspended if any bill or debt due and owing the Town or any of its agents is not paid on or before its scheduled due date. Suspension shall commence the moment notification is sent by the Town to said carter or licensee. The Town shall accord the licensee a license revocation hearing on said matter as soon as practically and feasibly possible.

#### [§ 177-22. Other grounds for license suspension.](#)

A licensee or carter license and dumping privileges at any designated solid waste management facility shall be suspended the moment notification is sent by the Town regarding any violation of this chapter to said carter or licensee that a license revocation hearing has been scheduled and shall remain suspended until a determination has been rendered by the Town Board.

#### [§ 177-23. through § 177-25. \(Reserved\)](#)

### [Article II. Residential Solid Waste](#)

#### [§ 177-26. Effective date; Article superseded.](#)

**[Amended 1-10-1995 by L.L. No. 1-1995]**

This Article was superseded by the residential carting contracts, effective January 1, 1992.

#### [§ 177-27. through § 177-34. \(Reserved\)](#)

*Editor's Note: Former §§ [177-27](#) through 177-29, Collection schedule; rates; permitted quantities; rate changes, Advanced billing and Limitation of contracts, were repealed 1-10-1995 by L.L. No. 1-1995.*

### [Article III. Dumpster Regulations](#)

#### [§ 177-35. Dumpsters and roll-offs.](#)



A. No permanent dumpster, compactor, shopbox or roll-off or their equivalents shall be placed, located or maintained on any property within the Town of Smithtown unless a permit number has been first obtained for said dumpster, compactor, shopbox or roll-off from the Department of Public Safety.

**[Amended 9-7-1993 by L.L. No. 7-1993; 12-21-1993 by L.L. No. 11-1993]**

B. All dumpsters, compactors, shopboxes and roll-offs shall be located in such a manner that they do not obstruct or interfere with the passage of vehicular or pedestrian traffic.

C. All dumpsters and compactors must be equipped with workable lids and component parts.

D. The name, address and telephone number of the owner of the dumpster, compactor, shopbox or roll-off shall be conspicuously displayed thereon.

**[Amended 12-21-1993 by L.L. No. 11-1993]**

E. No solid waste or other discarded materials or waste, including but not limited to solid and liquid waste, which because of its quantity, concentration or physical, chemical or infectious characteristics may cause or significantly contribute to an increase of serious irreversible or incapacitating reversible illness or pose a substantial present or potential hazard to human health or environment shall be placed in any dumpster, compactor, shopbox or roll-off by any person.

**[Amended 12-21-1993 by L.L. No. 11-1993]**

F. Every dumpster, compactor, shopbox or roll-off must be watertight, and every dumpster, compactor, shopbox or roll-off area shall be kept clean and utilized in a safe, clean and orderly manner and in such a manner as to

G. All dumpsters, compactors, shopboxes and roll-offs shall be promptly removed or emptied when they are full.

**[Amended 12-21-1993 by L.L. No. 11-1993]**

H. Any dumpster, compactor, shopbox or roll-off failing to comply with any provision of this chapter shall be deemed a hazard and every dumpster, compactor, shopbox or roll-off left at any location after the permit for it shall have expired or any dumpster, compactor, shopbox or roll-off left at any location which is not well maintained shall be deemed a hazard. At such time as a dumpster, compactor, shopbox or roll-off is deemed a hazard, the carter or owner of said dumpster, compactor, shopbox or roll-off and the real property owner shall be notified to remove said dumpster, compactor shopbox or roll-off within 24 hours. If after 24 hours said dumpster or roll-off still remains in its present location, the Town of Smithtown shall deem the dumpster, compactor, shopbox or roll-off to have been abandoned and cause said dumpster, compactor, shopbox or roll-off to be removed at the carter's or owner's or real property owner's own expense. Said carter or owner or real property owner shall also be charged an impound fee of \$250 for each dumpster, compactor, shopbox or roll-off impounded in addition to \$50 per day or part thereof that said dumpster, compactor, shopbox or roll-off is in the possession of the Town of Smithtown. If said dumpster, compactor, shopbox or roll-off is in the possession of the Town of Smithtown for more than 10 days, it shall cause a notice to be sent to the last registered owner of the dumpster, compactor, shopbox or roll-off by certified mail, return receipt requested, that if said dumpster, compactor, shopbox or roll-off is not removed from the possession of the Town of Smithtown and all costs incurred to date are paid in full within 48 hours, the title to the dumpster, compactor, shopbox or roll-off shall vest in the Town of Smithtown.

**[Amended 12-21-1993 by L.L. No. 11-1993]**

#### § 177-36. Annual permit.

**[Amended 12-21-1993 by L.L. No. 11-1993]**

There shall be an annual permit number for a compactor, shopbox, dumpster or roll-off which shall be for the calendar year January 1 through December 31 or fraction thereof.



### § 177-37. Identification numbers.

#### **[Amended 12-21-1993 by L.L. No. 11-1993]**

Permit numbers shall be assigned by the Town to all compactors, shopboxes, dumpsters and roll-offs permitted under this chapter. All permanent compactors, shopboxes, dumpsters and roll-offs shall be assigned a permit number. Failure to conspicuously display said number on the dumpster, compactor, shopbox or roll-off shall be a violation of this chapter.

### § 177-38. through § 177-41. (Reserved)

## Article IV. License Suspension or Revocation

### § 177-42. Notice and hearing.

A. Licenses issued under the provisions of this chapter may be revoked or suspended by the Town Board of the Town of Smithtown in accordance with the adjudicatory procedures set forth herein.

B. A licensee shall be given reasonable notice of such hearing, which notice shall be mailed postage prepaid to the licensee's last known address at least five days prior to the date set for the hearing. Such notice shall include:

(1) A statement of the time, place and nature of the hearing.

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(3) A reference to the particular sections of the statutes, ordinances or rules or regulations involved wherever possible.

(4) A short and plain statement of matters asserted.

C. Upon application of the licensee a more definite and detailed statement shall be furnished. Whenever the Town of Smithtown finds that the statement is not sufficiently definite or not sufficiently detailed, the findings of the Town of Smithtown as to the sufficiency or definiteness or detail of the statement or its failure or refusal to furnish a more definite or detailed statement shall not be subject to judicial review. Any statement furnished shall be deemed in all respects to be part of the notice of hearing.

D. All license revocation hearings shall be conducted in the manner wherein the accused licensee is afforded full due process of law.

E. All parties shall be afforded an opportunity to present written argument on issues of law and an opportunity to present evidence and such argument of issues of fact; provided, however, that nothing contained herein shall be construed to prohibit the Town of Smithtown from allowing parties to present oral argument within a reasonable time. In fixing the time and place for hearings and oral argument, due regard shall be had for the convenience of the parties, convenience of the witnesses and the public welfare sought to be protected.

F. Unless precluded by statute, disposition may be made of any adjudicatory proceeding by stipulation, agreed settlement consent order, default or other informal method. Nothing herein shall be construed to prevent the Town Board of the Town of Smithtown from convening another license revocation hearing at any future time.

### § 177-43. Record.

A. The record in a license revocation proceeding shall include:

(1) All notices, pleadings, motions and intermediate rulings.

(2) Evidence presented.

(3) A statement of matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose.

(4) Questions and offers of proof, objections thereto and rules thereon.

(5) Proposed findings and exceptions, if any.

(6) Any decision, determination, opinion, order or report rendered.

B. The Town of Smithtown shall make a complete record of all adjudicatory proceedings conducted before it. For this purpose, unless otherwise required by statute, the Town of Smithtown may use whatever means it deems appropriate, including but not limited to the use of stenographic transcriptions or electronic recording devices. Upon request made by any party upon the Town of Smithtown within a reasonable time but prior to the time for commencement of judicial review of its giving notice of its decision, determination, opinion or order, the Town of Smithtown shall prepare the record together with any transcript of proceedings within a reasonable time and shall furnish a copy of the record and transcript of any part thereof to any party as that party may request. Except when any statute provides otherwise, the Town of Smithtown is authorized to charge not more than its cost for the preparation and furnishing of such record or transcript or any part thereof or the rates specified in the contract between the Town of Smithtown and a contractor, if prepared by a private contractor.

C. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

#### § 177-44. Presiding officers.

Except as otherwise provided by statute, the Town of Smithtown, one or more members of the Town Board, the Town Board or one or more hearing officers designated and empowered by the Town Board of the Town of Smithtown to conduct hearings shall be presiding officers. Hearings shall be conducted in an impartial manner. Upon the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a presiding officer, the Town Board shall determine the matter as part of the record in the case, and its determination shall be a matter subject to judicial review at the conclusion of the adjudicatory proceeding. Whenever a presiding officer is disqualified or it becomes impractical for him or her to continue the hearing, another presiding officer may be assigned to continue with the case, unless it is shown that substantial prejudice to the party will result therefrom.

#### § 177-45. Powers of presiding officers.

Except as otherwise provided by statutes, presiding officers are authorized to:

A. Administer oaths and affirmations.

B. Sign and issue subpoenas in the name of the Town of Smithtown at the request of any party requiring attendance and giving of testimony by witness and the production of books, papers, documents and other evidence, and said subpoenas shall be regulated by the Civil Practice Law and Rules. Nothing herein contained shall effect the authority of an attorney for a party to issue such subpoenas under the provisions of the Civil Practice Law and Rules.

C. Provide for the taking of testimony by deposition.

D. Regulate the course of the hearing, set the time and place for continued hearings and fix the time for filing of briefs and other documents.

E. Direct the parties to appear and confer to consider the simplification of the issues by consent of the parties.

#### § 177-46. Evidence.

A. Irrelevant or unduly repetitious evidence or cross-examination may be excluded. Except as otherwise provided by statute, the burden of proof shall be on the party who initiated the proceeding. No decision, determination or other shall be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and as supported by and in accordance with substantial evidence. Unless otherwise provided by statute, the Town of Smithtown need not observe the rules of evidence observed by courts but shall give effect to the rules of privilege recognized by law. Objections to evidentiary

offers may be made and shall be noted in the record. Subject to these requirements, the Town of Smithtown may, for the purposes of expediting hearings and when the interest of parties will not be substantially prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

B. All evidence, including records and documents, in the possession of the Town of Smithtown which it desires to avail itself shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts or by incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be available for examination by the parties before being received in evidence.

C. All parties shall have the right of cross-examination.

D. Official notice may be taken of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the Town of Smithtown. When official notice is taken of a material fact not appearing in the evidence in the record and of which judicial notice could not be taken, every party shall be given notice thereof and shall, on timely request, be afforded an opportunity prior to decision to dispute the fact or its materiality.

#### § 177-47. Decisions, determinations and orders.

A. A final decision, determination or order adverse to a party in an adjudicatory proceeding shall be in writing or stated in the record and shall include findings of fact and conclusions of law or reasons for the decision, determination or order. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If in accordance with the Town of Smithtown rules a party submitted proposed findings of fact, the decision, determination or order shall include a ruling upon each proposed finding. A copy of the decision, determination or order shall be delivered or mailed forthwith to each party and to his or her attorney of record.

B. Unless required for the disposition of ex parte matters authorized by law, members or employees of the Town of Smithtown assigned to render a decision or to make findings of fact or conclusions of law in an adjudicatory proceeding shall not communicate directly or indirectly in connection with any issue of fact with any person or party nor in connection with any issue of law with any party or his or her representation except upon notice and opportunity for all parties to participate. Any such Town of Smithtown member or employee may:

(1) Communicate with other members of the Town of Smithtown; and

(2) Have the aid and advice of Town of Smithtown staff other than staff which have been assigned or are engaged in the investigative or prosecuting functions in connection with the case under consideration or a factually related case.

C. The Town Clerk shall maintain an index by name and subject of all written final decisions, determinations and orders rendered by the Town Board of the Town of Smithtown in adjudicatory proceedings. Such index and the text of any such written final decision, determination or order shall be available for public inspection and copying. Each decision, determination and order shall be indexed within 60 days after having been rendered.

D. The Town Board of the Town of Smithtown may delete from any such index, decision, determination or order any information that if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of Subdivision 2 of § 89 of the Public Officers Law and may also delete at the request of any person all references to trade secrets that if disclosed would cause substantial injury to the competitive possession of such person. Information which would reveal confidential or privileged material protected by federal, state or local statute, ordinance, rule or regulation shall be deleted from any such index decision, determination or order.

#### § 177-48. Adjournments.

Adjournment of any hearing or proceeding conducted pursuant to this chapter shall be granted only for good cause. Written request for adjournment shall be submitted to the hearing officer in the hearing or proceeding or to the Town Board, as the appropriate case may be, for which the adjournment is sought. The request must be accompanied by an affidavit which contains sufficient detail to allow the hearing officer or the Town Board to rule on the request.

#### **§ 177-49. Time limits.**

Under this chapter, adjudicatory proceedings shall be conducted in an expeditious manner with all due regard for the rights of the parties concerned. Every effort should be made by the parties to effectuate a speedy disposition of the case.

#### **§ 177-50. Conduct of hearings.**

The hearing officer exercising discretion may elect to conduct any hearing or proceeding under these rules ex parte after a showing that the party who is the subject of the hearing and its representative of record have been notified by certified mail of the pending hearing or proceeding or otherwise served with notice of the hearing. The party who is the subject of the hearing shall at no time be deprived the opportunity to appear. However, if a party has been served with two written notices of hearing and fails to appear after each notice, the hearing officer on proof of service shall have the authority to proceed with the scheduled hearing. Proof of service shall consist of a signed certified mail receipt or affidavit.

#### **§ 177-51. Duties of hearing officer.**

A. At the close of the hearing or proceeding the hearing officer shall make findings of fact and a recommendation as to the appropriate penalty or fine to be assessed or any other recommended action to be taken. The proposed findings of fact and the recommendation shall be transmitted to the Town Board of the Town of Smithtown for approval and simultaneously mailed or delivered to the parties to the proceeding. The parties shall have an opportunity to respond, in writing, in the form of a brief to the findings of fact and the recommendation of the hearing officer and such response shall be directed to the Town Board for its consideration within 15 days after the submission of the hearing officer's recommendation to the Town Board. In their briefs submitted in response to the findings of fact and the recommendation of the hearing officer, the parties may not submit or discuss evidence which is not a part of the official record of the hearing or proceeding. The Board shall act on the findings of fact and the recommendation as expeditiously as possible. The Board may affirm or reverse the findings of fact and the recommendation of the hearing officer in whole or in part, or it may remand and/or dismiss the proceeding based upon the record produced at the hearing. In the event that the Town Board of the Town of Smithtown sitting en masse hears and presides over the hearing, the provisions of this subsection shall not apply.

B. The assessment of civil penalties under applicable law procedures shall not preclude the referral of an appropriate violation to a prosecutor for prosecution of criminal charges.

C. If the alleged violation has been established and the Board determines in light of all the circumstances that the violation is not serious enough to warrant assessment of a civil penalty or if the imposition of civil penalties is not otherwise authorized by law, the Board in its discretion may take such other action as appropriate, including but not limited to written admonition or recommendation that disciplinary action be taken or referral to a prosecutor for prosecution of criminal charges.

#### **§ 177-52. Fines and penalties.**

At the conclusion of said hearing and as a result of the evidence adduced thereon and upon the recommendation of the hearing officer, the Town Board may, in its discretion, revoke said license, suspend the subject license for a specified period of time, censure the licensee and/or impose a fine not to exceed \$25,000 per violation. Nothing herein shall be construed to limit the authority of the Town Board to refer such violation to an appropriate prosecutor for criminal prosecution in addition to any civil penalty assessed under the provisions of this chapter.

#### § 177-53. through § 177-57. (Reserved)

### Article V. Recycling

#### § 177-58. Applicability.

All residential structures, including single- and multiple-family dwellings, apartment buildings and all condominiums with curbside collection and all community facilities shall be required to make provisions for the segregation of newspapers, corrugated cardboard, glass, metal and plastic from other solid waste for separate collection by a Town licensed carter.

#### § 177-59. Definitions.

As used in this Article, the following terms shall have the meanings indicated:

#### **PAPER RECYCLABLES**

A. Shall include the following:

- (1) Clean and unsoiled paper, including newsprint, newspapers, newspaper advertisements, supplements, comics and enclosures.
- (2) Computer paper, noncarbonized and untreated.
- (3) Magazines.
- (4) Corrugated boxes, cardboard cartons, pasteboard and similar corrugated and kraft paper materials.
- (5) Wrapping paper of all kinds.

B. "Paper recyclables" shall not include those paper products that contain a high glossy finish and shall not include telephone books.

#### § 177-60. Requirements.

A. Recyclables shall be separated from all other solid waste.

B. Paper recyclables shall be tied in bundles not to exceed 40 pounds prior to collection. Newspaper shall be bundled separately from magazines and cardboard.

C. Glass, plastic and metal recyclables shall be clean and all contents shall be removed therefrom prior to the collection. All caps and labels shall be removed from all recyclable material prior to collection.

D. All recyclables, except cardboard and brown paper bags, shall be placed in a designated recycling container for collection. Recyclables, with the exception of plastic recyclables, shall not be placed in plastic bags for collection.

E. Bulk metal may be brought to the recycling facility by the homeowner or left out to be removed by the Highway Department on Town-designated pickup days.

F. Recyclables shall not be placed in the same garbage can or container or otherwise mixed with other forms of solid waste for collection.

G. Ownership of all recyclables shall vest irrevocably upon the Town of Smithtown the moment the recyclables are placed or located at the curb or street line or within any easement owned by the Town of Smithtown which parallels any street, road or highway.

**[Amended 12-21-1993 by L.L. No. 11-1993]**

H. It shall be unlawful for any person to collect or remove or dispose of any solid waste or recyclable material which is the property of the Town of Smithtown without first having obtained a license pursuant to the requirements of this chapter.

I. A person who collects or removes solid waste or recyclables which belong to the Town of Smithtown shall deliver and dispose of the same at such locations and in such manner as designated by the Town of Smithtown for such purposes. Each and every collection or disposal in violation of this section from one or more residents shall constitute a separate and distinct offense.

J. It shall be unlawful for a person to collect, remove or dispose of solid waste which consists of recyclables combined with other form of solid waste.

K. Any resident may donate or sell recyclable material to any person whether operating for profit or not-for-profit, provided that no person may under any circumstances collect any solid waste or recyclable material from the curbside or street line or within any easement held by the Town of Smithtown parallel to any street, road or highway in the Town of Smithtown.

L. The Town Board is empowered to designate a day of the week on which recyclables shall be collected from a particular area. Recyclables shall not be collected from an area on any day of the week other than that designated by the Town Board. Residential solid waste which does not contain recyclable material shall not be collected from residences or disposed of at any Town facility on the day designated for collection and disposal of recyclables.

M. No person having custody or control of any property or premises in the Town of Smithtown shall permit or cause any solid waste, including recyclables, within his or her control to become a hazard to potential hazard to public travel, health or safety or to become a nuisance of any sort.

N. No person shall place or locate any garbage, receptacle or container on any street, road or highway at any time, except as provided by the provisions of this chapter.

O. The Town Board or the Sanitation Department of the Town of Smithtown shall be authorized from time to time to promulgate such other rules or regulations as may be deemed necessary.

**§ 177-61. Commercial and industrial recycling.**

A. All commercial and industrial facilities that generate corrugated cardboard waste and or recyclables shall be required to source separate any and all corrugated cardboard materials and/or recyclables from other solid wastes for separate collection by Town-licensed carters at a time and place mutually convenient to both the business and the carter.

**[Amended 12-21-1993 by L.L. No. 11-1993]**

B. All corrugated cardboard and/or recyclables delivered to the Smithtown Recycling Facility located at the Municipal Services Facility shall be delivered Monday through Friday, except holidays, during regular hours of operation.



**[Amended 12-21-1993 by L.L. No. 11-1993]**

C. Upon the arrival at the Municipal Services Facility, commercial collection vehicles shall identify their load as containing corrugated cardboard materials and/or recyclables at the scale house. The vehicles will then be directed to proceed to a designated location and unload.

**[Amended 12-21-1993 by L.L. No. 11-1993]**

D. No contaminated corrugated cardboard material shall be brought in or deposited at the Municipal Services Facility. If the corrugated cardboard is contaminated as designated by the Town's recycling contractor and/or Town Sanitation Department personnel, the carter will be required to remove, at the carter's own cost and expense, the contaminated material and be subject to the fines as set forth herein.

**§ 177-62. Commercial and industrial establishments designated.**

Commercial and industrial establishments subject to the requirements of § 177-61 shall include all facilities, buildings, structures and establishments other than community facilities or residential structures.

**§ 177-63. through § 177-67. (Reserved)**

**Article VI. Facility Operation**

**§ 177-68. Designated routes and destination of carters.**

All carters shall proceed to a designated solid waste management facility along routes designated by the Town Board of the Town of Smithtown.

**§ 177-69. Facility instructions and procedures.**

**[Amended 12-21-1993 by L.L. No. 11-1993]**

All carters and those entering the Municipal Services Facility shall abide by any instructions or procedures given by the Superintendent of Sanitation. The Superintendent of Sanitation shall be responsible for the complete operation and usage of any Town solid waste facility and the operation and usage of all vehicles entering, leaving and conducting any activity upon or with respect to said facility. The Superintendent of Sanitation shall make such rules and regulations as he or she shall see fit concerning the same. In the event that any rules or regulations established by the operator of the Town facility are subject to any agreements with any other municipality or governing body, said rule or regulation shall not be promulgated without prior Town Board approval.

**§ 177-70. Vehicle safety practices.**

A. All carters shall follow vehicle safety practices at all times and observe the following regulations:

- (1) The speed limit at the facility is 10 miles per hour, unless otherwise indicated.
- (2) All turns require the use of signals to warn other vehicles of the turn.
- (3) Drivers of a vehicle must hold a valid driver's license and are subject to all traffic laws and ordinances.
- (4) Trucks or trailers stopped on roadways must be properly protected by red flags by day and warning lights or reflectors by night.
- (5) Never pass another vehicle on or near the crest of a hill, at any intersection or curb or where the roadway ahead is obstructed for any reason.
- (6) Beware of slow-moving vehicles.



- (7) Do not follow another vehicle too closely or at a speed which would prevent you from stopping safely in an emergency.
- (8) Before backing a vehicle, the driver should determine that the space into which he or she will back is clear.
- (9) When parking on a grade the driver should set the brakes properly, leave the vehicle in gear and, if necessary, scotch the wheels.
- (10) Use extreme caution when driving into or out of the building or areas where visibility is limited.
- (11) Keep the vehicle in gear when moving down grade.
- (12) Special care should be taken in approaching and crossing a road. Signals and signal lights should be fully respected.
- (13) The driver must be alert to equipment defects. If a defect causes any unsafe condition or impairs the same operation of the equipment, operation must be suspended until the defect has been corrected.
- (14) Trucks with mechanical problems must exit the facility or, if disabled, request towing immediately so that inbound and outbound roads will be clear to other traffic.
- (15) No vehicle exceeding New York State weight, height or length requirements shall be permitted unless the driver is in possession of a valid New York State permit for the particular vehicle in question.
- B. Noncompliance with this chapter may result in the driver, and for severe violations his or her company, being denied access to any designated facility.

#### § 177-71. Facility entrance questions.

Drivers entering a designated facility shall be prepared to answer the following questions:

- A. The Town the solid waste originated in and/or was collected in.
- B. Whether the load is commercial or residential solid waste.
- C. The route or district number.

#### § 177-72. Weight tickets.

- A. All carters are responsible for ascertaining the accuracy of their tickets before signing. After a ticket is signed it shall be presumed to be accurate and no claim of discrepancy may be maintained against the Town of Smithtown or the operators of the facility.
- B. Any carter who fails to sign for or fails to receive a weight ticket shall be billed at the maximum rate for such delivery as though a weight ticket had been signed and received.

#### § 177-73. Tare weights.

- A. Any vehicle entering a designated facility for the first time shall obtain a tare weight for each truck or container disposing of acceptable waste at the designated facility and shall be obtained according to the procedures of the operator of the designated facility.
- B. After the initial tare weight has been obtained, the operator of the designated facility will require tare weights on a random basis to verify weight records. All carters shall cooperate with the operator of the designated facility and shall follow such weighing procedures as directed. Any carter refusing to cooperate with the operator of a designated facility shall be barred from such facility and shall be billed for the maximum load that could be delivered.

#### § 177-74. Tipping area procedures; unacceptable and hazardous waste.

- A. For unacceptable waste which is not hazardous waste, the carter may be required at the direction of the operator of the designated facility to reload such materials for disposal at another location.

B. For hazardous waste as defined by federal, state and local laws and regulations, carters shall remain at the facility until Town, public health and law enforcement officials arrive.

#### § 177-75. Emergencies.

A. Carters at a designated facility who discover a fire in their trucks (hot loads) shall be diverted to a clearly marked area of the facility property. The carter will be directed to discharge the load onto a designated area.

B. In the event of any incident which impairs the flow of traffic or the ability to dispose of acceptable waste at the facility, carters shall follow directions and procedures from employees of the facility.

#### § 177-76. Rejected loads; nonprocessable wastes and other hazardous wastes.

A. All nonprocessable waste shall be rejected from the Resource Recovery Plant and all nonprocessable wastes, except demolition debris and white goods, shall be rejected from the Municipal Services Facility. Carters who have received weight tickets for loads which contain any unacceptable waste shall not receive a credit for such deliveries.

B. The operator of the facility reserves the right to reject total or partial loads being delivered to the facility if special handling should be required.

C. Carters will dispose of rejected loads as prescribed by the Town.

D. The operator of any designated facility shall immediately notify the Department of Public Safety of any attempt to deliver unacceptable waste. Violators of any applicable law shall be subject to prosecution.

**[Amended 9-7-1993 by L.L. No. 7-1993]**

#### § 177-77. Hazardous wastes.

A. All loads coming into any solid waste management facility will be visually inspected for the purpose of documenting any violation of hazardous waste management laws. The Town will be notified immediately if any suspected hazardous waste is found in a truck delivering waste to any facility.

B. Violators of any of the laws governing the disposal of hazardous waste will be subject to prosecution. Fines of up to \$25,000 per day can be imposed against those who knowingly violate the laws and regulations regarding hazardous waste management.

C. Regardless of other actions, any carter who knowingly brings hazardous waste to any facility shall be permanently barred from all facilities.

#### § 177-78. Driver regulations.

A. All containers shall be secured. No leakage or spillage is allowed.

B. All trucks must proceed with care and follow directions issued by appropriate employees of a designated facility.

C. Manual unloading will only be permitted in designated areas.

D. Trucks are not to bump or roll into guardrails.

E. Drivers should ascertain correct placement of containers before releasing loads.

F. Cigarettes, cigars or other sources of combustion are strictly prohibited in or around the facility. No hauler will possess, consume or be under the influence of any illegal or intoxicating substances while on any facility premises.

G. Trucks must be cleaned of loose debris before exiting the disposal area. Any liquid or debris spilled onto roadways will be cleaned up at the carter's expense.

H. The truck owner will be responsible for the removal and repair of all damages relating to a roll-off container in the owner's possession that falls into a refuse pit or discharge area at any facility.

#### § 177-79. Nonprocessable wastes.

A. Nonprocessable waste includes materials which, if present in concentrations or quantities that in the reasonable judgment of employees of a designated facility:

- (1) Would pose a substantial threat to public health or safety;
- (2) May cause applicable air quality or water effluent standards to be violated by the normal operation of a designated facility; or
- (3) Have a reasonable possibility of adversely affecting the operation of a designated facility in any material respect.

B. Nonprocessable waste includes but shall not be limited to the following:

- (1) Explosives: dynamite, hand grenades, blasting caps, shotgun shells, fireworks or any other explosives.
- (2) Liquid waste: gasoline, kerosene, turpentine, waste oil, ether, alcohol, acids, hydraulic oil, petroleum, caustics, naphtha, acetate, solvents, propane, paints, sewage or processed wastewaters, leachates, cesspool and other human wastes or flammable or volatile liquids.
- (3) Demolition debris: Sheetrock, aggregate, brick, stone, cement, gravel, sand, structural clay products, soil, asbestos, roofing materials, plaster, plasterboard or other noncombustible demolition debris.
- (4) Miscellaneous materials: offal, tar, asphalt, sealed drums, pressurized containers or tires.
- (5) Hazardous waste as defined in the federal, state and local laws and regulations.
- (6) Pathological or infectious waste.
- (7) Radioactive waste.
- (8) White goods.
- (9) Logs or tree stumps larger than four feet in length and six inches in diameter.
- (10) Dead animals.
- (11) Human and animal remains.
- (12) Batteries.
- (13) Motor vehicles, major motor vehicle parts and other large machinery.
- (14) Baled materials.

C. If the operator of a designated facility discovers nonprocessable waste in an incoming truck either at or before the truck reaches the unloading or discarding area, unless such truck is specifically disposing of clean fill at the Town of Smithtown Municipal Services Facility, the driver will be directed to leave the facility. The attempt to deliver will be recorded. Repeat attempts may lead to refusal of access to all Town facilities.

#### **[Amended 1-10-1995 by L.L. No. 1-1995]**

D. All staff of any designated facility may routinely visually screen the solid waste being unloaded into the facility looking for nonprocessable waste and other prohibited material, including drums, containers which may contain unused or waste chemicals, large numbers of filled sacks or substantial quantities of soil or powdery debris. If suspected hazardous waste is discovered, the appropriate steps will be applied.

E. If a facility operator observes nonprocessable waste being discharged into the facility, that carter shall not be permitted to leave the facility. The vehicle will be reloaded and the carter required to remove the nonprocessable waste from the facility site at the carter's own expense. If the waste is suspected to be hazardous and cannot be removed safely, appropriate procedures shall be followed.

F. If the nonprocessable or suspected hazardous waste is observed in or going into the refuse pit or discharge area but the delivery vehicle exits the area before it can be stopped, the facility operator will make every attempt to identify and stop the vehicle before it exits the facility. The carter will then be required to reload the waste and remove it from the facility at the carter's own expense.

## § 177-80. Town facilities and use thereof.

A. It shall be unlawful for any person, firm, association, partnership or corporation to dispose of any solid waste of any kind or nature in the Municipal Services Facility or such other waste management facility as may be designated by the Town Board pursuant to this chapter which originated or was collected outside the territorial limits of the Town of Smithtown, except pursuant to Subsection L herein or a duly executed intermunicipal cooperative agreement.

**[Amended 1-10-1995 by L.L. No. 1-1995]**

B. It shall be unlawful for any person, firm, association, partnership or corporation to dispose of any solid waste of any kind or nature in the Town of Smithtown if the same originated or was collected outside the territorial limits of the Town of Smithtown, except pursuant to a duly executed intermunicipal cooperation agreement.

C. It shall be unlawful for any person to deposit or cause to be deposited in any solid waste management facility as may be designated by the Town Board pursuant to the provisions of this chapter any hazardous waste.

D. It shall be unlawful for any person to deposit or cause to be deposited in any solid waste management facility as may be designated by the Town Board pursuant to the provisions of this chapter any hypodermic needle or syringe, unless the same has been first destroyed by the detachment of the needle from the syringe from any disposal hypodermic unit and the hypodermic syringe has been crushed and broken and the needle bent and all of said parts deposited in the metal container so secured as to prevent parts from falling out.

E. Except upon order by an authorized officer, employee or agent having charge of a solid waste management facility as may be designated by the Town Board pursuant to the provisions of this chapter, no person shall remove any material or solid waste from any solid waste management facility once the same has been deposited.

**[Amended 1-10-1995 by L.L. No. 1-1995]**

F. It shall be unlawful for any person to deposit or cause to be deposited in any solid waste management facility any untreated cesspool contents.

**[Amended 1-10-1995 by L.L. No. 1-1995]**

G. Any metal drums brought to the Municipal Services Facility with a capacity of five gallons or greater must have both ends cut out.

**[Amended 1-10-1995 by L.L. No. 1-1995]**

H. Old, used, worn, defective or discarded automobile tires, truck tires or any other type of tires shall not be accepted for deposit in any solid waste management facility.

**[Amended 1-10-1995 by L.L. No. 1-1995]**

I. It shall be unlawful for any person, firm, association, partnership or corporation to dispose of any landscaping material in the Municipal Service Facility. All landscaping material shall be disposed of at a duly licensed facility.

**[Amended 1-10-1995 by L.L. No. 1-1995]**

J. Only Smithtown residents, parties to a specific agreement with the Town of Smithtown or persons, firms, associations, partnerships or corporations as provided in Subsection L herein are permitted to use the Municipal Services Facility, and said Town residents will be charged accordingly. There shall not be a charge for homeowners residing in the Town of Smithtown for the use of the facility when disposing of yard waste, unless said homeowner makes more than two deposits in a single day. In the event that a homeowner uses the facility more than two times in a day, said homeowner shall be charged \$10 for each additional visit, unless, for a good cause shown, the facility operator determines that said additional fee is inappropriate; then, in the facility operators judgment, the fee can be waived.

**[Added 12-21-1993 by L.L. No. 11-1993; amended 1-10-1995 by L.L. No. 1-1995]**

K. In the event that the facility operator is able to accept Town resident landscapers' yard waste material, they will be charged at a rate of \$40 per ton to dump said waste. The facility operator reserves the right to prohibit the dumping of landscapers' yard waste based upon the availability of the space, weather conditions, frequency of visits and any other reasons which are in the best interest of the proper operation of the Municipal Services Facility.

**[Added 12-21-1993 by L.L. No. 11-1993; amended 1-10-1995 by L.L. No. 1-1995]**

L. Clean fill may be disposed of at the Town of Smithtown Municipal Services Facility by any resident or nonresident person, firm, association, partnership or corporation who will be charged at the rate as established by the Town Board of the Town of Smithtown pursuant to § [177-83D\(5\)](#) and [D\(6\)](#) herein. The Municipal Services Facility operator reserves the right to prohibit the disposal of clean fill based upon weather conditions or any other reasons which are in the best interest of the proper operation of the Municipal Services Facility.

**[Added 1-10-1995 by L.L. No. 1-1995]**

M. The Town Board of the Town of Smithtown shall be authorized from time to time to promulgate such other rules or regulations as may be deemed necessary with regard to the disposal of clean fill at the Town of Smithtown Municipal Services Facility.

**[Added 1-10-1995 by L.L. No. 1-1995]**

#### **§ 177-81. Entry into solid waste management facility; search and seizure.**

By a vehicle's entry into a solid waste management facility, the owner and operator of that vehicle shall be deemed to consent to the searches and seizures hereinafter provided.

A. Any vehicle which enters any solid waste management facility may be searched and its contents examined by Town of Smithtown employees or agents to determine compliance with the provisions and prohibitions of the laws of the State of New York, County of Suffolk and Town of Smithtown.

B. Any peace or police officer or any authorized employee or agent of the Town of Smithtown shall have the power to seize without a warrant for conservation, health, safety or evidentiary purposes any item the officer or individual has cause to believe is a hazardous substance or generated or collected outside the Town of Smithtown which has been or is being processed or disposed of in violation of the provisions of this chapter or any item which has been or is being processed or disposed of in violation of any provision of applicable law.

#### **§ 177-82. Disposal generally.**

**[Amended 12-19-1991 by L.L. No. 12-1991]**

A. All vehicles or containers subject to the fees set forth herein must have a cubic yard capacity and tare weight of such vehicle or container clearly displayed on the right side outside thereof. Failure to disclose and display the cubic yard capacity and tare weight of a vehicle or container shall be grounds for refusal to permit dumping at the site.

B. No vehicles, except for Town licensed carters, shall be permitted to deliver solid waste to the Resource Recovery Plant.

C. Dumping of any solid waste at any solid waste management facility without the approval of the facility operator and the Town of Smithtown shall constitute a violation of this chapter. Nothing in this chapter shall exempt a resident from paying any fee which may otherwise be applicable pursuant to this chapter.

#### **§ 177-83. Disposal site; fees.**

**[Amended 12-19-1991 by L.L. No. 12-1991]**



A. Effective January 1, 1992, all commercial solid waste collected by a carter shall be transported to and disposed of at a solid waste management facility designated by the Town of Smithtown for the material to be disposed.

B. The Town of Smithtown reserves the right to direct the carter to deliver the waste to alternative disposal facilities within the boundaries of or within a radius of five miles of the boundaries of the Town of Smithtown.

C. All commercial solid waste collected shall be delivered directly to the designated disposal facility. No salvaging, mixing, sorting, segregating, removal or disposal shall be permitted at any other location.

D. All disposal fees associated with the disposal of commercial solid waste at the designated facilities shall be borne by the licensee. The Town of Smithtown shall invoice carters who have an account with the Town of Smithtown on a monthly basis for the actual tonnage delivered to the designated facility, except as provided in Subsection (7) herein. Payment by the carter shall be made to the Town within 15 calendar days of the date of invoice. In the event that the carter does not submit payment for its disposal fees within 15 calendar days of the invoice, a late payment charge of \$25 will be added to the carter's next monthly invoice. Furthermore, all delinquent unpaid balances will accrue interest at the periodic rate of 18%, which amount will be reflected on the carter's subsequent invoices until fully satisfied.

**[Amended 1-10-1995 by L.L. No. 1-1995]**

(1) Commercial acceptable wastes collected by the carter shall be delivered to the Huntington Resource Recovery Facility for disposal. The tipping fee at this facility shall be \$65 per ton commencing on January 1, 1992.

(2) Commercial recyclables, white goods or scrap metal collected by the carter may be delivered to the Smithtown Municipal Services Facility. Effective January 1, 1992, there shall be no tipping fee for these materials delivered to the Municipal Services Facility.

(3) Commercial bulk items collected by a carter shall be delivered to the Huntington Resource Recovery Facility. The tipping fee for commercial bulk items shall be \$65 per ton commencing on January 1, 1992.

(4) Commercially collected leaves and brush collected by the carter shall be delivered to the Municipal Services Facility where the vehicles will be weighed then directed to a designated facility. The tipping fee for these materials shall be \$40 per ton commencing January 1, 1992.

(5) Rubble or demolition and construction materials.

(a) The fee for the disposal of rubble or demolition and construction materials at the Town of Smithtown Municipal Services Facility shall be:

(1) Four dollars per automobile not specifically enumerated in Subsection D(5)(b).

**[Amended 5-12-1998 by L.L. No. 4-1998; 12-19-2000; 7-22-2003]**

(2) Ten dollars for a station wagon with the rear seat down, a van, minivan, four-wheel drive vehicle or an automobile with debris attached to the roof of such automobile.

**[Amended 5-12-1998 by L.L. No. 4-1998]**

(3) Twenty dollars for a pickup truck.

**[Amended 5-12-1998 by L.L. No. 4-1998]**

(b) The Town of Smithtown Municipal Services Facility reserves the right to weigh each vehicle as enumerated in § 177-83D(5)(a)[1], [2] and [3] that enters the facility if the scale house operator or other designated individual believes that such vehicle should be charged \$70 per ton for the disposal of rubble or demolition and construction materials.

**[Amended 12-19-2000; 7-22-2003]**

(c) The fee for the disposal of rubble or demolition and construction materials in accordance with § 177-83D(5)(a)[1], [2] and [3] and (b) may be amended by resolution, from time to time, by the Town Board of the Town of Smithtown at the recommendation of the Solid Waste Coordinator, without the necessity of a formal public hearing.

**[Added 5-12-1998 by L.L. No. 4-1998; amended 12-13-2005 by L.L. No. 6-2005]**

(6) Clean fill collected by any person, firm, association, partnership or corporation may be delivered and disposed of at the Town of Smithtown Municipal Services Facility. The fee for disposal of clean fill not specifically enumerated in § 177-83D(5)(a)[1], [2] and [3] shall be \$80 per ton. The fee as set forth in this subsection may be amended by resolution, from time to time, by the Town Board of the Town of Smithtown at the recommendation of the Solid Waste Coordinator, without the necessity of a formal public hearing.

**[Amended 1-24-1995; 4-17-1995; 5-9-1995; 5-16-1996; 7-1-1996; 7-16-1996; 5-12-1998 by L.L. No. 4-1998; 5-12-1998; 12-19-2000; 7-22-2003; 9-9-2008; 8-17-2010]**

(7) The disposal fee for the disposal of clean fill at the Town of Smithtown Municipal Services Facility shall be paid pursuant to the following procedures:

(a) The person, firm, association, partnership or corporation seeking to dispose of clean fill at the Town of Smithtown Municipal Services Facility shall first obtain a clean fill ticket at the Municipal Services Facility.

(b) The person, firm, association, partnership or corporation shall fill out an application requesting clean fill tickets at the Municipal Services Facility and must submit a certified check or money order payable to the Town of Smithtown general fund or cash, only at the discretion of the Municipal Services Facility operator, for the amount of clean fill tickets requested.

(c) The fee for disposal shall be calculated on a per yard basis depending on the size of the container or roll-off the person, firm, association, partnership or corporation is seeking to dispose of.

(d) Upon the arrival at the Town of Smithtown Municipal Services Facility, the person, firm, association, partnership or corporation shall identify its load as clean fill and proceed to the designated scale house. Then a clean fill ticket must be presented to the Municipal Services Facility scale house operator or other designated individual in advance of the disposal of the clean fill.

#### § 177-84. Exemptions.

Exempt from the provisions of this chapter shall be any vehicle owned, leased, rented, hired or utilized by the Town of Smithtown, its agencies, departments or bureaus.

#### § 177-85. through § 177-88. (Reserved)

#### Article VII. Littering

#### § 177-89. Throwing from vehicles.

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

#### § 177-90. Vehicles causing litter.

A. No person shall drive, operate or move any vehicle within the Town unless the vehicle is so constructed or loaded as to prevent any load, material, contents, litter, sand or gravel from being blown or tossed or deposited upon any street or public or private place.

B. No person shall drive, operate or move any vehicle within the Town if the vehicle is discharging any load, material, contents, litter, sand or gravel upon any street or public or private place.

#### § 177-91. Public places.

No persons shall throw, deposit or distribute litter in or upon any street, sidewalk, vehicle or other public place within the Town except in public receptacles or in authorized private receptacles for collection.



#### **§ 177-92. Placement 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.

#### **§ 177-93. Sweeping into gutters.**

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

#### **§ 177-94. Duties of business merchants.**

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 any litter from any building or lot from any public or private sidewalk or driveway. Persons owning or occupying places of business within the Town shall keep the sidewalks adjacent to their business premises free of litter.

#### **§ 177-95. Parks.**

No person shall throw, distribute 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 litter shall be carried away from the park by the person responsible for its presence and properly disposed of elsewhere as provided in this chapter.

#### **§ 177-96. Watercourses.**

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

#### **§ 177-97. Occupied private property.**

No person shall throw, distribute 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 the 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.

#### **§ 177-98. Premises to be maintained litter-free.**

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

#### **§ 177-99. Vacant lots.**

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

### § 177-100. Private dumps prohibited.

It shall be unlawful for any person to maintain on any property, whether owned by such person or not, any dump, solid waste or abandoned vehicles or parts thereof at any time. However, this section shall not be construed to limit the rights of householders or others to place solid waste in properly covered receptacles or containers in front of their property for authorized collection or removal.

### Article VIII. Nonresidential Solid Waste Disposal Capacity Generation Fee

**[Added 6-10-1997 by L.L. No. 3-1997** *Editor's Note: This local law also renumbered former Art. VIII, Penalties and Miscellaneous, as Art. IX. ]*

### § 177-101. Scope and purpose.

The purpose of this article is to provide for the health, welfare and safety of the populace of the Town of Smithtown by establishing a system for the collection of revenues necessary to meet existing municipal financial obligations in connection with continuing to make available solid waste disposal capacity meeting current technological, environmental and public health protection standards. The making available of such solid waste disposal capacity is intended to avoid the undue and unhealthful accumulation of waste and to encourage disposal of solid waste in a manner conducive to the maintenance of the public health, safety and welfare. Therefore, pursuant to Town Law, General Municipal Law, Municipal Home Rule Law and the laws of the State of New York, there is hereby established a system for the charging of fees and collecting of funds for the generation of nonresidential solid waste within the Town of Smithtown sufficient to maintain and operate solid waste disposal capacity sufficient to accommodate said nonresidential solid waste.

### § 177-102. System created.

A. There is hereby created and established a nonresidential solid waste disposal capacity generation fee billing system. Charges billed through this system shall be used to provide funds for the operation of a facility used for or in connection with allowing for the disposal of solid waste pursuant to a service agreement dated June 29, 1989, as amended, by and between the Town of Smithtown, the Town of Huntington and the facility operator, and for the acquisition, construction, equipping, operation and maintenance of such other related solid waste disposal sites or facilities and for other related services, the need for which the Town of Smithtown shall determine from time to time.

B. This nonresidential solid waste disposal capacity generation fee billing system and the disposal rates specified in this section shall become effective no later than July 1, 1997, or the effective date of this article.

C. Exemption from fee system.

**[Added 5-12-1998 by L.L. No. 4-1998]**

(1) State and local municipal entities may be exempt from the Town of Smithtown nonresidential solid waste disposal capacity generation fee system upon application to the Town of Smithtown Solid Waste Coordinator.

(2) The municipal entity may seek an exemption from the Town of Smithtown nonresidential solid waste disposal capacity generation fee system by filing a written request to the Town of Smithtown Solid Waste Coordinator. This written request must clearly state:

(a) The name of the entity requesting the exemption.

(b) All properties owned and operated by this entity, which are located within the confines of the Town of Smithtown Nonresidential Solid Waste Disposal Capacity Generation Fee System.

(c) The reasons why this entity should be exempt from the Town of Smithtown Nonresidential Solid Waste Disposal Capacity Generation Fee System.

(3) The municipal entity may seek a review of the Town of Smithtown Solid Waste Coordinator's decision by filing a written request in accordance with § [177-105B\(2\)](#).

### § 177-103. Rates.

A. Serviced billing rates. Nonresidential solid waste generators, serviced by licensed commercial waste collectors, shall be billed a monthly solid waste disposal capacity fee calculated in accordance with the following formula:

	SCY	=	Serviced container yards.
	DSUR	=	DSU (disposal service unit) rate.
	SCY x DSUR	=	Disposal capacity billing charge.

B. DSU rate. The DSU rate shall be as established by the Town Board of the Town of Smithtown. The DSU rate may be amended by resolution from time to time by the Town Board of the Town of Smithtown without the necessity of a formal public hearing.

### § 177-104. Billing.

A. The charges established herein for nonresidential solid waste disposal capacity shall be billed monthly to the landowner of each parcel of property.

B. The monthly nonresidential solid waste disposal capacity bill shall set forth the following information:

(1) Name and billing address of the landowner, including the address of that parcel of land for which this bill applies.

(2) The number and different sizes of the containers that are located on such parcel of property and the individual breakdown for each charge for each separate and distinct container and whether or not any container is shared by any businesses.

(3) The service dates for which the bill applies, along with the frequency of pickup at the location for each container and the compaction factor utilized by the Town.

(4) Any on-demand or extra disposal service from the prior calendar month, setting forth a detailed breakdown of what the disposal charges were for that location.

(5) The date payment is due without interest and late charges.

C. Payment of the monthly disposal capacity bill by the landowner shall be made to the Town of Smithtown general fund at the address as specified on the bill, within 15 calendar days of the due date. In the event that the disposal capacity fee bill is not paid within 15 calendar days of the due date, a late payment charge of \$25 will be added to the next monthly disposal capacity bill. Furthermore, all delinquent unpaid balances will accrue interest at the periodic rate of 18%, which amount will be reflected on the landowner's subsequent disposal capacity fee bills until such amount is fully satisfied.

D. In the event that such disposal capacity fee bill becomes over 75 days delinquent, the Town of Smithtown may pursue any and all lawful and appropriate collection remedies, including but not limited to:

(1) Civil action against the delinquent landowner seeking monetary relief for the amounts owed for the disposal capacity service.

(2) A levy against the landowner's tax bill in accordance with General Municipal Law § 120-cc, where the Town of Smithtown may impose a tax levy in any year in which unpaid fees or charges, including penalties for unpaid municipal solid waste disposal capacity service.

E. The provisions for failing to make payment set forth herein shall be in addition to any other rights and remedies which the Town of Smithtown may have under the laws of the State of New York.

#### § 177-105. Adjustments to charge; appeal proceedings.

##### **[Amended 5-12-1998 by L.L. No. 4-1998]**

A. Any commercial, industrial, institutional and multifamily operation or establishment may make an application to the Town of Smithtown Solid Waste Coordinator to be classified as either a low-density waste generator, a minimal waste generator and/or an on-demand service waste generator. This written request must be made to the Town of Smithtown Solid Waste Coordinator and include the following information:

- (1) The name of the entity requesting the classification.
- (2) The type or types of classification being requested.
- (3) The addresses of all properties owned and operated by this entity which are located within the confines of the Town of Smithtown Nonresidential Solid Waste Disposal Capacity Generation Fee System.
- (4) The reason(s) why this entity's properties should be classified as a low-density waste generator, a minimal waste generator and/or an on-demand service waste generator.

B. Appeal; review of decision.

(1) Any person, firm or corporation who is billed for charges outlined in this article and who considers such charges to be inaccurate, erroneous or inconsistent with the provisions of this article shall have the right to appeal the disputed charges by making written request to the Town of Smithtown Solid Waste Coordinator. A review and investigation of the disputed charges will then be made by the Town of Smithtown Solid Waste Coordinator who will provide to the appellant a written decision on the appeal which contains the reasons for the decision.

(2) The appellant may seek a review of the Town of Smithtown Solid Waste Coordinator's decision, by filing a written request to the Nonresidential Solid Waste Disposal Capacity Generation Fee Review Board of the Town of Smithtown within 10 days of the date of mailing of the Town of Smithtown Solid Waste Coordinator's decision to the appellant. The Nonresidential Solid Waste Disposal Capacity Generation Fee Review Board shall consist of the Environmental Protection Director, Town Comptroller and Town Attorney or their duly designated representatives. The appellant's notice of appeal must clearly state the nature of the action or reasons why the Town of Smithtown Solid Waste Coordinator's action should be modified, reversed or remanded. A review by the Board shall be conducted not less than 15 days and no more than 60 days from the date off the appellant's notice of appeal is filed, unless the Review Board, in its sole discretion, finds that the review should be delayed.

##### **[Amended 6-9-2009 by L.L. No. 2-2009]**

(3) Any charges found to be inaccurate, erroneous or inconsistent by written decision after a review or an appeal made pursuant to this section shall be corrected by means of a refund, credit or other method approved of by the Town of Smithtown Solid Waste Coordinator. Corrections for any inaccurate, erroneous or inconsistent charges shall be retroactive only to the beginning of the fiscal year in which such charges were appealed pursuant to this section.

##### **[Added 5-30-2000 by L.L. No. 5-2000]**

C. A review and investigation of this request will be made by the Town of Smithtown Solid Waste Coordinator, who will provide to the applicant a written decision on the application, containing the reasons for the decision.

D. The applicant may seek a review of the Town of Smithtown Solid Waste Coordinator's decision by filing a written request in accordance with § 177-105B(2).

#### § 177-106. Waste management restrictions.

A. Container identification. All waste collectors must display on each container a business name or trade name, which shall sufficiently identify the licensee providing waste collection services to the establishment using or

owning the waste container. In addition, the waste collector must display on every container a commercial solid waste identification decal as supplied by the Town of Smithtown. This decal must be applied in such a way so as to become permanent and conspicuously visible to any Town of Smithtown employee and the general public. It will be the solid waste collector's responsibility to affix the decal supplied by the Town of Smithtown to its container.

**B.** Container capacity. The capacity of each container as agreed to by the Town of Smithtown Solid Waste Coordinator must be conspicuously displayed on the container so as to be readily accessible to any employee of the Town of Smithtown. If there is any change in the capacity of the container, the waste collector must notify the Town of Smithtown Solid Waste Coordinator within 72 hours of such change.

**C.** Frequency of pickup. All waste collectors must conspicuously display on all containers the frequency of collection of the waste in each container. In the event such frequency of collection changes, the waste collector must notify the Town of Smithtown Solid Waste Coordinator, in writing, within 72 hours of such change.

**D.** Demand service. All waste collectors must conspicuously display on all containers that are set up as demand service that such container is not picked up on any specific frequency but is an on-demand container. The waste collector must display in letters at least two inches tall, that such container is "ON DEMAND." In the event that such container changes from an on-demand service to a specific frequency collection, the waste collector must notify the Town of Smithtown Solid Waste Coordinator, in writing, within 72 hours of such change. All on-demand service for any given month shall be billed based on the serviced container yards (SCY) disposed of in that month and reflected on the landowner's subsequent month's disposal fee bill. The Solid Waste Coordinator of the Town of Smithtown shall determine whether the commercial, industrial, institutional and multifamily operation or establishment is entitled to be charged under this system as an on-demand service waste generator.

**[Amended 5-12-1998 by L.L. No. 4-1998]**

**E.** Extra service. All waste collectors must notify the Town of Smithtown Solid Waste Coordinator of any extra service provided to a location that currently has a specific frequency of collection. Such notice must be made to the Town of Smithtown Solid Waste Coordinator, in writing, within 24 hours after such extra service is provided to any specific location, indicating the capacity size of the extra container service. The landowner will be billed for the disposal capacity fee for the extra service provided to the landowner, based on the serviced container yards (SCY) disposed of in that month and reflected on the landowner's subsequent month's disposal fee bill.

**§ 177-107. Route manifest reporting requirements.**

**A.** Every operator of a motor vehicle licensed to a waste collector shall maintain a solid waste disposal route manifest, which shall be a complete, accurate, current and legible record of each load of nonresidential waste collected, removed, transported and/or disposed of.

**B.** Solid waste disposal route manifests required by this section shall be maintained on a form approved by the Town of Smithtown Solid Waste Coordinator and shall contain the following:

**(1)** The date of the information reflected in the manifest; the business name and license number of the waste collector for which the vehicle is operated; the vehicle license number as required by the Town of Smithtown; and the vehicle operator's full, true and correct name.

**(2)** An itemized listing for each distinct point of waste collection of the collection address, container sizes and the Town of Smithtown decal number from which waste was collected and the account name of the customer from whom waste was collected.

**(3)** For each listing of waste collection, the name and address of the disposal, facility and the date of disposal.

**C.** Vehicle operators shall subscribe to the following statement on the manifest: "I understand that falsification of a solid waste disposal route manifest is a criminal offense. Understanding this, I hereby affirm that all



garbage collected by me is only commercial waste generated within the confines of the Town of Smithtown and that the information contained in the foregoing manifest is full, true and correct to the best of my knowledge."

D. Every operator of a motor vehicle licensed to a waste collector shall have an accurate and current solid waste disposal route manifest in his immediate possession at all times and shall display such manifest on demand of any employee of the Town of Smithtown. Failure to do so shall be deemed a violation of this chapter subjecting a person convicted under this section to the fines and penalties as set forth in this chapter.

E. The solid waste disposal route manifest shall be submitted to the Town of Smithtown Solid Waste Coordinator or his duly authorized representative daily upon delivery of the load to any disposal facility.

F. The waste collector must set forth on its solid waste disposal route manifest the route that each truck takes in collecting the waste by delineating the stop numbers in numerical order on the solid waste disposal route manifest.

#### § 177-108. Notice of changes.

A. Commercial waste collectors shall provide the Town of Smithtown Solid Waste Coordinator with written notification within 72 hours of the effective date of any changes in operation which affect the service to a commercial customer. The notification shall include the effective date(s) of such changes. Changes requiring written notification include but are not limited to the following:

(1) Loss of customers.

(2) Sale, lease or transfer of any portion of a waste collector's solid waste operation.

(3) Change of mailing address or phone number.

(4) Purchase, sale or lease of any vehicle or related solid waste collection equipment, including loaned or borrowed vehicles or equipment.

(5) Changes in number, sizes, types and collection frequency of containers.

(6) Addition of customers.

(7) Any extra container services.

B. Any changes to a customer's service which will affect their disposal charges shall be communicated in writing to the Town of Smithtown Solid Waste Coordinator.

#### § 177-109. Administration fee.

A. The Town of Smithtown shall charge each commercial property owner an administrative fee to cover the cost of implementing, administering and enforcing this commercial waste disposal capacity generation fee system. Each property owner shall be charged an administration fee to be included in the disposal capacity generation fee bill. The administration fee shall be as established by the Town Board of the Town of Smithtown. The administration fee may be amended by the Town Board of the Town of Smithtown without the necessity of a formal public hearing.

B. All commercial properties that have an assessment code classification as set forth below will be exempt from the administrative fee as set forth by the Town of Smithtown:

	610	Education
	611	Libraries
	612	Schools
	614	Special schools and institutions



	615	Other education
	620	Religious
	632	Benevolent and moral associations
	633	Homes for the aged
	641	Hospitals
	642	All other health facilities
	650	Government
	651	Highway garage
	652	Office building government
	653	Parking lots
	662	Police and fire protection
	681	Cultural facilities
	690	Miscellaneous
	692	Road, streets, highways and parkways
	695	Cemeteries

## **Article IX. Penalties and Miscellaneous**

**[Amended 12-21-1993 by L.L. No. 11-1993; 6-10-1997 by L.L. No. 3-1997]**

### **§ 177-110. Penalties for false statements.**

**A.** Any applicant for a license, as hereinabove described, who knowingly makes a false statement in such application shall be guilty of an unclassified misdemeanor and shall be liable to a fine of not more than \$5,000 or imprisonment for not more than 30 days, or both. In addition, any license issued by the Town of Smithtown in reliance on any false statement material to the application shall be immediately suspended until such time as the applicant submits a new application, together with supporting documentation and all appropriate fees. Upon approval of the application, the Town Clerk shall remove the suspension from the license, and the same shall continue to be in effect until the expiration date stamped on the license.

**B.** It shall be unlawful and an offense for any person to knowingly prepare or execute an inaccurate solid waste disposal route manifest or to induce or coerce any other person to prepare or execute an inaccurate solid waste disposal route manifest. Persons violating the provisions of this section shall be guilty of an unclassified misdemeanor and, upon conviction thereof, shall be liable for a fine of not more than \$5,000, excluding costs, and/or by imprisonment for a period of not more than 30 days.

C. Violations of this section shall be deemed sufficient cause for the cancellation, suspension or revocation of the waste collector's license pursuant to the rules and regulations authorized by this chapter.

**§ 177-111. Penalties for offenses.**

Any person who shall violate or neglect or refuse to comply with any of the provisions of this chapter, except where otherwise indicated, shall be guilty of an unclassified misdemeanor and shall be liable to a fine of not more than \$5,000 or imprisonment for not more than 60 days, or both. Each day shall constitute a separate violation and subject any person who shall violate or neglect or refuse to comply with any provision of the chapter to liability to the same extent as the first-time violator.

**§ 177-112. Severability.**

If any clause, sentence, paragraph, subdivision, section or other part of this chapter shall be judged by any court of competent jurisdiction to be unconstitutional or otherwise invalid, such judgment shall not affect, impair or invalidate the remainder of this chapter, and it shall be construed to have been the legislative intent to enact this chapter without such unconstitutional or invalid part therein.

**§ 177-113. When effective.**

**[Amended 10-6-2009 by L.L. No. 5-2009]**

This chapter shall become effective immediately upon filing with the Secretary of State of the State of New York.

**§ 177-114. Preemption.**

The provisions of this chapter shall take precedence over and shall supersede and preempt any inconsistent provision of any other local law or ordinance heretofore enacted by the Town of Smithtown or by any village within the Town of Smithtown.