

"LOCAL LAW NO. 5 OF 1988"  
A LOCAL LAW RELATING TO REGULATION OF THE  
COLLECTION AND DISPOSAL OF SOLID WASTE IN ESSEX COUNTY

BE IT ENACTED, by the Board of Supervisors of Essex County as follows:

SECTION 1. Purpose

The purpose of this local law is: (a) to institute an orderly program for the collection, transportation, treatment and disposal of solid waste generated in Essex County in order to promote the welfare, convenience, health, and safety of the citizens of Essex County[, and] ; (b) to prevent and prohibit the indiscriminate and uncontrolled use of property for dumping purposes; (c) to prevent and prohibit open dumping and to require that collection, transportation, treatment and disposal of solid waste and hazardous waste be conducted only as permitted and approved by the County of Essex; (d) to remove certain materials from the solid waste stream in order to decrease the flow of solid waste to the County landfill, aid in the conservation of valuable resources, increase the useful life of the County landfill, reduce the required capacity of existing and proposed solid waste management facilities, and reduce the financial impact and economic burden upon the taxpayers and residents of Essex County; and (e) to comply with the New York Solid Waste Management Act of 1988 which requires municipalities to adopt a local law providing for the source separation of solid waste into recyclable, reuseable, or other components for which economic markets or alternate uses exist.

SECTION 2. Definitions

(a) "Business" shall mean any individual, association, partnership, firm or corporation having an established business within Essex County.

(b) "Collector" shall mean any individual, association, partnership, firm or corporation in the business of collecting solid waste, other than their own solid waste, within Essex County.

(c) "Contractor" shall mean any individual, association, partnership, firm, or corporation: (1) in any business dealing with construction; (2) or dealing with the collection of junk, second-hand or used materials; or (3) [; and any individual, association, partnership, firm or corporation] which owns a packer truck or other vehicle commonly used in the waste hauling or collection industry and is not a collector.

(d) "Hazardous Waste" shall mean a waste or combination of wastes, which because of its quantity, concentration, or physical, chemical or infectious characteristics may: (1) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible or reversible incapacitating [reversible] illness; or (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed; or (3) waste which appears on the list of hazardous waste promulgated by [the Commissioner of

Environmental Conservation pursuant to section 27-0903 of the Environmental Conservation Law] any Federal or State agency, department or bureau; or (4) any waste which any municipality or governmental agency having appropriate jurisdiction shall determine to be so harmful, toxic or dangerous [such] that the health, safety, or welfare of the public is at risk, or the operation of solid waste management[,] facilities may be adversely affected.

(e) "Individual Hauler" shall mean any person that hauls with a car, van, [or] pickup truck, or other vehicle, their own solid waste.

(f) "Municipality" shall mean a town, city, or village, or any designated public agency thereof, an improvement district, or a public authority; or any two [of] or more of the foregoing which are acting jointly in connection with a solid waste management facility.

(g) "Sanitary Landfill" shall mean a facility which includes types of operations in which solid waste is deposited by plan on a specified portion of open land, [is compacted by force applied by mechanical equipment, and then is covered by a layer of earth,] all in accordance with or intended to be in accordance with 6 NYCRR Part 360 of the New York State Environmental Conservation Law Rules and Regulations as the same may be hereafter amended, or any successor regulatory scheme.

(h) "Secondary Materials" shall mean materials recovered from or otherwise destined for the waste stream, including but not limited to post-consumer material, plastics, metal and glass containers, industrial scrap material, cardboard, newspaper, yard organics, paper goods and products, office paper, and such other materials as defined in rules and regulations promulgated by any Federal or State agency, bureau, or department, and which material is capable of being either (1) reused or recycled in some form, or (2) sold on an existing or expected economic market.

[(h)] (i) "Solid Waste" shall mean all [putrescible and non-putrescible] materials or substances discarded or rejected as being spent, useless, worthless, or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, industrial and commercial waste, sludges from air or water pollution control facilities or water supply treatment facilities, rubbish, ashes, contained gaseous material, demolition and construction debris, discarded automobiles and offal, secondary materials, and as defined by applicable Federal and State statute, rule or regulation; but shall not include sewage and other highly diluted water carried materials or substances, and those in gaseous form, incinerator residue, or hazardous waste.

[(i)] (j) "Solid Waste Management Facility" shall mean any facility employed beyond the initial solid waste collection process, including but

not limited to: transfer stations; [bailing] baling facilities; rail haul or barge haul facilities, processing systems[;], including resource recovery facilities or other facilities for reducing solid waste volume; sanitary landfills; facilities for the disposal of construction and demolition debris; plants and facilities for compacting, composting or pyrolyzation of solid waste; recycling centers and secondary materials collection and storage facilities; and other solid waste disposal, reduction, collection, storage, or conversion facilities.

[[j)] (k) "Transfer Station" shall mean a facility where solid waste is transferred by a business, collector, contractor, or individual [hauler] hauler to a container for transport to a sanitary landfill, recycling facility, or other solid waste management facility.

### SECTION 3. Administration

(a) The Essex County Board of Supervisors shall by resolution formulate, adopt, promulgate, amend and repeal rules and regulations in furtherance of this local law and shall enforce the provisions of this local law and the rules and regulations.

(b) The Chairman of the Board of Supervisors, or his/her designee, shall administer the provisions of this local law, and the rules and regulations in furtherance [t]hereof, including but not limited to registering and licensing all collectors and contractors, the operation and maintenance of all transfer stations, and the operation of all sanitary landfills within the County.

### SECTION 4. Collection and Transportation of Solid Waste

(a) On and after a permit to operate a solid waste management facility is issued to Essex County or its designee, no collector, contractor, business, or municipality shall collect, transport or dispose of solid waste or hazardous waste without first complying with the provisions of paragraphs [b] through [e] below and obtaining a permit to be issued by the County of Essex.

(b) All applications for permits shall be in writing and shall contain such information as required by the County of Essex, and shall be verified by the applicant. The applicant shall file with his application proof of insurance as hereafter set forth and shall pay the required application and permit fees.

(c) The applicant at the time of making the application, shall furnish the County of Essex with an affidavit listing in detail the number of residences, commercial establishments, businesses, contractors, individuals or other generators of solid waste located in Essex County

and serviced by the applicant. This list shall be updated every six months by the applicant and submitted to the County of Essex. The County of Essex has the right to request more specific information if deemed necessary at any time.

(d) The applicant shall furnish with his application proof of the following insurance, which will include proof that the same will not be cancelled except on at least 30 days written notice to the County of Essex: (1) a performance bond in the amount of \$25,000 issued by a surety company authorized to issue such bonds in the State of New York; and (2) Public liability insurance in the amount of at least \$500,000 per person for personal injury or death and \$250,000 for property damage. Upon the cancellation or termination of any such bond or policy of insurance, any permits issued to the applicant on the basis of such insurance shall be immediately revoked and of no further force or effect.

(e) Upon receipt of the application, and the proper proofs of insurance, and affidavit of the detailed list of customers served, and the payment of the required fees, the County of Essex shall thereupon issue the applicant an identifying sticker or stickers, to be placed in a conspicuous place in each and every vehicle, along with a permit.

(f) Permits will expire annually on December 31. Renewal permits shall be issued in the same manner and subject to the same conditions as original permits, and also shall be subject to any additional requirements in effect at the time of the application for renewal.

(g) Permits issued under the provisions of this local law shall not be transferrable.

(h) All [transportation] transportation of solid waste shall be in strict conformity with this local law and the rules and regulations.

(i) All vehicles used in the transportation of solid waste shall be so constructed as to prevent leakage in transit. The body of the truck shall be wholly enclosed or shall at all times be kept covered with an adequate cover. Operation of vehicles shall be in such manner as to prevent spilling or loss of contents.

(j) Nothing in this law is deemed to supersede any local public health law or any state or federal law which may be applicable to the subject matter contained herein.

(k) No permit shall be issued to any business, collector, contractor, or municipality while: (1) any permit previously issued is under suspension, revocation, or review; or (2) where any expired permit was either revoked, or was suspended and the conditions for [reinstated] reinstatement were not met.

SECTION 5. Disposal of Solid Waste

(a) No business, collector, contractor or municipality shall dispose of any solid waste generated in Essex County at any place or places without a permit issued pursuant to Section 4 and other than as designated in the permit issued.

(b) No individual hauler shall dispose of any solid waste generated in Essex County except at a transfer station operated by Essex County or its designee. Individual haulers will not be required to obtain a permit but will be required to provide acceptable proof of residence in Essex County upon request. No individual hauler shall be authorized to use any solid waste management facility while any temporary or permanent ban[r] imposed by the County of Essex as provided in Section 9 hereof is in effect.

(c) All persons using any solid waste management facility will be required to adhere to the rules and regulations posted at such facility and abide by the instructions of the attendant on duty.

(d) There is hereby established a program for the separation, collection, and disposal of secondary materials, which program shall be administered by the Essex County Director of Solid Waste and/or such other person or person said Director may designate. Said program shall be administered and operated in accordance with such rules and regulations as the Essex County Board of Supervisors may adopt and amend from time to time and the following:

(1) all solid wastes, including secondary materials, shall be source separated and prepared for collection to the extent and in the manner required by the County of Essex;

(2) the County of Essex shall have no obligation to accept, receive or dispose of any solid waste or secondary materials not separated or prepared for collection in accordance with this local law and the rules and regulations adopted pursuant hereto;

(3) from the moment that any individual, business, or other person or entity, places any secondary materials at, in, on or near any curb, sidewalk, street, transfer station, or solid waste receptacle, for the purpose of collection or disposal, said secondary materials shall become the property of the County of Essex or its authorized agent;

(4) no person, business, collector, contractor, or other entity, who or which is not so authorized by the County of Essex, shall collect, pick-up, remove, or cause to be collected, picked up, or removed, any secondary materials so placed as provided in the foregoing subparagraph;

(5) where secondary materials are not placed or prepared for collection or disposal as required by this local law and the rules and regulations adopted hereunder, the person, business, collector, contractor, or other entity, responsible for initially placing or preparing those materials for collection or disposal shall either remove the same or place and prepare them in compliance herewith.

## SECTION 6. Prohibited Activities

(a) No hazardous waste, and no waste likely to cause Essex County to violate any of the terms of its permit to operate a solid waste management facility, shall be deposited at or delivered to any solid waste management facility.

(b) No solid waste or hazardous waste generated outside of or within Essex County shall be transported on the roads, streets or highways within the County of Essex, except under permit issued by the County of Essex; however, nothing herein contained shall be deemed to violate the Commerce Clause of the United States Constitution.

(c) No solid waste or hazardous waste generated outside Essex County shall be accepted at any solid waste management facility unless the same is delivered pursuant to a written contract with Essex County and approved by the Board of Supervisors.

(d) No solid waste or hazardous waste generated in Essex County shall be transported or disposed of outside of Essex County, except upon permit issued by the County of Essex.

(e) No person, firm or corporation shall litter any public or private property within Essex County with any solid waste. In any prosecution of a violation of this paragraph, the existence of any envelope or correspondence in such solid waste containing the name of any person shall be prima facie evidence that such person placed or deposited said solid waste where found and violated this paragraph.

## SECTION 7. Fees

The Board of Supervisors of Essex County is hereby authorized by resolution to adopt and amend a schedule of fees for the application and issuance of permits, as well as for use of any solid waste management facility within the County of Essex, and the [Chairman of the Board of Supervisors] Director of Solid Waste Management is authorized to collect such fees in any manner authorized by law or by the Board of Supervisors.

## SECTION 8. Inspection

All vehicles transporting solid waste or hazardous waste in the County of Essex, and any waste delivered to or deposited at a solid waste management facility, shall be subject to inspection by the County of Essex or its designee at any time.

SECTION 9. Violations and Enforcement

[(a) The permit of any business, contractor, collector, or municipality who violates any provision of this local law, or the rules and regulation promulgated and adopted by the Board of Supervisors hereunder, is subject to suspension and/or revocation for such violation. Any individual hauler who violates any provision of this local law or such rules and regulation may be temporarily or permanently barred from using any solid waste management facility.

(b) Upon the first violation, the permit of any business, contractor, collector, or municipality, shall be subject to suspension by the Chairman of the Board of Supervisors or his/her designee, with such suspension to continue until such time as the violation is remedied and any reasonable conditions imposed by the Chairman or his/her designee are complied with.

(c) Upon the first violation, any individual hauler shall be subject to being temporarily barred from using any solid waste management facility by the Chairman of the Board of Supervisors or his/her designee, with such temporary bar [red] to continue until such time as the violation is remedied and any reasonable conditions imposed by the Chairman or his/her designee are complied with.

(d) In addition to any other reasonable conditions imposed in (b) or (c) above, the Chairman of the Board of Supervisors or his/her designee shall be authorized to: (1) require any violator to pay all clean-up costs and for any and all damages to person or property resulting directly or indirectly from such violation; and (2) subject any violator to the penalties prescribed in Section 10 hereof.

(e) Upon any second or subsequent violation, any permit issued hereunder shall be subject to immediate revocation; and any individual may be permanently barred from using any solid waste management facility. In addition, any such violator shall be subject to the penalties prescribed in Section 10 hereof.

(f) The decision of the Chairman or his/her designee suspending or revoking any permit, or imposing a temporary or permanent bar on the use of any solid waste management facility, shall be subject to review by the Essex County Board of Supervisors; provided that the person aggrieved thereby files a written verified petition within ten (10) days of such decision with the Clerk of the Board of Supervisors setting forth in detail all facts upon which the petitioner will rely in challenging such decision. The filing of such petition may be made by personal service upon such Clerk, or by certified mail, return receipt requested; except that if certified mail is used, the date of filing shall be deemed to be the date on which the petition is delivered to the Clerk, and the return receipt shall be presumptive evidence of such date. The failure to timely file a petition shall render the decision of the Chairman or his/her

designee final and binding, and [that] the same shall not be subject to judicial review.

(g) The hearing on any petition shall be held within fourteen (14) days after the filing of the petition, unless otherwise agreed between the petitioner and the Chairman of the Board of Supervisors. The determination of the Board of Supervisors on such hearing shall be rendered in writing within five (5) days after the close of evidence, and the original such determination shall be filed with the Clerk of the Board of Supervisors. A certified copy of such written determination together with notice of filing, shall be sent to the petitioner by regular mail.

(h) The determination of the Board of Supervisors upon such hearing may be reviewed by the Supreme Court of Essex County in a proceeding commenced pursuant to Article 78 of the Civil Practice Law and Rules provided that such proceeding is commenced within thirty (30) days of the filing of such determination with the Clerk of the Board of Supervisors.

(i) Should the determination of the Board of Supervisors be reversed or modified through any proceeding commenced pursuant to Article 78 of the Civil Practice Law and Rules as provided above, in no event shall the County of Essex be liable for any damages of any kind or nature whatsoever arising out of the suspension or revocation of any permit, or from the imposition of any temporary or permanent bar[r] from the use of any solid waste management facility.

(j) In addition to the powers of suspension, revocation and bar provided for herein, the Chairman of the Board of Supervisors, or his/her designee, shall have the power to impose any fines or penalties authorized by resolution of the Board of Supervisors for a violation of the provisions of this local law or of any rules or regulations adopted hereunder.

#### SECTION 10. Penalties for Violations]

(a) Each violation of this local law, or of any rule or regulation adopted pursuant hereto, shall constitute [an offense] a public nuisance punishable by a civil fine of not more than [one] five hundred dollars ~~(\$100.00)~~ (\$500.00) for the first violation, and of not more than one thousand dollars ~~(\$1000.00)~~ for each subsequent violation, [or by imprisonment not exceeding thirty (30) days, or by both such fine and imprisonment.]

(b) In addition to the penalties prescribed in paragraph (a) above, the Board of Supervisors shall have the power and authority:

(1) to suspend and/or revoke the permit of any business, collector, contractor, municipality, or individual hauler, who violates any provision of this local law or the rules and regulations adopted by the Board of Supervisors in furtherance hereof;

(2) to temporarily or permanently bar any business, collector, contractor, municipality, or individual hauler from using any solid waste management facility;

(3) to require any violator to pay all clean-up costs, the amount of any damages to person or property resulting directly or indirectly from such violation, as well as any legal costs including attorney's fees and court costs incurred in connection with enforcing the provisions of this local law or the rules and regulations adopted in furtherance hereof.

SECTION [11] 10. Effective Date

This local law shall take effect immediately upon filing with the Secretary of State."