

SOLID WASTE MANAGEMENT (2024)

*An ordinance to replace and codify ordinance of the Town of Bowdoinham
- Solid Waste Management (1994)*

This ordinance shall supersede and rescind the Solid Waste Ordinance of 1994 in the Town of Bowdoinham, County of Sagadahoc, State of Maine.

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Section 1. PURPOSE

There are several purposes of this ordinance.

- 1.1 To protect the health, safety and general well being of Bowdoinham residents,
- 1.2 To enhance and maintain the quality of the environment to conserve natural resources, ~~_____~~ and to prevent water and air pollution.
- 1.3 To deliver Solid Waste programs that are fiscally responsible, balancing wants and needs ~~_____~~ in program development and delivery.
- 1.4 To adhere to all federal and state laws and regulations, all local zoning, land use and other ~~_____~~ applicable local ordinances, and other governing contracts or agreements pertaining to ~~_____~~ Solid Waste management.

Commented [LBR1]: You asked me to comment on whether "climate change" should be included here, or, whether it is subsumed in the language referencing "the environment." I think either way is fine. Legally speaking, it is not a driving issue as the purpose section of any ordinance has no regulatory teeth. Rather, it just helps guide interpretation of the rest of the ordinance if there is some ambiguity. I think it would be find to revise this language to include climate change (as it would not be inconsistent with state law) but it is legally unnecessary, especially because climate change is an environmental issue. It really is more of a policy than legal determination for the Committee to make.

Section 2. AUTHORITY

This ordinance is adopted pursuant to Home Rule powers as granted in Article VII-A of the Maine Constitution ~~and, Title 30-A M.R.S. § 3001, and Title 38, M.R.S.A. §§ 1304-B, 1305, and 1310-U.~~

Section 3. APPLICABILITY

This ordinance regulates storage, collection, transportation, transfer, treatment, use, processing, recycling, or disposal, or any combination thereof, of Solid Waste in the Town and provides for enforcement when its provisions are violated. ~~This ordinance regulates fees related thereto and the enforcement of this ordinance.~~

Commented [LR2]: I do not suggest including fees in the ordinance itself. Doing so can become cumbersome because if a change becomes necessary, it can only be accomplished by town meeting vote. Particularly in areas where markets are volatile (like in the solid waste arena), it is advisable to have flexibility in this regard. Accordingly, I would suggest giving the Select Board authority in this regard (as suggested in edits below where it authorizes the Select Board to enact Solid Waste Rules, which is a defined term).

Section 4. DEFINITIONS

To the extent that terms used in this ordinance are not defined herein, they shall have the meaning ascribed to them in 38 M.R.S. § 1303-C and 06-096 C.M.R. ch. 400, § 1 (2021), as amended, or if not defined therein, then they shall have their customary dictionary meaning.

Commented [LBR3]: The Committee expressed concern about inadvertently sweeping agriculture in to this ordinance. It might seem counterintuitive, but by defining "agriculture waste," and then specifically excluding it (as you will see below), I think this better serves your goal in this regard.

AGRICULTURAL WASTE - Wastes that result from agricultural activities (the growing of vegetables, fruits, seeds, nursery crops, poultry, livestock, field crops, cultivated or pasture hay and farm lot wood products, including Christmas trees) that are returned to the soils as fertilizers. It includes waste pesticides when generated by a farmer, provided that the farmer triple rinses each emptied pesticide container in accordance with Maine DEP rules and disposes of the pesticide residues in a manner consistent with the disposal instructions on the pesticide label. It does not include any material regulated as a residual under 06-096 CMR 419.

Commented [LBR4]: The Committee asked if "all flora and fauna" can be included in this definition. I don't think inclusion of "flora" would be appropriate because its customary dictionary definition includes all plant material. Clearly, this would be overbroad and would include any vegetable scraps someone puts in their trash. With respect to dead animals, however, I think it could reasonably be included given that they certainly can transmit, "human pathogens." I don't think doing so runs the risk of conflicting with the state's definition. And even so, I don't think this would necessarily be the kind of conflict that would invite preemption because it doesn't involve review criteria for solid waste facilities, which is where the Law Court has applied preemption, and which is implicated in 38 MRS 1310-U, which expressly denies municipalities home rule in this area.

BIOMEDICAL WASTE - Waste that may contain human pathogens of sufficient virulence and in sufficient concentrations that exposure to it by a susceptible human host could result in disease or that may contain cytotoxic chemicals used in medical treatment.

BULKY WASTE - Any items whose large size or weight precludes or complicates their handling by normal collection, processing or disposal methods (includes, but is not limited to, old furniture; carpeting; ~~white goods/appliances such as stoves, dryers, washing machines~~) or as further defined by the Solid Waste Rules and regulations as published on the Town’s website.

~~**CODES ENFORCEMENT OFFICER** - An individual appointed by the Town who performs or oversees many functions, which may be: Building Inspector, Plumbing Inspector, Land Use/Shoreland Zoning Officer, or E-911 Addressing Officer.~~

COMMERCIAL HAULER -- Any Person that is not a Municipal Hauler ~~non-Town appointed person~~ engaged in the collection and transportation of solid waste for a fee or other compensation.

COMPOSTABLE MATERIALS - Material that can disintegrate into non-toxic, natural elements at a rate consistent with similar organic materials.

COMPOSTING - ~~The biological decomposition of organic residuals under predominantly aerobic conditions and controlled temperatures between 110° and 160° F.~~

CONSTRUCTION OR DEMOLITION WASTE - Debris resulting from construction, remodeling, repair or demolition of structures. It includes, but is not limited to: building materials, discarded furniture, asphalt, wall board, pipes, and metal conduits. ~~building materials, asphalt, and any similar materials.~~ It does not include asbestos and other special wastes as defined herein and by the State.

FORCE MAJEURE - An extraordinary and unforeseen event whose occurrence would prevent the Town from performing a service as outlined in this Ordinance, including but not limited to natural disasters, epidemics, emergency, and civil unrest.

GOODS LEFT ROADSIDE - Items left outside by Town residents for other individuals to take most often without cost.

HEALTH OFFICER - individual ~~with medical training~~ appointed by the Town, pursuant to 22 M.R.S. § 451 ~~with the duties prescribed under 22 M.R.S. § 454-A to monitor and provide recommendations regarding situations that may jeopardize the health of Town residents.~~

HAZARDOUS WASTE - As defined in 38 M.R.S.A § 1303-C(15), a waste substance or material in any physical state, designated as hazardous by the Maine Board of Environmental Protection. The fact that a hazardous waste or constituent may have value or other use or may be sold or exchanged does not exclude it from this definition. It does not include waste from normal household or agricultural activities.

~~**INCIDENT** - an occurrence of an action or situation that is a separate unit of experience.~~

INERT FILL SUBSTANCE - ~~Material which does not chemically or biologically decompose, including but not limited to sand, gravel, bricks, and/or rocks. Clean soil material, including soil from road ditching and sand from winter sand cleanup; rock; bricks; crushed clean glass or porcelain; aged, fully-hardened asphalt; and cured concrete; that are not mixed with other solid or liquid waste, and are not derived from an ore mining activity.~~

LAWN WASTE - Grass, leaves, plant cuttings, garden waste, ~~-Does not include plastic bags or other plastic containers used to collect, store or transport Lawn Waste.~~

Commented [LR5]: This is a defined term, yet it is not referenced anywhere else in the Ordinance. For that reason, I would suggest deleting it.

Commented [LR6]: Because this term is used in the ordinance, I've added a definition.

Commented [LR7]: Delete this if you decide not to incorporate the definition of "special waste" in your definition section.

Commented [LR8]: The Committee asked whether, because this concept comes for a contracts context, it would be OK to include this. I think it is perfectly acceptable to do so.

Commented [LR9]: Strangely, the statutory qualifications for health officers does not actually require medical training. I deleted this just in case whoever is duly appointed does not have medical training but is nevertheless qualified under statute to serve.

Commented [LR10]: I added this to be consistent with the state's definition under the Chapter 400 Rules.

Commented [LBR11R10]: I know the Committee is concerned with inadvertently pulling in agriculture. Per the previous comment in conjunction with adding the definition agricultural waste, by referencing agricultural activities, it makes this provision consistent with state law and actually expressly excludes them from the definition of hazardous waste, so I think this is consistent with the Committee's intentions.

Commented [LR12]: The meaning of this phrase is unclear. I understand that this is intended to relate to individuals' responsibility for remediation of any prohibited discharge of hazardous waste. I've addressed this below, accordingly, a definition of the term "incident" is unnecessary.

Commented [LBR13]: I've revised this to reflect the state's definition (having noted that other references to the term in the ordinance are in the context of inert "fill").

MUNICIPAL HAULER - Any person who has been ~~franchised-authorized~~ by the Town to collect and/or transport acceptable ~~residential~~ trash.

Commented [LBR14]: It is my understanding that tickets for curbside pick up currently can be used by businesses as well. Does this ordinance intend to change that arrangement? This requires clarification because the definition of "trash" includes materials generated by businesses as well.

NON-STANDARD TRASH - Includes, but is not limited to, bulky waste, construction ~~or demolition~~ waste, and hazardous waste as defined above. ~~Also as defined by reference material posted on the Town's web site. A list of materials that will be considered Non-Standard Trash can be found on the Town's website.~~

Commented [LBR15]: As I interpret the intention of this ordinance, this is the kind of trash that will not be accepted for curbside pickup. (See comments below regarding curbside program). And so, I think we want to be very clear about the categories you want to include in this definition. To that end, I think you likely intended to include "biomedical waste" and "septage." Also, what about "Inert Fill," "Lawn Waste," and "Wood Waste"?

PERSON - Any natural person, corporation, partnership, or sole proprietorship, association or other legal entity.

RECYCLABLE MATERIALS - Materials determined by the Select Board that can be reasonably be separated from household, commercial, municipal refuse, that may include scrap metal, plastic that has a recycling symbol on it, corrugated cardboard, mixed paper, magazines, and/or newspaper. A complete list of recyclable materials can be found on the Town's website.

~~RECYCLE/RECYCLING – The collection, separation, recovery and sale or reuse of materials that would otherwise be disposed of or processed as waste or the mechanized separation of waste, other than through combustion, and the creation and recovery of reusable materials other than as a fuel for the generation of electricity.~~

Commented [LBR16]: Because this term is used throughout the ordinance, it should be defined. This is the definition of the term provided in Ch. 400.

RECYCLING FACILITY - Any facility designated and managed by the Town ~~exclusively for the purposes for Recycling for separating, collecting, and/or processing of manufactured materials for reuse as part of a different product.~~

Commented [LBR17]: This language is included in the State's definition.

SELECT BOARD - Governing board for the Town responsible for administration and enforcement of the provisions of this ordinance, ~~and for enacting applicable Solid Waste Rules, as defined herein.~~

SEPTAGE - Waste, refuse, effluent, sludge and other materials from septic tanks, cesspools, or other similar facilities. ~~Septage is further defined as a mixture of liquids and solids derived from residential sanitary wastewater, and includes sanitary wastewater from tanks connected to commercial and institutional establishments which have inputs similar to residential wastewater. Septage also includes wastes derived from portable toilets.~~

Commented [LBR18]: This additional language comes from Ch. 400.

SOLID WASTE - Useless, unwanted or discarded solid material with insufficient liquid content to be free flowing, including but not limited to ~~rubbish~~, trash, garbage, ~~refuse-derived fuel~~, scrap materials, junk, refuse, inert fill material and landscape refuse, but shall not include septage, ~~agricultural~~, biomedical or hazardous wastes. ~~The fact that a solid waste, or constituent of the waste, may have value, be beneficially used, have other use, or be sold or exchanged, does not exclude it from this definition.~~

Commented [LBR19]: See comment re agriculture activities under Hazardous Waste. The same logic applies here.

Commented [LBR20]: The revisions were to make it consistent with the State's definition.

SOLID WASTE COMMITTEE - Volunteer board consisting of individuals appointed by the Select Board who are responsible for evaluating and providing advice on solid waste matters to the Select Board.

SOLID WASTE DIRECTOR - Duly appointed Town employee responsible for overseeing the operations covered by this ordinance and the operations of the Transfer ~~Station.~~

Commented [LBR21]: It is my understanding that the Town does not yet have a licensed Transfer Station but that this ordinance was drafted based on the assumption that the Select Board will be pursuing such a license. Obviously, if it does pursue one, or, it is not granted, then the proposed ordinance will need to be updated accordingly.

~~SOLID WASTE RULES– Rules that the Select Board may enact or amend from time to time to further the purposes of this ordinance and to govern day-to-day operations of the Transfer Station, the Recycling Facility, and the Town's curbside trash collection program, including, but not limited to applicable fees for collection and disposal of solid waste and commercial hauler permits, acceptable materials to be~~

included in curbside collection and for disposal at the Transfer Station and Recycling Facility, hours of operation of the Transfer Station and Recycling Facility, and curbside collection schedules.

SPECIAL WASTE - Any solid waste generated by sources other than household and typical commercial establishments that exists in such an unusual quantity or in such a chemical or physical state, or any combination thereof, that may disrupt or impair effective waste management or threaten the public health, human safety or the environment and requires special handling, transportation and disposal procedures. Special waste includes, but is not limited to the following materials as they may be defined under State law: (1) Ash; (2) Industrial and industrial process waste; (3) Sludge and dewatered septage; (4) Debris from nonhazardous chemical spills and cleanup of those spills; (5) Contaminated soils and dredge materials; (6) Asbestos and asbestos-containing waste; (7) Sand blast grit and non-liquid paint waste; (8) High and low pH waste; (9) Spent filter media residue; and (10) Shredder residue.

Commented [LR22]: You may wish to define this term as it is referenced in the ordinance. Also, you may wish to list it as waste not accepted as for curbside pick up in section 7.1.4.

TOWN - Town of Bowdoinham, County of Sagadahoc, State of Maine.

TOWN MANAGER - Individual appointed by the Select Board who acts as Chief Executive and Administrative Official of the Town, and is responsible for the day-to-day operations and functions of Town Government. The Town Manager is responsible to the Select Board and is an appointed official under contract.

Commented [LR23]: As with the definition of "Codes Enforcement Officer," there is no subsequent reference in the Ordinance to this term, so I suggest deleting it.

TOWN'S WEBSITE - Internet site operated by the Town to provide information to the general public. The current town website can be found at www.bowdoinham.com.

TRANSFER STATION - Any facility designated and managed by the Town for storage and placement of waste in large containers or other storage methods and held for movement to another disposal facility. Must be licensed in accordance with applicable Maine State Law.

TRASH - Unwanted or discarded solid materials not specified in other categories, resulting from the ordinary conduct of business or housekeeping, excluding recyclable and compostable materials.

WATERWAY - Any river, stream, canal or channel that contains water, including, without limitation, the banks and bed of any such river, stream, canal or channel.

WHITE GOODS - Large appliances, including but not limited to stoves, refrigerators, washing machines, clothes dryers, dishwashers, and air conditioners.

Commented [LR24]: Updated to reflect state definition.

WOOD WASTE - Brush, stumps, lumber, bark, wood chips, shavings, slabs, edgings, slash and sawdust, wood from production rejects, and, wood pallets that are not pressure treated or visibly contaminated, and from which fasteners have been removed, which are not mixed with other solid or liquid waste. For the purposes of this definition, "lumber" Lumber is entirely made of wood and is free from metal, plastics, paint, varnish, stain, and any other coatings.

Commented [LR25]: Ditto prior comment.

Section 5. AUTHORITY TO ESTABLISH RULES ~~AND AMEND~~

The Select Board ~~and/or its delegee(s) is are~~ granted authority to administer and enforce the provisions of this ordinance. ~~The rules and regulations applying to this ordinance shall be on file in the Town Office and published on the Town's website.~~

Commented [LR26]: The Select Board is not authorized under Maine law to amend this ordinance as only the Town's legislative body (i.e., the town meeting) may do so. However, the ordinance can authorize the Select Board to enact rules to carry out the purposes of the ordinance and its day-to-day operations, which can give it some flexibility to react to circumstances (like prices for recycled goods, disposal, materials to be included in the program, etc.) so that the Town does not have to incur the expense and administrative burden of calling a town meeting to address such practical issues.

The Select Board is also granted the authority to enact Solid Waste Rules in furtherance of the purposes of this ordinance and to govern the day-to-day operations of the Transfer Station, Recycling Facility, and

~~the curbside trash collection program. Prior to enacting or amending the Solid Waste Rules, the Select Board shall consult with the Solid Waste Director and/or Solid Waste Committee and shall conduct a public hearing, with the text of said Rules or amendment to be posted on the Town's website at least 30 days prior to the public hearing. The Solid Waste Rules shall be on file in the Town Office and published on the Town's website.~~

Commented [LR27]: I note that 30 days was specified elsewhere in the ordinance, which is why I reflected that timeline here. However, I would suggest reducing the time required. If there is a market change or some other unanticipated event, 30 days could be a long time and could prevent the Select Board from being nimble enough to respond. Two weeks is fairly standard advance notice of public hearings.

~~Notwithstanding the above, this ordinance may be amended by vote during Bowdoinham's annual Town Meeting. Before any proposed amendments to this ordinance may be presented to the Town Meeting, all proposed amendments should they shall be reviewed for input by the Solid Waste Director and/or Solid Waste Committee and public hearing shall be held as prescribed in the preceding paragraph, or the Town's Solid Waste Director prior to being approved by the Select Board for inclusion in the Town Meeting. These proposed amendments must follow a process that involves public hearings.~~

Commented [LR28]: As drafted, it specifies that the ordinance may only be amended at the annual town meeting. Was this intended? Is there a reason not to allow amendments to occur at any town meeting?

~~This ordinance may be amended, without public hearings or Town Meeting approval, to meet any changes in State and Federal Laws and Regulations that apply to provisions that may be in conflict with those changes. Public notice of any such amendment shall be provided.~~

Commented [LR29]: While this approach makes a lot of common sense, the ordinance cannot be amended without town meeting approval. That said, in the event of conflict, or, if there are concerns around preemption, the Town can decide not to enforce any provisions that are in conflict while waiting to have the ordinance amended by the town meeting.

If the Town cannot adhere to this ordinance in part or in whole due to a force majeure, then the Town shall be exempted in part or in whole according to the influence of force majeure for the duration of the force majeure incident.

Section 6. GENERAL PROVISIONS

6.1 **Dumping:** No owner, occupant, tenant, or lessee, or invitee of any property in the Town shall deposit, store, or permit to accumulate any solid waste, other than trees, tree limbs, leaves and other wood waste or lawn waste, upon his or her any property located in the Town that is not stored or disposed of in a manner prescribed by this ordinance, or any other Local, State or Federal law. However, any person, subject to state and local laws and ordinances, may deposit or dump inert substance for fill purposes only on any land with the permission of the owner. Composting is also permissible.

Commented [LR30]: We want to include anyone who is on the property, including guests, contractors, etc.

Commented [LR31]: Does it make sense to include this as well?

6.1.1 **Waterways:** No person shall dispose of any solid waste in any waterways in the Town.

6.2 **Burning:** Except for licensed disposal of Hazardous or Biomedical Wastes as specified in State laws, no person shall burn or incinerate within the Town any solid waste, other than trees, tree limbs, leaves and other wood waste, generated within Bowdoinham. Any solid waste burning is required to be permitted as outlined in State and local laws.

Commented [LR32]: We want to avoid granting "discretion" to any board or official as doing so invites legal challenge based on a number of grounds, including "unlawful delegation of legal authority," discrimination, and selective enforcement. We want to clearly articulate in the ordinance and/or Subsurface Rules what will/won't be accepted and not leave it up to anyone's discretion.

6.3 **Construction or Demolition Waste:** As defined herein and in the Maine Solid Waste Management Rules, Construction and Demolition Waste will be considered bulky waste and may be disposed of at the Town's transfer station a manner consistent with the Solid Waste Rules at the discretion of the Solid Waste Department. All such waste must be generated in the Town.

Commented [LR33]: The Committee should be aware that there is a Law Court case from 1988 that found that a Town regulating or prohibiting the disposal of out of town waste within its borders was preempted by the state law. See *Midcoast Disposal v. Town of Union*, 537 A.2d 1149 (Me. 1988). While some might argue that this proposed provision of the ordinance is preempted by the State's comprehensive regulatory scheme governing solid waste, I think it is distinguishable from that case. In the *Midcoast* case, the issue was about prohibiting the establishment of any private facility within Union that accepted disposal of waste generated outside its borders. The subsequent case law and statutory provisions make clear that preemption applies to municipal ordinances governing siting, review standards, and approvals of solid waste facilities. Such provisions cannot be more strict than the state's (and in *Midcoast*, by prohibiting such facilities entirely, that was deemed to be more strict than state law, which allows them). Therefore, while there is some preemption risk with this provision, I think we have good arguments to respond to any such challenge.

6.4 **Hazardous and Biomedical Waste:** The handling and disposal of all hazardous and biomedical waste generated within the Town are the responsibility of the person generating such waste and must be disposed of privately, in accordance with all applicable Federal and State regulations, unless otherwise subsequently approved for disposal in a Town owned or operated facility by the Select Board under the Solid Waste Rules Bowdoinham's facility as approved by the Select Board.

Commented [LR34]: Is it intended that a transfer station would accept such waste? If so, we can edit accordingly.

6.4.1 Recovery by the Town for Unauthorized Discharge or Disposal of Hazardous and Biomedical Waste: ~~incident fees:~~ Any costs incurred by the Town as a result of any during unauthorized discharge or disposal of hazardous or biomedical materials waste by any Person, including their employees, servants, contractors, or agents, incidents, within Bowdoinham will be billed for the total of any clean up, remediation, and/or disposal-costs incurred by the Town, as determined by the Fire Chief, and as allowed by Maine law under, 38 M.R.S. ~~§1318-A1A~~, as may be amended. Without limiting the generality of the foregoing, said costs shall include personnel costs and those necessary to ensure public safety. These costs shall be billed to the responsible party or person, by their acts and/or omissions, causing the incident.

6.5 Transfer Station: The Town shall maintain a licensed transfer station to serve the Town for Non-Standard trash and recycling for solid waste materials generated in the Town.

6.6 Goods left roadside: From time to time, residents may leave goods at the roadside end of their driveway to be claimed by other citizens. Such goods may not be left roadside for more than one (1) month. Should goods remain unclaimed after that period of time they need to be; reclaimed by the resident or disposed of in accordance with other provisions of this ordinance

6.7 Compostable materials: Certain compostable materials will be accepted at the Transfer Station ~~Town's facility at the discretion of the Solid Waste Department.~~ A list of acceptable compostable materials will be published on the Town's website, or is available by calling the Solid Waste Department.

6.8 Lawn waste: Certain lawn waste will be accepted at the ~~Town's Transfer Station facility at the discretion of the Solid Waste Department.~~ A list of acceptable lawn waste will be published on the Town's website, or is available by calling the Solid Waste Department.

6.9 Waste material generated outside municipal limits: No person may dispose of any waste material covered by this ordinance unless it is generated from within the geographical limits of the Town. For clarity, pursuant to the definition of "Solid waste," items and/or their packaging are not considered to be "waste" until they are discarded. Accordingly, the fact that items and/or their packaging may have been generated outside municipal limits does not exclude them from being considered waste under this ordinance, or, to be disposed accordingly, if they are otherwise eligible. The Town reserves the right to make spot inspections of waste material for purposes of determining origin of waste.

6.10 Resident Disposal Permit: All residents who deliver separated acceptable materials to the Transfer Station and/or Recycling Facility ~~Town Facility~~ must display a Resident Disposal Permit issued by the Town on their vehicle. No more than two permits may be held by each household or business, and permits may not be loaned, sold or otherwise transferred to any other person not residing in the household or operating the business.

Section 7. PROVISIONS REGARDING DISPOSAL OF TRASH

7.1 Trash removal program: The Town shall establish and maintain a municipal curbside collection, transportation and disposition of acceptable residential trash program to operate on a scheduled basis. This program may is subject to change from time to time as outlined in Section 5 above in the Solid Waste Rules.

Commented [LBR35]: Just to clarify - the intent here is that if a Transfer Station is licensed and commences operation, it will not accept standard trash as that will only be collected curbside?

Commented [LR36]: We want to be clear and consistent with terms. "The Town's facility" could be confused with the current Recycling Center, and the only place it would be lawful for the Town to provide composting services would be at a duly licensed transfer station.

Commented [LBR37]: See prior comment regarding "discretion."

Commented [LBR38]: Will the Recycling Facility be located at the Transfer Station, assuming one becomes licensed and operational? And if so, is there an intended difference between these two facilities (i.e., that nonresidents could use the Recycling Facility but not the Transfer Station)?

Commented [LBR39]: See questions above regarding "residents" vs. "businesses." The question applies not only to curbside pickup but also eligibility for use of the Transfer Station and Recycling Facility (assuming it is located in a different place from the Transfer Station once it licensed).

Commented [LBR40]: Ditto prior comment regarding "residential" trash. This would constitute a substantial change from existing practice whereby anyone who purchases a ticket (residential or commercial) can participate in the curbside program. Is the intention to change that?

7.1.1. Containers: Containers of trash to be collected roadside shall not exceed twenty five (25) pounds in weight or thirty (30) gallons in volume. Town appointed municipal haulers shall only collect containers which meet the these restrictions.

7.1.2 Fees: The Town shall fund trash collection through a usage based fee. This fee shall be ~~recommended~~ established by the Select Board in the Solid Waste Rules, as may be amended from time to time, for approval at Town Meeting and shall be set at a level projected to cover all costs of trash collection, transportation and disposal.

7.1.2.1 Subsidy program(s): The Select Board shall establish and fund a program to provide substantive, but not necessarily full, relief from the cost of these fees for lower income residents of the town.

7.1.3 Private ways: Acceptable curbside waste will only be collected from accessible public roads within the Town from lots with an occupied residence or business and an occupancy permit. Residents or businesses on private roads can receive trash pickup by bringing their trash to the junction of the nearest public road, or as directed by the Town. A public road may be deemed inaccessible if identified as such by Municipal Hauler and approved by Select Board.

7.1.4 Solid Waste not subject to curbside collection: ~~Non-Standard Waste is not subject to curbside collection. Without limiting the generality of the foregoing, and regardless of whether such materials are included in the definition of Non-Standard Waste, the following materials are not subject to curbside collection: including, but not limited to used motor oil, antifreeze, liquid paint, or other toxic liquids or toxic materials shall not be placed for curbside collection. Non-Standard Waste and the other materials referenced in this section These materials shall be disposed of in accordance with the Solid Waste Rules and governing state and federal law., rules, that may be changed from time to time, as proposed by the Solid Waste Director and approved by the Select Board. These rules will be published on the Town's website, and changed thereto will be posted at least 30 days prior to effective date of changes.~~

7.2 White goods: May be accepted at the transfer station as directed by the Solid Waste Department. ~~A list of acceptable white goods will be published on the Town's website, or is available by calling the Solid Waste Department.~~

7.3 Commercial Hauler: ~~Waste to be picked up by a Commercial Hauler~~ Commercial pick up waste shall be in covered metal or plastic trash containers to keep animals out and reduce moisture contents. Private haulers must collect waste in vehicles designed to prevent loose flying trash and moisture leakage.

7.3.1 Commercial Hauler: All Commercial Haulers who operate within the Town must have a valid Commercial Hauler Permit issued by the ~~Town~~ and pay a Commercial Hauler fee. Said fee ~~shall~~ will be established by the Select Board in the Solid Waste Rules by the Select Board and shall reflect ~~Commercial Hauler operation, e.g. that~~ one time pick up fees shall differ from regularly scheduled pick up fees. All Commercial Haulers shall report to the Solid Waste Director ~~all information as requested in writing and needed for~~ required by the State for inclusion in the Town's required periodic to report solid waste ~~report~~ information as requested by the State.

7.4 Other Acceptable Solid Waste: Other acceptable solid wastes, not meeting size and weight requirements for curbside pickup, that are bulky, and/or require special handling, will be accepted at the Transfer Station for a fee ~~as enumerated in the Solid Waste Rules. Items subject to this provision will be published on the Town's website and may be changed from time to time by the Select Board.~~

Commented [LBR41]: How do you determine "low income"? Do you want to establish some objective eligibility criteria? Who makes this determination? You could tie it some objective indicator like eligibility for GA or low income housing under Maine State Housing criteria, etc. You could delegate the details of how this issue will be addressed to the Select Board in the Solid Waste Rules.

Commented [LBR42]: Ditto prior comments seeking clarification on the resident vs. business question.

Commented [LBR43]: I would suggest you more clearly articulate what will NOT be accepted. The ordinance includes definitions and provisions about various kinds of waste it was not entirely clear to me when I read this what categories of waste are allowed and are not. I understand that the Select Board will be responsible for creating a list of the specific items that will or won't be accepted, but the categories of waste are defined in the ordinance. And so, we want to be very clear about what you intend to be allowed in your curbside program. The way I tried to do that is to more specifically define "Non-Standard Trash," i.e. those categories that will not be accepted in the Town's "trash" collection program.

Commented [LR44]: Is this meant to indicate that any waste generated by a business must be picked up by a commercial hauler? Or, that if it is picked up by a commercial hauler, then it must be contained in a certain manner? My edits presume the latter.

Commented [LR45]: I note that sometimes the Town is capitalized and sometimes it is in lower case. It should be consistent.

Commented [LR46]: Are there existing standards that govern whether such a permit should be issued? If not, there need to. Will these permits be granted under some existing business licensing ordinance? If so, that is fine, but there needs to be actual criteria that the Select Board will review to determine whether or not the Permit should be granted.

Commented [LR47]: So that expectations are clear for any applicant or permit holder, the nature of the information required and the applicable deadline for providing it should be specified. This can be included here, or, in the Solid Waste Rules.

Commented [LR48]: Do we want to enumerate those categories of waste that will not accepted at the Transfer Station? As drafted, it could be interpreted to mean that any wastes not accepted for curbside pick up will be accepted at the transfer station. If that is not the intention (say, for biomedical waste), then we should be clear here.

Section 8. PROVISIONS REGARDING DISPOSAL OF RECYCLABLE MATERIALS

8.1 Recycling program: In accordance with the State’s policy to actively promote and encourage waste reduction measures from all sources and maximize waste diversion efforts (~~Title 38, Chapter 24, M.R.S. § 2101(2)~~) the Town shall operate a recycling program that accepts all properly separated recyclables materials generated within the Town without fees. ~~Acceptable items subject to this provision will be listed in the Solid Waste Rules, published on the Town’s web site and may be changed from time to time as proposed by the Solid Waste Director and approved by the Select Board.~~

8.2 Separation: The Town recognizes that markets for recyclables materials, the technology of solid waste disposal, and Federal and State solid waste and environmental regulations will change from time to time. Therefore the Select Board, with the advice of the Solid Waste Advisory Committee and/or the Solid Waste Director, shall periodically define categories of recyclable materials and how those categories shall be separated prior to processing by the Town ~~in the Solid Waste Rules- Administrative definitions and instructions shall be published at least 30 days prior to effective date on the Town’s website.~~

8.3 Designation of Recycling Facility: The Town shall designate a specific facility as its Recycling Facility. ~~The Select Board shall determine rules governing the availability and operation of the Recycling Center, including days and hours of operation, reasonable fees for non-recyclable materials, inspection of materials, and other matters pertaining to the day-to-day operation of the facility.~~ The operation of the Recycling Facility shall conform to all ~~-governing pertinent-~~regulations or directives of all local, county, state or federal agencies which may have jurisdiction. ~~These rules shall be published on the Town’s website and any changes to these rules shall be published 30 days prior to effective date.~~

8.3.1 Private Recycling Facilities: Any privately owned and operated recycling facilities, as defined by Maine State Waste Management Rules, within the Town shall conform to all pertinent regulations or directives of all ~~local, county,~~ state or federal agencies which may have jurisdiction ~~and with local and county regulations relating to the siting, review, and approval of such facilities, to the extent they are not stricter than those imposed by state or federal law.~~ The Town shall request, in writing, ~~and the private recycling facility shall provide,~~ information ~~from private recycling facilities~~ as needed to enable the Town to report solid waste information as requested by the State.

Section 9 - ENFORCEMENT AND PENALTIES

9.1 Enforcement: This ordinance shall be enforced by the Select Board and ~~their its~~ duly appointed representatives, and appropriate Law Enforcement departments.

9.2 Penalty: Any violation ~~of this ordinance -chapter may -be is~~ punishable, ~~on a per day, per violation basis,~~ by a civil penalty ~~as prescribed under 30-A M.R.S. § 4452(3) of not more than three thousand dollars (\$3000) for each offense, as assessed by the Select Board,~~ plus costs and attorney’s fees ~~for each civil penalty.~~ The violator shall reimburse the town for the cost of abating any damage caused by the violation. ~~The penalty maximum may be changed annually by the Select Board after discussion in public meeting. Changes to penalty maximums must be documented as amendments to this Ordinance.~~

Commented [LBR49]: I’ve added this based on case law and the requirements of section 38 M.R.S. section 1310-U relating to preemption of municipal ordinances. Note that under this section, "a municipality adopting an ordinance under this section shall forward a copy of the ordinance to the commissioner within 30 days of its adoption." Have you been working with anyone at DEP in the development of this ordinance. If not, I would suggest you send it to them prior to it being presented to town meeting just to flush out any possible issues the state might have with it.

Commented [LBR50]: Per prior comments, we should be a bit clearer about expectations and timelines here.

Commented [LBR51]: This is the statutory provision that governs penalties for violations of various kinds of municipal ordinances. I cited to this provision because it affords broader penalties, and, it is questionable whether the Select Board can assess these penalties. (It is likely that the Court must do so.)

~~9.3.1 Penalty forgiveness: The Select Board may, on an individual violation level, based on income and other pertinent circumstances, approve that part or all of a civil penalty be forgiven.~~

Commented [LBR52]: These are all considerations that the court will consider when assessing penalties.

Section 10 - CONFLICT WITH OTHER ORDINANCES AND LAWS

Whenever the requirements of this Ordinance are inconsistent with the requirement of any other Federal, State or Local Article, Ordinance, Code or Statute, the more restrictive requirements shall apply, unless the requirements involve the siting, review, or approval of a solid waste facility, in which case, the provisions of the governing state or federal law shall apply.

Commented [LBR53]: Again, while it is unlikely that preemption issues will arise here, it is important to acknowledge the case law and statutes that govern this arena.

Section 11 - SEVERABILITY CLAUSE

The sections and subsections of this ordinance are severable. If any section, clause, sentence, part or provision thereof is held illegal, invalid, or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or invalidate any of the remaining sections or subsections of this ordinance.