

## RECYCLING AND HAULER LICENSING ORDINANCE 95-157

### Sec. 11-108. Definitions:

*Commercial Establishment:* Any building or any part of a building wherein commerce or business is conducted, both profit and not for profit, including, but not limited to, stores, markets, offices, restaurants, shopping centers, theaters, schools, churches, government offices, and manufacturing facilities.

*Compost:* A nutrient-rich soil amendment composed of organic material that has been processed through decomposition at a permitted facility.

*County:* Kane County government and any duly authorized representatives or divisions, including the Kane County department of environmental management.

*Dwelling Unit Or Residential Dwelling Unit:* A residential accommodation including complete kitchen facilities permanently installed which are arranged, designed, used or intended for use exclusively as living quarters for one family.

*Garbage:* Any refuse products or materials discarded as no longer usable.

*Food Scrap:* Organic material that is capable of being decomposed into compost by composting and that may be separated from municipal waste for the purpose of composting, including, but not limited to, vegetable wastes resulting from the handling, preparation, cooking, sale, or consumption of food.

*Hauler:* Any person who engages in the business of collecting or hauling garbage, municipal waste, recyclables or other refuse on a continuous and regular basis, and makes multiple scheduled collections per month within the county.

*Landscape Waste:* Materials that are separated from municipal waste for the purpose of composting, including, but not limited to, all accumulations of grass, shrubbery cuttings, leaves, tree limbs, and other materials accumulated as the result of the care of lawns, shrubbery, vines, and trees.

*Mobile Home Park:* A property with manufactured single-family housing units thereon.

*Multi-Family Dwelling:* A building containing three (3) or more dwelling units used for residential occupancy, including apartment houses, nontransient apartment hotels, rooming houses, boarding houses, fraternities, sororities, dormitories and similar housing types but not including hotels, motels, hospitals, foster family homes, long term care facilities or semi-independent group residents.

*Municipal Waste:* Garbage, refuse, general household, institutional and commercial waste, industrial lunchroom or office waste, and construction and demolition debris.

*Recyclable Materials:* Materials that are separated from municipal waste for the purpose of recycling, including, but not limited to, aluminum and tin cans, newspapers, corrugated cardboard, mixed office paper, high-grade printing and writing papers, magazines, plastic containers (bottles, tubs, jugs, and jars) and glass containers (bottles and jars).

*Recycling:* A method, technique, or process by which materials that would otherwise be disposed of or discarded are collected, separated, or processed and returned to the economic mainstream in the form of raw materials or products, but does not include the combustion of waste for energy recovery or volume reduction.

*Refuse:* Garbage or municipal waste.

### **Sec. 11-109. Applicability:**

This article shall apply to all premises located within the borders of the county; provided, however, that certain municipalities, townships and township solid waste management districts may sever themselves from county jurisdiction relative to this article pursuant to the provisions of section 11-117 of this article. (Ord. 97-107, 4-8-1997)

### **Sec. 11-110. Enforcement and Right of Inspection:**

- (a) The provisions of this article are to be managed, administered and enforced by the Kane County Division of Environmental and Water Resources or its duly authorized representative.
- (b) The director and the recycling coordinator of the Kane County Division of Environmental and Water Resources and their duly authorized representatives, after notification and identification and subject to constitutional limitations, may enter at reasonable times upon the private or public property, both indoors and outdoors, and including any motor vehicle used to haul refuse or recyclables, of any commercial establishment or similar entity, or of the common areas of any multi-family dwelling unit for the purposes of investigating conditions relating to the administration and enforcement of this article or to determine whether a violation of this article exists.

The owner, owner's authorized representative or occupant of a commercial establishment or of a multi-family dwelling unit shall give the director and recycling coordinator, and their authorized representatives, free access to said premises at all reasonable times relating to the administration and enforcement of this article; provided, however, that an owner of a multi-family dwelling unit, or the owner's authorized representative, shall not give the inspector access to the interior of a privately occupied residential dwelling unit. (Ord. 97-107, 4-8-1997)

### **Sec. 11-111. Separation and Collection Of Recyclable Materials From Residential Dwelling Units:**

(a) *Separation Required:* It shall be the duty of every occupant of a single-family, two-family, or multi-family dwelling unit to separate recyclable materials from all other municipal waste, and store these recyclables separately in containers designed for recycling.

(b) *Collection Of Recyclables:*

(1) Collection of recyclable materials, as defined above, from all dwelling units shall be by a hauler duly licensed by the county under this article selected by the owner or occupant of the premises, or by a manager of such premises, or by an association governing such premises, or by franchise awarded by a municipality or township. It shall be the duty of every owner of a two-family or a multi-family dwelling unit or owner of a mobile home park an association governing such properties to arrange for the collection of recyclables from such premises by duly licensed haulers.

(2) As a guideline to owners of two-family or multi-family dwelling units or mobile home parks, it is recommended that each refuse corral on the premises include at a minimum, one 96-gallon wheeled cart for collection of recyclable materials, co-located with each trash dumpster. Over time, as participation increases, the recommended standard is to scale service so as to have a recycling dumpster of a capacity equal to 40% the capacity of the trash dumpster.

(3) Recyclable materials to be separated for collection shall include all acceptable items listed in the definition above.

(4) Recyclable materials collected by a hauler within the county shall not be deposited into a landfill or incinerator unless all reasonable efforts have been made by the hauler to sell those recyclable materials to a processor or end user.

*(c) Ownership Of Refuse And Recyclables:*

(1) Ownership of refuse and recyclable material set out for collection shall remain with the occupant who set out the material until removal by a licensed hauler. Until the refuse and/or recyclable materials are removed by the licensed hauler, the occupant who set out the material is totally responsible for their proper preparation, handling, and storage. Ownership and responsibility for the proper handling of the refuse and recyclable materials shall vest in the licensed hauler upon removal thereon by the hauler.

(2) It is unlawful for any person who is not licensed by the county to take or collect or scavenge any refuse or recyclable materials set out for licensed collection programs within the county. (Ord. 95-157, 6-13-1995; Ord. 97-107, 4-8-1997)

## **Sec. 11-112. Separation and Collection of Recyclable Materials from Commercial Establishments:**

(a) *Separation Required:* As of January 1, 1997, all commercial establishments, having recyclable materials which accumulate on the premises, shall separate from all other municipal waste all recyclable materials as defined above for said commercial establishment. It shall also be the duty of every owner, tenant, or occupant of a commercial establishment to store these recyclables separately in designated containers.

*(b) Collection Of Recyclables:*

(1) Collection of recyclables from the commercial establishment shall be by a hauler selected by the owner or manager of such premises or by an association governing such premises, or by franchise awarded by a municipality, village or township, but which hauler is duly licensed by the county under section 11-113 of this article.

(2) It shall be unlawful for any hauler to knowingly collect municipal waste from any commercial establishment that is not separating its recyclable materials for collection and recycling.

(3) Each hauler shall offer, either as part of basic service, or alternatively as an additional service, the collection of recyclable materials and food scrap from any commercial business, commercial property, or institutional facility within the county. Haulers shall provide information on the requirements of this ordinance and on how and what materials to recycle and compost at least once every other year to customers with recycling service. Haulers shall provide information on this ordinance, along with a written offer to provide recycling services to commercial businesses,

owners or operators of commercial property, and institutional facilities that are not recycling. Those offers shall be made at least once during the term of the contract or at least once every 2 years, whichever is shorter. The hauler's written offer shall include a request that the commercial business, owner or operator of the commercial business, or institutional facility respond to the hauler's request to provide recycling services in writing.

(4) Recyclable materials collected by a hauler within the county shall not be deposited into a landfill or incinerator unless all reasonable efforts have been made by the hauler to sell those recyclable materials to a processor or end user.

*(c) Ownership Of Refuse And Recyclables:*

(1) Ownership of refuse and recyclable material set out for collection shall remain with the occupant who set out the material until removal by a licensed hauler. Until the refuse and/or recyclable materials are removed by the licensed hauler, the occupant who set out the material is totally responsible for their proper preparation, handling, and storage. Ownership and responsibility for the proper handling of the refuse and recyclable materials shall vest in the licensed hauler upon removal thereon by the hauler.

(2) It is unlawful for any person who is not licensed by the county to take or collect or scavenge any refuse or recyclable materials set out for licensed collection programs within the county.

*(d) Request For Waiver:*

(1) If any commercial establishment believes that it has no recyclable materials or only one recyclable material pursuant to this article, it may request authorization from the county for a waiver to separate only one recyclable material; such request shall be submitted in writing to the Kane County department of environmental management and shall be supported by the results of a waste audit or other relevant information, which shall be submitted with the request.

(2) The county shall have thirty (30) days from the receipt of the request to approve or deny authorization for waiver. The decision shall be in writing and shall be served personally to the person requesting authorization or by certified mail to the address provided in the written request for waiver. A decision of denial of a waiver to separate only one recyclable material shall include a written notice stating the basis for the denial and shall provide notice to the applicant that a hearing may be requested in writing pursuant to section 11-116 of this article and that such request must be received by the county within fifteen (15) calendar days following service of the decision of denial on the applicant.

(3) A request for hearing on a denial of a waiver shall be made by the applicant in writing to the Kane County department of environmental management, and must be received by said department within fifteen (15) calendar days following the service of the decision of denial on the applicant. Upon receipt of a request for hearing, the county shall set a time and place for the hearing. The hearing shall be conducted pursuant to the procedures of section 11-116 of this article. (Ord. 95-157, 6-13-1995; Ord. 97-107, 4-8-1997)

## **Sec. 11-113. Licenses:**

*(a) Licenses Required:* No person or company with two (2) or more trucks shall engage in the business of collecting or hauling garbage, municipal waste, recyclables, or other refuse from sites

within the county without first procuring a license to do so from the county. Such license shall be valid for one calendar year, beginning on January 1.

(b) *Application:* Kane County shall prepare and make available to all haulers an application form for vehicle licenses. The application may include the following information:

- (1) Name of business operating vehicles.
- (2) Name of manager of business.
- (3) Street address, email address and telephone number of business.
- (4) Year, make, and model of each vehicle.
- (5) Type of each vehicle (e.g., dump truck, packer, pickup, etc.).
- (6) Vehicle identification number, license plate number, and fleet number for each vehicle.
- (7) Weight of each vehicle.
- (8) Capacity of each vehicle in cubic yards and tons.
- (9) Such other information as the county shall deem appropriate or necessary.

The licensee shall notify the county in writing within thirty (30) days following a change in any information contained in the license application.

(c) *License Renewal:* The county shall provide license renewal forms to each hauler within sixty (60) days prior to the expiration of the contractor's current license. License renewal forms shall be completed and received by the county thirty (30) days prior to the expiration of the contractor's current license.

(d) *Conditional License:* The county may grant a conditional license where an application is incomplete. The conditional license shall specify the conditions upon which a permanent license will be granted and the time requirement within which the conditions must be met. Failure to comply with the conditions specified shall result in a revocation of the conditional license and denial of the permanent license.

(e) *Issuance Or Denial:*

(1) The county shall have thirty (30) days from the receipt of the license or renewal application to issue or deny the license, license renewal, or conditional license. The county will issue a temporary license valid for thirty (30) days upon its failure to act upon the application within thirty (30) days.

(2) The past history of the applicant, in terms of compliance with this article, will be considered for purposes of issuance or denial of the license. The county shall notify the applicant in writing of its decision.

(3) A license denial shall provide written notice stating the basis for the denial and shall provide notice to the applicant that if an appeal is desired, a written request for a hearing must be received

by the county within fifteen (15) calendar days following service. Upon receipt of a request for hearing, the county shall set a time and place for the hearing. The hearing shall be conducted pursuant to the procedures in section 11-116 of this article.

(f) *License And Vehicle Registration Fee:*

(1) *Schedule Of Fees:* The following fees shall be required:

a. For each license: \$50.00 base fee

b. For each vehicle used in collecting or hauling garbage, municipal waste, recyclables, or other refuse: \$10.00 per vehicle

Payment of all fees must accompany the license application/renewal.

(2) *Vehicle Registration:* The county reserves the right to issue to each licensee a vehicle registration decal to be placed conspicuously on the outside of each vehicle so utilized by the contractor operating in Kane County. Such decals may be issued annually. The number of said vehicles utilized by the licensee shall be reported in the application.

(i) *Reporting:* On or before January 31 of each year, each licensee shall submit a completed tonnage report form, provided by the county, based on its recycling service operations during the previous calendar year. Failure to submit such a report shall constitute a violation of this article and will result in suspension or revocation of the license. This report shall contain:

(1) The total tonnage of municipal waste collected in the county.

(2) The total tonnage of recyclable material collected in the county in each sector (i.e., municipal residential, unincorporated residential, multi-family residential, and commercial).

(3) The total tonnage of landscape waste and food scrap collected for land application and/or composting. (Ord. 95-157, 6-13-1995; Ord. 97-107, 4-8-1997)

(4) The number of accounts held in each sector (i.e. households, multi-family dwellings, commercial establishments).

## **Sec. 11-114. Violations and Penalties:**

(a) *Civil Penalties:*

(1) Any licensed hauler who violates any provision of this article shall be subject to a fine of fifty dollars (\$50.00) for the first violation; one hundred dollars (\$100.00) for the second violation; and two hundred dollars (\$200.00) for a third violation. In the case of a fourth violation, a fourteen (14) day suspension of a license to collect or haul garbage, municipal waste, recyclable materials, or other refuse within the county shall be imposed. A fifth violation may result in two (2) months' suspension of license. For further subsequent violation(s), the license may be revoked for the remainder of the license term plus an additional year. For purposes of enforcement, the time period in which these violations accumulate shall be the period of the license. Notwithstanding these provisions, any flagrant violation of this article may result in suspension or revocation proceedings pursuant to subsection 11-115(a) of this article.

(2) Any commercial establishment who violates any provision of this article shall be subject to a fine of not less than twenty five dollars (\$25.00) or more than one hundred dollars (\$100.00) per day in violation. Each day the violation continues shall constitute a separate and distinct violation.

(3) Any owner of a two-family, multi-family dwelling unit or mobile home park who fails to arrange for the collection of separated recyclables from such unit or units on the property in question or who otherwise violates any provision of this article shall be subject to a fine of not less than twenty five dollars (\$25.00) or more than one hundred dollars (\$100.00) per day in violation. Each day the violation continues shall constitute a separate and distinct violation.

(4) Any person who scavenges municipal waste and recyclable materials that have been set out by residents, or businesses, or the county specifically for an authorized collection under this article shall be subject to a fine of up to five hundred dollars (\$500.00). Each day any violation of this article continues shall constitute a separate offense.

(b) *Warnings:* The county or any of its duly authorized representatives will issue a warning notice to any occupant of a dwelling unit, owner of a two-family, multi-family dwelling unit or mobile home park, hauler or establishment observed not in compliance with any provision of this article.

(c) *Injunctive Relief:* The county may institute appropriate actions or proceedings, including application for injunctive relief, action to compel performance, or other appropriate action to prevent, restrain, correct, or abate any violation or threatened violation of this article. (Ord. 95-157, 6-13-1995; Ord. 97-107, 4-8-1997)

## **Sec. 11-115. Administrative Procedures:**

(a) *Suspension Or Revocation Of License:*

(1) Any license required under this article may be suspended or revoked for violation of any provisions of this article.

(2) Written notice of a suspension or revocation shall be served via email upon the licensee at least fifteen (15) calendar days prior to the effective date of the suspension or revocation. The written notice shall contain the effective date of the suspension or revocation; the facts which support the conclusion that a violation or violations have occurred; a statement that if the licensee desires to appeal, a written request for a hearing must be received by the county within fifteen (15) calendar days following service of the notice, exclusive of the day of service; and that the request for hearing must state the grounds for appeal. If a hearing is requested, the suspension or revocation shall be stayed pending outcome of the hearing.

(3) Upon receipt of a request for hearing, the county shall set a date, time, and place for the hearing. The hearing shall be conducted pursuant to the procedures in section 11-116 of this article.

(b) *Summary Suspension Of License:*

(1) If the county finds that the public health, safety, or welfare requires immediate action, summary suspension of a license may be ordered.

(2) Written notice of a summary suspension shall be delivered via email. The county shall also take reasonable steps to notify the licensee by telephone prior to the summary suspension.

(3) The written notice shall state the effective date of the summary suspension; the violation requiring emergency action, the facts which support the conclusion that a violation has occurred; a statement that if the licensee desires to appeal, a written request for hearing must be received by the county within ten (10) calendar days following service of the notice, and that the request must state the grounds for appeal.

(4) Upon receipt of a request for hearing, the county shall set a date, time, and place for the hearing. The hearing shall be conducted pursuant to the procedures in section 11-116 of this article.

(5) The summary suspension shall not be stayed pending an appeal. (Ord. 95-157, 6-13-1995; Ord. 97-107, 4-8-1997)

## **Sec. 11-116. Hearings:**

Hearings conducted pursuant to this article shall be conducted as follows:

(1) *Hearing Commission:* The hearing shall be before a hearing commission consisting of the three (3) members of the Energy and Environmental Committee of the Kane County board.

(2) *Prehearing And Hearing Notice:* The county shall schedule and provide notice of the date, time, and place of the prehearing conference and hearing. The prehearing conference shall be held at least three (3) weeks prior to the hearing. The hearing shall be held no later than forty five (45) calendar days after receipt of the request for hearing or by mutual agreement of the parties.

(3) *Procedures:* The prehearing conference and hearing shall be conducted in the following manner:

a. The prehearing conference shall define the issues, schedule the exchange of witness lists and documentary evidence, seek agreement on the authenticity of documents and relevant testimonial evidence, determine whether intended evidence is cumulative and repetitive, and consider all other matters that will assist in a fair and expeditious hearing.

b. Each party shall exchange all relevant information and documentary evidence at least one week prior to the hearing date. Such information shall include all evidence intended for introduction at the hearing and includes, but is not limited to, the following: exhibits; statements; reports; witness lists including a description of the facts and opinions to which each is expected to testify; photographs, slides, demonstrative evidence. Evidence not exchanged in accordance with this provision will not be considered in the hearing unless good cause is shown to the hearing officer.

c. The hearing shall be public and shall be recorded by a certified court reporter.

d. All witnesses shall testify under oath or affirmation.

e. The hearing is subject to the general rules of evidence with latitude necessary to gain facts or information. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

f. The county shall have the burden of proof through preponderance of evidence.



g. The county, licensee or applicant, and additional parties as determined by the hearing officer, shall present evidence in that order. Each party shall have the opportunity to cross examine the witnesses of the other party. The hearing commission may examine witnesses.

h. The hearing commission shall make a written finding of fact and conclusions based upon the evidence provided at the hearing.

i. The cost of preparing and certifying a record of proceedings shall be borne by the applicant or licensee.

j. Appeal of a decision by the hearing commission shall be made to the circuit court within thirty (30) calendar days following the hearing commission decision. (Ord. 95-157, 6-13-1995; Ord. 97-107, 4-8-1997)

### **Sec. 11-117. Severability:**

(a) *Provisions:* If any section, subsection, sentence, clause, phrase or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(b) *Townships:* If a township or township solid waste disposal district within the county has a recycling ordinance in place on the effective date of this article which substantially conforms with or exceeds the requirements of this article including, but not limited to, the required separation and collection of recyclable material, submission of a material separation plan and reporting requirements, the township may continue to enforce its ordinance and such enforcement shall constitute within that township implementation of this article. A township or township solid waste disposal district may at any time adopt and enforce a recycling ordinance that is more stringent than that required by this article.

(c) *Municipalities:* A municipality which is located in two (2) or more counties, one of which is a home rule county, may, by ordinance, sever itself from county jurisdiction relative to this article if the municipality is a member of a municipal joint action agency formed prior to June 15, 1988, pursuant to section 3.2 of the Intergovernmental cooperation act. (Ord. 95-157, 6-13-1995; Ord. 97-107, 4-8-1997)

### **Sec. 11-118. Provisions Cumulative:**

The provisions in this article are cumulative and are additional limitations upon all other laws and ordinances covering any subject matter in this article. (Ord. 95-157, 6-13-1995; Ord. 97-107, 4-8-1997)