

**TOWN OF HAMPDEN
SOLID WASTE FLOW CONTROL AND LICENSING ORDINANCE**

COUNCIL ORDINANCE, Repealing and Replacing the Solid Waste Flow Control Ordinance

WHEREAS, the Town of Hampden adopted a Solid Waste Flow Control Ordinance on June 6, 1988; and

WHEREAS, the Town desires to update the ordinance; and

WHEREAS, it is more cost effective to repeal and replace the ordinance rather than try to amend it; and

WHEREAS, it is the intent of the Town Council that the new Solid Waste Flow Control and Licensing Ordinance replace the 1988 Solid Waste Flow Control Ordinance seamlessly and without lapse of coverage.

NOW THEREFORE, THE TOWN OF HAMPDEN HEREBY ORDAINS:

Article 1:

The Town of Hampden Solid Waste Flow Control Ordinance adopted on June 6, 1988 is hereby repealed effective on the date of passage of this Council Order.

Article 2:

The Town of Hampden hereby adopts and enacts the attached Solid Waste Flow Control and Licensing Ordinance effective on the date of passage of this Council Order.

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ADOPTED: Hampden Town Council, June 6, 1988
Effective date, June 5, 1988

REPEALED: Hampden Town Council, August 7, 2017
REPLACED: Hampden Town Council, August 7, 2017
Effective date, September 6, 2017

CERTIFIED BY: *Paula A. Scott*
Paula A. Scott, Town Clerk

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ARTICLE I - TITLE.

This article shall be known as the Solid Waste Flow Control and Licensing Ordinance.

ARTICLE 2 - ENABLING LEGISLATION.

This chapter is enacted pursuant to the authority granted in 38 M.R.S.A. § 1304-B and 30-A M.R.S.A. § 3001, et seq.

ARTICLE 3 - LEGISLATIVE FINDINGS.

§ 3.1 The Town of Hampden has an obligation to protect the health, safety and general wellbeing of the citizens of the Town of Hampden, and to enhance and maintain the quality of the environment, conserve natural resources, and prevent water and air pollution by providing for a comprehensive, rational and effective means of regulating the collection, transportation and disposal of solid waste.

§ 3.2 The Maine legislature has established a "Solid Waste Management Hierarchy," embodied in 38 M.R.S.A. § 2101, pursuant to which, it is the policy of the State to implement an integrated approach to solid waste management and to prioritize waste management in accordance with the following hierarchy: (i) reduction of waste; (ii) reuse of waste; (iii) recycling of waste; (iv) composting of biodegradable waste; (v) processing of waste including incineration; and (vi) land disposal.

§ 3.3 The Penobscot Energy Recovery Company ("PERC") facility in Orrington is an energy recovery facility currently in operation that processes municipal solid waste into refuse-derived fuel for incineration and generates electrical power as a byproduct of the incineration process. In accordance with a contract known as the Second Amended, Restated and Extended Waste Disposal Agreement, which the Town executed in May 1998 (the PERC Disposal Agreement), the Town has committed to direct municipal solid waste originating within its borders to PERC for disposal through the term of the PERC Disposal Agreement, which term is scheduled to end on March 31, 2018.

§ 3.4 The Fiberright Facility (Fiberright), which is to be constructed by Fiberright in Hampden, will be a recycling facility that processes municipal solid waste to recover recyclable materials, and that uses wet pulping, anaerobic digestion and other processes to convert the organic fraction of municipal solid waste into cellulosic biofuel, a processed engineered fuel product, and marketable biomethane and other products. In accordance with a contract known as the Joinder Agreement, which the Town executed in June 2016, the Town has committed to direct municipal solid waste originating within its borders to the Fiberright Facility for processing starting on April 1, 2018.

§ 3.5 Of the available disposal options within the State of Maine identified in the hierarchy at

38 M.R.S.A. § 2101 at the time of the execution of the PERC Disposal Agreement, the Town found that disposal at the PERC Facility was then the option that would best satisfy the statutory priorities for management of municipal solid waste over the term of the PERC Disposal Agreement. At the time of the execution of the Joinder Agreement, the Town found that the Fiberight Facility would be the option that would best satisfy the statutory priorities for management of municipal solid waste over the term of the Joinder Agreement.

§ 3.5 Disposal at the PERC Facility over the term of the PERC Disposal Agreement, and then at Fiberight Facility over the term of the Joinder Agreement, of municipal solid waste generated in the Town of Hampden is the preferred in-state management option and best serves the interests of the Town of Hampden in maintaining public health, safety, scenic values, resource conservation goals, etc., in accordance with the disposal priorities established by the Legislature in 38 MRSA § 2101.

ARTICLE 4 - DEFINITIONS.

The terms, phrases and words in this section shall have the following meanings:

Acceptable Solid Waste: All waste accepted by the Solid Waste Facility.

Commercial Hauler: An individual, corporation, partnership or other legal entity that transports solid waste for another from within the corporate limits of the Town of Hampden for compensation, or that transports solid waste generated by its own business.

Solid Waste Facility: Shall mean the PERC Facility during the term of the PERC Disposal Agreement, which is scheduled to terminate on March 31, 2018; and then beginning April 1, 2018, shall mean the Fiberight Facility during the term of the Joinder Agreement provided the Fiberight Facility is able to accept the Town's municipal solid waste; if the Fiberight Facility is not able to accept municipal solid waste or if the Joinder Agreement is terminated during its initial term or an extension term pursuant to Article 10 of the Joinder Agreement, it shall mean an alternative facility to be designated by the Town Manager.

Fiberight: Fiberight, LLC, a Delaware limited liability company, together with its affiliates and successors in interest.

Fiberight Facility: The facility of Fiberight, LLC, to be constructed in Hampden, Maine.

PERC Facility: The facility of the Penobscot Energy Recovery Company in Orrington, Maine.

Solid Waste: Shall have the same definition as set forth in 38 M.R.S.A. § 1303-C, as the same may be amended from time to time.

Town Manager: The Hampden Town Manager.

ARTICLE 5 - DISPOSAL OF SOLID WASTE

The Town of Hampden hereby directs that all acceptable commercial solid waste generated within the Town of Hampden that is not disposed of outside of the State of Maine shall be delivered to the Solid Waste Facility and that all acceptable residential solid waste generated within the Town of Hampden that is not disposed of outside of the State of Maine shall be delivered to the Hampden Transfer Station for ultimate management and disposal at the Solid Waste Facility. Nothing in this provision shall be deemed to regulate or prohibit disposal outside of the State of Maine of any waste generated within the Town of Hampden.

ARTICLE 6 - COMMERCIAL HAULER LICENSING.

§ 6.1 License Required. All Commercial Haulers must obtain on an annual basis a commercial hauling license from the Town Manager.

§ 6.2 Licensing Procedure.

- (a) All Commercial Haulers must submit a completed application form prescribed by the Town of Hampden.
- (b) All Commercial Haulers must include with each application a list of the current license plate numbers of all trucks owned by the applicant which are to be used to haul waste within the Town of Hampden. The list shall be kept up-to-date, and any changes must be reported immediately to the Town Manager.
- (c) Each Commercial Hauler shall provide a list of all disposal locations at which acceptable solid waste collected in the Town of Hampden is disposed. In the event of a violation or suspected violation of this Ordinance by a Commercial Hauler, the Town of Hampden may require that such hauler also provide to the Town Manager a list of all generators of acceptable solid waste transported by that hauler located within the Town of Hampden, a description of all routes used to transport that waste within the Town of Hampden, updated monthly. In addition, the driver of each of the Commercial Hauler's vehicles shall identify the source of each load containing Acceptable Solid Waste from within the Town of Hampden on the weight ticket, either by route number or by the name of the commercial establishment if the load is from a single source.
- (d) Only vehicles that are in good operating condition, that have their loads enclosed within a container or covered securely and that are capable of discharging their loads to the Solid Waste Facility's tipping room floor or at the Hampden Transfer Station by mechanical means will be licensed.
- (e) A Commercial Hauler shall annually provide to the Town certificate(s) of insurance from a reputable insurance agency demonstrating that the vehicle(s) that the Hauler will use to haul waste within the Town of Hampden are insured for the duration of the license. The Town Manager shall set the minimum insurance requirement annually. Any changes to a vehicle's insurance shall be immediately reported to the Town; if the insurance coverage for a vehicle is below the minimum required coverage, such

vehicle may not haul waste within the Town of Hampden.

§ 6.3 Nontransferable. The Commercial Hauler license shall be nontransferable.

§ 6.4 Fees. In order to be licensed, the Commercial Hauler shall pay an annual fee to the Town of Hampden. A basic fee covers the first vehicle and an additional fee will be levied for each additional vehicle to be licensed. These fees shall be as provided in the Fees Ordinance.

§ 6.5 Credit for tonnage. It shall be the responsibility of then Commercial Hauler to ensure that the Town of Hampden is given credit by the Solid Waste Facility for all Acceptable Solid Waste collected within the Town of Hampden and delivered to the Solid Waste Facility by the Commercial Hauler.

§ 6.6 Responsibilities of the Commercial Hauler. The Commercial Hauler shall be held fully responsible for the presence of unacceptable waste in loads delivered by the hauler to the Solid Waste Facility. Unacceptable waste shall have the definition set forth in the applicable contract between the Town and the Solid Waste Facility. In the event it has been determined that the Commercial Hauler has delivered unacceptable waste to the Solid Waste Facility, the hauler shall remove that waste immediately at the hauler's expense. In the event that the hauler fails to promptly remove any such waste, the waste may be removed by the Town of Hampden or its agents, with double the cost of removal and disposal to be paid to the Town of Hampden by the hauler. The hauler shall be fully responsible for the handling of waste between any source within the Town of Hampden and the Solid Waste Facility.

§ 6.7 Indemnification. By accepting a license, a Commercial Hauler agrees to defend, indemnify, and hold harmless the Town of Hampden, its elected officials, officers, agents, and employees against any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney's fees, relating in any way (1) to hauling operations, or (2) to the delivery of unacceptable solid waste to the Solid Waste Facility. The foregoing indemnity expressly extends to claims of injury, death, or damage to employees of the Commercial Hauler or anyone for whose acts they may be liable. In claims against any person or entity indemnified under this paragraph by an employee of the Commercial Hauler, the indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Commercial Hauler under the Maine Workers' Compensation Act or other disability benefit or employee benefit acts. Commercial Hauler expressly waives immunity under the Maine Workers' Compensation Act for the purposes of this indemnity provision.

§ 6.8 Inspection of Records. The Town of Hampden or its agents shall have the right, upon reasonable notice, to inspect the records of any Commercial Hauler as to any solid waste collected by it within the municipal limits of the Town of Hampden.

§ 6.9 Payment.

- (a) Each Commercial Hauler will be billed monthly for the total tonnage delivered by him or her to the Solid Waste Facility at a rate per ton equal to the sum of the current tipping fee, plus any administrative fees charged to support multijurisdictional solid

waste activities and a one-percent Town of Hampden administrative fee; said billing to be done by the Town of Hampden or its designated agent.

- (b) The Town of Hampden reserves the right to adjust the tipping fee from time to time as may be necessary to defray its total cost of solid waste disposal; however, the same tipping fee will be charged to all Commercial Haulers within the Town of Hampden.
- (c) Billing shall be done on a cycle to be determined by the Town of Hampden or its designated agent. Payment shall be due and payable within 30 calendar days from the date of invoice. Late payments shall be subject to the same rate of interest as is in effect at the time for delinquent property tax payments. Failure to pay within the prescribed time may result in temporary suspension of the Commercial Hauler's license until payment is received.
- (d) The Town of Hampden or its designated agent may also require licensed Commercial Haulers to post a payment bond or such other guaranty acceptable to the Town of Hampden to insure the financial capability of such haulers to meet required payments to the Town of Hampden. Posting of a bond or other guaranty may be required of a licensed hauler who has failed to make timely payments of all fees billed and whose license was temporarily or permanently suspended.

ARTICLE 7 - ENFORCEMENT

§ 7.1 All provisions of this chapter are enforceable by duly authorized police officers and the Town Manager or his or her designee(s).

§ 7.2 Any person who violates any provision of this chapter is subject to penalty as hereinafter provided.

§ 7.3 Whenever the Town Manager or his or her designee(s) determine that there has been a violation of this ordinance, they shall give notice of such violation to the person(s) responsible by personal service or by registered mail, return receipt requested, as follows:

- (a) The citation shall include a statement of reasons and shall allow reasonable time for performance of any act it requires.
- (b) The citation may contain an outline of remedial action which, if taken, will result in compliance.
- (c) The citation shall state that unless corrections are made within the allotted time, the violator will be subject to prosecution pursuant to the provisions of this article.

§ 7.4 Any person, firm or corporation that violates this article shall be subject to a civil penalty, payable to the municipality, of not more than \$100.00 for each violation.

§ 7.5 In addition to the above, the Town of Hampden may suspend the commercial hauling license of any Commercial Hauler who violates the provisions of this Ordinance.

- (a) Upon notice to the Commercial Hauler of a suspension, a public notice of the suspension will be issued and a hearing scheduled before the Hampden Town Council.
- (b) If the Hampden Town Council upholds the decision of the Town Manager, then a penalty of \$100 for each violation shall be levied against the Commercial Hauler, with each day of violation considered to be a separate offense. Said penalty shall be paid to the Town of Hampden prior to reinstatement of the license.
- (c) In the event that a Commercial Hauler shall have violated the provisions of this ordinance for five days or more or on ten or more separate occasions, the Town of Hampden shall have the right to revoke any existing license and to refuse to grant a license in the future to the hauler or any other person or entity controlled by or under common control with the hauler.

ARTICLE 8 - SEVERABILITY

The provisions of this Ordinance are deemed to be severable. If any part of this Ordinance is rendered void, invalid, or unenforceable, such rendering shall not affect the validity and enforceability of this Ordinance.