

Sponsor: Councilman DeFeo
First Reading: 03/21/11
Second Reading: 04/04/11
Third Reading: 04/18/11
Ord. No.: 002-11

AN ORDINANCE TO AMEND CHAPTER 54 ("SOLID WASTE") TO CLARIFY AND INTEGRATE REGULATIONS GOVERNING SOLID WASTE, RECYCLABLES, AND YARD WASTE DISPOSAL

WHEREAS, pursuant to 7 Del. C. Section 6053, the Town of Smyrna is instituting a recycling program throughout the town primarily directed towards residential recycling;

WHEREAS, the Delaware Department of Natural Resources and Environmental Control ("DNREC") has placed restrictions on the disposal of yard waste in landfills;

WHEREAS, it is necessary to revise the Town Code to provide guidance and regulations for the Town's recycling program;

WHEREAS, there is some confusion regarding various solid waste definitions;

WHEREAS, it is necessary to integrate into one section regulations governing recycling, yard waste disposal, and solid waste disposal;

BE IT HEREBY ENACTED by the Town Council of the Town of Smyrna, a majority thereof concurring in Council duly met, that the Town Code of the Town of Smyrna be and hereby is amended as follows:

Section 1. Repeal in their entirety Article I ("In General") and Article II ("Collection and Disposal") of Chapter 54 ("Solid Waste"), and insert in their place thereof the following:

ARTICLE I. COLLECTION AND DISPOSAL

DIVISION 1. GENERALLY

Sec. 54-1. Definitions.

The following words, terms and phrases, when used in this

article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Any word not defined in this section shall have its common dictionary meaning.

Ashes means the residue from the burning of wood, coal, coke or other combustible materials that has been extinguished and contains no burning residue.

Bulk Refuse means large items that exceed 40 pounds and/or do not fit inside an empty rigid container, including, but not limited to, refrigerators, washing machines, ovens, air conditioning units, mattresses, dressers, and couches. All non-collectible items are excluded from this definition.

Heavy Duty Plastic Bag means a plastic or polyethylene bag not less than 1 1/4 mils thick having a tie or twist fastener and containing no more than 30 gallons or 50 pounds when filled, of sufficient strength to carry its contents without ripping or rupturing.

Non-collectible Items means construction/demolition debris, building materials, and hazardous materials (including, but not limited to, herbicides, pesticides, tires, car parts, motor oil, paints, solvents, explosives, and liquefied petroleum gas bottles).

Non-organic Refuse means all nonputrescible solid waste (excluding ashes, non-collectible items, yard waste, and bulk refuse, as defined herein) consisting of combustible and noncombustible wastes including, by way of example but not limitation, paper, excelsior, cardboard, metals, tin cans, dirt, stone, crockery, glass, plastic, and similar material commonly known and referred to as "trash" or "rubbish".

Nonputrescible means wastes not liable to decay or spoil or become putrid.

Organic Refuse means putrescible animal and vegetable wastes, including, but not limited to, wastes resulting from the handling, preparation, cooking and consumption of food. Yard waste as defined herein is not included in this definition.

Person means any natural person, firm, partnership, corporation or unincorporated association.

Putrescible means waste liable to decay or spoil or become putrid.

Recyclables means fibers and containers including, but not limited to, the following: narrow-neck plastic bottles (such as milk jugs, bleach-detergent containers, and shampoo bottles), glass bottles and jars, metal containers (such as aluminum, steel, and tin), plastic grocery bags, magazines, junk mail,

envelopes, newspapers, corrugated cardboard, boxboard (cereal boxes), clean paper bags, catalogs, telephone books, soft cover books, colored paper, and white office paper. Any item with food residue (such as pizza boxes) is not considered a recyclable, and all liquid containers must first be emptied.

Rigid Containers means metal, plastic, or vinyl receptacles of rigid construction and durability.

Yard waste means grass clippings, leaves, branches, twigs, tree limbs and prunings, flower cuttings, weeds, shrub and hedge clippings, sod, and garden waste (including but not limited to vines, plants, fruit/vegetables and vegetable matter).

Sec. 54-2. Penalties.

Any person violating any provision of this article shall, upon conviction thereof before any court of competent jurisdiction, be subject to a fine of not less than \$10.00 nor more than \$25.00, plus costs. Citations may be issued for violations. This section shall be subject to the provisions of section 1-12, commonly known and referred to as the town mail-in fine ordinance.

Sec. 54-3. Littering on Public and Private Property Prohibited.

It shall be unlawful and a nuisance to throw, put, place or deposit any ashes, organic refuse, non-organic refuse, yard waste, bulk refuse, non-collectible items, recyclable, or other foreign substance

(a) upon any sidewalk, crosswalk, avenue, street, lane, alley, bridge, park or other public place or upon any property owned by the town unless the same is properly containerized and placed in a location authorized by section 54-30(a);

(b) in, on, or in front of any lot in town where the same was collected or gathered from a different lot in town; or

(c) in, on, or in front of any private or public property where the same was collected or gathered from any place outside the town limits.

Sec. 54-4. Public waste containers.

All public waste containers placed by the town along any of the avenues, streets, alleys or sidewalks of the town shall be used by the members of the general public as the place of disposal of waste paper and material accumulated by the members of the general public while using the public ways of the town. To this end, no person engaged in business, either as owner, manager, operator, employer, or another capacity, and no person residing in any dwelling, either as owner, tenant, employee or guest,

shall dispose of or place any ashes, non-collectible items, non-organic refuse, organic refuse, recyclables or yard waste generated or accumulated by a business or residential dwelling in any public waste container of the town.

Secs. 54-5-54-25. Reserved.

DIVISION 2. SINGLE-FAMILY DWELLINGS, MULTIFAMILY DWELLINGS WITH FEWER THAN TEN UNITS UNDER ONE OWNERSHIP AT ONE LOCATION AND CERTAIN COMMERCIAL UNITS

Sec. 54-26. Applicability.

(a) *Generally.* The rules and regulations set out in this division shall govern the disposition and collection of ashes, recyclables, yard waste, organic refuse, bulk refuse, non-collectible items, and non-organic refuse in the town.

(b) *Single-family, multifamily dwellings with fewer than ten units under one ownership and certain commercial units.* The rules and regulations set out in this division shall govern and apply only to commercial units having an average trash pickup not exceeding two 32-gallon containers per pickup, to single-family dwellings, and to multifamily dwellings with fewer than ten units under one ownership at one location; provided, however, commercial units with limited storage area, exceeding two 32-gallon containers per pickup, may request the town to contract pickup with charges based on average volume over the normal fees or charges to be paid monthly.

(c) *Other properties.* Any other properties in the town that do not receive town collection services are required to arrange for private collection. Arrangements for private collection shall be subject to approval by the town manager as to location of pickup, hours, containers, screening of containers and frequency of pickup. Any contract or arrangements for private collection shall remain subject to revision by the town manager where, in his reasonable opinion, the terms thereof require modification in the public interest of the town.

Sec. 54-27. Collection of organic refuse, non-organic refuse, and ashes.

(a) *Generally.* Each individual pickup location may use one, but no more than two, rigid containers. The maximum size rigid container used for organic refuse, non-organic refuse, and ashes shall be 32 gallons and the filled weight shall not exceed 50 pounds. All organic refuse and ashes shall be placed inside rigid containers unless otherwise provided for herein.

(b) *Non-organic refuse.* Heavy duty plastic bags may be used for non-organic refuse as long as the heavy duty plastic bags are of sufficient strength to carry their contents without ripping or rupturing.

(c) *Organic refuse and ashes.* All organic refuse and ashes shall be wrapped in paper and/or deposited into plastic bags of sufficient strength to hold their contents without ripping or rupturing. Organic refuse and ashes so wrapped or placed into plastic bags shall then be deposited into a rigid container for collection.

(d) *Non-collectible items.* No person shall place non-collectible items in rigid containers, rigid containers used for recyclables, heavy duty plastic bags, or any other container used to dispose of items to be collected by the town collection contractor.

(e) *Collection of bulk refuse.* Bulk refuse not otherwise designated herein as a "non-collectible item" may be collected as long as notice is provided to the town five (5) business days prior to the date the large item is to be collected and the large item is placed for collection in accordance with the requirements of section 54-30(a).

(f) *Yard Waste.* No person shall place yard waste in rigid containers, rigid containers used for recyclables, heavy duty plastic bags, or any other container used to dispose of items to be collected by the town collection contract except as otherwise provided in section 54-29.

Sec. 54-28. Collection of recyclables.

(a) Each individual pickup location shall have at least one rigid container that is used strictly for recyclables. The maximum size of the rigid container for recyclables shall be 96 gallons. Heavy duty plastic bags may be used for recyclables after the original rigid container for recyclables has been filled to its maximum capacity. Cardboard boxes may be stacked for collection next to rigid containers and/or heavy duty plastic bags as long as they are broken down and secured so as to prevent their scattering by wind or other means.

(b) No person shall place into a rigid container for recyclables any items that are not defined by this ordinance as recyclables. In the event that a rigid container for recyclables is found to contain one or more items not defined as recyclables, a written warning for the first violation shall be issued to the person listed on the town's records as receiving collection services at that address. The written warning shall include a list of approved recyclable items. After a written warning has been

issued, any subsequent violations shall be subject to the penalties found in section 54-2.

(c) Collection of recyclables shall be provided to customers according to the state-mandated schedule found in 7 Del. C. § 6053.

Sec. 54-29. Deposit of yard waste on streets, curbs, sidewalks or alleys.

(a) *Authorized yard waste disposal methods.* All yard waste, with the exception of branches, twigs, tree limbs and prunings, shall be bagged in heavy duty plastic bags of sufficient strength to carry their contents without ripping or rupturing and be deposited separate from other organic refuse, non-organic refuse, ashes, and recyclables at the appropriate street or alley line for collection. Each individual bag of yard waste shall not exceed forty (40) lbs in weight. Branches, twigs, tree limbs and prunings may be either tied together in bundles or placed in heavy duty plastic bags or cardboard boxes, which shall not exceed forty (40) lbs in weight and four (4) feet in length, and shall be deposited separate from other organic refuse, non-organic refuse, ashes, and recyclables at the appropriate street or alley line for collection. Branches, twigs, tree limbs and prunings that are not tied in bundles or placed in heavy duty plastic bags or cardboard boxes shall not be collected.

(b) *Prohibited conduct.* It shall be unlawful for any person to do the following:

(i) dispose of or mix yard waste with any non-organic refuse, organic refuse, or recyclables for regular trash collection or to dispose of yard waste in any dumpster or location not specified for such purpose; or

(ii) deposit, place, discard, drop or in any other manner scatter any yard waste in or upon the streets, curbs, sidewalks or alleys of the town except as otherwise indicated in this section.

(c) *Collection of unbagged leaves.* Unbagged leaves may be deposited in the streets of the town, near the curb, for pickup from October 16 through December 31 of each year. Leaves must be bagged at all times between January 1 and October 15 of each year.

(d) *Temporary scattering of yard waste.* Nothing in this section shall be construed as prohibiting the temporary scattering of grass clippings, leaves or the like on town streets, curbs, alleys or sidewalks where the same occurs incidental to and during mowing, raking or clipping operations, but the same shall

thereafter be removed and corrected immediately at the conclusion of such operations.

Sec. 54-30. Placement for collection; collection times.

(a) *Placement for collection.* All properly containerized non-organic refuse, ashes, recyclables, organic refuse and/or bulk refuse shall be placed along the curb or property line in front of such lot, or at the rear alley thereof, in order that it may be conveniently collected by the town's collection contractor. Yard waste shall be placed for collection as provided in section 54-29.

(b) *Setting out and removing rigid containers and heavy duty plastic bags.* All non-organic refuse, ashes, organic refuse, bulk refuse, and recyclables properly bagged or containerized shall be placed at the appropriate place for collection after 4:30 p.m., prevailing time, the day preceding the day designated for collection. All empty rigid containers and lids shall be removed by 12:00 midnight of the same day the collection is scheduled.

(c) *Improperly containerized non-organic refuse, ashes, recyclables, or organic refuse.* Any non-organic refuse, ashes, organic refuse, recyclables, bulk refuse, or yard waste not properly containerized, bagged, bundled, or otherwise placed as required by this article shall not be accepted by the collectors, and it shall be the duty of the person responsible to immediately remove the same, including any loose non-organic refuse, ashes, organic refuse, recyclables, or yard waste.

(d) *Lids; responsibility for scattered materials.* It is recommended, but not required, that all rigid containers used to dispose of organic refuse, non-organic refuse, recyclables, and ashes have tight fitting lids. Each person shall be responsible for gathering and properly disposing of any non-organic refuse, ashes, organic refuse, recyclables, or yard waste set out for collection by that person (or stored on the property where the person resides) which are disbursed as a result of wind, animals, birds, or other means or which are otherwise not collected by the town's collection contractor. Any person failing to gather and properly dispose of their non-organic refuse, ashes, organic refuse, recyclables, or yard wastes shall be in violation of this article and subject to the penalties in section 54-2.

Sec. 54-31. Collections.

(a) Except as provided in this article, all non-organic refuse, bulk refuse, ashes, recyclables, yard waste, and/or

organic refuse shall be collected, conveyed and disposed of by the town or by licensed collectors under contract to the town.

(b) All persons engaged in the collection and removal of non-organic refuse, ashes, recyclables, yard waste, bulk refuse, and/or organic refuse, including those employed by the town for that purpose, shall collect and transport the same through or along the avenues, streets, lanes, alleys or other public ways of the town in a sanitary, covered, liquid-tight container or motor vehicle body as set forth by the regulations of the state solid waste authority.

(c) *Holidays.* When the day for regularly scheduled collection falls on a legal holiday, such collection shall not take place until the next business day immediately thereafter.

(d) *Weather delays; landfill closings.* When collections are delayed because of weather and/or the closing of the state landfill, collections will resume on the next business day immediately thereafter.

Sec. 54-32. Fees; penalty for nonpayment.

(a) The town shall collect from the occupant or owner of each parcel of property subject to this division an annual collection fee, regardless of whether or not the owner uses the town collection service. The amount of the annual fee shall be set by the town council and may be revised as necessary to reflect changing costs of collection and/or disposal. The fee shall be billed monthly as part of the town utility bill and payable as prescribed pursuant to the town's rules and policies relating to payment of utility bills.

(b) All final accounts and all new accounts, in any given month, shall be assessed a monthly trash bill. The monthly trash bill on all final accounts and all new accounts shall be prorated on a weekly basis.

EXCEPTION: If the new account is a transfer from the current tenant back to the original property owner, it shall not be considered a new account for the balance of that calendar month unless that property owner uses the trash service or the property is or becomes occupied for any portion of the balance of that month. This exception applies only to the property owner, not a new tenant. The property owner must request removal of the trash fee prior to payment of the bill for this section to be applicable. No refunds will be made after the bill has been paid.

(c) The town manager, or his or her designee, shall be authorized to promptly adjust the amount of all monthly trash bills in order to pass through any increases or decreases in the

fees charged to the town by the state solid waste authority in connection with the town's disposition of its solid waste at the authority's landfills. Such adjustments shall be computed and allocated in such manner as to allow the town to recover or refund any increase or decrease in such fees over the remainder of that current fiscal year. The town manager shall report such adjustments to the town council at the next regular council meeting following such adjustment and shall promptly amend the town's schedule of fees to reflect such adjustments. Nothing in this section shall be construed to authorize the town manager or his or her designee to adjust the annual trash collection fee or monthly trash collection bill for any customer except in response to increases or decreases in the fees charged to the town by the state solid waste authority.

Sec. 54-33. Adjustments.

(a) *Generally.* The town will make appropriate credits or refunds in cases of overcharge or may bill for additional amounts in cases of undercharge. Reasons for adjustments could include, but are not limited to, clerical errors, improper application of the rate schedule or, upon documentation in writing, change of use or occupancy.

(b) *Refunds.* In no case will additional charges to the customer under the application of subsection (a) of this section be collected for a period which is more than three years prior to the month of discovery. If the customer has been overcharged, the town shall refund the amount due or credit the customer's account at the customer's election to the date the error was made, not to exceed three years prior to discovery. In the event of a change in occupancy or use, refunds shall not be retroactive. In the absence of an election by the customer for a refund by check, the town shall credit the customer's account. If additional charges are due the town, installment payments shall be offered for not more than the number of months the account was billed in error. An installment service payment charge shall not be applied to such installment payments.

(c) *Temporary adjustments.* The town manager shall waive the fee for trash service on a monthly basis upon written request and certification that a property is not occupied because:

(1) It is for sale;

(2) It is under construction; or

(3) If the owner of an owner-occupied property changes residency for a period of three or more consecutive months and:

a. Electric and/or water service is temporarily disconnected at the request of the property owner; or

b. The property owner provides a deed or lease showing proof of alternative residence.

Requests shall be presented to the town manager with the current monthly bill. The manager shall not consider partial or retroactive payments on accounts.

Any violation of this section will result in the repayment of all credit received.

Sec. 54-34. Payment plans for delinquent accounts.

When a customer's account becomes delinquent, the customer may enter into a written payment plan with the town, signed by the customer, wherein the customer shall pay the amount past due in equal consecutive monthly installments with the next three regular monthly bills. Such installment payments shall become a part of the customer's regular monthly bill and failure to pay the installment amounts in full when due shall result in the same late payment penalties and procedures as would apply to regular monthly bills. If the customer pays all the installments when due, any and all late payment penalties shall not be charged on the portion of the account past due during the time covered by the payment plan. A customer shall only be allowed to enter into such a payment plan with the town once every nine months.

Sec. 54-35. Collection of delinquent accounts by third party agency.

Upon a customer's account being terminated, the town billing manager shall forward the collection of such past due amounts to a third party collection agency or to the town solicitor. The cost of the third party collection agency or the town solicitor to collect past due amounts shall be added to the amount past due. Additionally, the town may take other legal and appropriate actions as may be needed to collect past due amounts.

Secs. 54-36-54-65. Reserved.

Section 2. Re-number Article III ("Littering") of Chapter 54 ("Solid Waste") as Article II ("Littering").

Section 3. Re-number Article IV ("Town's Authority to Remove Solid Wastes Deposited or Accumulated in Violation of this Chapter; Notice; Hearing; Recovery of Costs; Lien; Penalties") of Chapter 54 ("Solid Waste") as Article III ("Town's Authority to Remove Solid Wastes Deposited or Accumulated in Violation of this Chapter; Notice; Hearing;

Recovery of Costs; Lien; Penalties").

SYNOPSIS

This ordinance repeals Article I ("In General") and Article II ("Collection and Disposal") of Chapter 54 ("Solid Waste") and replaces these articles with a new Article I ("Collection and Disposal"). This ordinance makes other minor re-numbering changes. This ordinance defines key terms such as bulk refuse, heavy duty plastic bag, non-collectible items, non-organic refuse, organic refuse, recyclables, rigid containers, and yard waste. The penalty for violating this ordinance is to be between \$10.00 and \$25.00. Littering on public and private property is prohibited and permitted uses of public waste containers are outlined. Public containers are to be used to dispose of waste generated in public places and not waste generated by business or residences. Single-family dwellings, multifamily dwellings with fewer than ten units, and certain commercial units are to receive collections under this ordinance, while all other properties must arrange for private collection. This ordinance sets forth regulations for the collection of non-organic refuse, organic refuse, ashes, and the collection of bulk refuse, including how to properly containerize different items, weight restrictions, and a prohibition on mixing yard waste and non-collectible items with other wastes. Units may use up to two rigid containers and in some instances may use heavy duty plastic bags. Rigid containers are only required when disposing of ashes and organic refuse. This ordinance regulates the collection of recyclables, requiring each unit to use at least one rigid container and permitting the use of heavy duty plastic bags for overflow recyclables. Mixing non-recyclable items with recyclables is prohibited (enforcement procedures are included in this ordinance), and recyclable collection must comply with 7 Del. C. § 6053. Yard waste is regulated by this ordinance, including separating yard waste from other wastes, weight restrictions, how to containerize yard waste, prohibitions on scattering yard waste, and the dates when leaves will be collected without being bagged. This ordinance outlines where and when waste must be placed for collection. Improperly containerized waste will not be collected. Lids are not required, but property owners or occupants are responsible for gathering any waste disbursed from their containers or plastic bags placed out for collection. This ordinance requires waste to be disposed of by the town or a licensed contractor and places standards on the vehicles transporting waste through the town.

This ordinance outlines collection procedures for holidays, weather delays, and landfill closings. This ordinance covers setting fees (including fee adjustments to reflect collection or disposal costs), outlines how trash bills are part of the utility bills, and addresses how trash bills are assessed on accounts. This ordinance specifies procedures for town-wide collection fee adjustments, procedures for refunds or credits for specific properties, and procedures to collect payment on delinquent accounts. This ordinance authorizes the town to send delinquent accounts to collection agencies, the town solicitor's office, and to take other legal means necessary to collect past due amounts.

This will certify that this is a true and correct copy of the Ordinance duly adopted by the Town Council of the Town of Smyrna at its regular Council meeting on April 18th, 2011.

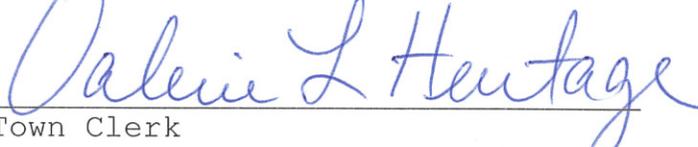
ATTEST:


Council Secretary


Mayor

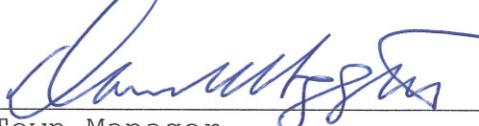
This shall certify that the title and synopsis of this Ordinance was published in "The Smyrna Times" on April 27th, 2011 and posted at the Town Hall on April 27th, 2011.

So Certifies:


Town Clerk

This shall certify that the title, effective date and synopsis of this Ordinance was published in "The Smyrna Times" on April 27th, 2011 and posted at the Town Hall on April 27th, 2011.

So Certifies:


Town Manager