

RECYCLING LAW

LOCAL LAW NO. 6 OF THE YEAR 1989

A Local Law Pursuant to Article 27 of the New York Environmental Conservation Law Providing for the Regulation of the Construction and Operation of Recyclables Handling and Recovery Facilities

Adopted June 6, 1989

Be it enacted by the Town Board of the Town of Kirkwood as follows:

SECTION 1.1 Short Title:

This law shall be known and may be cited as the Town of Kirkwood Recyclables Handling and Recovery Facilities Law (hereinafter referred to as Recycling Law).

SECTION 1.2 Purpose and Intent:

The Town Board of the Town of Kirkwood hereby finds and determines that the construction and operation of recyclables handling and recovery facilities as hereinafter defined within the Town of Kirkwood or any part thereof poses a potential threat to the health and safety of the residents of the Town of Kirkwood and to animals within the Town of Kirkwood, and that their potential for contamination of adjacent property and water supplies constitutes a potential health and safety hazard to the Town of Kirkwood and its residents as well as to food chain crops and animals within the Town of Kirkwood. It is the purpose and intent of this Local Law to provide for the health, safety, fire protection and the welfare of the residents of the Town of Kirkwood and the owners of property within the Town of Kirkwood by regulating the construction and operation of recyclables handling and recovery facilities within the Town of Kirkwood.

SECTION 2.1 Definitions:

For the purposes of this Local Law, the following terms shall have the meanings set forth hereinafter:

- (a) **“Applicant”** means the person applying for a permit under this Local Law and must be the owner or operator of the solid waste management facility.
- (b) **“Closure”** means the owner or operator of any active or inactive solid waste management facility, including recyclables handling and recovery facilities, must, upon termination of use, properly close that facility and must monitor and maintain such closure so as to minimize the need for further maintenance; and to prevent adverse environmental or health impacts such as, but not limited to, contravention of surface water and groundwater quality standards, gas migration, odors, and vectors. Termination of use includes those situations where a facility has not received solid waste for more than one year, unless otherwise provided by permit, or the permit has expired. Termination of use also results from permit denial or order of the Commissioner of Department of Environmental Conservation or of a court.
- (c) **“Construction”** means any physical modification to the site at which a potential or proposed solid waste management facility is to be located, including, but not limited to, site preparation (e.g., clearing and grading, excavation of borrow material for daily cover, etc.).
- (d) **“Department”** means the New York State Department of Environmental Conservation.

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- (e) **“Food chain crops”** means crops grown for human consumption and crops grown for feed for animals whose products are consumed by humans.
- (f) **“E.C.L.”** means Chapter 43-B of the Consolidated Laws of the State of New York, entitled the Environmental Conservation Law.
- (g) **“Operation”** means operation of the facility after initial receipt of solid waste.
- (h) **“Person”** means any individual, public or private corporation, political subdivision, government agency, authority, department or bureau of the State, municipality, industry, co-partnership, association, firm, trust, estate, or any other legal entity whatsoever.
- (i) **“Putrescible”** means the tendency of organic matter to decompose with the formation of malodorous by-products.
- (j) **“Recyclable material”** means solid waste that exhibits the potential to be used repeatedly in place of a virgin material.
- (k) **“Recyclables handling and recovery facility”** means a solid waste management facility, other than collection and transfer vehicles, at which recyclables are separated from the solid waste stream, or at which previously separated recyclables are collected.

SECTION 2.2 Applicability:

- (a) The Local Law shall regulate the construction and operation of recyclables handling and recovery facilities within the Town of Kirkwood.
- (b) On and after the effective date of this Local Law, except as provided in subdivisions (c) and (d) of this section, no person shall construct or operate a facility used in the recovery, collection, storage, or treatment of recyclables without first having obtained the required permit to do so pursuant to this Local Law.
- (c) Exempt facilities. The following facilities are exempt from regulation under this Local Law:
 - (1) Returnable container redemption operations conducted at a dealer, distributor, or redemption center (as defined by 6 NYCRR Part 367).
 - (2) The storage of recyclables on the property of a manufacturer for use in the manufacturing process in the place of virgin material.
- (d) Partially exempt facilities: The following facilities which are otherwise licensed by State law, i.e. automobile dismantlers, scrap metal processors, facilities that recover metal from sludges that are not hazardous waste which are required to be managed at a facility subject to regulation under 6 NYCRR Part 373 or 374, and metal salvage yards are exempt from regulation under this Local Law to the extent of activities regulated by said State license, except as follows: the owner or operator of each of these facilities must provide the Town with (1) an annual report that details how the waste automotive fluids in a vehicle (including but not limited to refrigerants, oil and transmission fluid) are disposed, and (2) a copy of any reports required to be submitted to appropriate State agencies.

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SECTION 2.3 Application requirements for a permit to construct and operate:

1. CONTENTS OF APPLICATION:

An application for a permit to construct and operate a recyclables handling and recovery facility must contain the information requirements set forth in Subpart 360-1 of 6 NYCRR Part 360 and the application requirements contained in 6 NYCRR 360-12.2 and 6 NYCRR 360-12.3.

2. REVIEW OF APPLICATION FOR A PERMIT TO CONSTRUCT AND OPERATE:

Prior to issuance of such permit to construct and operate, a site plan at a scale of 1"=50' or a scale less the following information shall be submitted to the Town Board for approval:

- (a) The description of the site including:
 - (1) preliminary engineering plans with elevations showing the use, location and dimensions of proposed buildings and land areas, driveways, driveway intersections with street parking areas, maneuvering areas, utilities and utility easements, and signs;
 - (2) a storm drainage and grading plan regarding proposed handling of surface water runoff and erosion control; and
- (b) Address and precise site boundaries as shown on a survey to be prepared by a licensed surveyor or engineer;
- (c) Time period of use for disposal of recyclable material;
- (d) Name of the owner and operator during the time period of use and whether said persons have ever been convicted of a felony or misdemeanor;
- (e) Names of persons responsible for the generation and transportation of recyclable material to be disposed of;
- (f) Type and quantity of recyclable material to be disposed of;
- (g) Manner of disposal of recyclable material;
- (h) Nature of soils at the site;
- (i) Depth of water table at the site;
- (j) Location, nature and size of aquifers at the site;
- (k) Direction of present and historic groundwater flows at the site;
- (l) Location, nature and size of all surface waters at and near the site;
- (m) Levels of contaminants, if any, in groundwater, surface water, air and soils at and near the site resulting from wastes previously disposed of at the site or from any other cause and areas known to be directly affected or contaminated by wastes from the site;

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- (n) Latest analysis of all drinking water drawn from or distributed through the area in which the site is located when the New York State Department of Health, Broome County Department of Health or a State Certified Laboratory determines that water quality may have been affected by the site in question, including any known change in the quality of such drinking water over time;
- (o) Proximity of the site to private residences, public buildings or property, school facilities, places of work or other areas where individuals may be present; and
- (p) Any place of temporary storage used or to be used by the applicant and the place or places where and the manner in which the applicant will finally dispose of any wastes; and
- (q) Such other information as the Town Board deems necessary.

SECTION 2.4 Hearing and Decision:

The Town Board shall fix a time within sixty (60) days from the day an application is made and an EIS filed for a bearing relating to such application. The Town Board shall give public notice thereof by the publication in the official newspaper of such bearing at least fourteen (14) days prior to the date thereof and shall decide the same within forty-five (45) days after such hearing; provided, however, the time within which the Town Board must render its decision may be extended by mutual consent of the applicant and the Town Board. The decision of the Town Board shall immediately be filed in the office of the town clerk and a copy thereof mailed to the applicant.

SECTION 2.5 Permits:

- (a) The Town may issue a permit to construct and operate with respect to a new recyclables handling and recovery facility, or expansion of a facility, only if the application's engineering and hydrogeological data and construction plans and specifications required by this Local Law pertaining to such a facility substantiate that the proposed facility meets the requirements of the ECL and this Local Law.
- (b) The Town Board shall review said application and any additional information and after a public hearing pursuant to Section 2.4 of this Local Law shall approve, approve with modifications or disapprove said application with regard to achieving without limitations thereto the following objectives:
 - (1) Compliance with the criteria of Sections 2.3 and 2.5 of this Local Law.
 - (2) A harmonious relationship between such use and uses located in adjacent districts as reflected in the Comprehensive Plan.
 - (3) The maximum safety of vehicular access and egress from the site to existing and prospective streets and highways.
 - (4) The maximum adequacy of interior circulation and parking facilities with particular attention to vehicular and pedestrian safety.
 - (5) The adequacy of transitional landscaping and setbacks in regards to achieving maximum compatibility and protection to adjacent property.

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(6) The maximum adequacy of the facilities environmental safeguards in regards to protection of the local environment and of adjacent property.

(c) A permit to construct and operate shall be issued pertaining to a recyclables handling and recovery facility only if the applicant demonstrates to the Town's satisfaction that:

(1) the facility's construction is in accordance with the terms of the permit to construct and operate (and plans approved thereunder) issued pursuant to this Local Law;

(2) certification of construction by DEC has been submitted in accordance with section 6 NYCRR 360-1.11 and the Town has inspected the facility and finds it to be in compliance with the permit to construct and operate (and plans approved thereunder); and

(3) An environmental impact statement pursuant to article 8 of the Environmental Conservation Law of the State of New York and applicable local laws of the Town of Kirkwood must be prepared. Such statement shall include a description and evaluation of the nature of the probable environmental impact, including specification of the predictable adverse effects on the natural environment and ecology, public health and safety, scenic, historic, cultural and recreational value, water and air quality, wildlife and an evaluation of measures to mitigate adverse effects; and

(4) a form of insurance, surety or financial responsibility, as required by Section 2.5 (h) and (i) of this Local Law, has been filed with the Town.

(5) the proposed facility will be in full compliance with all applicable laws, rules and regulations of the State of New York in effect on the date of submission of the permit application pertaining to the construction and operation of a recyclables recovery and handling facility; including the requirements of Section 2.3 of this Local Law; and

(6) there has been opportunity for public review and comment as provided for in Section 2.4 of this Local Law; and

(7) receipt of a permit pursuant to this section shall not relieve any person of the responsibility of constructing and operating such facility in full compliance with all applicable laws, rules or regulations or of operating the facility in full compliance with all applicable laws, rules and regulations of the State of New York in effect on the date of submission of the permit application.

(d) Except as otherwise exempted by this Local Law, no person shall engage in the construction or operation of a recyclables handling and recovery facility within the Town of Kirkwood without the necessary permit as required by this Local Law.

(e) The Town Board may impose such permit conditions as it deems necessary to protect the environment of the proposed site and the health and safety of the Town of Kirkwood.

(f) The Town may deny the application for a permit to construct and operate where:

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- (1) the applicant's engineering and hydrological data and construction plans and specifications required by this Local Law pertaining to such a facility fails to demonstrate that the facility meets the requirements of the ECL and this Local Law and fails to demonstrate an ability to operate in accordance with the requirements of the ECL and this Local Law; or
 - (2) the activities contemplated by the applicant seem detrimental to the properties, landowners, residents in affected area, wildlife and the general ecology of the proposed site area studied; or
 - (3) site studies indicate that the proposed facility appears to be detrimental to, or inconsistent with, the overall comprehensive plan for land use previously formulated by the Town and its then current land use laws and regulations; or
 - (4) the applicant fails to demonstrate to the Town's satisfaction that the facility's construction is in accordance with the terms of the permit to construct and operate and plans approved thereunder issued pursuant to this Local Law; or
 - (5) certification of construction by DEC has not been submitted in accordance with 6 NYCRR 360-1.11; or
 - (6) the Town has inspected the facility and finds it in non-compliance with the permit to construct and operate permit (and plans approved thereunder); or
 - (7) a form of insurance, surety, or financial responsibility, as required by Section 2.5 (h) and (i) of this Local Law, has not been filed with the Town.
- (h) Before issuance of a permit, the applicant shall present to the Town certificates of insurance evidencing the acquisition of liability insurance coverage, including pollution coverage, in at least the amounts of:
- (1) Death/bodily injury: Two million dollars (\$2,000,000.00); and
 - (2) Property damage: five million dollars (\$5,000,000.00).

Said insurance shall be maintained throughout the term of the permit issued by the Town of Kirkwood to construct and operate said facility and for a three year additional period after termination of said permit, and the aforementioned certificates shall provide for thirty (30) days' notice to the Town prior to cancellation of coverage.

Failure of applicant to maintain said insurance coverage shall result in immediate termination of the Town permit.

- (i) Surety Requirements.
 - (1) The Town may require a form of surety or financial responsibility acceptable to the Town by a permit holder, conditioned upon compliance with the terms of the permit issued to such holder pursuant to this Local Law.
 - (2) A form of surety or financial responsibility, acceptable to the Town, will be required for facilities where the operator and the owner are not the same person, to cover the cost of having the facility properly closed.

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(3) Forms of surety or financial responsibility acceptable to the Town will be required for claims arising out of injury to persons or property from pollution or otherwise, relative to either sudden and accidental occurrences or non-sudden and accidental occurrences, in the form of liability insurance, self-insurance or other form acceptable to the Town. The amount of such financial responsibility is to be set by the Town.

(j) Acceptance of said permit from the Town of Kirkwood by the applicant shall be indicative of the consent by applicant to indemnify and save harmless the Town of Kirkwood and all officers, agents and employees of said Town from and against any and all losses, claims, damages, costs, judgments, lawsuits, expenses, risks of loss or liability of whatever nature arising out of injuries to persons or property of whatever kind or nature as a result of operation of said solid waste management facility within the Town of Kirkwood and which are attributable to the negligence, omission of duty, misfeasance or wrongful act on the part of the applicant, its employees or agents.

(k) Any approval of the application and issuance of a permit by the Town Board pursuant to this Local Law shall be valid only for so long as the premises which are the subject of site plan approval are used for the specific use and purposes stated in that application; therefore, if at any future time the applicant shall wish to dedicate the premises to any other use, he shall make a new application in accordance with the provisions of this local Law.

(l) Such permit shall be personal with the applicant. Said permit does not go with the title of the land nor may it be sold, assigned, transferred or disposed of in any manner. Any holder of such permit who allows it to be used by any other person, and any person who uses such permit granted to any other person, shall be guilty of an offense against this Local Law.

(m) Any member of the Town Board or any of its duly authorized representatives shall be granted access to the area of the activity or business of the permittee at all reasonable hours to inspect the same for compliance herewith, at least twice per year.

SECTION 2.6 Operational Requirements:

In addition to the requirements set forth in section 360-1.14 of 6NYCRR Part 360, the owner or operator of a recyclables handling and recovery facility (other than one described in Section 2.2(c) and (d) of this Local Law) must operate in compliance with the following:

(a) All activities at the facility must be performed in accordance with the manuals, plans, and programs prepared by applicant pursuant to section 6 NYCRR 360-12.3 and required by this Local Law and approved by the Town. All manuals, plans, and programs required by this Local Law must be maintained and be available for reference and inspection at the facility. These manuals, plans, and programs must be updated no less frequently than annually. No facility shall begin operations unless all manuals, plans or programs required by this Local Law are first approved by the Town.

(b) Receipt and handling of recyclable material:

(1) Recyclables generated or resulting from industrial, commercial, agricultural or residential operations or activities within New York State but outside the Town of Kirkwood, New York, shall not be accepted at facilities licensed by the Town of Kirkwood.

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(2) Ferrous metals recovered from the ash residue after the bottom ash has been quenched at the Broome County Resource Recovery Facility, if such facility is sited within the Town of Kirkwood, shall not be accepted at facilities licensed by the Town of Kirkwood because of the potential health risks that may be associated therewith.

(3) The facility shall receive only recyclable material which will be treated for the recovery of recyclables.

(4) External storage of any recyclable material is prohibited due to the potential threat to health and safety of the residents of the Town of Kirkwood that external storage represents, including contamination of water supplies and threat of fire.

(5) No person shall store recyclable material inside the facility in such a manner that the storage area or recyclable material becomes a nuisance or a sanitary or environmental problem.

(6) All recyclable material storage, handling and tipping areas must include fire detection and protection equipment as required by the N.Y. State Uniform Fire Prevention Building Code (9 NYCRR 600-1400).

(7) All recyclable material passing through the facility must ultimately be recycled or be disposed of at a solid waste management facility authorized by the New York State Department of Environmental Conservation as required by section 6 NYCRR Parts 360-375 (Solid Wastes), if in this State, or by the appropriate governmental agency or agencies if in other states, territories, or nations.

(c) Putrescible solid waste shall not be stored indoors for more than two (2) days.

(d) Access. The owner or operator must restrict the presence of, and must minimize the possibility for any unauthorized entry onto the facility. A description of the security measures must be provided and must include, but not be limited to, a means to control entry at all times through the gates or other entrances to the facility (as by a 24 hour surveillance system which continuously monitors and controls entry, or an artificial or natural barrier). Signs, legible from a distance of at least 25 feet, that read "Visitors and unauthorized personnel must report to the office" also must be posted at each entrance to the facility and at other locations, in sufficient numbers to be seen from any approach to the facility. In the case of facilities allowing local residents to bring and dispose of their solid waste, a designated area to do so must be provided in order to minimize potential accidents and unauthorized entry.

(e) Compliance and Operational Reports. In addition to the requirements of subdivisions 360-1.4(c) and 360-1.14(j) of 6 NYCRR Part 360, the facility owner or operator must also comply with the reporting requirements contained in 6 NYCRR 360-12.4(E).

(f) The owner or operator must comply with all facility closing requirements described in subdivisions 360-3.4(h) and 360-12.3(f) of 6 NYCRR Part 360.

SECTION 2.7 Application Fee:
(Amended December 3, 2019)

Reference ARTICLE XVI – Building Code and Miscellaneous Fee Schedules, SECTION 1603, for the current application fee.

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The fee for a permit shall be two thousand five hundred dollars (\$2,500.00) to be used by the Town to engage services of qualified professionals or experts to review and report on the application and the facts, allegations or data set forth therein. The application fee shall be deposited in a special account maintained by the Supervisor of the Town of Kirkwood and the monies shall be invested at interest. Any monies not expended by the Town of Kirkwood under the provisions of this Local Law shall be returned to the applicant together with any interest earned on the monies so deposited.

SECTION 2.8 Penalties:
(Amended December 3, 2019)

Reference ARTICLE XVII – Ordinance Violations and Penalties, SECTION 1715 for the current penalties.

SECTION 2.9 Separability Clause:

If any clause, sentence, paragraph, section or part of this Local Law shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder of this Local Law but shall be confined in its operation to the clause, sentence, paragraph, section or part of this Local Law that shall be directly involved in the controversy in which such judgment shall have been rendered.

SECTION 2.10 Repeal:

Any portions of ordinances, resolutions or regulations heretofore adopted in conflict with this Local Law are hereby repealed.

SECTION 2.11 Effective date:

This Local Law shall take effect immediately upon filing in the office of the Secretary of State.