

ORDINANCE NO. 178

AN ORDINANCE OF MIDDLE SMITHFIELD TOWNSHIP, A SECOND CLASS TOWNSHIP OF THE COUNTY OF MONROE, COMMONWEALTH OF PENNSYLVANIA, FOR THE PURPOSE OF AMENDING "THE CODE OF THE TOWNSHIP OF MIDDLE SMITHFIELD", CHAPTER 155 "SOLID WASTE AND RECYCLING" BY AMENDING §155.1 "INTENT" TO REQUIRE ALL DOMESTIC, COMMERCIAL, INSTITUTIONAL AND INDUSTRIAL RECYCLABLES ACCUMULATED UPON ANY PROPERTY WITHIN TOWNSHIP TO BE COLLECTED AND REMOVED AT CURBSIDE, ROADSIDE OR SIMILAR LOCATION ON THE PREMISES BY AN AUTHORIZED COLLECTOR WITHIN THE TOWNSHIP AND DISPOSED OF IN ACCORDANCE WITH THE SOLID WASTE MANAGEMENT ACT; AMENDING AND ADDING CERTAIN DEFINITIONS OF TERMS; REPEALING §155.4(G); AMENDING §155.6 "SEPARATION OF RECYCLABLES", §155.7 "SEPARATION OF LEAF WASTE"; §155.12 "RECYCLING REPORTS AND SCHEDULED COLLECTION DAYS OF SOURCE-SEPARATED RECYCLABLES", §155.16 "REQUIRED COLLECTION DAYS AND HOURS OF COLLECTION FOR MUNICIPAL WASTE", §155.17 "TRANSPORTATION OF MUNICIPAL WASTE", AND §155.19 "AUTHORIZATION OF COLLECTORS", REPEALING §155.20 "PROPERTY OWNERS ASSOCIATIONS", AMENDING §155.22 "INSURANCE COVERAGE", §155.24 "BILLING PROCEDURES", §155.25 "EQUIPMENT OF AUTHORIZED COLLECTOR", AND §155.26 "DISPOSAL"; REPEALING §155.27 "ASSIGNMENT OF CONTRACT"; AMENDING §155.28 "AUTHORIZED COLLECTORS TO PROVIDE RECYCLABLE REMOVAL SERVICE FOR RESIDENTIAL, MULTI-FAMILY, HOUSING, COMMERCIAL, MUNICIPAL AND INSTITUTIONAL ESTABLISHMENT AND PROPERTIES", §155.31 "UNLAWFUL TO TERMINATE SERVICE OF AUTHORIZED COLLECTOR FOR COMPLIANCE", §155.32 "MISSED COLLECTION", §155.33 "COMPLAINTS", AND §155.35 "PENALTIES" AND PROVIDING FOR THE SEVERABILITY AND THE REPEAL OF PRIOR INCONSISTENT PROVISIONS AND/OR ORDINANCES.

CERTIFICATION

I hereby certify that the within Ordinance is a true and correct copy of an Ordinance proposed to be adopted for the above purposes by the Board of Supervisors of Middle Smithfield Monroe County, Pennsylvania, on the _____ day of _____, 2011.

Jennifer Ann Wise, Esquire
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WHEREAS, the Board of Supervisors of the Township of Middle Smithfield, ("Supervisors"), of Monroe County, Pennsylvania have heretofore adopted a comprehensive compilation of ordinances of the Township entitled the "Code of the Township of Middle Smithfield"; and

WHEREAS, any and all additions, amendments, deletions or supplements to the Code, when passed and adopted in such form as to indicate the intention of the Board of Supervisors to be a part thereof, shall be deemed to be incorporated into such Code so that reference to the Code shall be understood and intended to include such changes; and

WHEREAS, whenever such additions, amendments, deletions, or supplements to the Code shall be adopted, they shall thereafter be printed and, as provided hereunder, inserted in the post-bound book containing said Code as amendments and supplements thereto; and

WHEREAS, Section 1506 of the Second Class Township Code, Act of May 1, 1933, P.L. No 69, as amended by the Act of November 9, 1995, P.L. 350, No. 60, found at 53 P.S. 66506, entitled "General Powers", authorizes the board of supervisors to take and adopt ordinances necessary for the proper management, care and control of the Township, and the maintenance of the health and welfare of the Township and its citizens; and

WHEREAS, the Board of Supervisors of the Township of Middle Smithfield desire to amend Chapter 155 "Solid Waste and Recycling" to comply with the requirements of the Pennsylvania Department of Environment Protection and applicable statutory provisions affecting solid waste and

recycling, including but not limited to, the Municipal Waste Planning, Recycling and Waste Reduction Act, Act of July 28, 1988 (P.L. 556, No. 101), as amended; the Solid Waste Management Act, Act of July 7, 1980 (P.L. 380, No. 97), as amended; and the Waste Transportation Safety Act, Act of June 29, 2002 (2002-90);

WHEREAS, as part of a Consent Order and Agreement entered into by and between the Pennsylvania Department of Environmental Protection and Middle Smithfield Township dated May 26, 2011, this Ordinance is intended to bring the Township's municipal waste planning, recycling and waste reduction ordinance into compliance with Act 101 and with the terms and conditions of that Consent Order and Agreement; and

WHEREAS, the Supervisors have determined that the proposed Ordinance amendments are in the best interests of Middle Smithfield Township and its citizens.

NOW, THEREFORE, be it ORDAINED and ENACTED by the Board of Supervisors of Middle Smithfield Township, Monroe County, Pennsylvania, and it is hereby ordained and enacted by the authority of the same, to wit:

SECTION 1. General Provisions. The Code of Ordinances of Middle Smithfield Township, Chapter 155 "Solid Waste and Recycling" is hereby amended as set forth below; such amendment being adopted and incorporated in the official ordinance books by reference with the same force and effect as if duly recorded therein.

SECTION 2. Repealer. All ordinances, rules, regulations, policies, procedures, code sections, or parts thereof inconsistent herewith are hereby repealed.

SECTION 3. Severability. Should any part of this ordinance be found to be void or illegal by a court of competent jurisdiction, the remainder of this ordinance shall remain in full force and effect.

SECTION 4. Effective Date. This ordinance shall become effective five (5) days after its adoption.

SECTION 5. The Amendments. The specific sections of Chapter 155 "Solid Waste and Recycling" identified herein below are amended in the following manner, all other provisions within each section and throughout Chapter 155 shall remain in full force and effect.

(1). Section 155.1 is hereby amended and shall be replaced with the following:

§ 155.1. Intent.

A. All domestic, commercial, institutional and industrial recyclables accumulated upon any property within Middle Smithfield Township shall be collected and removed at curbside, roadside or similar location on the premises by an authorized collector. Waste shall be disposed of in accordance with the Solid Waste Management Act.

(2). In Section 155.3 "Definitions", the following definitions shall replace existing terms and, in the case where the term was not previously defined, then such term shall be added to this section.

AUTHORIZED COLLECTOR - A collector of municipal wastes and recyclables, including leaf materials, licensed and approved by the Monroe County Municipal Waste Management Authority ("MCMWMA").

DEPARTMENT - The Pennsylvania Department of Environmental Protection.

DOMESTIC – Recyclable materials generated by persons in residential establishments, including residential subdivisions and residential developments.

LEAF WASTE - Shall mean leaf waste from trees, bushes and other plants, garden residue, shrubbery and tree trimmings and similar materials, but not including grass clippings.

LICENSED COLLECTOR - See "Authorized collector".

NEWSPRINT – Paper of the type commonly referred to as "newspaper" and distributed at fixed or stated intervals, usually daily or weekly, having printed thereon news and opinions and containing advertising inserts, magazines, glossy or other chemically coated paper, office paper, and any other paper products of any nature.

NEWSPAPER - See "newsprint".

RECYCLABLE COLLECTION PERMITTEE - A person authorized by the MCMWMA to collect, transport and deliver to market recyclables exclusively (and not municipal waste) for persons other than himself, his immediate family, or persons for whom he is acting as an agent (as defined herein).

(3). Section 155-4(G) is hereby repealed.

(4). Section 155-6 "Separation of recyclables" shall be amended to read as follows:

§ 155.6. Separation of Recyclables.

- A. Persons shall separate clear glass containers, aluminum, steel and bimetallic cans, plastic containers, and newsprint from other municipal waste generated at their homes, apartments and other residential establishments and shall store such materials until collection. As noted herein below in § 155.7, leaf waste shall be kept separate from other municipal waste. Nothing in this ordinance or regulation shall be deemed to impair the ownership of separated materials by the person who generated them unless and until such materials are placed at curbside or similar location for collection.
- B. Persons shall separate leaf waste from other municipal waste generated at their homes, apartments and other residential establishments until collection unless those persons have otherwise provided for the composting of leaf waste. An owner, landlord or agent of an owner or landlord of multi-family rental housing properties with four or more units may comply with this section by establishing a collection system for recyclable materials at each

property. The collection system must include suitable containers for collecting and sorting materials, easily accessible locations for the containers and written instructions to the occupants concerning the use and availability of the collection system. Owners, landlord and agents of owners or landlords who comply with this ordinance shall not be liable for the noncompliance of occupants of their buildings. Nothing herein shall require any person to gather leaf waste or prevent any person from utilizing leaf waste for compost, mulch, or other agricultural purposes.

- C. Persons shall separate high grade office paper, clear glass containers, aluminum, steel and bimetallic cans, plastic containers, newsprint, corrugated paper and leaf waste generated at commercial, municipal or institutional establishments and from community activities and to store the material until collection. Persons occupying commercial, institutional and municipal establishments within township borders shall be exempt from the requirements of this ordinance or regulation if those persons have otherwise provided for the recycling of materials they are required by this section to recycle. To be eligible for an exemption under this subparagraph, a commercial or institutional solid waste generator must annually provide written documentation to the municipality of the total number of tons recycled.

- (5). Section 155.7 "Separation of leaf waste" is hereby amended to read as follows:

§ 155.7. Separation of Leaf Waste.

Unless otherwise provided for composting, all persons shall keep leaf waste separate from all other forms of municipal waste and separate from recyclables. Such waste shall be set out for collection in a manner to be designated by the Authorized Collector and shall be disposed of by the Authorized Collector at a leaf-composting facility operating in accordance with Pennsylvania Department of Environmental Protection's regulations and guidelines for leaf-composting facilities. Nothing herein shall require any person to gather leaf waste or prevent any person from utilizing leaf waste for compost, mulch, or other agricultural purposes.

- (6). Section 155.12 "Recycling Reports" shall be amended to read as follows:

§ 155.12. Recycling Reports and Scheduled Collection Days for Source-Separated Recyclables.

- A. Quarterly Recycling Reports. All collectors shall submit to the Township a quarterly recycling report together with copies of all weigh slips indicating the weight of all recyclables collected from within the Township and taken to the facility. Each such quarterly recycling report shall be submitted on or before the last day of the first month of each quarter, for the preceding quarter. Quarters shall run on a calendar-year basis, thus: January through March; April through June; July through September; and October through December.
- B. Scheduled Collection Days for Source-Separated Recyclables. Each authorized collector shall establish, identify and report to the Township, a scheduled collection day, at least once per month, during which separated materials are to be placed at the curbside, or similar location on the premises for collection. Collection schedules shall be updated each quarter as a component of the authorized hauler recycling report. The collection

schedules of all authorized collectors shall be published as part of the Township's comprehensive and sustained public information and education program.

(7). Section 155.16 "Required collection and hours of collection" shall be amended to read as follows:

§ 155.16. Required Collection Days and Hours of Collection for Municipal Waste.

- A. Mandatory Municipal Waste Collection Services. Every owner or occupant of residential homes, apartments, and other residential establishments shall contract with an individual, entity or firm, which is an authorized collector to have all municipal waste generated on the premises by any of the occupants removed and deposited at a permitted facility on a weekly basis or more often.
- B. Scheduled Collection Days for Municipal Waste. Authorized collectors shall schedule collection days, at least once per week, during which municipal waste, is to be placed at the curbside, or similar location on the premises for collection. Collection schedules shall be updated each quarter as a component of the authorized hauler recycling report. The collection schedules of all authorized collectors shall be published as part of the Township's comprehensive and sustained public information and education program.
- C. Proof of Contract Required. Whenever requested by Township, the owner or occupant of any residential establishment shall present proof adequate in the judgment of the Township that the owner or occupant of said residential establishment has a current contract with an authorized collector to dispose of municipal waste generated on the premises on a weekly basis or more often. The owner or occupant of the premises shall have 72 hours to provide proof to the Township that the owner or occupant has a current contract with an authorized collector to provide sufficient service to satisfy the terms and conditions of this Chapter.
- D. Duties of Collectors. Any authorized collector picking up municipal waste in the Township shall be required to advise the Township in writing, within 72 hours after request from the Township, as to whether an owner or occupant has a current contract for municipal waste disposal from his/her premises. Further, all authorized collectors shall cooperate with the Township in providing information in the event that an action is taken to enforce the terms and conditions of this Chapter.
- E. If persons or establishments (being so authorized by the terms hereof) collect and remove their own municipal waste and/or recyclables, they shall do so at a minimum of once weekly for municipal waste and at least once per month for source-separated recyclables and leaf waste, or more often as necessary, in order to prevent odors, vectors or accumulations of refuse or garbage that are unsafe, unsightly or potentially harmful to the public health. Any municipal waste so removed shall be disposed of in accordance with the requirements of this Chapter.

- F. No person other than an authorized collector shall collect or remove municipal waste or recyclables from any other person's property unless otherwise provided for herein. All agreements for collection, transportation and disposition of municipal waste and/or recyclables shall be by private contract between the owner and/or occupant of the property where the material is generated or on their behalf by a properly authorized property owners' association and the collector who is authorized to collect same.
- G. Nothing herein shall limit the right of the Township to implement public collection of solid waste and/or recyclables either by entering into contracts or by engaging in any collection practice permitted by law.
- H. Nothing in this section shall modify the requirements in this Chapter pertaining to separation and collection of recyclables.

(8). Section 155.17 "Transportation of municipal waste" is hereby amended to read as follows:

§ 155.17. Transportation of Municipal Waste.

- A. All authorized collectors shall prevent or remedy any spillage or leakage from vehicles or containers used in the transport of municipal waste as well as recyclables.
- B. All authorized collectors shall collect municipal waste and/or recyclables in either closed or covered containers to prevent waste from being blown or falling from the vehicle.
- C. The transfer of waste from one collection vehicle to another may not take place in the Township, except on private property in those areas of the Township designated for such by the Township, if any. No such transfer may take place on any public right-of-way, and no such transfer operation may block traffic, create litter or in any other manner constitute a nuisance, create a health hazard or violate any other ordinance of the Township or provision of statutory law.

(9). Section 155.19 "Authorization of collectors" is hereby amended to read as follows:

§ 155.19. Authorization of Collectors.

- A. It shall be unlawful for any person, except for litter control and/or roadside clean up personnel, and others duly authorized by the Township, to collect and to transport waste of any nature or recyclables within or from the Township. Authorization to collect, transport and dispose of municipal waste and/or recyclables for person's other than one's self or for whom one is acting as an agent may be given only by the Township.
- B. All authorized collectors and recyclable collection permittees shall have an affirmative duty to follow and conduct themselves in accordance with their current license or

permit and to service each of their customers in accordance with their current license or permit and the requirements of the Municipal Waste Planning, Recycling and Waste Reduction Act of 1988, as amended, the Solid Waste Management Act of 1980, as amended, and the Waste Transportation Safety Act of 2002, as amended.

(10). Section 155-20 "Property owner's associations" is hereby repealed.

(11). Section 155-22 "Insurance coverage" is hereby amended as follows:

§ 155-22. Insurance Coverage.

All authorized collectors shall maintain a general and property insurance policy identifying Middle Smithfield Township as an additional insured and certificate holder with minimum coverage limits of \$500,000.00 per incident and \$1,000,000.00 aggregate.

(12). Section 155.24 "Billing procedures" is hereby amended to read as follows:

§ 155.24. Billing Procedures.

All authorized collectors shall establish rates to be charged for the removal of municipal waste and source separated recyclables; no person or entity shall be permitted to "opt out" of either municipal waste collection or source separated recyclable collection. The rate charged must be for both services. All authorized collectors shall enter into individual or separate contracts with each household or occupant of the premises, without liability to or upon Middle Smithfield Township.

(13). Section 155.25 "Equipment of the collector" is hereby amended to read as follows:

§ 155.25. Equipment of Authorized Collector.

All authorized collectors of municipal waste and source separated recyclables shall collect and remove municipal waste as well as source separated recyclables in motor-driven vehicles having enclosed, leak proof bodies with covers made of such materials as to prevent the contents from escaping.

(14). Section 155.26 "Disposal" is hereby amended to read as follows:

§ 155.26. Disposal.

Each authorized collector as well as any and all recyclable collection permittee shall dispose of municipal waste as well as source separated recyclables and leaf waste at a licensed and approved disposal and/or recycling facility as approved by the MCMWMA.

(15). Section 155-27 "Assignment of contract" is hereby repealed.

(16). Section 155-28 "Licensed collectors to provide recyclable removal service for residential, multifamily housing, commercial, municipal and institutional establishment and properties" is hereby amended to read as follows:

§ 155-28. Authorized collectors to provide recyclable removal service for residential, multi-family, housing, commercial, municipal and institutional establishment and properties.

Every authorized collector shall be required to provide, in addition to municipal waste removal to its residential, multi-family, commercial, municipal and institutional customers the service of removing recyclables, including leaf waste, from their properties at the curbside or an appropriate location on the premises, with a single fee charged for both municipal waste and recyclables collection services so provided. Any such recyclables so removed by authorized collectors shall be kept separate from municipal waste and shall be taken to a recycling or compost facility for the purpose of recycling as provided herein.

(17). Section 155-31 "Unlawful to terminate service of licensed collector for compliance" is hereby amended to read as follows:

§ 155-31. Unlawful to Terminate Service of Authorized Collector for Compliance.

No person shall terminate the services of an authorized collector because of said collector's compliance with the rules and regulations of this Chapter.

(18). Section 155-32 "Missed pickup" is hereby amended to read as follows:

§ 155-32. "Missed Collection".

In the event any authorized collector misses a collection, the authorized collector shall collect from the missed location within 24 hours of notification from the missed person, provided the person has abided by the terms of contract with authorized collector.

(19). Section 155-33 "Complaints" shall be amended to read as follows:

§ 155-33. Complaints.

- A. All complaints regarding collection of municipal waste and/or recyclables shall initially be reported to the authorized collector. Any complaint which the authorized collector fails to resolve shall be reported in writing to the Township.
- B. The Township Board of Supervisors shall have the right to investigate all complaints and to determine the validity of any complaints received from any person as to the failure of an authorized collector's failure to act in accordance with this Chapter.

(20). Section 155-35 "Penalties" is hereby amended to read as follows:

§ 155.35. Penalties.

Any person, as defined herein, who violates any provision of this Chapter, upon conviction thereof, in an action brought before a magisterial district judge in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay a fine of not less than \$300.00 nor more than \$1,000.00 plus costs and

reasonable attorney's fees, and, in default of payment of said fine, costs and attorney's fees, to a term of imprisonment not to exceed 90 days. Each day that a violation of this Chapter continues, or each section of this Chapter which shall be found to have been violated, shall constitute a separate offense. For purposes of this Chapter, the doing of an act or thing prohibited by any provision of this Chapter or the failure to do any act or thing or to which any provision of this Chapter creates an affirmative duty shall constitute a violation of this Chapter, punishable as herein stated.

ORDAINED AND ENACTED into an Ordinance at a regular meeting of the Board of Supervisors of Middle Smithfield Township, Monroe County, Pennsylvania, this _____ day of _____, 2011.

TOWNSHIP OF MIDDLE SMITHFIELD

SCOTT R. SCHALLER, Chairperson

ROBERT F. SPANO, SR., Vice Chairperson

MITCHELL L. MARCUS, Supervisor

(TOWNSHIP SEAL)

MICHELE L. CLEWELL, Secretary