

Best Practices for Municipalities Developing Private Hauler Regulations

FINAL – March 2017

Municipal Waste Ban Compliance Regulation

NOTE TO USER

The following document was developed in response to requests from municipal officials in the Commonwealth of Massachusetts who want to increase recycling by ensuring that all Private Haulers operating in the municipality are in compliance with the Massachusetts Waste Bans (310 CMR 19.017).

This document contains sample language that can be adopted as is, edited, or used in conjunction with Town specific language to best address the circumstances in each municipality. *Optional Language*, included as ATTACHMENT 2 with this document, provides additional language that may be important to some municipalities depending on their involvement in Solid Waste management, including: provision of recycling containers, unit-based pricing, food waste collection and other recycling incentives.

This guidance document can be used to adopt a bylaw/ordinance or regulation around three general areas:

1) Mandatory Recycling – If your municipality does not already require generators to separate Recyclables from Solid Waste, it is recommended that Section V in the attached template be adopted in conjunction with Sections 2 or 3 (below) to assure that the Permitted Hauler requirements under Sections 2 and 3 are fairly enforced by the municipality. Mandatory Recycling can help ensure compliance with the Massachusetts Waste Bans and support the efforts of Permitted Haulers to collect Solid Waste and Recyclables separately.

Information on Mandatory Recycling and Private Hauler regulations can be found on the MassDEP website: <http://www.mass.gov/eea/agencies/massdep/recycle/reduce/mandatory-recycling.html>

2) Residential Only Private Hauler Regulations - A municipality may choose to only regulate collection of Solid Waste from Residential Customers/Generators. If so, the sections referring to Commercial Customers should be eliminated from this document. Residential Customers/Generators, for purposes of this document, shall mean property owners and occupants of single and multi-family dwellings, condominiums, public housing, and mobile homes.

3) Residential and Commercial Private Hauler Regulations - A municipality may choose to regulate both residential and commercial waste hauling activity, and therefore adopt all the language contained in this document, as modified to meet the specific circumstances of each municipality.

In all cases, the final bylaw/ordinance and/or regulation developed should be reviewed by your Municipal Attorney before adoption.

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GENERAL LANGUAGE TEMPLATE

RULES AND REGULATIONS FOR REMOVAL, TRANSPORT, AND DISPOSAL OF SOLID WASTE OR RECYCLABLES IN THE TOWN/CITY OF _____

I. Purpose

The goal of these regulations is to protect public health and the environment and ensure that all Private Haulers collecting Solid Waste and Recyclables adhere to the Massachusetts Waste Ban regulations and uniformly comply with permit requirements established by the Town/City of _____. This should ensure that:

- The environmental benefits of recycling are maximized;
- There is joint enforcement of the Waste Ban requirements by the municipality and all Private Haulers operating within the municipality;
- There are fair and equitable rules for all Private Haulers operating in the municipality;
- All residents and businesses have convenient (parallel) access to recycling collection services;
- All Private Haulers licensed to operate in a municipality are in compliance with state regulations (310 CMR 19.017);
- There is greater consistency across municipalities to promote clear operating guidelines for Private Haulers; and,
- Municipalities and Private Haulers work together to support the goals of the Solid Waste Master Plan and the Global Warming Solutions Act.

II. Authority

These regulations establish minimum requirements for the systematic collection of Solid Waste and Recyclables in order to promote waste reduction, comply with State-mandated Waste Bans (310 CMR 19.017), and further the goals of the Town/City of _____. The Board of Health of the Town/City of _____ adopts these regulations under the provisions of Chapter 111 Sections 31, 31A, 31B, 122 and 150A of the Massachusetts General Laws.

Private Haulers shall only collect for disposal those items acceptable for disposal. Materials banned from disposal under 310 CMR 19.017 shall not be included with Solid Waste.

III. Effective Date

These regulations shall take effect on _____.

IV. Definitions

For the purposes of this regulation, the following words and phrases shall have the following meaning unless the content clearly indicates otherwise:

Commercial Customers/Generators shall mean property owners and occupants of any commercial, industrial, institutional, municipal, school, or mixed use building within the Town/City of _____.

Customer shall mean either Residential Customer/Generator or Commercial Customer/Generator.

Mercury Disposal Prohibition shall mean Disposal Prohibition Provision of the Mercury Management Act (Chapter 190 of the Acts of 2006). Effective May 1, 2008, mercury-added products cannot be disposed of in Solid Waste. The law also prohibits any Solid Waste collector from collecting as Solid Waste the contents of a Solid Waste container that the collector knows (or reasonably should know) includes one or more mercury-added products. Details may be found at this link:

<http://www.mass.gov/eea/docs/dep/toxics/laws/hgbanfaq.pdf>

Permitted Hauler shall mean any Private Hauler who has obtained a valid Private Hauler permit from the Town/City of _____.

Private Hauler shall mean any person or entity providing collection of Solid Waste and/or Recyclables for hire within the Town/City of _____.

Recyclables shall mean a material that is banned from disposal in the Commonwealth of Massachusetts pursuant to 310 CMR 19.017: Waste Bans. Mixed paper, cardboard, glass, metal, and plastic containers are priority materials of this regulation.

Residential Customers/Generators shall mean property owners and occupants of single and multi-family dwellings, condominiums, public housing, and mobile homes within the Town/City of _____.

Solid Waste shall mean useless, unwanted or discarded non-recyclable solid and liquid wastes, excluding items restricted from disposal in Massachusetts, as defined by Table 310 CMR 19.017(3) of the Massachusetts' Solid Waste regulations (310 CMR 19.017).

Town/City shall mean the _____ *Town/City of* _____

Waste Ban Materials shall mean all materials designated as banned from disposal in the Commonwealth of Massachusetts pursuant to 310 CMR 19.017: Waste Bans, including: asphalt pavement, brick & concrete, cathode ray tubes, clean gypsum wallboard, commercial food waste, ferrous and non-ferrous metals, glass & metal containers, lead acid batteries, leaves and yard waste, recyclable paper, cardboard and paperboard, single resin narrow-necked plastics, treated and untreated wood and wood waste (banned from landfills only), white goods (large appliances), and whole tires (banned from landfills only).

V. Mandatory Recycling

(NOTE TO USER: If the municipality has already codified Mandatory Recycling for waste generators, insert reference to municipal regulation/bylaw/ordinance here). These regulations are intended to support and align with the Town/City of _____ Mandatory Recycling bylaw/ordinance and/or regulation as follows.

OR

(NOTE TO USER: If the municipality has not yet codified Mandatory Recycling for waste generators, the following language may be utilized): In order to protect the environment, promote recycling and be in compliance with Massachusetts Waste Ban regulations (310CMR 19.017); the Town/City of _____ hereby establishes a requirement for mandatory separation of Recyclables from the Solid Waste stream. This requirement applies to all Residential Customers/Generators and Commercial Customer/Generators in the Town/City of _____.

(NOTE TO USER: Below are options to enact Mandatory Recycling for waste generators:

- ***Massachusetts General Law Chapter 40 Section 8H enables the legislative body (Town Meeting, city council) to establish a program for recycling. Any recycling program established pursuant to this section may require that all residents, schools and businesses in a city or town separate from their Solid Waste those Recyclables designated by the municipality.***
- ***Local Boards of Health may choose to adopt Mandatory Recycling regulations under the provisions of MGL Chapter 111 Section 31.***
- ***Municipalities may choose to enforce the Massachusetts Waste Bans 310 CMR 19.017.)***

The Town/City of _____ will inform all generators (residential and commercial) at least once per year that recycling is mandatory.

VI. Permit Required

All Private Haulers wishing to collect, transfer, or transport Solid Waste or Recyclables generated within _____ shall be required to first obtain or annually renew a permit from the Town/City of _____. No Private Hauler may collect Solid Waste or Recyclables unless they have obtained a valid Private Hauler Permit from the Town/City. Private Haulers that collect only Recyclables must also be permitted.

A. Permit Application

The permit application shall include the formal name of the person or company, a statement that the person or company is registered to do business in Massachusetts and that the person or company is fully insured, and a contact name, address, and telephone number. Copies of certificates of insurance for public liability and property insurance also shall be included.

The permit application must include a statement that the Private Hauler understands, and is in compliance with the Massachusetts Waste Bans and Mercury Disposal Prohibition. The Private Hauler shall list the Solid Waste disposal facilities and the Recycling processing facilities where Solid Waste and

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Recyclables are expected to be delivered from Private Hauler's Customers during the permit year. The application shall be signed by a designated representative of the company, permitted to do business within the Commonwealth of Massachusetts.

The application shall include information on the types of services intended to be offered, and the approximate number of collection trucks expected to be used in the municipality during the course of the permit year. The application shall include information on how the Private Hauler intends to ensure that Customers prevent Waste Ban materials from being disposed with Solid Waste, and how the Private Hauler intends to notify Customers of improper Recycling or Solid Waste disposal.

Upon receipt of a complete permit application, the Board of Health shall have _____ days to rule on the granting of a permit to operate within the Town/City of _____. In addition, the applicant shall pay an annual permit fee of _____ (insert fee) as determined by the Town/City of _____.

B. Annual Permit Renewal

Each Permitted Hauler shall annually submit a renewal application of his/her permit no later than the 1st of _____ (insert month) (*recommend one month in advance of permit expiration*), by paying the annual permit fee.

The annual renewal application must indicate any changes from the original permit, including any change in Solid Waste or Recyclables facilities used, and must be signed by a business owner. The renewal must be accompanied by the following information or a completed Annual Solid Waste and Recyclables Reporting Form (ATTACHMENT 4):

- Total tons of Solid Waste collected for disposal and total tons of Recyclables collected for processing from Residential Customers/Generators within the Town/City of _____ during the previous calendar year or 12-month period. (In the case where the Permitted Hauler delivers loads for disposal or recycling that are combined with more than one municipality, then the Permitted Hauler must provide their best estimate of tonnage delivered from the Town/City.)
- The average number of Residential and Commercial Customers using each service (Solid Waste, Recycling) during the previous calendar year within the Town/City.
- The names of any Commercial Customers where the Permitted Hauler is providing Solid Waste only service.
- The names of any Commercial Customers where the Permitted Hauler is providing Recycling only service.
- Copies of any Waste Ban violation letters or notices received by the Permitted Hauler during the prior year that refer to loads collected within the Town/City of _____.

Failure to provide a complete and accurate Annual Solid Waste and Recyclables Reporting Form may be grounds for denial of a permit to operate within the Town/City of _____.

Annual permits will be issued by the 1st of _____ each year.

C. General Permit Requirements

All Permitted Haulers must be in compliance with the following general permit requirements:

- All Permitted Haulers must clearly display the name of the company on each vehicle operating in the municipality.
- All Permitted Haulers must be in compliance with applicable federal, state and local laws. Each vehicle must meet all Department of Transportation safety requirements at all times.
- All materials must be securely contained in the vehicle. Littering or leaking shall be considered a violation of the permit.
- Recyclables shall not be commingled with Solid Waste when collected by the Permitted Hauler. Recyclables must be delivered to a processing facility designed to accept Recyclables. The Permitted Hauler shall inform Customers how to prepare acceptable Recyclables consistent with the requirements of the Recyclables processing facility.
- Permitted Haulers shall only collect for disposal Solid Waste which is not banned from disposal. It is the responsibility of the Permitted Hauler to educate the Customer about the Waste Bans and inform them that they will refuse to collect Solid Waste mixed with Waste Ban items that are visible to the driver/collector from any of their Customers (there is no requirement to open bags). Please refer to the list of Waste Ban items (ATTACHMENT 1) which may not be accepted at Massachusetts' disposal facilities.
- In the event that the Permitted Hauler refuses to collect any materials, the Permitted Hauler will notify such Customers in writing of the reason(s) for refusal to collect the Solid Waste or Recyclables. In addition, the Permitted Hauler will advise the Board of Health about Customers who have received rejection notices. The Board of Health will, where possible, assist the Permitted Hauler with enforcement of the Mandatory Recycling provision and/or Waste Ban requirement.

VII. Bundled Service Requirement

(NOTE TO USER: The goal of this requirement is to ensure that Permitted Haulers provide a bundled service for the collection of both Solid Waste and Recyclables for each Customer. This ensures that all Customers have access to recycling services in order to be in compliance with the Waste Bans.)

A. Service to Residential Customers/Generators

For **Residential Customers/Generators**, the bundled service must provide Customers with Solid Waste and Recyclables collection at a rate that reflects the cost of providing both services. Solid Waste and Recycling services must be provided by the same Permitted Hauler unless otherwise pre-approved by the Board of Health. The Permitted Hauler may itemize the invoice to clearly show the cost of Recycling collection contained in the bundled service.

All Permitted Haulers serving Residential Customers/Generators must provide appropriately-sized, paired Solid Waste and Recyclables containers that are clearly marked and adjacent or in close proximity to each other.

B. Service to Commercial Customers/Generators

For **Commercial Customers/Generators**, the Permitted Hauler must provide both Solid Waste and Recyclables collection; unless the Customer can provide proof to the Permitted Hauler that separate Recycling services are provided by another Permitted Hauler or via one of the methods listed on the Recycling Service Exemption Form (ATTACHMENT 5). Permitted Haulers may charge separately for the collection of Recyclables. Commercial Customers/Generators may choose to contract for collection of Recyclables by a second Permitted Hauler that only performs Recyclables collection. Permitted Haulers that collect only Recyclables are not required to collect Solid Waste.

Permitted Haulers must provide the names and addresses of their Solid Waste only Commercial Customers to the Town/City so the Town/City can follow up to ensure that those Customers are complying with the Waste Bans.

C. Exceptions

(NOTE TO USER: If the Town/City has a protocol for requesting an exception to any requirement of this regulation, insert here.)

VIII. Inspection

The Board of Health or its designee is authorized to inspect a Permitted Hauler's truck and load at any time. The Board of Health also has the right to require weight slips or confirmation of disposal of Solid Waste or management of Recyclables.

IX. Enforcement

Enforcement of this regulation shall be by criminal complaint in the district court and/or non-criminal disposition ticket per MGL Chapter 40, Section 21D. Agents of the Board of Health or its designee shall have the power to enforce the provisions of this regulation.

A. Penalties

In the event that a Permitted Hauler fails to follow these regulations, the Board of Health reserves the right to impose reasonable fines and/or revoke the permit to operate within the Town/City, subject to the Appeal Provisions described below.

- | | |
|-------------------------|---|
| (a) First offense | warning |
| (b) Second offense | \$ _____ fine |
| (c) Third offense | \$ _____ fine |
| (d) Subsequent offenses | not less than \$ _____ nor more than \$ _____ |

Each day of failure to comply with the regulations shall constitute a separate violation.

B. Appeal Provisions

Any Permitted Hauler cited for a violation of these regulations may appeal such citation by filing a written notice of appeal with the Board of Health within seven (7) days, exclusive of Saturdays, Sundays and legal holidays, from the date of said citation. A hearing will be held within 60 days from the date of the filing of the appeal. Written notice of the hearing date will be delivered to the applicant at least two (2) weeks prior to the scheduled date. The hearing will be conducted in accordance with the established procedures of the Board of Health.

C. Legal Provisions – Town specific

(NOTE TO USER: If the Town/City has standard language for legal provisions, insert here.)

ATTACHMENTS

1. **List of Waste Ban Materials**
2. **Optional Language**
3. **Permit Application**
4. **Annual Solid Waste and Recyclables Reporting Form**
5. **Recycling Service Exemption Form for Commercial Generators**
6. **Waste Ban Educational Handout:**
<http://www.mass.gov/eea/docs/dep/recycle/laws/wbfact.pdf>