

**TOWN OF WHITINGHAM
CIVIL ORDINANCE
REGULATING THE MANAGEMENT OF SOLID WASTE
AND VARIABLE RATE PRICING**

WHEREAS, the Town of Whitingham has, by virtue of the authority granted in 24 V.S.A. § 1971 (Title 24, Chapter 59, Section 1971), and 24 V.S.A. § 2202a (a) (Title 24, Chapter 61, Subchapter 8, Section 2202a), the power to adopt, amend, repeal, and enforce ordinances, and to manage and regulate the solid waste disposal within its boundaries; and

WHEREAS, in accordance with 24 V.S.A. § 2202a (d) of Act 148, Vermont’s Universal Recycling law, which requires municipalities implement a variable rate pricing system by no later than July 1, 2015; the Town of Whitingham is implementing and requiring variable rate pricing charges for Municipal Solid Waste (hereinafter “MSW”) collection from residential customers for disposal based on the volume or weight of the waste collected. This requirement to implement applies to all solid waste haulers and facilities that accept and collect MSW from residential customers.

WHEREAS, variable rate pricing systems have been shown to be one of the most effective mechanisms for decreasing the disposal of solid waste, increasing recycling and composting rates, and increasing the diversion and reuse of valuable materials from the solid waste stream. Further variable rate pricing is more equitable or fair pricing for solid waste by charging based on the number of units of solid waste a residential customer produces.

NOW, THEREFORE, to encourage the responsible use of resources and the protection of the environment, the Selectboard of the Town of Whitingham hereby adopts this ordinance requiring variable rate pricing charges for collection of MSW from residential customers in the Town of Whitingham, Vermont.

Article I: PURPOSE; TITLE

Purpose. This ordinance is enacted to encourage the responsible use of resources and the protection of the environment.

Title. This ordinance shall be known and may be cited as the “Solid Waste and Variable Rate Pricing Ordinance.”

Article II: DEFINITIONS

“**Clean Wood**” shall mean discarded brush, trees, raw (unpainted and untreated) dimensional wood or lumber, or untreated wood pallets. Clean wood does not include manufactured particleboard, oriented strand board, plywood, painted wood or wood treated with preservatives.

“**Collection**” shall mean the gathering, pickup, acceptance, and allowance to drop off municipal solid waste by both solid waste haulers and solid waste facilities such as transfer stations where drop off of municipal solid waste is permitted.

“**Compost**” and “**Composting**” shall mean the controlled biological decomposition of organic matter through active management to produce a stable humus-rich material.

“**Conditionally Exempt Generator**” as defined in the Vermont Hazardous Waste Management Regulations to mean a generator that generates less than: (1) 220 pounds (100 kilograms) of hazardous waste in a calendar month; and (2) 2.2 pounds (1 kilogram) of acutely hazardous waste in a calendar month; and 220 pounds (100 kilograms) of any residue or contaminated soil, waste, or other debris resulting from the cleanup of a discharge of any acutely hazardous waste in a calendar month; and has accumulated less than 2,200 pounds (1000 kilograms) of hazardous waste, 2.2 pounds (one kilogram) of acutely hazardous waste, or 220 pounds (100 kilograms) of any residue or contaminated soil, waste, or other debris resulting from the cleanup of a discharge of any acutely hazardous waste at any time.

“**Construction and Demolition Debris**” shall mean inert materials which do not become leachate or do not contain harmful leachable substances. Such debris typically includes concrete, masonry, mortar, and any other material determined by the State of Vermont not to pose a threat to public health or the environment.

“**Designated Area**” shall mean an area designated for placement of solid waste. This includes either: a specific area at the Transfer Station designated by the Transfer Station Attendant to be used for storage of a specific type of waste material until hauling away for final disposal, or; an area used for collection, which must be readily accessible at all times by a conventional solid waste collection truck and not directly on the traveled portion of any public road or sidewalk. An area may be so designated through mutual agreement between a person and his, her, or its hauler. However, the location of a designated area shall not violate any applicable local or municipal ordinance.

“**Disposal**” or “**to Dispose**” shall mean: (1) the incineration of any solid waste other than clean wood for fuel; (2) the placement of any solid waste in a landfill; or (3) the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any ground or surface waters.

“**Electronics**” or “**E-Waste**” shall consist of discarded electronic products, including such materials as televisions, computers, peripherals, and cell phones.

“**Facility**” shall mean any site or structure used for treating, storing, processing, recycling, transferring or disposal of municipal solid waste. A facility may consist of a single or several treatment, storage, recycling, or disposal locations. Also referred to throughout as a “service provider” when being referred together with the term “hauler”.

“**Generator**” shall mean a person who produces solid waste by any means including, but not limited to, residential, commercial, institutional, and industrial activities.

“**Hauler**” shall mean any person who collects, transfers, or transports solid waste generated within town borders for compensation, including Clean-Out Service Providers and operators of a Mobile

Solid Waste Collection Operation. Also referred to throughout as a “service provider” when being referred together with the term “facility”. Haulers may operate within the town, but are prohibited from using the Whitingham Transfer Station.

“**Hazardous Waste**” shall mean any material or substance which, by reason of its composition or characteristics, is from time to time defined as hazardous either by 42 U.S.C. § 6901 et seq., or by 15 U.S.C. § 2605(e), or by 42 U.S.C. § 9601 et seq., or by 10 V.S.A. Chapter 159, or by any laws of similar purpose or effect, or by any regulations promulgated under any of the foregoing, and any other material which the Federal Environmental Protection Agency, the Vermont Agency of Natural Resources or its Secretary, or the Vermont Department of Environmental Conservation, or any similar governmental agency or unit having jurisdiction, shall determine from time to time is ineligible for disposal, whether by reasons of being toxic, reactive, ignitable, corrosive, strong sensitizers, or which generate pressure through decomposition, heat, or other means, which in the judgment of the State may cause, or contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, taking into account the toxicity of such waste, its persistence and degradability in nature, and its potential for assimilation, or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms, or any matter which may have an unusually destructive effect on the health of persons or other living organisms, or any matter which may have an unusually destructive effect on water quality if discharged to ground or surface waters of the State. All special nuclear source or by-product material, as defined by the Atomic Energy Act of 1954, is specifically excluded from this definition.

“**Household Hazardous Waste**” shall mean any waste from households that would be subject to regulation as Hazardous Waste if it were not from households.

“**Mandatory Recyclables**” includes those listed in the Universal Recycling Law such as paper, cardboard, glass, specified plastics and metal.

“**Municipal Solid Waste**” hereinafter referred to as “MSW or “solid waste” means discarded garbage, refuse or rubbish; recyclables and other waste destined for composting, reuse or recycling; yard waste; electronics; tires; construction and demolition debris; and other discarded material including solid, liquid, semisolid, or contained gaseous materials, but does not include: (i) animal manure and absorbent bedding used for soil enrichment; (ii) solid or dissolved materials in industrial discharges which are point sources subject to permits under the Water Pollution Control Act (10 V.S.A. Chapter 47); or (iii) Hazardous Waste.

“**Organic Materials**” include food scraps, leaf and yard debris and other materials that can be diverted from landfills through composting, diverted for agricultural use or treated using anaerobic digestion.

“**Person**” shall mean an individual, partnership, company, corporation, association, institution, unincorporated association, joint venture, trust, municipality, agency, department, and any other legal entity. In any provision of this Ordinance prescribing a fine, penalty, or denial or revocation of a permit the term “person” shall include the officers and directors of the corporation.

“Prohibited Materials” shall mean materials that shall not be accepted at the Transfer Station; provided, however, that the Town Selectboard may accept certain prohibited materials or designated components thereof at a town designated facility, pursuant to rules and regulations adopted by the Selectboard. The list of prohibited materials may be established and modified from time to time by resolution of the Selectboard acting in accordance with policies and/or guidelines established and adopted by, and that may be amended from time to time by, the Selectboard. A current official list of prohibited materials is contained in Article X of this Ordinance.

“Resident” shall mean an individual owning or occupying a dwelling unit or land in the Town of Whitingham.

“Reuse” shall mean solid waste that is reused by the generator or other person, in the material’s original or altered state, and is thereby diverted from recycling, composting or disposal. Nothing in this definition shall be construed to include incineration of any kind, landfilling, or use as an alternative daily cover for a landfill.

“Self-Hauler” shall mean a person who transports and delivers his or her own solid waste or wolid waste from other individuals within a member municipality for no compensation.

“Separate” and **“Separation”** shall mean the segregation and collection of materials, apart from solid waste destined for disposal, for the sole purpose of recycling, reuse, composting, or special handling.

“Tires” shall mean rubber vehicle tires for reuse, shredding or incineration.

“Town” shall mean the Town of Whitingham.

“Transfer” shall mean to carry, remove, transport, or shift solid waste from one place, facility, vehicle, trailer, or container to another.

“Transfer Station” shall mean the facility owned by the Town of Whitingham that accepts and/or processes solid waste for ultimate transport to off-site locations for disposal, processing, treatment, or incineration.

“Transport” shall mean any movement of solid waste by air, rail, highway, or water.

“Unlawful Conduct” shall mean any act, or failure to act, in violation of any provision of this Ordinance, any rule, or regulation enacted by the town, any term, condition, or restriction imposed upon, or required by, any permit issued or required under the terms of this Ordinance or any applicable law or regulation relating to the management of solid waste. Unlawful Conduct shall subject the violator to civil penalties as provided in this Ordinance.

“Variable Rate Pricing” means a fee structure that charges for MSW collection based on its weight or volume.

“**Waste**” shall mean a material that is: disposed; or is being accumulated, stored, or physically, chemically or biologically treated prior to being discarded or has served its original intended use and is normally discarded.

“**White Goods**” shall mean appliances, such as refrigerators, stoves, air-conditioners, ovens, water fountains, washers, and dryers.

“**Yard Debris**” shall mean: trees; tree stumps; brush; wood chips generated from these materials; lawn clippings; leaves; weeds; and other organic, compostable materials accumulated during the normal maintenance or restoration of a yard, garden, recreational field, or other area covered with vegetation.

Article III: VARIABLE RATE PRICING

Haulers and facilities (hereinafter “service providers” when jointly noted) that provide collection and/or drop-off disposal services for MSW to customers shall charge these customers for this service on the basis of the volume or weight of the MSW they produce, which is a pricing system commonly referred to as variable rate pricing.

Each service provider shall establish a unit-based price to be charged for the collection/drop-off or disposal of each unit of MSW from customers; for example, a price per pound or a price for each 30-gallon bag or 30-gallon container that is collected or disposed of by a customer. Each larger unit of MSW, such as a 64-gallon container or a 50-gallon bag, shall carry an increased price.

The provisions of this subsection shall not be construed to prohibit any service provider from establishing rules and regulations regarding the safe maximum weight of bags or containers of municipal solid waste materials. A service provider may refuse to collect or allow disposal of any bag or container which is overloaded or which contains a MSW greater than the rated or specified volume or weight of such bag or container, or shall account for and bill the customer for the Collection of such excess MSW.

Article IV: FLAT FEE

In addition to the variable rate price charged per unit of MSW, service providers may, but are not required to, charge a flat fee to customers for the purpose of covering operational costs for collecting, transporting, and disposing of MSW.

In the event that a service provider elects to establish a flat fee, all bills for services provided to customers shall clearly show both the flat fee and the unit-based price to maintain transparency.

Nothing herein shall prevent or prohibit a service provider from charging additional fees for the collection of materials such as food and yard residuals or bulky items; except however, that no service provider may charge a separate line item fee on a bill to a customer for the collection of mandated recyclables after July 1, 2015, in accordance with state statutes. A service provider may incorporate the cost of the collection cost of mandated recyclables into the cost of the collection of solid waste and may adjust the charge for the collection of solid waste.

Article V: PERMIT STICKER REQUIREMENT

All self-haulers wishing to use the transfer station shall apply annually on forms provided by the Town for a permit sticker to use the transfer station. The forms shall include the name and address of the applicant and the license plate number of the vehicle on which the permit sticker shall be applied. A determination as to whether the self-hauler applicant is a resident and/or whether the applicant is a property or business owner shall be made by the Town Clerk; determination as to use of the transfer station by haulers shall be made by the Selectboard or their designated representatives.

No person, generator, resident, self-hauler, or other entity shall be allowed to deposit any solid waste at the transfer station without first obtaining a permit sticker. All permit stickers shall be purchased at the Town Clerk's office and locations designated on the fee schedule.

The Town Clerk or their designated representative, in special cases, may issue a temporary permit for disposal of solid waste from a single household of a Whitingham resident or a business located in Whitingham. No permit sticker shall be required for a temporary permit, though a permit sticker fee is still required. Permission for specific and temporary access to the transfer station for these special cases will be communicated to the Transfer Station Attendant.

Article VI: USE FEES

No person, generator, resident, self-hauler, or other entity, except those specifically deemed exempt in this ordinance, shall deposit any solid waste at the town transfer station without payment of a use fee (punch card fee) for each load or portion of a load deposited in a single entry to the transfer station.

All use fees (punch cards) shall be purchased at the Town Clerk's office and at locations designated on the fee schedule. Punch cards will be provided by the Town as evidence of payment and these punch cards shall be delivered to the Transfer Station Attendant at the time of depositing the MSW.

To utilize the transfer station, all persons, generators, residents, and self-haulers (except those specifically deemed exempt under Article XIII of this ordinance) shall pay the Transfer Station Attendant with punch cards, as well as any additional applicable bulk charges based on the current fee schedule.

The Town Clerk or their designated representative, in special cases, may issue a temporary permit for disposal of solid waste from a single household of a Whitingham resident or a business located in Whitingham. Permission for temporary access to the transfer station for these special cases will be communicated to the Transfer Station Attendant. In addition to a prior paid permit sticker fee, all use fees including applicable bulk charges will be paid to and determined by the Transfer Station Attendant based on the current fee schedule.

Article VII: PERMIT STICKER AND USE FEES

Permit and use fees shall be listed on a fee schedule and set by the Selectboard and posted at the Town Clerk’s office, the municipality’s administrative offices and at the Transfer Station.

Article VIII: REQUIREMENT FOR HAULER ANNUAL FILING OF PRICING SYSTEM

No person or entity acting as a hauler shall solicit the collection of solid waste from residences, commercial establishments, construction sites, or any source whatsoever, within the Town of Whitingham without first submitting evidence of their variable rate pricing system with the Selectboard Office. This evidence shall include a breakdown of any and all fees including any flat fees. Haulers may not use the transfer station unless given specific approval by the Selectboard to do so.

Article IX: SEPARATION OF SOLID WASTE AT TRANSFER STATION

No person, generator, resident, self-hauler, hauler or other entity shall deposit any MSW at the transfer station unless all materials have been separated and deposited according to the direction of the Transfer Station Attendant or the Attendant’s designated representative.

Materials accepted at the transfer station should be separated into the following categories and disposed of in the appropriate designated area as directed by the Transfer Station Attendant or the Attendant’s designated representative:

- Mandatory Recyclables
- Organic Materials (Compost) and Yard Waste
- Clean Wood
- Tires
- Metals
- Construction and Demolition Debris
- Electronics or E-waste
- White Goods

All other non-hazardous and non-prohibited materials shall be discarded as solid waste as directed by the Transfer Station Attendant or the Attendant’s designated representative.

Article X: PROHIBITED MATERIALS

The following materials shall not be delivered to the transfer station nor accepted by the Attendant (except by specific authorization of the Selectboard):

- animal carcasses or remnants thereof
- intact motor vehicles or sections thereof
- fire damaged material
- hazardous waste
- household hazardous waste

If unauthorized waste or prohibited materials have been disposed of at the transfer station, the offending party shall remove such waste at the offending party’s expense.

Article XI: ORIGIN OF SOLID WASTE

No solid waste may be deposited at the transfer station unless the solid waste originated within the geographic bounds of the Town of Whitingham. Disposing of other waste shall be considered a penalty of this ordinance and subject to fine and enforcement as set forth herein.

If unauthorized waste or waste not originating within the geographic bounds of the Town of Whitingham has been disposed of at the transfer station, the offending party shall remove such waste at the offending party's expense.

Article XII: REGULATIONS

The Selectboard shall promulgate regulations for the safe and sanitary operation of the transfer station consistent with this ordinance.

Article XIII: EXEMPTIONS

The Town of Whitingham is exempt from the payment of permit and user fees.

Article XIV: HAZARDOUS WASTE COLLECTION EVENTS

The Town of Whitingham shall regularly hold hazardous waste collection events for the purpose of allowing residents and conditionally exempt generators to properly dispose of hazardous waste and household hazardous waste materials. The Selectboard shall decide and advertise when and where these events are held.

Article XV: DAYS AND HOURS OF OPERATION

The transfer station shall be open on such days and during such hours as may be designated by the Selectboard. The days and hours of operation shall be posted at the entrance of the transfer station and at the office of the Town Clerk.

Article XVI: PROHIBITIONS

No person, generator, resident, self-hauler, hauler or other entity shall solicit the collection of garbage, refuse, solid waste, or other materials within the Town of Whitingham, nor with the intent to deposit or dispose of any such material at the transfer station, except in accordance with the provisions of this ordinance.

Article XVII: PROHIBITED ACTS

The following are prohibited acts that constitute penalties of this ordinance and are subject to fines and enforcement as set forth herein and through laws of the State of Vermont:

1. No burning, salvaging, discharging of firearms, soliciting, advertising or any other similar activity shall be permitted within the transfer station.
2. No disposal of prohibited materials is allowed at the transfer station, with the exception of proper disposal of hazardous waste and household hazardous waste during a hazardous waste collection event should it be occurring at the transfer station.
3. No person, generator, resident, self-hauler, hauler or other entity shall dispose of solid waste when the transfer station is closed, dispose anything at the transfer station not within the list of accepted materials in Article IX of this ordinance, nor dispose of solid waste contrary to any other provision of this ordinance.
4. It shall be unlawful for any person or persons to dump, deposit, throw or leave, or to cause or permit the dumping, depositing, placing, throwing or leaving of litter on any public or private property in the Town of Whitingham unless:
 - a) Such property is designated by the Selectboard or by the State of Vermont for the disposal of such litter, and such Person is authorized by the proper public authority to use such property; or
 - b) Such waste material is placed into a litter receptacle or container installed on such property.

Any person, generator, resident, self-hauler, hauler or other entity found in violation of this ordinance or any regulations adopted hereunder can be directed to leave the transfer station by the Attendant on duty. Failure to leave when so directed shall constitute a separate violation of this ordinance.

If unauthorized waste or prohibited materials have been disposed of at the transfer station, the offending party shall remove such waste at the offending party's expense.

Article XVIII: INSPECTIONS

All solid waste generated within the Town, and all solid waste deposited at the transfer station, shall be subject to inspection without notice by the Transfer Station Attendant or the Attendant's designated representative; for purposes of ensuring compliance with this ordinance. Failure to allow inspection shall be a violation of this ordinance and constitutes unlawful conduct.

Article XIX: PENALTIES AND CIVIL ENFORCEMENT

- a. This ordinance is a civil ordinance and enforcement shall be brought in the judicial bureau in accordance with 24 V.S.A. §1974a et seq.
- b. The penalties for violating this ordinance are as follows:

	<u>Civil Penalty</u>	<u>Waiver Fee</u>
1st offense:	\$250.00	\$125.00
2nd and subsequent offenses:	\$500.00	\$250.00

The waiver fee is paid by a violator who admits or does not contest the violation.

Article XX: DESIGNATION OF ENFORCEMENT PERSONNEL

For the purposes of this ordinance, the Selectboard may designate any combination of the following Persons as enforcement personnel: members of the Selectboard, the Town Health Officer, the Town Attorney, and any official with law enforcement authority under Vermont law.

The Town may seek enforcement of a final order in the Superior Court or before the Environmental Court for the State of Vermont.

Article XXI: ENFORCEMENT FEES

In any action brought by the Town to enforce the provisions of this ordinance, to enjoin violation of this ordinance, to collect any fees and/or interest thereon, or to collect any civil penalty or other amount due the District, the person in violation or liable for amounts due the Town shall pay the Town its reasonable attorneys' fees and other costs and expenses of such action.

Article XXII: REPEAL OF INCONSISTENT PROVISIONS

All ordinances or parts of ordinances, resolutions, regulations, or other documents inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

Article XXIII: SEVERABILITY

This ordinance and its various parts, sentences, sections, and clauses are hereby declared to be severable. If any part, sentence, section or clause is adjudged invalid, it is hereby provided that the remainder of this ordinance shall not be affected thereby.

Article XXIV: EFFECTIVE DATE

This ordinance shall be effective on July 1, 2018.

Adopted this 28th day of March, 2018.

Keith Bronson, via Skype

Keith Bronson, Selectboard Chair

Greg Brown, Selectboard Vice Chair

Allan Twitchell, Selectboard Member

Karl Twitchell, Selectboard Member

Robin Kingsley, Selectboard Member

Attest: _____
Almira Aekus, Town Clerk