

Town of Sutton

Ordinance Regulating Solid Waste and Junk

I. Statement of Purpose

The purpose of this Ordinance is to regulate the disposal of solid waste and junk (as defined below) throughout the community; to protect and promote the health, safety, and welfare of the residents of the Town of Sutton; and to promote the responsible use of resources and protect the environment.

II. Authority

This Ordinance is enacted pursuant to the authority granted to the Town of Sutton to adopt, amend, repeal and enforce ordinances by 24 V.S.A. § 1971, to define what constitutes a public nuisance, and to provide procedures and take action for its abatement or removal as the public health, safety, or welfare may require by 24 V.S.A. § 2291 (14), the power to prohibit the throwing, depositing, burning, and dumping of refuse by 24 V.S.A. § 2201, the power to manage and regulate solid waste disposal within its boundaries by 24 V.S.A. §§ 2291(12) and 2202a, the power to compel the cleaning of any premises which in the judgment of the legislative body is dangerous to the health and safety of the public 24 V.S.A. § 2291(13), the power to enforce a solid waste ordinance by 24 V.S.A. § 2297a, and the power to provide for penalties for violations of any ordinance adopted by 24 V.S.A. § 2291(15).

This Ordinance shall be a civil ordinance within the meaning of 24 V.S.A. chapter 59.

III. Definitions

- A. The definitions set forth in 10 V.S.A. § 6602 and 24 V.S.A. § 2241 are hereby incorporated into this Ordinance.
- B. "Abutting property owner" shall mean any person or persons that owns, leases, or in any other way uses or controls the real property abutting any portion of the property of another.
- C. "Disposal" shall mean the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste, junk, or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any ground or surface waters.
- D. "Enforcement Officer" shall mean any 1) Town Health Officer, 2) Town Constable, 3) Zoning Administrator, or 4) any other officers appointed by the Selectboard to enforce the provisions of this Ordinance.

- E. "Hazardous waste" shall mean any waste or combination of wastes of a solid, liquid, contained gaseous, or semi-solid form, including those which are toxic, corrosive, ignitable, reactive, strong sensitizers, or which generate pressure through decomposition, heat, or other means, which in the judgment of the Vermont Secretary of Natural Resources 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 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 and amendments thereto, codified in 42 U.S.C. § 2014, is specifically excluded from this definition.
- F. "Highway" shall mean any highway as defined in 19 V.S.A. § 1. This definition shall include town trails as defined by 19 V.S.A. § 301(8).
- G. Public Nuisance means any condition which is detrimental to the public health, safety and welfare or creates a substantial annoyance, inconvenience or injury to the residents of the Town of Sutton. Nuisance includes but is not restricted to, garbage, rags, waste or refuse materials, swill, sewage, decaying animal or vegetable matter, bottles, glass, junk automobiles or parts thereof, any solid or liquid matter that does or may generate diseases or emit unhealthy gasses or offensive odors any of which would create a situation hazardous to children and the general public.
- H. "Junk" shall mean old or discarded scrap copper, brass, iron, steel, or other old or scrap or non-ferrous material, including rope, rags, batteries, glass, rubber debris, waste, trash, or any discarded, dismantled, wrecked, scrapped, or ruined motor vehicles or parts thereof.
- I. "Junk motor vehicle" shall mean a discarded, dismantled, wrecked, scrapped or ruined motor vehicle or parts thereof, or a motor vehicle, other than an on-premise utility vehicle, which is allowed to remain unregistered and uninspected for a period of 90 days from the date of the discovery.
- J. "Person" shall mean any individual or group of individuals, owner, lessee, firm, business, partnership, sole proprietorship, association, corporation, unincorporated association, joint venture, trust, company, or organization of any kind.
- K. "Private Property" shall mean any land or any structure or portion of any structure designed or used for private, commercial or residential purposes which is not public property.

- L. "Public Property" shall mean any and all waterways, public rights of way, easements, medians, sidewalks, highways, streets, or other public parks, spaces, grounds and buildings.
- M. "Respondent" shall mean the person who receives notice from the Selectboard of an alleged violation of this Ordinance.
- N. "Selectboard" shall mean the Selectboard of the Town of Sutton.
- O. "Solid waste" means any discarded garbage, refuse, septage, sludge from a waste treatment plant, water supply plant, or pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous materials resulting from industrial, commercial, mining, or agricultural operation and from community activities but does not include animal manure and absorbent bedding used for soil enrichment; high carbon bulking agents used in composting; or solid or dissolved materials in industrial discharges which are point sources subject to permits under the Water Pollution Control Act, chapter 47 of title 10. For the purpose of this Ordinance, solid waste shall also furniture, household items and appliances, and marketable recyclables.
- P. "Solid waste order" means a directive issued by the Selectboard that the respondent take actions necessary to achieve compliance with the Ordinance, to abate hazards created as a result of noncompliance, or to restore the environment to the condition existing before the violation and may include a civil penalty.
- Q. "Town Clerk" shall mean the Town Clerk for the Town of Sutton.
- R. "Waste" means a material that is discarded 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.

IV. General Prohibitions

- A. It shall be unlawful to dispose of any hazardous waste except for in a facility certified or approved by the State of Vermont to accept such hazardous wastes.
- B. It shall be unlawful for any person or persons to dump, dispose, deposit, throw or leave, or to cause or permit the dumping, depositing, placing or leaving of solid waste on any public or private property or into any water in the Town of Sutton except as follows:

1. The composting of organic material if authorized by the Vermont Solid Waste Management Rules provided no nuisance is caused;
2. The disposal of solid waste in a privately owned or maintained waste container with the express consent of the owner of the container;
3. The disposal of solid waste in a publicly-owned or maintained waste container in a public building, or on public grounds provided such solid waste was created or originated in a public building or on its grounds or generated during the use of said public building, or grounds on such grounds;
4. The disposal of solid waste on property that adheres to Required Agricultural Practices approved by the Commissioner of the Vermont Department of Agriculture; or
5. As specifically approved by the Vermont Department of Environmental Conservation, the Selectboard, and the Applicable Solid Waste Management District.

C. It shall be unlawful to place, dispose, discard, or abandon junk or a junk motor vehicle (s) in a place where it is visible from a highway, or where it is visible to an abutting property owner from a portion of the abutting property owner's land. Any such items or material so placed, disposed, discarded or abandoned is hereby declared a public nuisance.

D. Nothing in this Ordinance shall be interpreted as affecting the operation or use of a licensed salvage yard as defined in 24 V.S.A. §§2241-2291 or certified solid waste disposal facility under 10 V.S.A Chapter 159.

V. Enforcement and Penalties.

When an Enforcement Officer obtains information of a potential violation of this Ordinance, that Officer shall, within 15 days, investigate the potential violation and, where feasible and safe to do so, shall make a site visit to assess the situation. Said enforcement Officer shall then notify the Selectboard of the results of the investigation. The Selectboard shall then determine whether to proceed through the Judicial Bureau process through issuance of a municipal ticket, or through a solid waste order, as detailed below.

A. Judicial Bureau. A violation of this Ordinance shall be a civil matter which may be enforced in the Vermont Judicial Bureau. Each day that the violation continues shall constitute a separate violation of this Ordinance.

1. Violations enforced in the Judicial Bureau shall be in accordance with the provisions of 24 V.S.A. §§ 1974a and 1977 et seq. A civil penalty of not more than \$800 per violation may be imposed for violation of this Ordinance.

- a) A municipal ticket will be issued by the Enforcement Officer if the violation has not been corrected in accordance with this Ordinance.
- b) For purposes of enforcement in the Judicial Bureau, the designated Enforcement Officer shall issue tickets and may be the appearing officer at any hearing.
- c) An Enforcement Officer is authorized to recover civil penalties or waiver penalties in the following amounts, or as established by the Judicial Bureau, for each violation of this Ordinance:

First offense: \$100 full penalty / \$50 waiver penalty, plus the actual cost of municipal cleanup where applicable

Second offense: \$200 full penalty / \$100 waiver penalty, plus the actual cost of municipal cleanup where applicable

Third offense: \$400 full penalty / \$200 waiver penalty, plus the actual cost of municipal cleanup where applicable

Subsequent offense: \$800 full penalty / \$400 waiver penalty, plus the actual cost of municipal cleanup where applicable

- d) If the penalty for all continuing violations of this Ordinance is greater than \$800.00, or if injunctive relief is sought, the Selectboard may bring an action in superior court.

B. Solid waste order and enforcement. For any violations of this Ordinance not including salvage yards, the Selectboard may use the procedures set forth in 24 V.S.A. Chapter 61, Subchapter 12 to issue a solid waste order to enforce any of the provisions of this Ordinance. Such order may include civil penalties for each violation and, in the case of a continuing violation, a penalty for each succeeding day.

1. Notice. When the Selectboard has reasonable grounds to believe that a person has violated this Ordinance, the Selectboard may issue notice of the alleged violation which shall be delivered either in person or mailed by first class mail or certified-return receipt requested mail. If mailed by first class mail, the notice is deemed received three days after the date of mailing. A copy of the notice shall be mailed to the Department of Environmental Conservation for information purposes only. The notice shall include:

- a) a brief description of the alleged violation and identification of the ordinance alleged to have been violated;
- b) a brief description of the desired remediation and potential enforcement actions (including possible penalties) which may be taken by the Selectboard and the Selectboard's probable course of action; and
- c) a statement that the respondent has a right to a preliminary hearing before the Selectboard and a description of the procedures for requesting a preliminary hearing.

2. Opportunity for corrective action. Any person who receives a notice of violation from the Selectboard and who, within ten (10) days of such notice, takes the remedial action outlined in the notice of violation to the satisfaction of the Selectboard may avoid further enforcement action.

3. Preliminary hearing. A person who receives a notice of violation shall be offered an opportunity for a preliminary hearing before the Selectboard for the purpose of determining whether a violation exists and reviewing the Selectboard's probable course of action. The request for hearing shall be made in writing to the Sutton Town Clerk no later than ten (10) days after the date the notice of violation is received. The Selectboard shall hold a hearing within fourteen (14) days of receipt of the request for a hearing.

4. Proposed Order. After a preliminary hearing, the Selectboard may issue a proposed order. If no hearing is requested within ten (10) days after the date of receipt of the notice of violation, the Selectboard may issue a proposed order at once. A proposed order shall be delivered in person or mailed by first class mail or by certified mail, return receipt requested. If mailed by first class mail, the order is deemed received three (3) days after the date of mailing.

A proposed order shall include:

- (a) a statement that the respondent has the right to request a hearing before the legislative body on the proposed order and the procedures for requesting the hearing;
- (b) a statement that the respondent has the right to request a hearing before the Environmental Division after the order has become final and a description of the procedures for requesting a hearing before the Environmental Division;
- (c) a statement that filing a request for hearing before the Environmental Division will stop penalties from accruing in the case of a continuing violation;
- (d) if applicable, a directive that the respondent take actions necessary to achieve compliance with the Ordinance, to abate hazards created as a result of noncompliance, or to restore the environment to the condition existing before the violation;
- (e) if applicable, a civil penalty of not more than \$500.00 for each violation and in the case of a continuing violation, not more than \$100.00 for each succeeding day. When setting the penalty, the Selectboard may consider:
 - i. the degree of actual or potential impact on public health, safety, welfare, and the environment resulting from the violation;
 - ii. whether the respondent has cured the violation;
 - iii. the presence of mitigating circumstances;

- iv. whether the respondent knew or had reason to know the violation existed;
- v. the respondent's record of compliance;
- vi. the economic benefit gained from the violation;
- vii. the deterrent effect of the penalty;
- viii. the costs of enforcement; and
- ix. the length of time the violation has existed.

5. Hearing on proposed order. A person who receives a proposed order shall be offered an opportunity for a hearing before the legislative body, provided that the request for hearing is made in writing to the Town Clerk no later than fifteen (15) days after the date of receipt of the order. If the respondent does not request a hearing, the order shall be deemed a final order, and shall be effective on the date of receipt or a later date stated in the order. If the respondent does request a hearing subsequent to receipt of the order, the Selectboard shall hold a hearing within fourteen (14) days of receipt of the request. After the hearing, the Selectboard may withdraw or amend the order and may issue a final order, which shall be delivered or mailed to the respondent in the same manner as proposed orders and which shall be effective on the date of receipt or a later date stated in the order.

6. Continuing Violations. Each day that a violation continues from the effective date of a final order shall constitute a separate violation. However, the filing of a request for hearing with the Environmental Division shall stop penalties from accruing in the case of a continuing violation until the Environmental Division has issued its order.

7. Enforcement. The Selectboard may seek enforcement of a final order in the Superior Court or before the Environmental Division. If a penalty is imposed and the respondent fails to pay the penalty to the Town within the time prescribed, the Selectboard may bring a collection action in the Superior Court.

C. Payment to Town: All penalties collected under this Ordinance shall be paid to "Town of Sutton."

V. Other Laws

This Ordinance is in addition to all other ordinances of the Town and all applicable laws of the State of Vermont. All ordinances, resolutions, regulations, or other documents inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

VI. Severability

If any section of this Ordinance is held by a court of competent jurisdiction to be invalid, such finding shall not invalidate any other part of this Ordinance. If any statute referred to in this Ordinance shall be amended, this Ordinance shall be deemed to refer to such amended statute.

VII. Effective Date

This Ordinance shall become effective sixty (60) days after its adoption by the Selectboard, or at such time following the expiration of the 60 days from the date of its adoption as is determined by the Selectboard. If a petition is filed under 24 V.S.A. § 1973, that statute shall govern the taking effect of this Ordinance.

Adopted this 25th day of JANUARY, 2018 by the Selectboard of the Town of Sutton, Vermont.

Tim Simpson
Scott F. Green
Joseph G. Sullivan

ADOPTION HISTORY:

1. Agenda item at a regular meeting of the Selectboard held on 1/25/18
2. Read and approved at a regular meeting of the Selectboard on 1/25/18 and entered in the minutes of that meeting which were approved on 2/22/18.
3. Posted in public places on 2/26/18.
4. Notice of adoption published in the CALEDONIAN-RECORD newspaper on 3/3/18 with a notice of the right to petition.