

Adopted 6/2/2022
Local Law 5 of 2022

Solid Waste & Littering

**Amending Chapter 118
of the Code of the Town of Rochester**

Presented by Supervisor Baden, Local Law 5-2022, removing Chapter 118, Solid Waste of the Code of the Town of Rochester and replacing as follows:

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

Section 1.

Pursuant to, and in accordance with, the provisions of the New York State Municipal Home Rule Law and the NYS General Municipal Law, Article 18, §808, the Town of Rochester Town Board removes Chapter 118, Solid Waste of the Code of the Town of Rochester and replaces as follows.

§ 118-1 Legislative Intent

It is hereby ordained that the deposit of litter (defined in this chapter to include garbage, refuse, and/or rubbish) and litter is found to be a danger or nuisance to the health, safety, appearance and welfare of the residents of the Town of Rochester. The Town Board of the Town of Rochester hereby determines it necessary, for the above stated reasons, to provide a method whereby vacant and improved properties within the Town are kept free of litter and to provide for the disposal thereof in the established solid waste transfer station. All of these conditions adversely affect the welfare of the town citizenry and the development of the town unless they are properly and carefully regulated.

Therefore, recognizing the above and the need of the community for an adequate and well-regulated procedure for the disposal of garbage, rubbish and waste and in the exercise of its police power in these regards, be it enacted by the Town Board of the Town of Rochester as follows:

§ 118-2 Application.

This chapter shall apply to dumping upon all lands, public or private, within this town, except upon such premises as are or may be lawfully established as a solid waste transfer station and thereon only in the manner herein provided.

§ 118-3 Definitions and word usage.

- A. The word "shall" is always mandatory and not merely directory.
- B. For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meanings given herein.

COMMERCIAL HAULER

Any person, firm, corporation, partnership or other association engaged in the business of collecting, disposing or transporting garbage, refuse or waste material in any part of the Town of Rochester.

GARBAGE

Any refuse from animal and vegetable matter, waste food or parts thereof; refuse from the kitchen, market, store or house; floor sweepings; table waste or animal or vegetable matter, meats, fish, bones, fat and all offal and organic waste substance or substances capable of decay, but shall not include waste from slaughterhouses, rendering plants or sanitary disposal systems.

LITTER

Includes "garbage," "refuse" and "rubbish," as defined herein, and all other waste material which, if thrown or deposited as prohibited in this chapter, tends to create a danger or nuisance to public health, safety and welfare.

PARK

Includes a park, playground, recreation center or any other public area in the Town, owned or used by the Town and devoted to active or passive recreation.

PERSON

One or more persons of either sex, natural persons, corporations, partnerships, associations, joint-stock companies, unincorporated associations, their agents or employees, societies, clubs and all other entities of any kind capable of being sued.

PRIVATE PREMISES

Includes any yard, grounds, walk, driveway, porch, steps or mailbox belonging or appurtenant to any dwelling, house, building or other structure.

PUBLIC PLACE

Includes any and all streets, sidewalks, boulevards, alleys or other public ways and any and all public parks, squares, spaces, grounds and buildings.

REFUSE

All putrescible and non-putrescible solid wastes (except body wastes), including garbage, rubbish, ashes, street cleanings, dead animals and solid market and industrial wastes.

RESIDENT

A property owner or person having their domicile or residence of a temporary or permanent nature within the Town of Rochester, Ulster County, New York.

RUBBISH

Non-putrescible solid wastes consisting of both combustible and noncombustible wastes, such as paper, wrappings, cigarettes, cardboard, tin cans, yard clippings, leaves, wood, glass, bedding, crockery and similar materials.

VEHICLE

Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, including devices exclusively upon stationary rails or tracks.

WASTE MATERIAL

Includes but is not limited to waste produced by industrial or manufacturing process, including food processing waste, boiling house cinders, lumber scraps and shavings, slag, industrial sludge or other chemical waste and by-products, tires, oils and large amounts of wood, concrete, rocks, bricks and other wastes from building operations.

§ 118-4 Dumping prohibited.

The use of private or public lands within the Town of Rochester as a landfill dump, dumping ground, storage or disposal facility for refuse, waste or garbage is hereby prohibited.

§ 118-5 Disposal at lawfully established sites required.

It shall be unlawful to dispose of any garbage, refuse or waste material anywhere in the Town of Rochester except in a lawfully established solid waste transfer site operated by the town or at such other solid waste transfer site approved by the town, Ulster County Department of Health, Ulster County Resource Recovery Agency and the New York State Department of Environmental Conservation.

§ 118-6 Private disposal sites prohibited.

No private solid waste transfer station shall be permitted.

§ 118-7 Designation of solid waste transfer station.

- A. The premises owned by the Town of Rochester situate on Airport Road is hereby designated as the solid waste transfer station of this town and as the depository of garbage, waste and refuse by the residents, subject to the provisions of this law.
- B. No Person shall deposit any hazardous waste as defined in 6 NYCRR Part 371, et seq.

§ 118-8 Permit or license required for transfer station use.

- A. No person not in possession of a duly issued permit or license shall be permitted to use the solid waste transfer station. Any such permit or license shall not be sold, assigned, transferred or otherwise disposed of in any manner.
- B. The Town Clerk of the Town of Rochester is hereby authorized to issue annual permits and identification stickers to qualified applicants and to collect such fees as have been established therefor by resolution of the Town Board. The Town Clerk shall also have the authority to generally administer the procedures incident to the issuance of permits and the collection of fees.
- C. All persons using the solid waste transfer station shall have a valid permit or identification device as issued by the Town of Rochester and shall display the same upon the request of any transfer station attendant.

§ 118-9 Permit fees.

The Town Board shall from time to time by resolution establish such fees for the issuance of permits and identification stickers and devices and shall further establish tipping fees as it shall deem appropriate.

§ 118-10 Dumping hours.

No person shall dump or cause to be dumped any substance on the premises designated as the solid waste transfer station except at regular hours established by the Town Board. The solid waste transfer station shall be open to all permitted users on such days and at such times as the Town Board may from time to time establish.

§ 118-11 General regulations

- A. No person shall pick over or remove any object deposited at the solid waste transfer station site, except as authorized by the Town Board.
- B. No material shall be burned at the solid waste transfer station unless a Department of Environmental Conservation restrictive burning permit is obtained. Any person bringing hot ashes upon or otherwise causing a fire to start at the solid waste transfer station shall be subject to penalties imposed for violation of this chapter.

- C. No person shall deposit or cause to be deposited any substance of any kind at the solid waste transfer station site herein designated except at the places, time and in the manner directed by the person in charge of the premises under authority of the Town Board, whether such direction is given personally or by a sign or signs erected upon the premises by his authority.

§ 118-12 Dead animals and fowl.

- A. No person shall carry or leave or cause to be carried or left upon the premises mentioned in § 118-7A any dead animal or fowl.
- B. No person, other than with permission of municipal or state agencies, shall carry or leave or cause to be carried or left upon the solid waste transfer station site any animal, waste, excrement, discharge, secretion or feces.

§ 118-13 Placement of rubbish in covered containers; collection.

- A. All rubbish shall be deposited in authorized private receptacles. The placement of rubbish in authorized private receptacles to be collected shall be so as to prevent the rubbish from being scattered or from being carried by the elements.
- B. Authorized private receptacles for rubbish pickup shall be material of substantial construction. Each container shall have its own lid and be securely covered. Newspapers, magazines and other such materials must be bundled and securely tied. No other type of container for rubbish will be allowed under this chapter, with the exception of municipally scheduled general cleanup collection.

§ 118-14 Household wastes in public litter receptacles.

No person shall deposit household rubbish or garbage in public litter receptacles.

§ 118-15 Littering in public places.

- A. No person shall throw or deposit litter in or upon any street, sidewalk or other public place within the Town.
- B. No person shall sweep into or deposit in any gutter, culvert, street or other public place within the Town the accumulation of litter from any building or lot or any litter from any public or private sidewalk or driveway.

§ 118-16 Littering in parks and vacant lots.

No person shall throw or deposit litter in any park, parking lot or vacant lot within the Town. Where public receptacles are not provided in a park, all litter shall be carried away from the park by the person responsible for its presence and properly disposed of elsewhere.

§ 118-17 Littering from vehicles.

No person, being the driver of or a passenger in a vehicle, shall throw or deposit litter upon any street or public place within the Town or upon any private property.

§ 118-18 Transporting wastes.

No person shall transport in any truck or other vehicle or in any other manner through the public streets of the Town, streets to which the public has access or over any land owned or controlled by the Town any ashes, waste material, rubbish, discarded boxes, barrels or other containers of merchandise or discarded material of any kind or description consigned to a dump or to any other destination, unless the same is conveyed or transported in a truck, vehicle or other manner entirely covered or enclosed so that material cannot escape while being so transported. In the event that the same shall be transported or conveyed other than in an entirely closed truck, vehicle or otherwise, such material being so transported and conveyed shall be covered by a canvas or covering of a similar nature, securely fastened so as to prevent the material escaping from the truck, vehicle or otherwise onto the streets, sidewalks, ways, public land or private property. It shall be unlawful for any person to so convey and transport ashes, rubbish, waste or discarded material of any nature through the public streets of the Town, on ways open to the public or over land owned or controlled by the public or willfully to deposit or negligently to allow such material to escape onto the streets and other places while being so transported and conveyed. It shall be the duty of every person transporting and conveying such material to stop and recover the same, in the event of any escape or loss thereof, irrespective of the cause of the escape or loss.

§ 118-19 Placing garbage or waste in streets or streams prohibited.

It shall be unlawful for any person to throw, spill, place, deposit or leave or cause to be thrown, spilled, placed, deposited or left or permit any agent, servant or employee to throw, spill, place, deposit or leave in or upon any street, highway, alley, sidewalk, park, public building, in any running water or body of water within the Town of Rochester, any garbage, refuse, waste material or any other dirt or filth, including but not limited to sewage, excrement, slops, dead carcasses, compost, ashes, soot or any material subject to being carried by the wind or unwholesome or putrescible matter of any kind.

No person shall throw or deposit litter on any occupied private property within the Town in such a manner that it tends to create a danger or nuisance to the public health, safety and welfare, whether owned by such person or not, except that the owner or person in control of private property may maintain private receptacles for collection, as authorized by this chapter. Litter shall be deposited in such a manner that it will be prevented from being carried or deposited by the elements from any such occupied private property to the street, sidewalk or other public place or upon any private property.

§ 118-20 Littering on open or vacant private property.

No person shall throw or deposit litter on any open or vacant private property within the Town, whether owned by such person or not, so that the same shall create a danger or nuisance to the public health, safety and welfare.

§ 118-21 Responsibility to maintain private property.

The owner or person in control of any private property shall at all times maintain his premises free of litter so that the same does not constitute a danger or nuisance to the public health, safety and welfare. This section shall not prohibit the storage of litter in authorized private receptacles for collection.

§ 118-22 Responsibility to maintain sidewalks.

Persons owning or occupying property shall keep the sidewalk in front of the premises free of litter.

§ 118-23 Issuance of appearance ticket.

Where a violation of the chapter is observed by a public servant employed by the Town whose duties include the enforcement of this chapter, an appearance ticket shall be issued in accordance with Chapter 2 of the Code of the Town of Rochester, to the property owner or individual committing the violation.

§ 118-24 Penalties for offenses.

- A. Any person, as that term is defined in § 118-3, above, who is convicted of a violation of any of the provisions of this chapter shall, for the first conviction thereof, be punished by a fine of not less than \$100 and not more than \$500; for a second or subsequent conviction within 24 months after any previous conviction, such person shall be punished by a fine of not less than \$200 and not more than \$1,000 or by imprisonment for not more than 15 days, or by both such fine and imprisonment. Each day of continued violation shall constitute a separate additional violation. Additionally, the property owner may be subjected to a litter removal proceeding as hereinafter provided.
- B. Conviction for any above-mentioned violation shall constitute and effect an immediate suspension or forfeiture of the license or permit, at the discretion of the court hearing said case.
- C. In addition, any person violating this chapter shall be subject, in lieu of criminal action, to a civil penalty enforceable and collectible by the town in the amount of \$500 for each such offense. Such penalty shall be collectible by and in the name of the town for each day that such violation shall continue.
- D. In addition to the above-mentioned penalties, the Town Board or any person aggrieved by the violation may also maintain an action or proceeding in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of such chapter.
- E. The Town Board, in addition, shall have the right to suspend, revoke or cancel any permit or license issued when the holder of such license or permit violates the provisions of this law.

§ 118-25 Litter removal proceeding.

Where a property owner or individual has been cited and found guilty, pled guilty or entered into a settlement or civil compromise wherein the existence of the litter has been established and 20 days have elapsed (unless in the disposition of the appearance ticket a different time frame has been ordered by the Court or agreed upon by the parties) and the litter has not been substantially removed from the property, then a litter removal proceeding can be commenced as hereinafter provided.

A. Report.

- (1) Inspection and report. The Code Enforcement Officer shall cause an inspection to be made of the said littering and to report the findings thereon in writing to the Town Board. The Code Enforcement Officer shall, for the purposes hereof, be deemed an official.
- (2) Consideration of report. The Town Board shall consider the report, and, if in its opinion the report so warrants, shall by resolution determine that the littering is a danger or nuisance to the public health, safety, appearance or welfare and violates the provisions of this chapter and shall order that the littering be removed; provided, however, that a notice thereof shall be given as provided in the next section hereof.

B. Notice to remove; service of notice to remove; filing or proof of service.

- (1) Notice to remove. After passage of a resolution by the Town Board, the Code Enforcement Officer is hereby authorized and empowered to notify the owner or the agent of such owner of any private property within the Town to properly dispose of litter located on such owner's property which is or may become a danger or nuisance to public health, safety, appearance or welfare. Such notice shall contain a description of the property affected, sufficiently definite in terms to identify it, and to the extent practical, the notice shall contain a description of the location, quantity and/or type of litter for which removal is being sought. The notice shall state that, unless the litter is properly disposed of within 10 days after service of the notice, the Town will, after a public hearing at a date and time specified in the notice (at least 10 days from service), proceed with the removal and proper disposition of such litter and shall cause the costs of such removal and disposition to be charged as a municipal lien against the premises.
- (2) Service of notice to remove. The notice referred to in Subsection **B(1)** above may be served upon an owner who resides in the Town, in person or by leaving it at his usual place of residence with a member of his family above the age of 14 years. If an owner shall not reside in the Town, notice may be served upon him personally or mailed to his last known post office address (which shall be presumed to be the address on file with the Assessor), by registered or certified mail, and served upon the occupant of the property, if any, or upon the agent of the owner in charge thereof. If the owner of the property is unknown or if service cannot for any reason be made as above directed,

notice thereof shall be posted on the littered premises and shall be published at least once not less than 10 days before the proposed removal or proper disposition in the newspaper designated by the Town as its official newspaper. There may be inserted in the advertisement notice to the owners of several different parcels of land. Notice to infant owners or owners of unsound mind shall be served upon their guardians. Where lands are held in trust, service shall be made upon the trustees. Where lands are held by joint tenants, tenants in common or tenants by the entirety, service upon one of the owners shall be sufficient and deemed and taken as notice to all.

- (3) Filing or proof of service. Proof of service of such notices shall be filed within 10 days thereafter or within 10 days of the publication of such notices with the Town Clerk and Assessor, but failure to file the same shall not invalidate the proceedings if service has actually been made as herein provided.
- C. Public hearing. Upon failure to comply with a notice to remove litter, the Town Board shall hold a public hearing, notice of which and the time and place thereof to be specified in the notice provided for in Subsection **B(1)** above. If after the public hearing the Town Board determines by resolution that the litter constitutes a danger or nuisance to the health, safety, appearance or welfare of the residents of the Town, then the Town Board shall by further resolution order its removal and disposition, the reasonable cost of which shall be recouped as provided. Additionally, the Town Board may authorize the Supervisor to execute a notice, in recordable form, to be indexed against the record owner(s) and to be recorded in the Ulster County Clerk's Office specifying that after a public hearing, it has been determined that the reasonable costs of the litter removal and disposition will be assessed against the property the next tax year.
- D. Removal of litter. The Town Board, after a public hearing as provided in Subsection **C** above, may affect the removal and proper disposition of the subject litter. Where the Town has affected the removal and property disposition of such litter or has paid for its removal and proper disposition, either by way of a third-party contractor in accordance with the Town's procurement policy or by Town employees and equipment, an accurate account of the cost and expense thereof shall be kept and a true statement under oath or affirmation shall be filed by the officer of the Town in charge of such removal or proper disposition with the Town Clerk. The Town Board shall examine the same and, if it is properly made, shall confirm it and file such report with the Assessor, who shall record it in a book to be kept for that purpose. Such statement recorded in accordance with the provisions hereof shall be prima facie evidence that all legal formalities have been complied with and that the work has been done properly and satisfactorily.
- E. Collection of costs and expenses. All expenses incurred by the Town in connection with the removal of the litter, including the cost of actually removing the litter, and all reasonable and necessary legal expenses incidental thereto and any other actual costs incurred by the Town,

including the service and publication costs and the costs of filing the notice in the Ulster County Clerk's Office, shall be assessed against the land on which said litter was located, in which event a statement to that effect shall be filed with the Town Clerk, which statement shall be full notice to every person concerned that the amount of the statement constitutes a municipal lien against the property affected and that the same is due and collectible as hereinafter provided. The amount so charged shall forthwith become a lien upon such lands and shall be added to and become and form a part of the taxes next to be assessed and levied upon such lands, the same to bear interest at the same rate as taxes and shall be collected and enforced by the same officers and in the same manner as taxes.

- F. Remedies. The remedies provided for herein are cumulative and not exclusive and shall be in addition to any other remedies provided by law.

Section 2. Severability

If any part or provision of this local law is judged invalid by any court of competent jurisdiction, such judgment shall be confined in application to the part or provision directly on which judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Law or the application thereof to other persons or circumstances. The Town hereby declares that it would have enacted the remainder of this Law even without such part or provision or application.

Section 3. Effective Date

This local law shall become effective immediately upon the filing in the office of the New York Secretary of State pursuant to Section 27 of the Municipal Home Rule Law.