

**LOCAL LAW NO. 2 OF 2009
COUNTY OF OTSEGO, NEW YORK**

**A LOCAL LAW AMENDING LOCAL LAW NO. 3 OF 2000 -
ESTABLISHING A SOLID WASTE USER FEE**

Section 1. Short Title.

This law shall be known as the Otsego County Solid Waste User Fee Local Law.

Section 2. Findings.

The Board of Representatives of Otsego County finds that:

A. The New York State Solid Waste Management Plan (the "Plan") and the Solid Waste Management Act of 1988 (the "1988 Act") mandates that the amount of solid waste generated and disposed in New York State be managed through the establishment of programs to reduce the amount of waste being produced and disposed by recycling and reusing that portion of the waste stream that can feasibly be so recovered.

B. To provide the citizens of the County with solid waste management and recycling services required by the 1988 Act and the Plan, the County entered into a Service Agreement with the Montgomery-Otsego-Schoharie Solid Waste Management Authority (the "Authority" or "MOSA"), a public benefit corporation created pursuant to Title 13-AA of the Public Authorities Law. The Service Agreement requires the County to deliver or cause to be delivered to MOSA the solid waste generated within the County.

C. The County through the Service Agreement with the Authority has undertaken a number of programs pursuant to the mandates of the Plan and 1988 Act, which provide services to the residents of the County and serve to implement a local solid waste management plan, including but not limited to recycling programs for the collection, processing, transporting and marketing of recyclable materials; the closing and monitoring of landfills in accordance with directives of the Department of Environmental Conservation ("DEC"); the planning of a new landfill; the development of a system of recycling and solid waste transfer stations to process recyclable materials and municipal solid waste generated by County residents; the operation of an existing landfill for the disposal of solid waste generated by County residents; and the educational and administrative functions attendant to these services and facilities.

D. Commencing January 1, 1996, the County will provide transportation of recyclable materials from drop-off locations within the County to recycling facilities and/or markets.

E. The Board of Representatives has determined as a matter of public policy that the cost of providing such services should be borne by the generators of solid waste and recyclable materials, who are the users of the services and facilities being provided.

F. The County has further determined that funding the entire cost of services and facilities by charging a tipping fee at the Authority facilities has raised these tipping fees to unacceptable levels. The County intends to reduce the tipping fee charged at MOSA facilities by paying directly to the Authority a portion of the cost of providing services, creating a market based incentive for private collectors to deliver to MOSA solid waste generated within the County.

Section 3. Purposes.

This law is enacted pursuant to the laws of the State of New York, including Municipal Home Rule Law Section 10 (1)(ii)(a)(9-a) and County Law Sections 226-b and 266, to: institute a plan to charge users of recycling, solid waste management and related services and facilities provided by MOSA and the County, a fee for the use of such services and facilities, which fee shall cover a portion of the cost of the services being provided, and which fee shall be charged on an equitable basis, related to the level of recycling and solid waste services available to the class of users.

Section 4. Definitions and General Provisions.

A. *Board or Board of Representatives* means the Otsego County Board of Representatives.

B. *County* means the County of Otsego.

C. *Fee Status Date* means March 1 for each succeeding fiscal year (ex: March 1, 1995 for fiscal year 1996).

D. *Recyclables or Recyclable Materials* means materials that would otherwise be solid waste, and which can be collected, separated, and/or processed, treated, reclaimed, used or reused so that their component materials or substances can be beneficially used or reused.

E. *Solid Waste* means all putrescible and non-putrescible solid waste materials generated or originated within the County, including, but not limited to, materials or substances discarded or rejected, whether as being spent, useless, worthless, or in excess to the owners at the time of such discard or rejection or for any other reason; or being accumulated, stored, or physically, chemically or biologically treated prior to being discarded or rejected, having served their intended use; or a manufacturing by-product, including, but not limited to, garbage, refuse, waste materials resulting from industrial,

commercial, community, and agricultural activities, sludge from air or water pollution control facilities or water supply treatment facilities, rubbish, ashes, contained gaseous material, incinerator residue, demolition and construction debris and offal; but not including sewage and other highly diluted water-carried materials or substances and those in gaseous form, or hazardous waste as defined in the New York Environmental Conservation Law or its implementing regulations.

F. *Billing Unit* or *Units* refers to the number assigned to each parcel of real property pursuant to Section VI below and shall provide the basis for determining the fee charged.

G. *Solid Waste User Fee Roll* refers to the County Solid Waste Fee Roll which includes the assignment of Billing Units to each parcel.

H. *Unit Charge* means the dollar amount established by the Board of Representatives pursuant to Section V below, as the annual solid waste fee charged for one Billing Unit.

I. *Rate Schedule* refers to the schedule adopted by the Board of Representatives pursuant to Section V. C., establishing classes and formulas for determining Billing Units for parcels of improved real property.

J. In the event that any date herein falls on a Saturday, Sunday or legal holiday, then the applicable date shall be the next succeeding date that is not a Saturday, Sunday or legal holiday.

Section 5. Establishment of Annual Solid Waste Fee.

A. The annual solid waste fee shall be charged to owners of improved real property located within the County, as the owners and users of such property are deemed to generate solid waste or recyclable materials and are therefore users of County provided solid waste and/or recycling facilities and services.

B. The annual solid waste fee shall be an annual fee covering the period from January 1 through December 31 of each calendar year.

C. The Board of Representatives shall establish by resolution a Rate Schedule setting forth classifications or formulas for determining the Billing Units assigned to all parcels based upon the use of the real property. The classification of parcels and the formulas for determining the Billing Units assigned to each class is based on the level of services available to such class, which has been or will be determined by the Board of Representatives in its sole discretion. Information regarding the use of each parcel and property measurements is based upon the County's records for the assessment of property values together with such other data deemed necessary to properly characterize each

parcel. The Board of Representatives may change the Rate Schedule from time to time by resolution.

D. On or before December 10 of each year, the Board shall by resolution establish the Unit Charge to be applied for the following fiscal year in calculating the annual solid waste fee to be charged.

E. The annual solid waste fee shall be charged to the owner of each parcel of real property in accordance with this local law based upon the number of Billing Units assigned to such parcel (as set forth in Section 6 below) times the Unit Charge established for the year.

F. A one-half unit exemption from the annual solid waste fee shall be allowed for all senior citizens who qualify for the County's senior citizen partial exemption from real property taxes.

Section 6. Preparation of Solid Waste User Fee Roll.

A. Each parcel of improved real property situated in the County shall be assigned to a class of parcels as set forth in the Rate Schedule based upon the use of the parcel as of the Fee Status Date.

B. The Solid Waste Coordinator shall make a reasonable effort to ascertain the name of the owner, last known owner or reputed owner and the use of the parcel as of the Fee Status Date. The Solid Waste Coordinator shall prepare a Solid Waste User Fee Roll listing each parcel in the County, its owner, its property classification code, and the number of Billing Units assigned to it.

C. The tentative Solid Waste User Fee Roll shall be completed on or about October 1. A copy shall be filed in the Solid Waste Office. The Solid Waste Coordinator shall forthwith cause a notice of such filing to be published once in the official newspapers of the County on or about October 8. The notice shall state that a tentative Solid Waste User Fee Roll containing solid waste Billing Units established for each parcel has been completed; that a copy has been filed and may be examined by any person during regular business hours at the Solid Waste Office.

D. Within seven (7) business days following the filing of the tentative Solid Waste User Fee Roll, a Notice shall be mailed to each owner of real property for which a change from the previous year has been made setting forth any change in the number of Billing Units assigned to a parcel. Such notice shall also state that an appeal must be directed to the Solid Waste Coordinator on or before October 31. Failure to mail the notice or failure of the owner to receive the notice shall not prevent the charging, collection and enforcement of the annual solid waste fee against the owner and property.

E. The property owner shall file a statement under oath, specifying the parcel of property, why the assigned classification is erroneous or illegal, what the owner believes is the correct classification and a brief description of the facts supporting the claim. The statement must be made by the owner of the parcel in question or by some other person authorized by the owner to make the statement who has knowledge of the facts stated therein.

F. The Solid Waste Coordinator shall determine in writing the proper classification of each parcel for which a complaint has been filed and shall mail a copy of such determination to the complainant on or before November 7. The decision shall also include information regarding the procedure to appeal the decision to the Appeals Board and the date, time and place of the meeting or meetings of the Appeals Board. Any person desiring to appeal the decision of the Solid Waste Coordinator may file an appeal with the Appeals Board on or before November 15. The appeal shall be in writing and shall include a copy of the Solid Waste Coordinator's decision and a brief description of the reason for the appeal.

G. The Appeals Board shall consist of three County residents appointed by the Board of Representatives. Each member of the Appeals Board shall serve for specified terms to be determined by the Board of Representatives. The Appeals Board shall meet on or before November 30.

H. A final Solid Waste User Fee Roll shall be completed on or about December 1 and shall be filed in the Solid Waste Office.

Section 7. Billing and Collecting of Fee.

A. The annual solid waste fee shall be sent to each owner of real property as a separate line item on the County tax bill. At the discretion of the County, this annual solid waste user fee in the discretion of the Board, may be sent to all owners of real property as a separate statement.

B. The fee shall be due January 1 and payable without interest or penalties by January 31, and payment shall be made to the local tax collector in person or by mail. As directed by law*, this solid waste user fee shall be collected by the local tax collectors with their collection of local taxes. (*Section 266 County Law; Opinion of the State Comptroller 78-550.)

C. All annual solid waste fees shall be a debt and personal obligation of the owner of the parcel of property. Said fees shall be a lien upon the parcel of property as of the due date of the fee.

Section 8. Delinquent Fees.

A. The County shall be entitled to commence a civil action to foreclose upon any lien upon property in accordance with the law or collect any amount due to it.

Section 9. Severability.

If any clause, sentence, paragraph, section or part of this title shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof involved in the controversy in which such judgment shall have been rendered.

Section 10. Correction of Errors.

The Board of Representatives authorizes the Appeals Board and the Solid Waste Coordinator to grant correction of an error in the Solid Waste User Fee Roll to the extent permitted by State law and the correction of errors related to the calculation of Billing Units. When it shall appear that an annual solid waste fee has not been paid because of errors or omissions not the fault of the owner, the Appeals Board may modify or waive the penalties, charges, costs and interest to be paid on the fee and may grant refund of paid solid waste fees for a period of one (1) year after payment.

Section 11. Effective Date.

The provisions of this law shall be effective immediately upon the filing of a copy with the Secretary of State.