

**RESOLUTION NO. 440-09 INTRODUCED BY EXECUTIVE COMMITTEE TO ENACT A LOCAL LAW AMENDING LOCAL LAW NO. 1 OF 1992 AND CHAPTER 171 OF THE CODE OF SULLIVAN COUNTY TO ADD A NEW ARTICLE VIII ESTABLISHING A SOLID WASTE USER FEE**

**WHEREAS**, proposed Local Law entitled "A Local Law Amending Local Law No. 1 of 1992 and Chapter 171 of the Code of Sullivan County to add a new Article VIII Establishing a Solid Waste User Fee", was presented to the Sullivan County Legislature at a meeting held on November 5, 2009 at the County Government Center, Monticello, New York, to consider said proposed local law and notice of public hearing having been duly published and posted as required by law, and said public hearing having been held and all persons appearing at said public hearing deemed to be heard, and

**NOW, THEREFORE, BE IT RESOLVED**, that the Sullivan County Legislature does hereby enact and adopt this Local Law entitled "A Local Law Amending Local Law No. 1 of 1992 and Chapter 171 of the Code of Sullivan County to add a new Article VIII Establishing a Solid Waste User Fee", County of Sullivan, State of New York, which local law is annexed hereto and made a part hereof.

**Moved by Mr. Rouis, seconded by Mrs. Goodman**, put to a roll call vote with Mr. Sager and Mr. Sorensen opposed, resolution carried and **declared duly adopted on motion** November 12, 2009.

**LOCAL LAW NO. 7 OF 2009  
COUNTY OF SULLIVAN, NEW YORK**

**A LOCAL LAW AMENDING LOCAL LAW NO. 1 OF 1992  
AND CHAPTER 171 OF THE CODE OF SULLIVAN COUNTY  
TO ADD A NEW ARTICLE VIII  
ESTABLISHING A SOLID WASTE USER FEE**

**§ 171-25 Short Title.**

Article VIII of Chapter 171 of Part II of the Code of Sullivan County shall be known as the Sullivan County Solid Waste User Fee Article.

**§ 171-26 Findings.**

The Legislature of Sullivan 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 feasibly can be so recovered.

B. To provide the citizens of the County with effective solid waste management and recycling services, the County has adopted and amended its Waste Management Plan and Rules, and has implemented a number of programs which provide services to all citizens of the County.

Since 1992, the County has provided County-wide solid waste management, including the mandate of source separation of recyclable materials from municipal solid waste, recycling and disposal services at the Sullivan County Landfill and at County owned and operated transfer stations, and the education of our citizens on the mandates of State and local laws and the benefits of recycling.

C. The County Legislature has determined as a matter of public policy that the cost of providing County-wide solid waste management services should be borne by all generators of solid waste and recyclable materials within the County of Sullivan.

D. The County Legislature finds that the County-wide solid waste management system has sufficient capacity to adequately handle all municipal solid waste, recycling and disposal services generated within the County.

E. The County Legislature has determined that substantially all solid waste is generated on improved parcels of real property

F. The County Legislature has determined that funding the entire cost of services and facilities by charging a tipping fee at the County’s solid waste facilities and *ad valorem* taxes has placed a disproportionate burden on the taxpayers of Sullivan County.

G. The County Legislature has determined that attempting to fund the entire cost of the County's solid waste services and facilities by a tipping fee alone would be unworkable and unacceptable.

H. Therefore, the Legislature finds that the most equitable method of funding the cost of the County's solid waste services is to charge a rationally based Solid Waste User Fee to the owners of all parcels of improved property within the County.

**§ 171-27 Purposes.**

This Article VIII of Chapter 171 of Part II of the Code of Sullivan County 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 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 utilized by each class of users.

**§ 171-28 Definitions and General Provisions.**

In addition to the definitions set forth in Article II of this Chapter, the following terms shall have the following meanings. In the event of a discrepancy in the definition of a term defined in both Article II and in this Article VIII the definition in this Article VIII shall take precedence.

A. *Legislature* means the County Legislature of the County of Sullivan.

B. *Fees Status Date* shall mean November 15th for each succeeding fiscal year (ex: November 15, 2009 for fiscal year 2010).

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 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 of units assigned to each parcel of real property pursuant to §171-29 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 Legislature pursuant to §171-29 below, as the annual Solid Waste User Fee charged for one Billing Unit.

I. *Rate Schedule* refers to the schedule adopted by the Legislature pursuant to Section § 171-29 below establishing classes and formulas for determining Billing Units for parcels of improved real property.

J. *Solid Waste User Fee or Solid Waste Fee or User Fee* means an annual user fee for use of any portion of the County's Solid Management Facility which fee is to be determined in accordance with the provisions of this Article VIII and which fee is to be billed to and paid by the owners of each and every parcel of improved real property within the County.

K. *Solid Waste User Fee Grievance Committee* shall mean a committee comprised of the Deputy County Manager/Commissioner of the Division of Management and Budget, Treasurer and Commissioner of the Division of Public Works or their designees.

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.

#### **§ 171-29 Establishment of Annual Solid Waste Fee.**

A. The Solid Waste User Fee shall be charged to owners of improved real property located within the County since the owners and users of such property are deemed to generate solid waste or recyclable materials either directly or indirectly and are therefore users of all or a portion of the County's Solid Waste Management Facility and services.

B. The Solid Waste User Fee shall be an annual fee covering the period from January 1 through December 31 of each calendar year.

C. The Legislature shall establish by resolution a Rate Schedule setting forth classifications or formulas for determining the Billing Units assigned to all parcels of improved property based upon the authorized use of real property.

D. The classification of parcels and the formulas for determining the Billing Units assigned to each class shall be based on the level of services available to such class, which has been or will be determined by the Legislature in its sole discretion.

E. Information regarding the use of each parcel of improved property and measurements of improvements shall be based upon the assessment records for each property together with such other data as may be deemed necessary to properly characterize and classify each parcel of improved parcel and to determine the number of Billing Units.

F. The Legislature may change the Rate Schedule from time to time by resolution.

G. On or before December 1st of each year, the Legislature 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.

H. The annual Solid Waste User Fee shall be charged to the owner of each parcel of improved real property based upon the classification of the parcel as of the Fee Status Date, the number of Billing Units assigned to such parcel (as set forth in § 171-30 below) multiplied by the Unit Charge established for the year.

#### **§ 171-30 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, as recorded by the assessor, of the parcel as of the Fee Status Date.

B. The Director of Real Property Tax, or such other County official or entity as may be designated by the County Manager, 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 County 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 Solid Waste User Fee Roll shall be completed on or before November 15. A copy shall be filed in the Office of the County Legislature and the Treasurer's office. The Clerk of the County Legislature shall forthwith cause a notice of such filing to be published once in the official newspapers of the County. The notice shall state that a tentative Solid Waste User Fee Roll containing solid waste Billing Units established for each parcel has been completed and that a copy has been filed and may be examined by any person during regular business hours at the Office of the County Legislature and the Office of the County Treasurer.

#### **§ 171-31 Billing and Collecting Fees.**

A. An invoice for the annual Solid Waste User Fee shall be sent to each owner of

real property as a separate line item on the County tax bill.

B. The Solid Waste User 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. The Solid Waste User Fee shall be collected by the local collectors at the same time and in the same manner as their collection of local taxes. County Law §§226-b, 266; Real Property Tax Law §1510.

C. All annual Solid Waste User Fees shall constitute a debt and personal obligation of the owner of the parcel of real property.

D. Any portion of a Solid Waste User Fee which shall remain unpaid after January 31<sup>st</sup> shall bear interest at the same rate and in the same manner as unpaid real property taxes.

### **§ 171-32 Challenges**

Challenges to any Solid Waste User Fee may be made only as follows:

A. Any challenge to the data on the assessment rolls used in compiling the Solid Waste User Fee Roll shall be brought before the assessing authority at the same time and in the same manner as any other challenge with respect to an assessment of real property. In the event of any correction or adjustment resulting from such a challenge the Town and County shall remediate such error in the same manner as the correction of an error with respect to real property taxes.

B. Any challenge to the determination of classification or Billing Units by the County or any challenge to the imposition of the Solid Waste User Fee on a parcel of improved property may only be brought as follows:

i The property owner shall first have paid the subject Solid Waste User Fee.

ii The challenge provided for herein shall constitute to sole and exclusive remedy with respect to any claim that the determination of classification or Billing Units by the County was improper or any claim that the imposition of the Solid Waste User fee on a parcel of improved property was unlawful or improper.

iii The challenge shall be brought within six months of the payment of the Solid Waste User Fee.

iv The Challenge shall be brought before the County's Solid Waste User Fee Grievance Committee whose determination shall be the final. Such final determination shall be subject to a judicial review provided such petition to commence such judicial review is filed and served within one hundred and twenty (120) days, as provided in Article 78 of the Civil Practice Law and Rules, of the date on which the challenger is served with the determination of the Committee.

iv In the event the Solid Waste User Fee Committee shall grant a challenge or grievance the property owner shall be granted a credit or refund, in the amount determined by said Committee.

**§ 171-33 Delinquent Fees.**

A. Any portion of a Solid Waste User Fee which shall remain unpaid on October 31st of any year shall constitute a lien on such property.

B. The County shall be entitled to commence a civil action to foreclose upon any lien upon property in the same manner and to the same extent as its ability to foreclose upon a lien for the non-payment of real property taxes, or accordance with any other provision of law or collect any amount due to it.

C. Any unpaid Solid Waste User Fee shall be subject to a two (2) year redemption period which period shall commence on January 1<sup>st</sup> when such unpaid fee first became a lien on the property.

**§ 171-34 Severability.**

If any clause, sentence, paragraph, section or part of this Article 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 and that rest and remainder of this Article shall be given the fullest extent possible, consistent with law and consistent with the intent of this Article as determined from the content of the entire Article.

**§ 171-35 Effective Date.**

The provisions of this Article VIII of this Chapter 171 of the Sullivan County Code and of this Local Law amending Local Law 1 of 1992 shall be effective immediately upon the filing of a copy with the Secretary of State.