

**PROVIDING FOR THE DISPOSAL OF SOLID WASTE
IN ALPENA COUNTY**

**AN ORDINANCE to restrict disposal of refuse generated within the
County of Alpena;**

WHEREAS, the State of Michigan has, through Act 451, Public Acts of Michigan, 1994, mandated that cities, townships, villages, and counties shall assure that all Solid Waste is delivered to licensed solid waste disposal areas or otherwise legally disposed of; and

WHEREAS, Alpena County has an approved solid waste management plan as required by Act 451; and

WHEREAS, the County, in order to comply with the mandate of Act 451 and the provisions of the Plan, and to secure the health, safety, and general welfare of citizens of the County, has joined with certain municipalities located outside the County to form the Montmorency-Oscoda Landfill Committee for the purpose of, among other things, providing the landfill for the use of municipalities forming the landfill and their citizens; and

WHEREAS, the member local units of governments who have formed the Landfill have by resolution agreed that a County Ordinance providing for the disposal of solid waste at the Montmorency-Oscoda Landfill is desirable; and

WHEREAS, it is the belief of the County that the operation of the Montmorency-Oscoda Landfill and handling of wastes generated within the County by the Montmorency-Alpena landfill is in the best interests of the citizens of Alpena County.

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE PEOPLE OF THE
COUNTY:**

Section 1. Definitions:

"Committee" means the Montmorency-Oscoda Landfill Committee or its successors or assigns.

"County" means the County of Alpena.

"Montmorency-Oscoda Landfill" means the solid waste processing facility/sanitary landfill located in the county of Montmorency; and owned by the counties of Montmorency and Oscoda; and operated by Montmorency-Oscoda Landfill Committee.

§ 12.530. Damage to livestock or poultry; remedy; complaint, proceedings before township supervisor or trustee; destruction of dog; liability for damages and costs.

Sec. 20. If a person sustains any loss or damage to livestock or poultry that is caused by dogs, or if the livestock of a person is necessarily destroyed because of having been bitten by a dog, the person or his or her agent or attorney may complain to the township supervisor or a township officer or other qualified person designated by the township board of the township in which the damage occurred. The complaint shall be in writing, signed by the person making it, and shall state when, where, what, and how much damage was done, and, if known, by whose dog or dogs. The township supervisor or a township officer or other qualified person designated by the township board shall at once examine the place where the alleged damage was sustained and the livestock or poultry injured or killed, if practicable. He or she shall also examine under oath, or affirmation, any witness called. After making diligent inquiry in relation to the claim, the township supervisor or a township officer or other person designated by the township board shall determine whether damage has been sustained and the amount of that damage, and, if possible, who was the owner of the dog or dogs that did the damage. If during the course of the proceedings the owner of the dog causing the loss or damage to the livestock becomes known, the township supervisor or a township officer or other person designated by the township board shall request the district court judge to immediately issue a summons against the owner commanding him or her to appear before the township supervisor or township officer or other person designated by the township board and show cause why the dog should not be killed. The summons may be served anyplace within the county in which the damage occurred, and shall be made returnable not less than 2 nor more than 6 days from the date stated in the summons and shall be served at least 2 days before the time of appearance mentioned in the summons. Upon the return day fixed in the summons the township supervisor or township officer or other person designated by the township board shall proceed to determine whether the loss or damage to the livestock was caused by the dog, and if so he or she shall immediately notify the sheriff or the animal control officer of the county of that fact and upon notification the sheriff or the animal control officer shall kill the dog wherever found. Any owner or keeper of the dog or dogs shall be liable to the county in a civil action for all damages and costs paid by the county on any claim as provided in this section.

(MCL § 287.280.)

History:

Pub Acts 1919, No. 339, § 20, eff August 14, 1919; amended by Pub Acts 1937, No. 47, imd eff May 18, 1937; 1968, No. 38, imd eff May 21, 1968, by § 2, eff January 1, 1969; 1972, No. 349, imd eff January 9, 1973; 1989, No. 45, imd eff June 12, 1989.

Prior codification:

GT '90 § 5001

Cross references:

Killing dogs molesting wildlife, § 12.528.

Trespassing dogs, § 12.529.

Liability for illegal killing of licensed dog, § 12.538.

Common-law liability of owner of dog not affected, § 12.539.

Callaghan's Michigan Digest references:

Animals, §§ 13 et seq.

Michigan Civ Jur references:

Animals § 34.

CASE NOTES

Prior act, as to the custody of dogs and licensing thereof, did not violate Const 1908, art II, § 16, as to due process of law, because the act placed the duty of passing upon claims for sheep killed upon a justice of the peace, such duty under an earlier act being placed on the township board. *Fremont Canning Co. v Waters* (1920) 209 Mich 178, 176 NW 577.

The term "other domestic animal," used in CL '97, § 5593, giving double damages in reference to animals killed by dogs, included turkeys. *Holcomb v Van Zylen* (1913) 174 Mich 274, 140 NW 521.

Unless the legislature amends the dog law to designate a township officer to exercise the power of determination of damages to be paid to the owner of livestock damaged by dogs, the county board of commissioners may not reimburse the owner of livestock for damages caused by dogs. Op Atty Gen, February 15, 1980, No. 5654.

No member of the executive or legislative branch of a township government may exercise powers of the justice of the peace conferred by the dog law. Op Atty Gen, February 15, 1980, No. 5654.

§ 12.531. Report of township supervisor to county board of commissioners.

Sec. 21. If after making the examination required in section 20, the township supervisor or other person designated by the township board has determined that damage has been sustained by the complainant, the township supervisor or other person designated by the township board, upon payment to him or her of his or her costs up to that time by the complainant, shall deliver a report of the examination and all papers relating to the case to the county board of commissioners of the county in which the loss was sustained. The report shall be filed in the office of the county board of commissioners. If the complainant has not paid the costs, the township supervisor or other person designated by the township board shall state that fact in the report and the amount of the unpaid costs.

(MCL § 287.281.)

History:

Pub Acts 1919, No. 339, § 21, eff August 14, 1919; amended by Pub Acts 1980, No. 223, imd eff July 18, 1980.

Statutory references:

Section 20, above referred to, is § 12.530.

CASE NOTES

No member of the executive or legislative branch of a township government may exercise powers of the justice of the peace conferred by the dog law. Op Atty Gen, February 15, 1980, No. 5654.

Unless the legislature amends the dog law to designate a township officer to

exercise the power of determination of damages to be paid to the owner of livestock damaged by dogs, the county board of commissioners may not reimburse the owner of livestock for damages caused by dogs. Op Atty Gen, February 15, 1980, No. 5654.

§ 12.532. Fees of justice of peace, included in damages.

Sec. 22. Justices of the peace, for the services rendered under this act, shall receive \$4.00 for each case, and 10 cents per mile for each mile traveled, to be paid by the claimant in each case. In all cases where damages are awarded, the fees paid by claimants shall be included in the amount of such damages.

(MCL § 287.282.)

History:

Pub Acts 1919, No. 339, § 22, eff August 14, 1919; amended by Pub Acts 1958, No. 26, eff September 13, 1958.

Prior codification:
CL '29, § 5266

§ 12.533. Damages, payment by county, method, amount.

Sec. 23. (1) When the county board of commissioners of the county receives a report of the township supervisor or other person designated by the township board pursuant to section 21, if it appears from the report that a certain amount of damage has been sustained by the claimant, the county board of commissioners shall immediately draw their order on the treasurer of the county in favor of the claimant for the amount of loss or damage which the claimant has sustained, together with all necessary and proper costs incurred. If the claim filed with the board appears from the report filed to be illegal or unjust, the board may make an investigation of the case and make its award accordingly.

(2) An amount awarded pursuant to this section shall be paid by the county out of its general fund. A payment shall not be made for any item which has already been paid by the owner of the dog or dogs doing the injury. If a payment is made by the county for any livestock or poultry bitten by a dog or dogs, the payment shall not exceed the amount allowed by the county board of commissioners.

(MCL § 287.283.)

History:

Pub Acts 1919, No. 339, § 23, eff August 14, 1919; amended by Pub Acts 1925, No. 31, eff August 27, 1925; 1927, No. 52, eff September 5, 1927; 1929, No. 131, eff August 28, 1929; 1931, No. 286, eff September 18, 1931; 1945, No. 233, eff September 6, 1945; 1980, No. 223, and eff July 18, 1980.

Statutory references:

Section 21, above referred to, is § 12.531.

Cross references:

Fund for payment of damages by county, § 12.516.

CASE NOTES

The fund created by Pub Acts 1917, No. 347, as to licensing dogs, was for the sole benefit of sheep owners, and did not belong to townships as township funds; wherefore a township had no vested right to such fund, and the statute relating to the fund could be changed or modified by the legislature. Fremont

Canning Co. v Waters (1920) 209 Mich 178, 176 NW 577.

Board of supervisors may not refuse to pay for damage done to livestock by dogs because of failure of supervisors to enforce collection of dog license fees. Op Atty Gen, 1941-1942, p 454, No. 22187.

§ 12.534. Duty of county auditors with respect to claims for damages; report by justices of peace; payment out of county general fund.

Sec. 24. In counties having a board of county auditors, such board shall receive, audit and determine all claims for damages under this act and when such claims are found to be legal and just said board of county auditors shall order their payment out of the general fund of the county. Justices of the peace in such counties shall deliver their report of investigation under this act to such board of county auditors.

(MCL § 287.284.)

History:

Pub Acts 1919, No. 339, § 24, eff August 14, 1919.

Prior codification:
CL '29, § 5268

§ 12.535. Saving clause; disposition of dog fund; expense of dog department in cities, payment.

Sec. 25. Any valid claims for loss or damage to live stock which have accrued under any general or local laws, prior to the taking effect of this act, shall not abate by reason of the repeal of such laws by the operation of this act, but all such claims, and all claims arising under this act and all expense incurred in any county in enforcing the provisions of this act shall be paid out of the general fund of the county. At the time this act takes effect, all moneys then in the "dog fund" in the hands of township or city treasurers, derived from the taxation of dogs under existing laws, shall be turned into the county general fund: Provided, In all cities having a well regulated dog department, the reasonable expense of maintaining the same, shall be borne by said county, duly audited by the board of supervisors, and in any county having a board of county auditors, said board of county auditors shall audit said reasonable bills, to be paid out of the general fund of the county.

(MCL § 287.285.)

History:

Pub Acts 1919, No. 339, § 25, eff August 14, 1919.

Prior codification:
CL '29, § 5269

"Department" means Michigan Department of Environmental Quality.

"Effective Date" means the effective date of this Ordinance.

"Hazardous Waste" means hazardous waste as defined in Act No. 451 of the Public Acts of Michigan, 1994, as amended from time to time, and as identified in administrative rules promulgated from time to time pursuant to said Act by the Director of the Department.

"Municipal Waste" means street cleaning, municipal sludges, demolished building material, trees, brush, leaves, stumps, asphalt, concrete, industrial ash from municipal facilities and other inert materials collected by employees or agents of a municipality.

"Person" means any individual, proprietorship, firm, public or private corporation, partnership, trust, public or private agency or any other entity, or group of such persons.

"Site-Separated Materials" means recyclable materials (including, but not limited to, bottles, cans, newspaper, corrugated containers, grass, leaves, brush, yard trimmings, and metals) that are separated from solid waste after collection from a site of generation by a waste hauler or by the operators of the Montmorency-Oscoda Landfill to which it is delivered.

"Solid Waste" means garbage, rubbish, ashes, incinerator ash, incinerator residue, and industrial sludges, solid commercial and solid industrial waste, and animal waste provided, however, that this definition shall not include hazardous waste, municipal waste, non-acceptable landfill items, site-separate materials, source separated materials, human body waste, liquid or other waste regulated by statute, ferrous or nonferrous scrap directed to a scrap metal processor or to a reuser of ferrous or nonferrous products, and slag or slag products directed to a slag processor or to a reuser of slag or slag products.

"Source-Separated Materials" means recyclable materials (including, but not limited to, bottles, cans, newspapers, plastics, corrugated containers, metals, grass, leaves, brush, and yard trimmings) that are separated from solid waste prior to the collection of solid waste from a site of generation by a waste hauler.

"Unacceptable Landfill Items" means materials detrimental to the operation of the Landfill, including but not limited to burning or smoldering materials or ash, tires, batteries, and cars.

Section 2. All Solid Waste generated in the County shall be disposed of frequently enough to protect the public health.

Section 3. After the Effective Date, it shall be unlawful for any person residing in Alpena County to dispose of Solid Waste, other than by delivering or causing the delivery of Solid Waste to the Montmorency-Oscoda Landfill. This Section shall not apply to Hazardous Waste, Unacceptable Landfill Items, waste generated by any person that is disposed of at its own sanitary landfill licensed pursuant to Act 451, Public Acts of Michigan, 1994, or waste which is permitted under state law or rules promulgated by the Department to be disposed of at the site of generation. Delivery of Hazardous Waste to the Montmorency-Oscoda Landfill shall be deemed a violation of this Ordinance.

Section 4. Upon a violation of any provision of this Ordinance, the County may seek criminal prosecution and may seek legal and/or equitable relief in a court of competent jurisdiction.

Section 5. Any person who shall violate a provision of this Ordinance shall be guilty of a misdemeanor, punishable by a fine not to exceed \$500.00, or by imprisonment not exceeding 90 days, or both such fine and imprisonment. Each day that a violation occurs or continues shall be deemed a separate offense.

Section 6. If any section, subsection, sentence, clause or phrase of within this Ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Commissioners of the County hereby declares that it would have passed this Ordinance, section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional. Future amendments to this Ordinance may exempt from the effect hereof types of Solid Waste or Solid Waste generators on the recommendation of the governing body of the Montmorency-Oscoda Landfill by category or classification of Solid Waste or Solid Waste generators.

Section 7. All Ordinances or parts of Ordinances in conflict with the provisions of this are hereby repealed.

Section 8. This Ordinance shall be effective upon inclusion in the Alpena County Solid Waste Management Plan of the Flow Control mechanisms contemplated by this Ordinance and publication once in a newspaper of general circulation in Alpena County and when Resolution #97-32 is effectuated.