



## INFORMATION MEMO

# City Solid Waste Management

*Understand city authority and requirements to regulate the collection and disposal of solid waste and the roles of state and county oversight. Read about city licensing authority and permitted assessments and fees. Learn about open and organized systems of solid waste collection, including their advantages and disadvantages. Includes a flowchart showing the process for adopting organized collection and links to model ordinance and resolution.*

### RELEVANT LINKS:

[Minn. Stat. § 412.221, subd. 22 \(3\)](#); [Minn. Stat. § 410.33](#). *Troje v. City Council of City of Hastings*, 310 Minn. 183, 245 N.W.2d 596 (1976).

[Minn. Stat. § 443.18](#); [Minn. Stat. § 410.01](#).

See [Minn. Stat. §§ 443.18-443.35](#) for more information about first class cities' authority and restrictions regarding solid waste management.

See Information Brief, [Minnesota Solid Waste History](#), Minnesota House of Representatives.

## I. Authority, oversight, and definitions

### A. Authority to regulate

All cities are authorized to provide for or regulate by ordinance the disposal of sewage, garbage, and other refuse. This broad grant of police power authorizes cities to regulate the collection and disposal of solid waste.

### B. Authority to acquire, construct, and operate solid waste facilities—first class cities

First class cities (Minneapolis, St. Paul, Duluth, and Rochester) are authorized:

- To acquire by purchase or condemnation lands on which to build plants for the destruction of garbage and other refuse.
- To purchase, build, operate, and maintain such plants for the destruction of garbage and other refuse.
- To provide for the collection of all such garbage or refuse and its delivery to destruction plants or other places.
- To pay and contract to pay for the same in such annual installments and at such a rate of interest on deferred payments as the city council determines.

Each of these actions must be authorized by at least a three-fourths vote of all members of the city council. First class cities have additional authority and restrictions regarding solid waste management.

### C. State oversight

Before the 1970s, open burning and open dumping were the most common forms of solid waste management.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

## RELEVANT LINKS:

[Minn. Stat. § 115A.46.](#)  
[MPCA Local Government Assistance Unit.](#)

See [Minn. Stat. ch. 115A.](#)

[Minn. Stat. § 115A.02.](#)

[Minn. Stat. § 115A.46.](#) [Minn. Stat. § 400.16.](#) [Minn. Stat. § 473.149.](#) [Minn. R. ch. 9215.](#)  
The MPCA maintains a database of county contacts for solid waste and recycling. For more information about recycling in your county, visit [Recycle More Minnesota's website.](#)

[Minn. Stat. § 115A.46 subd. 5.](#)

[Minn. Stat. § 473.149.](#) See [Metropolitan Solid Waste Management Policy Plan 2016-2036.](#)

Beginning in the 1970s, the Minnesota Legislature adopted a variety of waste management regulations, and gave the Minnesota Pollution Control Agency (MPCA) regulatory oversight over the management of solid waste and recycling.

The MPCA develops and enforces the state's solid waste management regulations. It also is responsible for approving the solid waste plans that counties must adopt. The MPCA has a Local Government Assistance Unit that offers a variety of tools to help counties, cities, and townships develop and support systems that recover resources and manage waste.

The Minnesota Legislature adopted the Waste Management Act in 1980. It establishes the following descending order of priority for waste management:

- Waste reduction and reuse.
- Waste recycling.
- Composting of source-separated compostable materials, including, but not limited to, yard waste and food waste.
- Resource recovery through mixed municipal solid waste composting or incineration.
- Land disposal that produces no measurable methane gas or that involves the retrieval of methane gas as a fuel for the production of energy to be used on-site or for sale.
- Land disposal that produces measurable methane and that does not involve the retrieval of methane gas as a fuel for the production of energy to be used on-site or for sale.

## D. County oversight

Minnesota counties have primary responsibility for solid waste management, including recycling. All counties are required to adopt a solid waste plan that must include waste reduction and recycling provisions, as well as provisions to minimize the amount of waste disposed of in landfills.

After the MPCA has approved a county's solid waste plan, a city located in that county may not enter into a binding agreement governing solid waste management activity or develop, or implement solid waste management activity (other than activity to reduce waste generation or reuse waste materials) that is inconsistent with the county's plan without the county's consent.

Metropolitan counties must develop solid waste management plans that are consistent with the most recent "metropolitan long-range policy plan."

**RELEVANT LINKS:**

[Minn. Stat. § 115A.03, subd. 21.](#)

[Minn. Stat. § 115A.03, subd. 31.](#) [Minn. Stat. § 116.06, subd. 22.](#)

[Minn. Stat. § 115A.951.](#)  
[Minn. Stat. § 115A.96.](#) [Minn. Stat. § 115A.03, subd. 17a.](#)  
[Minn. Stat. § 115A.9565.](#)  
[Minn. Stat. § 115A.931.](#)  
[Minn. Stat. § 115A.935.](#)  
[Minn. Stat. § 115A.932.](#)  
[Minn. Stat. § 115A.9155.](#)  
[Minn. Stat. § 115A.9157.](#)

## **E. Definitions**

### **1. Mixed municipal solid waste**

Mixed municipal solid waste is defined as “garbage, refuse, and other solid waste from residential, commercial, industrial, and community activities that the generator of the waste aggregates for collection.” Mixed municipal solid waste does not include “auto hulks, street sweepings, ash, construction debris, mining waste, sludges, tree and agricultural wastes, tires, lead acid batteries, motor and vehicle fluids and filters, and other materials collected, processed, and disposed of as separate waste streams.”

### **2. Solid waste**

Solid waste is defined as “garbage, refuse, sludge from a water supply treatment plant or air contaminant treatment facility, and other discarded waste materials and sludges, in solid, semisolid, liquid, or contained gaseous form, resulting from industrial, commercial, mining, and agricultural operations, and from community activities.” Solid waste does not include:

- Hazardous waste
- Animal waste used as fertilizer
- Earthen fill, boulders, rock
- Concrete diamond grinding and saw slurry associated with the construction, improvement, or repair of a road when deposited on the road project site in a manner that is in compliance with best management practices and rules of the agency
- Sewage sludge
- Solid or dissolved material in domestic sewage or other common pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents or discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended, dissolved materials in irrigation return flows
- Source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended

State law specifically prohibits certain items from being included in mixed municipal solid waste or in solid waste, including: telephone directories, major appliances, electronic products containing a cathode-ray tube, yard waste, tires, motor and vehicle fluids and filters, mercury or mercury-containing devices or products from which the mercury has not been removed for reuse or recycling, fluorescent tubes, and certain batteries.

## RELEVANT LINKS:

[Minn. Stat. § 115A.03, subd. 38.](#)

[Minn. Stat. § 115A.03, subd. 25a.](#)

[Minn. Stat. § 115A.03, subd. 32b.](#)

[Minn. Stat. § 115A.03, subd. 32a.](#) [Minn. Stat. § 115A.93.](#)

[Minn. Stat. § 115A.94.](#) See Section IV, *Solid waste and recycling collection*, for more information about organized collection.

### 3. Yard waste

Yard waste is defined as “garden wastes, leaves, lawn cuttings, weeds, shrub and tree waste, and prunings.”

### 4. Recyclable materials

Recyclable materials are defined as “materials that are separated from mixed municipal solid waste for the purpose of recycling or composting, including paper, glass, plastics, metals, automobile oil, batteries, source-separated compostable materials, and sole sourced waste streams that are managed through biodegradative processes.” Recyclable materials do not include refuse-derived fuel or other material that is destroyed by incineration.

### 5. Source-separated recyclable materials

Source-separated recyclable materials are defined as “recyclable materials, including commingled recyclable materials that are separated by the generator.”

### 6. Source-separated compostable materials

Source-separated compostable materials are defined as materials that:

- Are separated at the source by waste generators for the purpose of preparing them for use as compost.
- Are collected separately from mixed municipal solid waste, and are governed by the licensing provisions of section 115A.93.
- Are comprised of food wastes, fish and animal waste, plant materials, diapers, sanitary products, and paper that is not recyclable.
- Are delivered to a facility to undergo controlled microbial degradation to yield a humus-like product meeting the MPCA’s class I or class II, or equivalent, compost standards, and where process rejects do not exceed 15 percent by weight of the total material delivered to the facility.
- May be delivered to a transfer station, mixed municipal solid waste processing facility, or recycling facility only for the purposes of composting or transfer to a composting facility, unless the commissioner determines that no other person is willing to accept the materials.

### 7. Organized collection

Organized collection is defined as “a system for collecting solid waste in which a specified collector, or a member of an organization of collectors, is authorized to collect from a defined geographic service area or areas some or all of the solid waste that is released by generators for collection.”

**RELEVANT LINKS:**

[Minn. Stat. § 115A.94, subd. 5.](#) See Section IV, *Solid waste and recycling collection*, for more information about organized collection.

[Minn. Stat. § 115A.94, subd. 5.](#)

[Minn. Stat. § 473.811, subd. 5.](#) [Minn. Stat. § 473.121.](#)

[Minn. Stat. § 115A.941.](#)

## **8. Open collection**

Open collection is generally defined as a system for collecting solid waste or recyclable materials where individual residents and businesses are free to contract with any collector licensed to do business in the city.

## **II. City regulation and licensing**

### **A. Required regulation**

There are three situations where cities are required to regulate solid waste collection.

#### **1. County organized collection ordinance**

Any county can adopt an ordinance requiring cities or towns within its boundaries to organize collection of solid waste. If a city does not comply with the county's organized collection ordinance, the county can organize collection itself.

A county's organized collection ordinance—in addition to requiring solid waste collection—may also require the separation and separate collection of recyclable materials, specify the material to be separated, and require cities to meet any performance standards for source separation contained in the county's solid waste plan.

#### **2. Cities in the metropolitan area**

Cities in the metropolitan area must adopt an ordinance regulating the collection of solid waste within its boundaries. The metropolitan area includes the counties of Anoka, Carver, Dakota (excluding the city of Northfield), Hennepin (excluding the cities of Hanover and Rockford), Ramsey, Scott (excluding the city of New Prague), and Washington. If a city is located in a metropolitan county that has adopted a collection ordinance, the city must adopt either the county ordinance by reference or a stricter ordinance. If a city is located in a metropolitan county that has adopted a recyclable-separation ordinance, the ordinance applies in all cities within the county that have failed to meet the local abatement performance standards stated in the most recent annual county report.

#### **3. Cities with a population of 1,000 or more**

Any city, regardless of where it is located, with a population of 1,000 or more must ensure that every residential household and business in the city has solid waste collection service.

## RELEVANT LINKS:

[Minn. Stat. § 115A.941](#). See Section IV, *Solid waste and recycling collection*, for more information about organized collection.

[Minn. Stat. § 115A.941](#).

[Minn. Stat. § 115A.151](#).

[Minn. Stat. § 115A.93, subd. 1](#).

[Minn. Stat. § 115A.93, subd. 2](#). [Minn. Stat. § 115A.93, subd. 1\(a\)](#). *Troje v. City Council of City of Hastings*, 310 Minn. 183, 245 N.W.2d 596 (1976). The MPCA is currently working with Minnesota counties to receive a list of locally licensed collectors. For more information contact Peder Sandhei, Principal Planner, MPCA at 651-757-2688, 800-657-3864, or [peder.sandhei@state.mn.us](mailto:peder.sandhei@state.mn.us).

[Minn. Stat. § 115A.93, subd. 3](#).

To comply with this requirement, cities are authorized to organize solid waste collection, provide collection by city employees, or require by ordinance that every household and business has a contract for collection services. An ordinance with such a requirement must also provide for enforcement. Cities must follow specific procedural requirements before adopting organized collection of solid waste.

A city with a population of 1,000 or more may exempt a residential household or business from the requirement to have solid waste collection service if the household or business ensures that an environmentally sound alternative is used.

## B. Recycling required at city facilities

All statutory and home rule charter cities are required to ensure that facilities under their control, from which mixed municipal solid waste is collected, have containers for at least three recyclable materials, such as, but not limited to, paper, glass, plastic, and metal. Cities also must transfer all recyclable materials collected to a recycler.

## C. Licensing

### 1. Solid waste collectors

State law prohibits any person from collecting mixed municipal solid waste for hire without a license from the jurisdiction where that waste is collected.

Cities are authorized to license solid waste collectors. If a city licenses solid waste collectors, it must submit a list of licensed collectors to the MPCA. County boards are required to adopt by resolution the licensing authority of any city that does not license solid waste collectors. If a city acts as a licensing authority, it may impose requirements that are consistent with the county's solid waste policies. In addition, state law establishes several requirements that must be imposed for any license issued to a solid waste collector.

First, a license must require collectors to impose charges for collection of mixed municipal solid waste that increase with the volume or weight of the waste collected. For example, a solid waste collector could charge fees that increase with the increasing volume of solid waste generated by customers. Garbage carts of different sizes, measured by their volume in gallons, could be issued to customers who can decide what size garbage cart best suits their disposal needs.

## RELEVANT LINKS:

[Minn. Stat. § 115A.93, subd. 3.](#)

[Minn. Stat. § 115A.93, subd. 3\(a\).](#)

[Minn. Stat. § 115A.93, subd. 3.](#)

[Minn. Stat. § 115A.553, subd. 2. Minn. Stat. § 115A.93, subd. 1\(b\).](#)

[Minn. Stat. § 115A.46, subd. 5.](#)

[Orr v. City of Rochester, 193 Minn. 371, 258 N.W. 569 \(1935\).](#)

The commissioner of the MPCA may exempt a licensing authority from this requirement if the county in which the city is located has an approved solid waste plan that concludes that variable rate pricing is not appropriate for that jurisdiction because it is inconsistent with other incentives and mechanisms implemented that are more effective in attaining the goals of discouraging on-site disposal, littering, and illegal dumping. The commissioner may also exempt a collector from this requirement while revisions are being made to the county's solid waste plan if certain conditions are met. The exemption is only effective until the county solid waste plan is revised.

Second, a license that requires a pricing system based on volume instead of weight shall determine a base unit size for an average small quantity household generator of waste and establish, or require the licensee to establish, a multiple unit pricing system that ensures that amounts of waste generated in excess of the base unit amount are priced higher than the base unit price.

Third, a license shall prohibit collectors from imposing a greater charge on residents who recycle than on residents who do not.

## 2. Recycling collectors

Counties can require either county or municipal licenses for the collection of recyclable materials. A person may not collect recyclable materials for hire unless that person is licensed locally or is registered with the MPCA. Each county must ensure that materials separated for recycling are taken to markets for sale or to recyclable material processing centers. No county may prevent a person that generates or collects solid waste from delivering recyclable materials to a recycling facility of the generator's or collector's choice.

If a city acts as a licensing authority, it may impose requirements that are consistent with the county's recycling policies. A city can also impose requirements that are in addition to or different from the county's policies if the city's requirements are designed to reduce waste generation or promote the reuse of waste materials.

## 3. License fees

State law does not address the amount that cities can charge for licenses for collection of solid waste or recyclable materials. Generally, a license fee must be reasonable. It should not be viewed as a source of revenue and should be in an amount that is close to the direct and indirect costs in issuing the license and regulating the licensed activity.

## RELEVANT LINKS:

*Waste Systems Corp. v. County of Martin*, 985 F.2d 1381 (8th Cir. 1993). *C & A Carbone, Inc. v. Town of Clarkstown, New York*, 511 U.S. 383 (1994). *Ben Ohrleins and Sons and Daughter, Inc. v. Hennepin County*, 115 F.3d 1372 (8th Cir. 1997).

*City of Philadelphia v. New Jersey*, 437 U.S. 617 (1978). *United Haulers Ass'n, Inc. v. Oneida-Herkimer Solid Waste Management Auth.*, 550 U.S. 330 (2007).

Minn. Stat. §§ 115A.83-115A.86.

Minn. Stat. § 115A.83. Minn. Stat. § 115A.03, subds. 27 and 28.

Minn. Stat. § 115A.94, subd. 3. Minn. Stat. § 115A.86.

## D. Requiring use of specific waste facility

Some municipalities have adopted ordinances that regulate the flow of solid waste, for example, by designating where it must be taken for disposal. This is generally done as a tool to achieve solid waste management goals. Flow control ordinances may raise constitutional issues under the Commerce Clause of the United States Constitution if they interfere with the flow of interstate commerce.

Courts have recognized a distinction under the Commerce Clause that generally allows municipalities more authority to take actions affecting solid waste if they are acting as a “market participant” instead of as a government regulator. When a municipality is providing for or contracting for waste management services, it generally is thought to be acting as a market participant.

State law authorizes counties or sanitary districts to adopt a designation ordinance requiring that all solid waste generated within a specific geographic area must be delivered to a specific solid waste facility. A designation ordinance does not apply to the following materials:

- Materials separated from solid waste and recovered for reuse in their original form or for use in manufacturing processes.
- Materials that are processed at a resource recovery facility at the capacity in operation at the time that the designation plan is approved by the commissioner of the MPCA.
- Materials that are separated at a permitted transfer station located within the boundaries of the designating authority for the purpose of recycling the materials if either: (1) the transfer station was in operation on Jan. 1, 1991; or (2) the materials were not being separated for recycling at the designated facility at the time the transfer station began separation of the materials.
- Recyclable materials that are being recycled, and residuals from recycling if there is at least an 85 percent volume reduction in the solid waste processed at the recycling facility and the residuals are managed as separate waste streams.

If a city organizes collection, by contract or as a municipal service, it may include a requirement that all or any portion of the solid waste be delivered to a waste facility identified by the city. This requirement would not apply to recyclable materials and materials that are processed at a resource recovery facility at the capacity in operation at the time the requirement is imposed. In a district or county where a resource recovery facility has been designated by ordinance, organized collection must conform to the designation ordinance’s requirements.

## RELEVANT LINKS:

[Minn. Stat. § 473.813](#). [Minn. Stat. § 473.121](#). LMCIT staff can assist in reviewing city contracts, especially provisions related to insurance and liability. For more information, contact Chris Smith, Risk Management Attorney, at [csmith@lmc.org](mailto:csmith@lmc.org) or 651-281-1269.

[Minn. Stat. § 115A.93, subd. 5](#). [Minn. Stat. § 13.02, subds. 9, 12](#).

[Minn. Stat. § 443.015](#). See [Adopting Assessments for Unpaid Charges for Garbage Collection and Disposal Services](#), LMC Model Resolution, and [Providing for Assessment of Unpaid Charges for Garbage Collection and Disposal Services](#), LMC Model Ordinance.

[Minn. Stat. § 443.29](#).

[Minn. Stat. § 115A.921, subd. 1](#).

Cities in the metropolitan area have authority to directly negotiate and enter into contracts—for a term not to exceed 30 years—for the delivery of solid waste to a waste facility, and the processing of solid waste. Contracts made by direct negotiations shall be approved by resolution. Before a city in the metropolitan area enters into a contract for a period of more than five years, it must submit the proposed contract and a description of the proposed activities under the contract to the commissioner of the MPCA for review and approval.

## E. Customer lists

Customer lists that solid waste collectors provide to cities are private data on individuals, or nonpublic data with regard to data not on individuals, under the Minnesota Government Data Practices Act.

## III. City assessments and fees

### A. Assessments for unpaid services

Any statutory city or city of the fourth class that provides, by contract or otherwise, for garbage collection and disposal may by ordinance require the owners of all property served to pay the proportionate cost of the service to their properties. The city council may annually levy an assessment equal to the unpaid cost as of Sept. 1 of each year against each lot or parcel of land. The assessment may include a penalty not to exceed 10 percent of the unpaid amount, and shall bear interest not exceeding 6 percent per year. Such assessments shall be certified to the county auditor and shall be collected and remitted to the city treasurer in the same manner as assessments for local improvements.

First class cities (Minneapolis, St. Paul, Duluth, and Rochester) have additional authority to collect unpaid charges for rubbish disposal in a civil action, or to assess them against the property receiving the service and collect them as other taxes are collected.

### B. City fees

#### 1. Operators of disposal facilities

A city may charge a fee that cannot exceed \$1 per cubic yard of waste, or its equivalent, on operators of facilities for the disposal of mixed municipal solid waste located in the city. The fees must be credited to the city's general fund. Revenue produced by 25 cents of the fee must be used only for purposes of landfill abatement or for mitigating and compensating for the local risks, costs, and other adverse effects of the facilities.

**RELEVANT LINKS:**

[Minn. Stat. § 115A.921, subd. 1.](#)

[Minn. Stat. § 115A.921, subd. 2.](#) [Minn. Stat. § 115A.03, subd. 7.](#)

[Minn. Stat. § 115A.921, subd. 2.](#)

[Minn. Stat. § 115A.929.](#)

[Minn. Stat. § 115A.03, subd. 36.](#)

[Minn. Stat. § 115A.919.](#)  
[Minn. Stat. § 115A.921.](#)

Revenue produced by the balance of the fee may be used for any general fund purpose.

There is an exemption from this fee for waste residue from recycling facilities at which recyclable materials are separated or processed for the purpose of recycling, or from energy and resource-recovery facilities at which solid waste is processed for the purpose of extracting, reducing, converting to energy, or otherwise separating and preparing solid waste for reuse if there is at least an 85 percent weight reduction in the solid waste processed.

A city also may charge a fee not to exceed 50 cents per cubic yard of waste, or its equivalent, on operators of facilities for the disposal of construction debris located within the city. The revenue from the fees must be credited to the city general fund. Two-thirds of the revenue must be used only for purposes of landfill abatement or for purposes of mitigating and compensating for the local risks, costs, and other adverse effects resulting from the facilities.

There is an exemption from 25 percent of this fee if the facility has implemented a recycling program that the county has approved, and 25 percent if the facility contains a liner and leachate collection system the MPCA has approved. Two-thirds of the revenue from this fee must offset any financial assurances required by the city for a construction debris facility. The maximum revenue that may be collected for this type of fee must be determined by multiplying the total permitted capacity of a facility by 15 cents per cubic yard. Once the maximum revenue has been collected for a facility, the fees in this subdivision may no longer be imposed.

## **2. Accounting for fees**

Cities that provide for solid waste management shall account for all revenue collected from waste management fees, together with interest earned on revenue from the fees, separately from other revenue collected by the city. Cities must report revenue collected from the fees and use of the revenue separately from other revenue and use of revenue in any required financial report or audit.

A city provides solid waste management and is subject to this requirement for a separate accounting and reporting if a city engages in any activities that are intended to affect or control the generation of waste, or engages in any activities that provide for or control the collection, processing, and disposal of waste. State law defines waste management fees as:

- All fees, charges, and surcharges collected under sections 115A.919, 115A.921, and 115A.923 of the Minnesota Statutes.

## RELEVANT LINKS:

[Minn. Stat. § 115A.923.](#)  
For more information about these fees see Section III. B., *City Fees*. [Minn. Stat. § 115A.929.](#)

[Minn. Stat. § 115A.945.](#)

[Analysis of Waste Collection Service Arrangements](#), Minnesota Pollution Control Agency, June 2009.

[Minn. Stat. § 115A.94, subds. 1, 3.](#) See Section IV. D., *Procedural requirements for adopting organized collection*, for more information.

[Minn. Stat. § 115A.94, subd. 3.](#)

- All tipping fees collected at waste management facilities owned or operated by the city.
- All city charges for waste collection and management services.
- Any other fees, charges, or surcharges imposed on waste for the purpose of waste management, whether collected directly from generators, indirectly through property taxes, or as part of utility or other charges for city-provided services.

Any city that provides or pays for the costs of collection or disposal of solid waste must, through a billing or other system, make the prorated share of those costs for each solid waste generator visible and obvious to the generator.

## IV. Solid waste and recycling collection

### A. Types of collection systems—open collection and organized collection

The two main types of collection systems for solid waste and recycling are commonly referred to as “open collection” and “organized collection.” A 2009 study authorized by the MPCA estimated that the number of cities with open solid waste collection was between 65 to 80 percent, and the number of cities with organized solid waste collection was between 20 to 35 percent. The same study indicated that the number of cities with open recycling was estimated to be between 40 to 60 percent, and the number of cities with organized recycling was estimated to be between 50 to 60 percent.

Open collection is generally defined as a collection system where individual residents and businesses are free to contract with any collector licensed to do business in the city.

Organized collection is defined as a “system for collecting solid waste in which a specified collector, or a member of an organization of collectors, is authorized to collect from a defined geographic service area or areas some or all of the solid waste that is released by generators for collection.” A city must comply with certain procedural requirements in the organized collection statute before adopting organized collection of solid waste.

A city may organize collection as a municipal service where city employees collect solid waste from a defined geographic service area or areas. In the alternative, cities may organize collection by using one or more private collectors or an organization of collectors. The agreement with the private collectors may be made through an ordinance, franchise, license, negotiated or bid contract, or by other means.

## RELEVANT LINKS:

[Minn. Stat. § 471.345. Minn. Stat. § 412.311. \*Schwandt Sanitation of Paynesville v. City of Paynesville\*, 423 N.W.2d 59 \(Minn. Ct. App. 1988\).](#)

[Minn. Stat. § 115A.94, subd. 3. Minn. Stat. § 115A.86.](#)

[Minn. Stat. § 115A.94, subd. 3.](#)

[Minn. Stat. § 115A.94, subds. 1, 3. Minn. Stat. § 115A.03, subds. 25a, 31. Minn. Stat. § 116.06, subd. 22.](#)

[Waste Recovery Coop. of Minn. v. Cnty. of Hennepin](#), 475 N.W.2d 892 (Minn. Ct. App. 1991).

The competitive bidding requirements in state law do not apply to contracts for solid waste collection because a contract for these services does not meet the definition of a “contract” that is subject to the Uniform Municipal Contracting Law.

Organized collection accomplished by contract or as a municipal service may include a requirement that all or any portion of the solid waste—except recyclable materials and materials that are processed at a resource-recovery facility at the capacity in operation at the time the requirement is imposed—be delivered to a waste facility identified by the city. In a district or county where a resource-recovery facility has been designated by ordinance, organized collection must conform to the ordinance’s requirements.

Cities are prohibited from establishing or administering organized collection in a way that impairs recycling. Further, cities must exempt recyclable materials from organized collection upon a showing by the person who generates the recyclables or a collector of recyclables that the materials are or will be separated from mixed municipal solid waste by the generator, separately collected, and delivered for reuse in their original form or for use in a manufacturing process.

It is not absolutely clear whether a city that decides to enter into an agreement for the collection of recyclable materials, including source-separated compostable materials, with one collector or an organization of collectors is required to comply with the procedural requirements in the organized collection statute. The answer likely depends on whether the definition of “solid waste” referenced in the organized collection statute should be interpreted to include recyclable materials.

The MPCA has taken the position (while advising cities that they should consult their city attorneys) that recyclable materials, including source-separated compostable materials, are not subject to the organized collection statute because they are not a part of solid waste or mixed municipal solid waste once they have been separated out for separate collection and recycling.

The Minnesota Court of Appeals, in a published opinion, considered a similar issue of whether telephone directories collected for recycling were subject to a county’s designation ordinance requiring mixed municipal solid waste to be disposed of at a county-designated facility. The court of appeals concluded that the telephone directories did not meet the definition of mixed municipal solid waste or of solid waste because they were being collected for recycling in a “separate waste stream” and were not being “discarded” as solid waste.

## RELEVANT LINKS:

[Minn. Stat. § 115A.94, subd. 6.](#)

[Minn. Stat. § 115A.03, subd. 4.](#) [Minn. Stat. § 115A.94.](#)

[Jennissen v. City of Bloomington](#), 913 N.W.2d 456 (Minn. 2018).

[Analysis of Waste Collection Service Arrangements](#), Minnesota Pollution Control Agency, June 2009.

[Analysis of Waste Collection Service Arrangements](#), Minnesota Pollution Control Agency, June 2009.

If a city is considering entering into an agreement for the collection of recyclable materials with one collector or an organization of collectors, it should consult its city attorney to determine whether it must follow the procedural requirements in the organized collection statute.

## **B. Organized collection is generally optional**

The organized collection statute provides that the authority to organize the collection of solid waste is optional and is in addition to authority governing solid waste collection granted by other law. The statute also provides that a city may exercise any authority granted by any other law, including a home rule charter, to govern collection of solid waste. A city would only be required to organize collection if the county in which it is located has by ordinance required cities within its jurisdiction to organize collection.

The Waste Management Act defines cities as “statutory and home rule charter cities authorized to plan under sections 462.351 to 462.364.” Therefore, both statutory and home rule charter cities may adopt organized collection using the procedures outlined in the organized collection statute.

The Minnesota Supreme Court has held that the Waste Management Act does not preempt, under a field-occupation analysis, home rule charter cities from regulating the process for organizing the collection of solid waste. Instead, the Supreme Court concluded that the Act establishes the minimum procedural requirements that home rule charter cities must follow before adopting organized collection.

## **C. Open collection versus organized collection: pros and cons**

### **1. Open collection**

There are several frequently cited advantages of open collection:

- Residents have more choice and are free to select a solid waste collector based on their preference.
- There is a direct relationship between the solid waste collector and its customers.
- There are minimal administrative costs for cities.
- Smaller solid waste collectors are better able to enter the market in an open collection system by servicing a portion of city residents.

In contrast, there are several frequently cited disadvantages of open collection:

## RELEVANT LINKS:

[The Benefits of Organized Collection, Minnesota Pollution Control Agency, Feb. 2012. \*Analysis of Waste Collection Service Arrangements\*, Minnesota Pollution Control Agency, June 2009.](#)

[Analysis of Waste Collection Service Arrangements, Minnesota Pollution Control Agency, June 2009.](#)

[Minn. Stat. § 115A.94, 2013 Minn. Laws ch. 45. See Appendix A, Organized Collection Flowchart.](#)

- Open collection generally results in a more expensive monthly cost for residents.
- Multiple collectors means more truck traffic and the resulting negative side effects, including the potential for added street maintenance costs, and increased vehicle noise and emissions, fuel consumption, and vehicle accidents.
- There may be inconsistent charges for the same level of service in a city.
- Cities have reduced ability to manage solid waste collection.

## 2. Organized collection

There are several frequently cited advantages of organized collection:

- The price paid by households in an organized collection system is generally lower per month for similar service levels than in an open collection system due to increased efficiencies from serving every household or business in the community or on a particular route.
- Limiting the number of solid waste collectors allows cities to decrease the impacts of increased truck traffic, including the potential for added street maintenance costs, vehicle noise and emissions, fuel consumption, and vehicle accidents.
- Cities have greater ability to manage solid waste collection and can establish service requirements.
- Standardized service makes public education easier.
- Cities' ability to seek requests for proposals on a regular basis helps lower costs.

In contrast, there are several frequently cited disadvantages of organized collection:

- Households and businesses do not get to choose their collector.
- Cities have greater administrative involvement and costs.
- Small collectors have higher entry costs to get into the market and competitive opportunities are limited to contract openings.
- The statutory requirements for switching from open collection to organized collection are time consuming and can be difficult politically.

## D. Procedural requirements for adopting organized collection

There are several procedural steps a city must take before it is authorized to adopt organized collection of solid waste. The Minnesota Legislature adopted significant changes to the organized collection statute in 2013 that were designed to simplify the process for adopting organized collection.

## RELEVANT LINKS:

[Minn. Stat. § 115A.03, subd. 4.](#)  
[Minn. Stat. § 115A.94.](#)

[Jennissen v. City of Bloomington](#), 913 N.W.2d 456 (Minn. 2018).

[Minn. Stat. § 115A.94, subd. 4d.](#)  
[Minn. Stat. § 331A.03.](#)

[Minn. Stat. § 115A.94, subd. 4d.](#)  
[2018 Minn. Laws ch. 177, § 5.](#)

[2018 Minn. Laws ch. 177, § 6.](#)

Any city that has adopted organized collection as of May 1, 2013, is exempt from the new requirements.

The Waste Management Act defines cities as “statutory and home rule charter cities authorized to plan under sections 462.351 to 462.364.” Therefore, both statutory and home rule charter cities may adopt organized collection using the procedures outlined in the organized collection statute.

The Minnesota Supreme Court has held that the Waste Management Act does not preempt, under a field-occupation analysis, home rule charter cities from regulating the process for organizing the collection of solid waste. Instead, the Supreme Court concluded that the Act establishes the minimum procedural requirements that home rule charter cities must follow before adopting organized collection.

### **1. Notice to public and to licensed collectors**

A city with more than one licensed collector must first give notice to the public and to all licensed collectors that it is considering adopting organized collection. State law does not specify how notice should be provided. The League recommends providing both published notice and individual mailed notice to each licensed collector.

### **2. Exclusive negotiation period with licensed collectors**

After the city provides notice of its intent to consider adopting organized collection, it must provide a negotiation period that is exclusive between the city and all collectors licensed to operate in the city. Legislation that is effective on Jan. 1, 2019, clarifies that this exclusive negotiation period must be at least 60 days, but may be longer if the city chooses.

For any organized collection noticed on or after Jan. 1, 2019, before the exclusive meetings and negotiation, participating licensed collectors and elected officials must meet and confer regarding waste collection issues, including but not limited to road deterioration, public safety, pricing mechanisms, and contractual considerations unique to organized collection.

A city is not required to reach an agreement with the licensed collectors during this period. The purpose of the exclusive negotiation period is to allow the licensed collectors an opportunity to develop a proposal in which they, as members of an organization of collectors, will collect solid waste from designated sections of the city.

## RELEVANT LINKS:

[Minn. Stat. § 115A.94, subd. 4d.](#)

[Minn. Stat. § 115A.94, subd. 4d.](#)

[Minn. Stat. § 115A.94, subd. 4d.](#)

[Minn. Stat. § 115A.94, subd. 4c.](#)

[2018 Minn. Laws ch. 177, §§ 2, 5.](#)

LMCIT staff can assist in reviewing city contracts, especially provisions related to insurance and liability. For more information, contact Chris Smith, Risk Management Attorney, at [csmith@lmc.org](mailto:csmith@lmc.org) or 651-281-1269.

[Minn. Stat. § 115A.94 subd. 4a.](#) [Minn. Stat. ch. 13D.](#)

[2018 Minn. Laws ch. 177, § 2.](#)

[Minn. Stat. § 115A.94, subd. 4b.](#)

[2018 Minn. Laws, ch.177, § 3.](#)

The proposal must contain identified city priorities, including issues related to zone creation, traffic, safety, environmental performance, service provided, and price, and must reflect existing collectors maintaining their respective market share of business as determined by each hauler's average customer count during the six months before the beginning of the exclusive negotiation period.

If an existing collector opts to be excluded from the proposal, the city may allocate its customers proportionally based on market share to the participating collectors who choose to negotiate.

If an organized collection agreement is established as a result of the exclusive negotiation period, the initial agreement must be in effect for a period of three to seven years. For any organized collection noticed on or after Jan. 1, 2019, the initial agreement must be in effect for seven years. Upon execution of an agreement between the participating licensed collectors and the city, the city shall establish organized collection through appropriate local controls. The city does not need to establish an organized collections options committee or a solid waste collection options committee (2018 legislation, effective Jan. 1, 2019, changes the name of this committee) if it reaches an agreement with the licensed haulers during the exclusive negotiation period; however, the city must first provide public notice and a public hearing before officially deciding to implement organized collection. Organized collection may begin no sooner than six months after the effective date of the city's decision to implement organized collection.

### **3. Organized collection options committee or solid waste collection options committee**

If a city does not reach an agreement with its licensed collectors during the exclusive negotiation period, it can form by resolution an "organized collection options committee" to study various methods of organized collection and to issue a report. For any organized collection noticed on or after Jan. 1, 2019, the name of such a committee shall be the "solid waste collection options committee."

The city council appoints the committee members. The committee is subject to the open meeting law and has several mandatory duties.

First, the committee shall determine which methods of solid waste collection to examine, which must include at least two methods of organized collection: (1) a system in which a single collector collects solid waste from all sections of the city; and (2) a system in which multiple collectors, either singly or as members of an organization of collectors, collect solid waste from different sections of the city.

**RELEVANT LINKS:**

[Minn. Stat. § 115A.94, subd. 4b.](#)

[2018 Minn. Laws ch. 177, § 3.](#)

[Minn. Stat. § 115A.94, subd. 4b.](#)

[Minn. Stat. § 115A.94, subd. 4b.](#)

[Minn. Stat. § 115A.94, subd. 4b.](#)

[Minn. Stat. § 115A.94, subd. 4c.](#)

[Minn. Stat. § 115A.94, subd. 4c.](#)  
[Minn. Stat. § 115A.94, subd. 3.](#)

For any organized collection noticed on or after Jan. 1, 2019, the committee must also examine a third method of solid waste collection: the existing system of collection.

Second, the committee shall establish a list of criteria on which the organized collection methods selected for examination will be evaluated, which may include: costs to residential subscribers, miles driven by collection vehicles on city streets and alleys, initial and operating costs of implementing the solid waste collection system, providing incentives for waste reduction, impacts on solid waste collectors, and other physical, economic, fiscal, social, environmental, and aesthetic impacts. For any organized collection noticed on or after Jan. 1, 2019, the criteria may also include the impacts on residential subscribers' ability to choose a provider of solid waste service based on the desired level of service, costs and any other factors, the impact of miles driven on city streets and alleys and the incremental impact of miles driven by collection vehicles.

Third, the committee shall collect information regarding the operation and efficacy of existing methods of organized collection in other cities and towns.

Fourth, the committee shall seek input from, at a minimum:

- The city council
- The city official responsible for solid waste issues
- Persons currently licensed to operate solid waste collection and recycling services in the city
- City residents who currently pay for residential solid waste collection services

Finally, the committee must issue a report on its research, findings, and any recommendations to the city council.

#### **4. Public notice and public hearing**

A city council shall consider the report and recommendations of the committee. A city must provide public notice and hold at least one public hearing before deciding to implement organized collection.

#### **5. Implementation**

A city can begin organized collection no sooner than six months after the effective date of the city's decision to implement organized collection. A city may organize collection as a municipal service where city employees collect solid waste from a defined geographic service area or areas. In the alternative, cities may organize collection by using one or more private solid waste collectors or an organization of collectors.

**RELEVANT LINKS:**

[Minn. Stat. § 604.02.](#)  
[2018 Minn. Laws ch. 177, § 7.](#)

An agreement with private collectors may be made through an ordinance, franchise, license, negotiated or bid contract, or by other means.

## **6. Anticompetitive conduct**

A city that organizes collection is authorized to engage in anticompetitive conduct to the extent necessary to plan and implement its chosen organized collection system, and is immune from liability under state laws relating to antitrust, restraint of trade, and unfair practices, and other regulation of trade or commerce.

## **7. Joint liability limited**

For any organized collection noticed on or after Jan. 1, 2019, any resulting organized collection agreement must not obligate a participating licensed collector for damages to third parties solely caused by another participating licensed collector, notwithstanding section 604.02 of the Minnesota Statutes. The organized collection agreement may include joint obligations for actions that are undertaken by all the participating collectors.

## **V. Conclusion**

Cities have broad authority to regulate the collection and disposal of solid waste. Cities exercise this authority subject to state and county oversight. Cities should work closely with their city attorneys when exercising this authority by requiring licenses, imposing fees and assessments, entering into contracts, and adopting ordinances. Cities must comply with procedural requirements in the organized collection statute before they may adopt organized collection of solid waste.

# Appendix A: Organized Collection Flowchart

