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## **SUPREME COURT OF THE UNITED STATES**

No. 92-1402

**C & A CARBONE, INC., ET AL., PETITIONERS v. TOWN OF CLARKSTOWN, NEW YORK**  
ON WRIT OF CERTIORARI TO THE APPELLATE DIVISION,  
SUPREME COURT OF NEW YORK, SECOND JUDICIAL DEPT.  
[May 16, 1994]

JUSTICE KENNEDY delivered the opinion of the Court.

As solid waste output continues apace and landfill capacity becomes more costly and scarce, state and local governments are expending significant resources to develop trash control systems that are efficient, lawful, and protective of the environment. The difficulty of their task is evident from the number of recent cases that we have heard involving waste transfer and treatment. See *Philadelphia v. New Jersey*, 437 U. S. 617 (1978); *Chemical Waste Management, Inc. v. Hunt*, 504 U. S. \_\_\_ (1992); *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dept. of Natural Resources*, 504 U. S. \_\_\_ (1992); *Oregon Waste Systems, Inc. v. Department of Environmental Quality of Oregon*, 511 U. S. \_\_\_ (1994). The case decided today, while perhaps a small new chapter in that course of decisions, rests nevertheless upon well-settled principles of our Commerce Clause jurisprudence.

We consider a so-called flow control ordinance, which requires all solid waste to be processed at a designated transfer station before leaving the municipality. The avowed purpose of the ordinance is to retain the processing fees charged at the transfer station to amortize the cost of the facility. Because it attains this goal by depriving competitors, including

out-of-state firms, of access to a local market, we hold that the flow control ordinance violates the Commerce Clause.

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The town of Clarkstown, New York, lies in the lower Hudson River valley, just upstream from the Tappan Zee Bridge and by highway minutes from New Jersey. Within the town limits are the village of Nyack and the hamlet of West Nyack. In August 1989, Clarkstown entered into a consent decree with the New York State Department of Environmental Conservation. The town agreed to close its landfill located on Route 303 in West Nyack and build a new solid waste transfer station on the same site. The station would receive bulk solid waste and separate recyclable from nonrecyclable items. Recyclable waste would be baled for shipment to a recycling facility; nonrecyclable waste, to a suitable landfill or incinerator.

The cost of building the transfer station was estimated at \$1.4 million. A local private contractor agreed to construct the facility and operate it for five years, after which the town would buy it for one dollar. During those five years, the town guaranteed a minimum waste flow of 120,000 tons per year, for which the contractor could charge the hauler a so-called tipping fee of \$81 per ton. If the station received less than 120,000 tons in a year, the town promised to make up the tipping fee deficit. The object of this arrangement was to amortize the cost of the transfer station: The town would finance its new facility with the income generated by the tipping fees.

The problem, of course, was how to meet the yearly guarantee. This difficulty was compounded by the fact that the tipping fee of \$81 per ton exceeded the disposal cost of unsorted solid waste on the private market. The solution the town adopted was the flow control ordinance here in question, Local Laws 1990, No. 9 of the Town of Clarkstown (full text in Appendix). The ordinance requires all nonhazardous solid waste within the town to be deposited at the Route 303 transfer station. *Id.* §3.C (waste generated

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within the town), §5.A (waste generated outside and brought in). Noncompliance is punishable by as much as a \$1,000 fine and up to 15 days in jail. §7.

The petitioners in this case are C & A Carbone, Inc., a company engaged in the processing of solid waste, and various related companies or persons, all of whom we designate Carbone. Carbone operates a recycling center in Clarkstown, where it receives bulk solid waste, sorts and bales it, and then ships it to other processing facilities—much as occurs at the town's new transfer station. While the flow control ordinance permits recyclers like Carbone to continue receiving solid waste, §3.C, it requires them to bring the nonrecyclable residue from that waste to the Route 303 station. It thus forbids Carbone to ship the nonrecyclable waste itself, and it requires Carbone to pay a tipping fee on trash that Carbone has already sorted.

In March 1991, a tractor-trailer containing 23 bales of solid waste struck an overpass on the Palisades Interstate Parkway. When the police investigated the accident, they discovered the truck was carrying household waste from Carbone's Clarkstown plant to an Indiana landfill. The Clarkstown police put Carbone's plant under surveillance and in the next few days seized six more tractor-trailers leaving the facility. The trucks also contained nonrecyclable waste, originating both within and without the town, and destined for disposal sites in Illinois, Indiana, West Virginia, and Florida.

The town of Clarkstown sued petitioners in New York Supreme Court, Rockland County, seeking an injunction requiring Carbone to ship all nonrecyclable waste to the Route 303 transfer station. Petitioners responded by suing in United States District Court to enjoin the flow control ordinance. On July 11, the federal court granted Carbone's injunction, finding a sufficient likelihood that the ordinance violated the Commerce Clause of the United States Constitution.

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Four days later, the New York court granted summary judgment to respondent. The court declared the flow control ordinance constitutional and enjoined petitioners to comply with it. The federal court then dissolved its injunction.

The Appellate Division affirmed. 182 App. Div. 2d 213, 587 N. Y. S. 2d 681 (2d Dept. 1992). The court found that the ordinance did not discriminate against interstate commerce because it “applies evenhandedly to all solid waste processed within the Town, regardless of point of origin.” *Id.*, at 686. The New York Court of Appeals denied petitioners' motion for leave to appeal. 80 N. Y. 2d 760, 605 N. E. 2d 874 (1992). We granted certiorari, 508 U. S. \_\_\_ (1993), and now reverse.

At the outset we confirm that the flow control ordinance does regulate interstate commerce, despite the town's position to the contrary. The town says that its ordinance reaches only waste within its jurisdiction and is in practical effect a quarantine: It prevents garbage from entering the stream of interstate commerce until it is made safe. This reasoning is premised, however, on an outdated and mistaken concept of what constitutes interstate commerce.

While the immediate effect of the ordinance is to direct local transport of solid waste to a designated site within the local jurisdiction, its economic effects are interstate in reach. The Carbone facility in Clarkstown receives and processes waste from places other than Clarkstown, including from out of State. By requiring Carbone to send the nonrecyclable portion of this waste to the Route 303 transfer station at an additional cost, the flow control ordinance drives up the cost for out-of-state interests to dispose of their solid waste. Furthermore, even as to waste originant in Clarkstown, the ordinance prevents

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everyone except the favored local operator from performing the initial processing step. The ordinance thus deprives out-of-state businesses of access to a local market. These economic effects are more than enough to bring the Clarkstown ordinance within the purview of the Commerce Clause. It is well settled that actions are within the domain of the Commerce Clause if they burden interstate commerce or impede its free flow. *NLRB v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 31 (1937).

The real question is whether the flow control ordinance is valid despite its undoubted effect on interstate commerce. For this inquiry, our case law yields two lines of analysis: first, whether the ordinance discriminates against interstate commerce, *Philadelphia*, 437 U. S., at 624; and second, whether the ordinance imposes a burden on interstate commerce that is “clearly excessive in relation to the putative local benefits,” *Pike v. Bruce Church, Inc.*, 397 U. S. 137, 142 (1970). As we find that the ordinance discriminates against interstate commerce, we need not resort to the *Pike* test.

The central rationale for the rule against discrimination is to prohibit state or municipal laws whose object is local economic protectionism, laws that would excite those jealousies and retaliatory measures the Constitution was designed to prevent. See *The Federalist* No. 22, pp. 143-145 (C. Rossiter ed. 1961) (A. Hamilton); Madison, *Vices of the Political System of the United States*, in 2 *Writings of James Madison* 362-363 (G. Hunt ed. 1901). We have interpreted the Commerce Clause to invalidate local laws that impose commercial barriers or discriminate against an article of commerce by reason of its origin or destination out of State. See, e.g., *Philadelphia*, *supra* (striking down New Jersey statute that prohibited the import of solid waste); *Hughes v. Oklahoma*, 441 U. S. 322 (1979) (striking down Oklahoma law that prohibited the export of natural

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minnows).

Clarkstown protests that its ordinance does not discriminate because it does not differentiate solid waste on the basis of its geographic origin. All solid waste, regardless of origin, must be processed at the designated transfer station before it leaves the town. Unlike the statute in *Philadelphia*, says the town, the ordinance erects no barrier to the import or export of any solid waste but requires only that the waste be channeled through the designated facility.

Our initial discussion of the effects of the ordinance on interstate commerce goes far toward refuting the town's contention that there is no discrimination in its regulatory scheme. The town's own arguments go the rest of the way. As the town itself points out, what makes garbage a profitable business is not its own worth but the fact that its possessor must pay to get rid of it. In other words, the article of commerce is not so much the solid waste itself, but rather the service of processing and disposing of it.

With respect to this stream of commerce, the flow control ordinance discriminates, for it allows only the favored operator to process waste that is within the limits of the town. The ordinance is no less discriminatory because in-state or in-town processors are also covered by the prohibition. In *Dean Milk Co. v. Madison*, 340 U. S. 349 (1951), we struck down a city ordinance that required all milk sold in the city to be pasteurized within five miles of the city lines. We found it "immaterial that Wisconsin milk from outside the Madison area is subjected to the same proscription as that moving in interstate commerce." *Id.*, at 354, n. 4. Accord, *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dept. of Natural Resources*, 504 U. S. \_\_\_, \_\_\_ (1992) (slip op., at 7) ("[O]ur prior cases teach that a State (or one of its political subdivisions) may not avoid the strictures of the Commerce Clause by curtailing the movement of articles of commerce through subdivisions of the

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In this light, the flow control ordinance is just one more instance of local processing requirements that we long have held invalid. See *Minnesota v. Barber*, 136 U. S. 313 (1890) (striking down a Minnesota statute that required any meat sold within the state, whether originating within or without the State, to be examined by an inspector within the State); *Foster-Fountain Packing Co. v. Haydel*, 278 U. S. 1 (1928) (striking down a Louisiana statute that forbade shrimp to be exported unless the heads and hulls had first been removed within the State); *Johnson v. Haydel*, 278 U. S. 16 (1928) (striking down analogous Louisiana statute for oysters); *Toomer v. Witsell*, 334 U. S. 385 (1948) (striking down South Carolina statute that required shrimp fishermen to unload, pack, and stamp their catch before shipping it to another State); *Pike v. Bruce Church, Inc.*, 397 U. S. 137 (1970) (striking down Arizona statute that required all Arizona-grown cantaloupes to be packaged within the State prior to export); *South-Central Timber Development, Inc. v. Wunnicke*, 467 U. S. 82 (1984) (striking down an Alaska regulation that required all Alaska timber to be processed within the State prior to export). The essential vice in laws of this sort is that they bar the import of the processing service. Out-of-state meat inspectors, or shrimp hullers, or milk pasteurizers, are deprived of access to local demand for their services. Put another way, the offending local laws hoard a local resource—be it meat, shrimp, or milk—for the benefit of local businesses that treat it.

The flow control ordinance has the same design and effect. It hoards solid waste, and the demand to get rid of it, for the benefit of the preferred processing facility. The only conceivable distinction from the cases cited above is that the flow control ordinance favors a single local proprietor. But this difference just makes the protectionist effect of the ordinance



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more acute. In *Dean Milk*, the local processing requirement at least permitted pasteurizers within five miles of the city to compete. An out-of-state pasteurizer who wanted access to that market might have built a pasteurizing facility within the radius. The flow control ordinance at issue here squelches competition in the waste-processing service altogether, leaving no room for investment from outside.

Discrimination against interstate commerce in favor of local business or investment is *per se* invalid, save in a narrow class of cases in which the municipality can demonstrate, under rigorous scrutiny, that it has no other means to advance a legitimate local interest. *Maine v. Taylor*, 477 U. S. 131 (1986) (upholding Maine's ban on the import of baitfish because Maine had no other way to prevent the spread of parasites and the adulteration of its native fish species). A number of *amici* contend that the flow control ordinance fits into this narrow class. They suggest that as landfill space diminishes and environmental cleanup costs escalate, measures like flow control become necessary to ensure the safe handling and proper treatment of solid waste.

The teaching of our cases is that these arguments must be rejected absent the clearest showing that the unobstructed flow of interstate commerce itself is unable to solve the local problem. The Commerce Clause presumes a national market free from local legislation that discriminates in favor of local interests. Here Clarkstown has any number of nondiscriminatory alternatives for addressing the health and environmental problems alleged to justify the ordinance in question. The most obvious would be uniform safety regulations enacted without the object to discriminate. These regulations would ensure that competitors like Carbone do not underprice the market by cutting corners on environmental safety.

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Nor may Clarkstown justify the flow control ordinance as a way to steer solid waste away from out-of-town disposal sites that it might deem harmful to the environment. To do so would extend the town's police power beyond its jurisdictional bounds. States and localities may not attach restrictions to exports or imports in order to control commerce in other states. *Baldwin v. G. A. F. Seelig, Inc.*, 294 U. S. 511 (1935) (striking down New York law that prohibited the sale of milk unless the price paid to the original milk producer equalled the minimum required by New York).

The flow control ordinance does serve a central purpose that a nonprotectionist regulation would not: It ensures that the town-sponsored facility will be profitable, so that the local contractor can build it and Clarkstown can buy it back at nominal cost in five years. In other words, as the most candid of *amici* and even Clarkstown admit, the flow control ordinance is a financing measure. By itself, of course, revenue generation is not a local interest that can justify discrimination against interstate commerce. Otherwise States could impose discriminatory taxes against solid waste originating outside the State. See *Chemical Waste Management, Inc. v. Hunt*, 504 U. S. \_\_\_ (1992) (striking down Alabama statute that imposed additional fee on all hazardous waste generated outside the State and disposed of within the State); *Oregon Waste Systems, Inc. v. Department of Environmental Quality of Oregon*, 511 U. S. \_\_\_ (1994) (striking down Oregon statute that imposed additional fee on solid waste generated outside the State and disposed of within the State).

Clarkstown maintains that special financing is necessary to ensure the long-term survival of the designated facility. If so, the town may subsidize the facility through general taxes or municipal bonds. *New Energy Co. of Indiana v. Limbach*, 486 U. S. 269, 278 (1988). But having elected to use the open

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market to earn revenues for its project, the town may not employ discriminatory regulation to give that project an advantage over rival businesses from out of State.

Though the Clarkstown ordinance may not in explicit terms seek to regulate interstate commerce, it does so nonetheless by its practical effect and design. In this respect the ordinance is not far different from the state law this Court found invalid in *Buck v. Kuykendall*, 267 U. S. 307 (1925). That statute prohibited common carriers from using state highways over certain routes without a certificate of public convenience. Writing for the Court, Justice Brandeis said of the law: "Its primary purpose is not regulation with a view to safety or to conservation of the highways, but the prohibition of competition. It determines not the manner of use, but the persons by whom the highways may be used. It prohibits such use to some persons while permitting it to others for the same purpose and in the same manner." *Id.*, at 315-316.

State and local governments may not use their regulatory power to favor local enterprise by prohibiting patronage of out-of-state competitors or their facilities. We reverse the judgment and remand the case for proceedings not inconsistent with this decision.

*It is so ordered.*

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APPENDIX TO OPINION OF THE COURT

TOWN OF CLARKSTOWN

Local Law No. 9 of the year 1990

A local law entitled, "SOLID WASTE TRANSPORTATION AND DISPOSAL."

Be it enacted by the TOWN BOARD of the Town of CLARKSTOWN as follows:

Section 1. Definitions

Unless otherwise stated expressly, the following words and expressions, where used in this chapter, shall have the meanings ascribed to them by this section:

**ACCEPTABLE WASTE**—All residential, commercial and industrial solid waste as defined in New York State Law, and Regulations, including Construction and Demolition Debris. Acceptable Waste shall not include Hazardous Waste, Pathological Waste or sludge.

**CONSTRUCTION AND DEMOLITION DEBRIS**—Uncontaminated solid waste resulting from the construction, remodeling, repair and demolition of structures and roads; and uncontaminated solid waste consisting of vegetation resulting from land clearing and grubbing, utility line maintenance and seasonal and storm related cleanup. Such waste includes, but is not limited to bricks, concrete and other masonry materials, soil, rock, wood, wall coverings, plaster, drywall, plumbing fixtures, non-asbestos insulation, roofing shingles, asphaltic pavement, electrical wiring and components containing no hazardous liquids, metals, brush grass clippings and leaves that are incidental to any of the above.

**HAZARDOUS WASTE**—All solid waste designated as such under the Environmental Conservation Law, the

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Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act of 1976 or any other applicable law.

**PATHOLOGICAL WASTE**—Waste material which may be considered infectious or biohazardous, originating from hospitals, public or private medical clinics, departments or research laboratories, pharmaceutical industries, blood banks, forensic medical departments, mortuaries, veterinary facilities and other similar facilities and includes equipment, instruments, utensils, fomites, laboratory waste (including pathological specimens and fomites attendant thereto), surgical facilities, equipment, bedding and utensils (including pathological specimens and disposal fomites attendant thereto), sharps (hypodermic needles, syringes, etc.), dialysis unit waste, animal carcasses, offal and body parts, biological materials, (vaccines, medicines, etc.) and other similar materials, but does not include any such waste material which is determined by evidence satisfactory to the Town to have been rendered non-infectious and non-biohazardous.

**PERSONS**—Any individual, partnership, corporation, association, trust, business trust, joint venturer, governmental body or other entity, howsoever constituted.

**UNACCEPTABLE WASTE**—Hazardous Waste, Pathological Waste and sludge.

**SLUDGE**—Solid, semi-solid or liquid waste generated from a sewage treatment plant, wastewater treatment plant, water supply treatment plant, or air pollution control facility.

**TOWN**—When used herein, refers to the Town of Clarkstown.

## Section 2. General Provisions

### A. Intent; Purpose.

I. The intent and purpose of this chapter is to

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provide for the transportation and disposition of all solid waste within or generated within the Town of Clarkstown so that all acceptable solid waste generated within the Town is delivered to the Town of Clarkstown solid waste facility situate at Route 303, West Nyack, New York and such other sites, situate in the Town, as may be approved by the Town for recycling, processing or for other disposition or handling of acceptable solid waste.

II. The powers and duties enumerated in this law constitute proper town purposes intended to benefit the health, welfare and safety of Town residents. Additionally, it is hereby found that, in the exercise of control over the collection, transportation and disposal of solid waste, the Town is exercising essential and proper governmental functions.

B. Supervision and Regulation.

The Town Board hereby designates the Director of the Department of Environmental Control to be responsible for the supervision and regulation of the transportation and disposition of all acceptable waste generated within the Town of Clarkstown. The Director of the Department of Environmental Control shall be responsible for and shall supervise the Town's activities in connection with any waste collection and disposal agreements entered into between the Town and third parties and shall report to the Town Board with respect thereto.

C. Power to Adopt Rules and Regulations.

The Town Board may, after a public hearing, adopt such rules and regulations as may be necessary to effectuate the purposes of this chapter. At least seven (7) business days' prior notice of such public hearing shall be published in the official newspaper of the Town. A copy of all rules and regulations promulgated hereunder and any amendments thereto shall be filed in the office of the Town Clerk upon adoption and shall be effective as provided therein.

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Section 3. Collection and Disposal of Acceptable Waste.

A. The removal, transportation and/or disposal of acceptable waste within or generated within the Town of Clarkstown shall be exclusively disposed of, controlled and regulated by the Town under this chapter and Chapter 50 and Chapter 82 of the Clarkstown Town Code, together with such rules and regulations as the Town has or may from time to time adopt.

B. All acceptable waste, as defined herein, except for construction and demolition debris, shall be removed, transported and/or disposed of only by carters licensed pursuant to the requirements of Chapter 50 of the Clarkstown Town Code and any amendments thereto. All other persons are hereby prohibited from removing, transporting or disposing of acceptable waste, except for construction and demolition debris generated within the Town of Clarkstown, and except as may be provided for herein or in the rules and regulations adopted pursuant to this chapter and/or Chapter 50 of the Clarkstown Town Code.

C. All acceptable waste generated within the territorial limits of the Town of Clarkstown is to be transported and delivered to the Town of Clarkstown solid waste facility located at Route 303, West Nyack, New York or to such other disposal or recycling facilities operated by the Town of Clarkstown,<sup>1</sup> or to recycling centers established by special permit pursuant to Chapter 106 of the Clarkstown Town Code, except for recyclable materials which are separated from solid waste at the point of origin or generation of such solid waste, which separated recyclable materials may be transported and deliv-

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<sup>1</sup>In a separate zoning ordinance, the Town declared that it shall have only one designated transfer station. Town of Clarkstown Zoning Code §106-3.

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ered to facilities within the Town as aforesaid, or to sites outside the town. As to acceptable waste brought to said recycling facilities, the unrecycled residue shall be disposed of at a solid waste facility operated by the Town of Clarkstown.

D. It shall be unlawful to dispose of any acceptable waste generated or collected within the Town at any location other than the facilities or sites set forth in Paragraph "C" above.

Section 4. Disposal of Unacceptable Waste.

A. No unacceptable waste shall be delivered to the Town of Clarkstown solid waste facility situate at Route 303, West Nyack, New York or other solid waste facility operated by the Town of Clarkstown or recycling centers established by special permit pursuant to Chapter 106 of the Clarkstown Town Code by any person, including, without limitation, any licensed carter or any municipality. Failure to comply with the provisions of this section shall be subject to the provisions with respect to such penalties and enforcement, including the suspension or revocation of licenses and the imposition of fines, in accordance with the provisions of this chapter and/or Chapter 50 of the Clarkstown Town Code and any amendments thereto. The Town Board of Clarkstown may, by resolution, provide for the disposal of sewer sludge, generated by a municipal sewer system or the Rockland County sewer district, at a disposal facility situate within the Town of Clarkstown.

B. It shall be unlawful, within the Town, to dispose of or attempt to dispose of unacceptable waste of any kind generated within the territorial limits of the Town of Clarkstown, except for sewer sludge as provided for in Section "A" above.

Section 5. Acceptable and Unacceptable Waste Generated Outside the Town of Clarkstown.

A. It shall be unlawful, within the Town, to dispose



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of or attempt to dispose of acceptable or unacceptable waste of any kind generated or collected outside the territorial limits of the Town of Clarkstown, except for acceptable waste disposed of at a Town operated facility, pursuant to agreement with the Town of Clarkstown and recyclables, as defined in Chapter 82 of the Clarkstown Town Code, brought to a recycling center established by special permit pursuant to Chapter 106 of the Clarkstown Town Code.

B. It shall be unlawful for any person to import acceptable waste or unacceptable waste from outside the Town of Clarkstown and dump same on any property located within the Town of Clarkstown and to proceed to sift, sort, mulch or otherwise mix the said material with dirt, water, garbage, rubbish or other substance, having the effect of concealing the contents or origin of said mixture. This provision shall not apply to composting of acceptable waste carried out by the Town of Clarkstown.

Section 6. Fees for Disposal of Acceptable Waste at Town Operated Facilities.

There shall be separate fees established for disposal of acceptable waste at Town operated disposal facilities. The Town Board, by resolution adopted from time to time, shall fix the various fees to be collected at said facilities. The initial fees to be collected are those adopted by the Town Board on December 11, 1990 by Resolution Number 1097.

Section 7. Penalties for Offenses.

Notwithstanding any other provision of this chapter, the violation of any provision of this chapter shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for a period not exceeding fifteen (15) days for each offense, or by both fine and imprisonment, and each day that such violation shall be permitted to continue shall constitute a separate offense hereunder.

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Section 8. Repealer; Severability.

Ordinances and local laws or parts of ordinances or local laws heretofore enacted and inconsistent with any of the terms or provisions of this chapter are hereby repealed. In the event that any portion of this chapter shall be declared invalid by a court of competent jurisdiction, such invalidity shall not be deemed to affect the remaining portions hereof.

Section 9. When Effective.

This chapter shall take effect immediately upon filing in the office of the Secretary of State.