

Implementing a County Materials Management Plan For Effective Results

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Introduction

Sub-Part 11 of Act 451 of 1994 (the “MMP Law”) formalizes the transition from traditional solid waste management planning to a focus on materials reuse, recycling, and long-term sustainability practices. The MMP Law outlines how to develop a “Plan,” but the key question is how to implement that Plan and achieve measurable results. To address this, the MMP Law incorporates enforcement mechanisms and processes to measure desired outcomes. This triggers the question of how and when to implement the Plan for the best results.



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Shall we?

The term “shall” is important

When reviewing a statute, the term “shall” is controlling. In statutory interpretation, “shall” means mandatory. Although the MMP Law uses the word “shall” throughout, the following seven (7) key “shall” provisions convey the general intent of the MMP Law:



EGLE must ensure each County, singularly or as a lawful grouping, develops and ultimately has an approved Plan. (Sec. 11571)



EGLE triggers the Plan process by requiring each County to issue a Notice of Intent. (Sec. 11571)



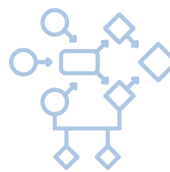
All municipalities in a County must be included in an approved Plan. (Sec. 11571)



Each County Approval Agency must appoint a Planning Committee made up of defined representatives. (Sec. 11572)



The Planning Committee must direct the Designated Planning Agency in the preparation of a Plan using the process defined. (Sec. 11573)



Each Plan must meet the listing of Plan requirements as defined in the MMP Law, including enforceable mechanisms to fully implement the Plan. (Sec. 11578)



Each legislative body of each municipality in the County will ultimately receive a copy of the Plan and each municipality will be asked to approve or reject the Plan following the time lines provided. (Sec. 11575)

Why Local Governments?

They Hold the Key to Effective MMP Plan Implementation

The fundamentals of the MMP Law make it clear that Michigan is asking each County to follow a process that results in a written Plan that meets the stated goals and objectives of the MMP Law. Its intent is practical and beneficial, provided that the Plan is effectively implemented.

Effective implementation of a Plan is best achieved by local governments because they possess broad ordinance authority over the affairs, health, safety, and welfare of the local community. This means the legislative and other actions of townships, cities, and villages serve as the foundation for meaningful implementation of any approved Plan.

A County has narrow and limited ordinance authority. A County may pass ordinances that relate to County affairs and do not contravene the general laws of Michigan or interfere with the local affairs of a township, city, or village within the limits of that County. In the opinion of this writer, a County is not well-positioned to take the lead on comprehensive and effective Plan implementation, given its narrow authority. This task is best left to local townships, cities, and villages.

A township has powers conferred by the Legislature or by the Michigan Constitution. A township has the authority to enact and enforce ordinances that regulate the public health, safety, and general welfare of its citizens. Cities and villages also have the power to adopt and enforce ordinances relating to their municipal concerns, subject to the constitution and the controlling laws. Accordingly, implementation of the Plan is most effectively accomplished by townships, cities, and villages.

Under the MMP Law, the legislative body of each municipality (township, city, or village) within a County will have an opportunity to receive, review, and approve or reject the proposed Plan. This mandatory process serves as an opportunity for a local legislative body to determine how it “accepts” the proposed Plan. A township, city, or village legislative body is not bound by any defined process in the MMP Law regarding how it transmits its acceptance or rejection. Each local legislative body should act independently with the intent to achieve maximum implementation of the Plan going forward. This requires proactive, forward-thinking decision-making.

How Local Governments May Approve the Plan

A local legislative body may initiate its Plan approval as an agenda item at a public meeting in one of the following ways:



Resolution

By a written resolution, with or without conditions;



Ordinance

By an ordinance that adopts all or part of the Plan; or



Motion

By a majority vote on a motion, with or without conditions.



Each legislative body has the right to issue an acceptance or rejection in a format developed by that legislative body to further the goals of the community. If approval is to be issued, each municipality should examine its approval format based on its own long-term planning goals and the objectives of the Plan it is approving.

Each township, city, and village should consider acceptance of the Plan by a written resolution that also resolves that the local government will adopt the finalized Plan, or relevant parts of it, by an ordinance duly enacted by the legislative body.

Local Ordinances Support Plan Implementation

After acceptance of the Plan is transmitted and a final approved Plan is in place, each municipality should then work with local professionals and advisors to adopt the Plan through an ordinance that does some or all of the following by way of enforceable mechanisms as suggested by the MMP Law.

- Adopts the approved Plan by reference, just like a state motor vehicle code, building code, etc.
- Adopts the Plan by reference and includes specific, enforceable mechanisms in the ordinance, including, but not limited to, the following examples.
 - Incorporates compliance with the Plan into all local contracting for services related to solid waste, composting, and recycling in the municipality.
 - Incorporates compliance with the Plan into all local purchasing and contracting policies and ordinances in the municipality.
 - Incorporates compliance with the Plan into relevant commercial business registration processes to capture business compliance with the Plan in the municipality.
 - Incorporates compliance with the Plan into local site planning requirements, rezoning/special use processes, and general zoning compliance requirements in the municipality.
 - Incorporates compliance with the Plan into the local master planning process in the municipality.
 - Incorporates a provision requiring data collection by any service provider operating in the community so that all volumes of managed materials in the municipality are tracked, compiled, reported, and measured against benchmarks.
 - Establishes enforceable penalties for persons or entities that operate or conduct business in the local community in violation of the Plan requirements.

Bold Local Approaches

A bold and untested approach by a local legislative body is to adopt the Plan by ordinance and, in the same ordinance, take one or more of the following actions:



Prohibit Comingling Recyclable Materials

Expressly prohibit any person or entity from commingling recyclable materials with municipal solid waste where curbside recycling is available.



Prohibit Comingling Organic Materials

Expressly prohibit any person or entity from commingling organic materials (food waste) with municipal solid waste where organic materials management is available curbside in another manner.



Prohibit Comingling Yard Waste

Expressly prohibit any person from commingling yard waste with municipal solid waste under all circumstances and make composting mandatory where compost services are available

Local Implementation of the MMP Plan

Tools and Approaches for Effective Countywide Results

The MMP Law allocates three (3) years for every County to adopt a Plan. The process is rigorous and designed to produce a comprehensive planning tool. Townships, cities, and villages are uniquely positioned to implement the Plan using their broad ordinance authority. If the goals, objectives, and Plan requirements can be legally integrated with local ordinances, processes, and policies, the County's plan has a strong likelihood of achieving measurable success.

Townships, cities, and villages should also consider adopting and implementing the Plan through the formation of a "Materials Management Authority". Michigan has two (2) enabling laws that allow like-minded local governments to form and operate an authority to manage all or part of the materials in those combined communities. (See MCL 123.301 et. seq. and MCL 124.281 et. seq.). The authority option optimizes service routes by eliminating border restrictions and allows for combined RFP processes to get more favorable pricing. Plan implementation and Plan compliance can be incorporated into the authority's formation documents. This cohesive approach provides significant benefits for groups of local like-minded communities seeking to work together on Plan implementation.

The MMP Law represents good forward-thinking by the State of Michigan. Implementing the goals and objectives of every County Plan will place Michigan in a top-tier position in sustainable materials management.