

City of Rio Communities, New Mexico

Ordinance No: 2019-69

CHAPTER 11 HEALTH AND SAFETY

ARTICLE 4 SOLID WASTE COLLECTION

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11-4-1 Exclusive rights; requirement to utilize services provided by city.

- A. The city shall enforce a general system for the collection and disposal of solid waste within the city. The city shall have the exclusive right to collect and dispose of solid waste within the city. The city shall provide and maintain suitable equipment and personnel sufficient to collect solid waste within the city and shall provide adequate areas for the disposal of solid waste.

- B. Every person owning or controlling an occupied residence or commercial establishment within the city is required to arrange for and receive the solid waste collection service provided by the city or the city's franchised collector and to pay the solid waste collection fees approved by the city. Fees shall be billed by the franchised collector.
- C. To achieve these purposes, and in lieu of the city directly providing and maintaining the equipment and personnel therefor, the governing body of the city may enter into a single exclusive franchise agreement for the collection, haulage and disposal of solid waste from commercial and/ or residential sources.
- D. Nothing in this chapter prohibits residents from participating in recycling services offered by another entity if the city or the city's franchised collector is not providing the same.

11-4-2 Applicability of provisions.

The provisions of this ordinance shall be applicable within the corporate limits of the city.

11-4-3 Definitions.

As used in this ordinance, the following words shall have the following meanings:

"Ashes" means the remains from fires.

"Business, commercial establishment or institution" means any structure or premises not defined as a residence.

"Code enforcement officer" is a city official charged with enforcement of this ordinance and other provisions of this code relating to public health. Notwithstanding any authorization of the code enforcement officer by this ordinance, all decisions shall be subject to the review by the city manager.

"Commercial garbage or trash" means waste produced by a business, commercial establishment or institution.

"Construction and demolition debris" means materials generally considered to be not water soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing materials, pipe, gypsum wallboard and lumber from the construction or destruction of a structure, and includes rocks, soil, tree remains, trees and other vegetative matter that normally results from land clearing.

"Franchised collector" means any business providing solid waste collections services to whom the city has awarded a contract or franchise for the collection and hauling of the city residential or commercial solid waste within the city.

"Garbage" means waste resulting from the handling, preparation, cooking and consumption of food and wastes from the growing, handling, storage and sale of produce.

"Hauler" is any person, joint enterprise or corporation who is licensed to collect and dispose of any solid waste which is not collected by the city or the city's franchised collector, including dead animals, medical waste, toxic, hazardous, flammable or explosive waste.

"Industrial garbage or trash" means wastes produced by an industrial or manufacturing operation.

"Litter" is garbage or trash found in public areas that has been intentionally or negligently discarded by any person.

"Manager" means the city manager or his/her authorized representative.

"Residential garbage or trash" means waste produced by a family dwelling unit.

"Rubbish" means any material that is considered unimportant or valueless.

"Single- or multifamily dwelling units" means apartments, rooming-houses and boarding-houses, but shall not include hotels, tourist courts, motels, motor courts, trailer courts or apartment hotels.

"Solid waste" or **"waste"** includes commercial, industrial and residential garbage or trash, ashes, rubbish, litter, construction and demolition debris. Solid waste also includes discarded parts of motor vehicles, tires, clothing, mattresses, appliances, furniture, salvage or unwholesome materials of any kind or description, offal, swill, carrion, dirt, or slop. Solid waste not collected by the city or the franchise collector includes dead animals, medical waste, toxic, hazardous, flammable or explosive waste. Solid waste does not include sewage.

"Trash" means any discarded matter, including combustible trash, such as paper, plastic, and wood; noncombustible trash, such as metal, dirt, rock, concrete, asphalt, glass, crockery, and other mineral waste: street rubbish, such as street sweepings, dirt, leaves, catch-basin dirt and contents of litter receptacles. Trash shall not include wastes from commercial operations, nor shall it include wastes resulting from industrial and manufacturing operations.

11-4-4 Collection franchise authorized.

- A. To achieve the purposes set forth in section 11-4-1, and in lieu of the city directly providing and maintaining the equipment and personnel therefor, the governing

body of the city may enter into a single exclusive franchise agreement, for the collection, haulage and disposal of solid waste from commercial, industrial, institutional and/ or residential sources.

- B. The franchise agreement may provide that the franchisee may have exclusive rights to all roll-off work, including construction debris.
- C. The franchise may provide for a method of dispute between the owner or account holder and the franchised collector.
- D. The franchise may authorize the franchisee to directly bill and collect from the residential or commercial user.
- E. Any franchise shall provide for the termination of the franchise prior to the expiration of the term for cause.
- F. At the end of a franchise term, the city may elect not to renew the franchise or renegotiate with the franchisee. In order to provide collection and disposal after the franchise term has expired, the city may (1) provide collection and disposal by the city; (2) contract or franchise with another person authorized to collect solid waste within the state and the City; or (3) arrange for collection of solid waste in any other manner allowed by law.

11-4-5 Owners of real property responsible for payment of solid waste collection fees; liens.

- A. Every owner of real property being served within the city shall be responsible for the payment of the solid waste collection and disposal fees established and provided for by this chapter, whether or not the owner uses the solid waste collection and disposal services. The owner or owner's agent shall establish an account for such purposes with the city or with the franchised collector if the city has entered into a franchise agreement for the provision of solid waste collection and disposal services to the extent that such franchise requires the same. The owner or the owner's agent shall be the responsible party for billing and payment purposes. The owner shall be responsible for any bills unpaid by tenants who have been authorized by the owner to such establish accounts for solid waste collection and disposal fees.
- B. If any owner of real property fails or refuses to pay the fees chargeable to such person for solid waste collection and disposal, the amount of such unpaid fees may be assessed against the property by the city council and a lien against the real property from which the solid waste is collected or removed may be filed as provided by NMSA 1978 § 3-26-1 et seq. The franchisee or city may seek enforcement of unpaid solid waste collection and disposal fees by any means provided by city ordinances or state law.

- C. If any owner of real property fails to pay the quarterly bill within thirty days (30 days) of the due date for the bill, the residential or commercial user account for the real property shall be considered as delinquent and the city or the franchised collector, if authorized to bill and collect fees under the terms of the franchise agreement, shall attempt to first collect said delinquent amount by sending a notice of delinquency to said owner of real property and to the residential or commercial user if a different person from the owner. If the delinquency has not been cured within thirty (30) days from the date of the notice, the city may proceed to cause the delinquent amounts to be assessed against the real property and to have a lien placed thereon. A charge per mailing to cover the expense of postage and handling may be added as follows:
1. Residential account: \$1 per mailing, plus a late fee of \$5 per month per container for each month the account is past due.
 2. Commercial account: a penalty of 1.25% of the outstanding bill that is 30 days or more in arrears, with a minimum of \$10, plus \$5 per month per container for each month the account is past due.
- D. The franchised collector shall notify the city in writing of any residential or commercial user whose account is unpaid over thirty (30 days); and the city shall issue a written notice to the owner of the property that the residential or commercial user account is delinquent as provided above, if the delinquency is not cured, and that the amount of the delinquency may be assessed and a lien filed against said real property as provided above, and that the city may take any and all legal actions to recover the unpaid solid collection and disposal fees. As a part of the franchise agreement, the franchised collector may assist the city in the preparation and sending of notices and other documents under this section on city forms as part of the enforcement of collections of unpaid solid waste fees, which notices, and documents shall be approved by the city prior to sending to the user.
- E. In addition to its other rights and remedies, the franchised collector may bring civil suit against the owner of real property who refuses or fails to pay the fees chargeable to such owner for solid waste collection and disposal in any court of competent jurisdiction if the franchised collector bears the risk of loss from non-payment of said fees under the franchise agreement.
- F. Real property with vacant dwellings or buildings shall continue to be charged for solid waste collection and disposal fees unless the owner or agent of such premises makes an application in writing to the city or the franchised collector stating the date of vacated premises and expected date of re-occupancy. Solid waste collection and disposal fees shall continue to accrue until such application is made and the vacancy has been confirmed. No credits shall be given for charges on vacant premises prior to receipt of such application. Solid waste collection and disposal fees are charged on a monthly basis and credits shall not be prorated. Any person making

a false statement upon any application or request pursuant to this section shall be guilty of a petty misdemeanor.

11-4-6 Contact for all customer complaints/concerns.

- A. All initial complaints or concerns **from residential or commercial users arising from services provided under the franchise** should be addressed to the **franchised collector**.
- B. If complaints/concerns are not addressed after two attempts, the following procedures apply. Forms are available at city hall or online at **the city's website**. If a residential or commercial user has a grievance with the franchised collector relating to the services provided to that user, such user shall file a written complaint with the code enforcement officer. The code enforcement officer shall notify the franchise collector of the complaint and give the franchise collector five days to either correct the problem or respond to the complaint in writing. The code enforcement officer shall schedule a hearing on the complaint within fifteen (15) days and send notice of the hearing to all parties by registered or certified mail no less than fifteen (15) days prior to the scheduled hearing date. The code enforcement officer shall hear the evidence and grant the appropriate relief, which may include ordering the franchise collector to change its practices, ordering an adjustment of amounts paid to the collector or any other remedy that is appropriate.
- C. The residential or commercial user or the franchise collector may appeal the decision of the code enforcement officer within ten (10) days of the date of said decision, by notifying the city clerk or city manager of intent to appeal the decision of the code enforcement officer. The appeal will be to the City Council, which shall hear the appeal at a time set in its discretion. The decision of the City Council shall be final.
- D. Failure of the owner of real property to pay solid waste collection and disposal fees will entitle the franchised collector to pursue its legal remedies to the extent authorized under the franchise agreement, or as provided by applicable law.

11-4-7 Failure to use city service.

- A. The city may remove or order the franchised collector to remove any solid waste from any real property or any premises if: (1) any person owning or controlling real property allows solid waste to be deposited or accumulated upon said real property other than in the proper receptacle and fails to remove solid waste or to place the solid waste in the proper receptacle within forty-eight (48) hours after notice from the code enforcement officer; or (2) the person owning or controlling real property refuses to use the solid waste collection and disposal services provided by the city.

- B. After the removal of solid waste, city or the franchised collector shall bill the owner of the real property for the appropriate fees chargeable under this ordinance for the removal of such solid waste, in addition to a reasonable charge attributable for a special collection.

11-4-8 Garbage and trash—Pre-collection practices.

- A. Garbage and trash shall be placed and maintained in collection containers as required by the city and provided by the city or the city's franchised collector.
- B. It shall be the responsibility of all persons to dismantle and/or flatten all boxes or crates, regardless of construction, and to bundle all tree clippings, before placing in collection containers.
- C. Hazardous or construction materials shall not be placed in collection containers, and the producers of such materials will be required to individually contract with an independent franchised collector or hauler for the disposal of such waste:
- D. All garbage or trash shall be secured into plastic bags prior to disposal in the containers provided.
- E. Motor oil and similar liquid materials shall be disposed of in accordance with the regulations and standards adopted by the United States Environmental Protection Agency and the New Mexico Environment Department.

11-4-9 Garbage and trash containers.

- A. Containers for residential use shall be provided by the city or the franchised collector and shall be made of metal or plastic, with tight-fitting covers, and shall be watertight.
- B. All containers for residential use provided by the city or the franchised collector shall be covered at all times, and the outside of said container shall remain in a neat appearance.
- C. Residential Containers. The city or the franchised collector shall provide to each residential user with one or more containers as the former deems adequate.
- D. Commercial Containers. All commercial containers shall be provided by city or the franchised collector for commercial users. Any accessory equipment, such as compactors, may also be available to the commercial user, but must be coordinated with the franchised collector.
- E. The commercial user will secure the cart(s)/dumpsters behind a **three (3)** sided wall or **three (3)** sided fence to prevent trash from blowing, during emptying or being filled. The fence/wall should be high enough to keep trash from blowing outside the

enclosure **without exceeding the applicable building code height restriction.** The enclosure must be kept clean, so as to not pose a health or littering issue.

- F. All residential and commercial users shall comply with the rules and regulations established by the city or the franchise collector for the use, care and location of containers.
- G. All containers shall be placed where required by the city or the franchised collector unless otherwise specified by the code enforcement officer. It is unlawful to block or impede access to a container that is located as directed.
- H. Containers serving residential accounts shall be used only by residential users for solid waste generated on the premises of such residential users; those serving commercial accounts shall be used only by the commercial user served by the particular account and those authorized by that user. All other use of residential or commercial containers is prohibited and shall be a violation of this ordinance.
- I. All commercial users shall retain the appropriate number of containers in order to accommodate the volume of solid waste generated by the user's commercial establishments. All commercial users are advised to work with the recommendations of the city or the franchised collector to ensure cost and pick-up schedule efficiency as determined by the city or the franchised collector.
- J. Any restaurant or other business that deals with grease or oil shall utilize the proper container for proper disposal of the same as solid waste.

11-4-10 Residential collections; frequency and user responsibilities.

- A. The collection of solid waste for residential users shall occur at least once per week.
- B. Residential users are responsible for ensuring that containers are placed in the proper location in the public right of way prior to pick up as required by the city or the franchised collector.
- C. Residential users shall return the containers back to their property from the pick-up location within twelve (12) hours after collection has occurred.

11-4-11 Lost or damage to containers.

- A. It is unlawful to intentionally damage or modify any container furnished by the city or by the franchised collector or any hauler.
- B. Any person who damages any container provided for the residential or commercial users shall be liable to the city or to the franchised collector for the cost of repair or replacement of such container.

- C. No person shall enter into or remain in any container provided for residential or commercial solid waste collection.
- D. No person shall interfere with the use or the placement of the container from the property of any another residential or commercial user.

11-4-12 Solid waste collection rates.

The rates for collection of solid waste are as follows:

- A. Residences. The residential user shall be charged at the current adopted rate per month for one (1) cart for one (1) pick up a week. The residential user shall also be charged at the current adopted rate for over filling/over-loading the cart. Additional carts may be provided at the current adopted rate per month. The residential user shall be responsible for special pickups at the current adopted rate.
- B. Basic Commercial. The commercial user shall be charged at the current adopted rate per month for one (1) cart for one (1) pickup per week. Additional carts may be provided for a fee at the current adopted rate per month. The commercial user shall be responsible for special pickups at the current adopted rate. The commercial user will secure the cart(s) behind a three (3) sided wall or 3-sided fence to prevent trash from blowing, during emptying or being filled. The fence/wall should be high enough to keep trash from blowing outside the enclosure. The enclosure must be kept clean, so as to not pose a health or littering issue.
- C. Commercial or business establishments with dumpsters shall be assessed a fee at the current adopted rate.
- D. Extra on-call rates for commercial containers shall be charged at the current adopted rate.
- E. Front-end loader compactor monthly base rates shall be charged at the current adopted rate.
- F. A deposit may be charged for commercial containers.

11-4-13 Special rates.

Special Pickup Services. A special fee shall be charged by the city or the franchised collector for all special pickup services at an assessed rate according to the type of load and the requirements of resources needed to complete this task. The items to be disposed shall be placed curbside.

11-4-14 Accumulation of garbage, trash and debris.

- A. No person shall throw, place, sweep, dump, dispose, accumulate or allow to accumulate any litter, garbage or trash on any real property owned, leased or used by that person.
- B. No person shall cause or permit to remain upon any real property any material hazardous to public health.
- C. Any unauthorized accumulation of garbage or trash, or rubbish, is declared to be a nuisance and is prohibited. It shall be unlawful for any person to sweep, place or throw solid waste or other waste materials in or upon any sidewalk, street, alley or unoccupied real property for any reason.
- D. The owner of real property shall be responsible and liable for the costs of removal and clean-up of violations under this ordinance.
- E. If the code enforcement officer finds a violation of this ordinance or that a health hazard exists, the code enforcement officer shall notify the owner of the real property to properly correct and remediate such conditions within a designated period of time not to exceed forty-eight (48) hours.
- F. Upon failure of the owner of real property to correct or remediate the violation within the time designated by the code enforcement officer, the city manager may contract for the removal and clean-up of the violation, or order the removal and clean-up by the city, at the expense of the owner of said property.
- G. The costs of removal and clean up shall become a lien on the property, unless such costs have been paid for by the owner of the property. The lien shall be enforced and foreclosed according to applicable state law.
- H. If the city establishes a public works department, costs for the removal and clean-up of a violation on the property under this ordinance using city resources shall be determined on the basis of labor and equipment at a normal rental rate per day, plus any direct costs paid by the city.

11-4-15 Solid waste hauling within the city.

No solid waste shall be transported within the city unless the vehicle transporting the same shall be covered if the container portion of the vehicle is open. The clean-up and removal of any litter, debris or solid waste or other matters which has fallen from a moving vehicle is the responsibility of the driver of the vehicle and / or the hauler.

11-4-16 Hazardous, toxic, flammable or explosive waste.

No person shall place any hazardous, toxic, highly flammable or explosive materials in any containers furnished for regular collection. Hazardous, toxic, highly flammable or explosive materials shall be disposed of in accordance with applicable state and federal regulations, at the expense of the person accumulating or possessing the same.

11-4-17 Medical waste.

No person shall dispose, discard or throw away any medical waste, including hypodermic needles or syringes, except into a container that is specifically approved for such purposes.

11-4-18 Construction sites and transportation of materials.

All persons shall secure a disposal container from a licensed hauler for any permitted construction site within the municipal boundaries and shall maintain the integrity of such container until project completion.

11-4-19 Scavenging prohibited.

It is unlawful for any person to remove any discarded item or substance from any container without receiving the prior authorization of the property owner.

11-4-20 Dumping illegal; penalty.

- A. For purposes of this ordinance, the term “dumping” means the disposal within the city of any solid waste, medical waste, toxic, hazardous, flammable or explosive waste, and dead animals which is not authorized by this ordinance.
- B. Dumping within the city shall be unlawful. Any person who violates any provision of this ordinance shall be subject to the following penalties:
 - 1. upon a first conviction within an 18-month period, a fine of not less than \$100 nor more than \$500, or by imprisonment not exceeding ninety (90) days, or both such fine and imprisonment;
 - 2. upon a second conviction within an 18-month period, a fine of not less than \$250 nor more than \$500, or by imprisonment not exceeding ninety (90) days, or both such fine and imprisonment; and
 - 3. upon a third or subsequent conviction within an 18 months period, a fine of \$500, or by imprisonment not exceeding ninety (90) days, or both such fine and imprisonment.

11-4-21 Regulations adopted.

The rules and regulations promulgated and published by the New Mexico Environment Department concerning the subject matter of this ordinance, including any amendments thereto, are adopted by reference and made a part of this ordinance. A copy will be available at City Hall.

11-4-22 Violation—Penalty.

Violation of the provisions of this chapter or failure to comply with any of its requirements shall constitute a petty misdemeanor. Any person who violates any provision of this ordinance shall, upon conviction, be subject to a fine not exceeding \$500 or by imprisonment not exceeding 90 days or both unless a different specific penalty is provided. Each separate violation shall constitute a separate offense, and upon conviction, each day of violation shall constitute a separate offense.

PASSED, APPROVED AND ADOPTED THIS 25th DAY OF June 2019 BY THE GOVERNING BODY OF THE CITY OF RIO COMMUNITIES, NEW MEXICO.

City of Rio Communities Governing Body

Mark Gwinn,
Mayor

Margaret (Peggy) Gutjahr,
Councilor Mayor Pro-tem

Bill Brown,
Councilor

Joshua Ramsell,
Councilor

Arturo Sais,
Councilor

ATTEST:

Elizabeth (Lisa) Adair,
Municipal Clerk