

SOLID WASTE MANAGEMENT

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Section Cross references: Buildings and building regulations, Ch. 8; Littering, § 24-20;
 State law references: Refuse generally, NMSA 1978, § 3-48-1 to 3-48-7;
 Solid Waste Act, NMSA 1978, § 74-9-1 to 74-9-42;
 municipal requirement to provide solid waste collection services; § 20.9.2.9, NMAC.

ARTICLE I. IN GENERAL

Sections 30-1 to 30-25. Reserved.

ARTICLE II. COLLECTION AND DISPOSAL

Section 30-26. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bulk trash, lumber; concrete, trees, scrap metal or auto parts means large disposable items of trash not normally class 1 or class 2 solid waste.

Can means a reusable container or receptacle made of plastic, metal, or fiberglass, having a tight fitting lid, and having a capacity not to exceed 32 gallons, a loaded weight of no more than 40 pounds, and handles of adequate strength for lifting.

Cart means a reusable container or receptacle made of plastic, metal or fiberglass with a tight fitting lid and structured so as to be lifted, dumped and repositioned by a mechanical arm or other device of a refuse truck.

Commercial business means all uses other than a residence.

Food dispenser's premises means all restaurants, cafes, confectioneries, hotels or other establishments that regularly engage in the preparation or sale of food for consumption upon such premises, and includes produce houses, fruit stands, grocery stores, bakeries and all other food processing and manufacturing establishments.

Hazardous waste means waste designated as hazardous by the United States Environmental Protection Agency or the New Mexico Environment Department.

Residence means premises on which persons produce or generate solid waste from single-family residences and includes an individual unit, an individual duplex or condominium, an individual townhouse, a mobile home or a factory house. Apartment houses having more than two living units shall be considered commercial businesses.

Solid waste means all rejected or waste food, offal, swill, carrion, cold ashes, dirt, slops, wastepaper, trash, rubbish and waste or unwholesome materials of every kind and character. Solid waste is divided into two classes as follows:

- (1) *Class 1 solid waste* includes kitchen and table refuse and leavings, any and all rejected or waste food, animal manure, offal, swill, carrion, slops and also every accumulation of animal, vegetable or other matter that attends the preparation, consumption, decay or dealing in or storage of meats, fish, fowl, birds, fruits and vegetables.
- (2) *Class 2 solid waste* includes crockery, bottles, broken brick, tin cans, metal vessels, trimmings from lawns, trees and flower gardens, pasteboard boxes, rags, paper, straw, sawdust, packing material, shavings, boxes, cold ashes, weeds and all rubbish or other refuse not included in class 1 solid waste. This class includes such infrequently disposed of items as home appliances or furnishings and other items from a residential premises.

History: Ord. No. 208, § 1, adopted 5-1-89; Cross reference: Definitions generally, § 1-2.

Section 30-27. Penalty for violation of article.

Any person violating any provision of this article, shall, upon conviction, be punished in accordance with Section 1-6.

History: Ord. No. 208, § 13, adopted 5-1-89.

Section 30-28. Minimum standards for businesses.

Persons in the business of collecting, storing, or disposing of solid waste in the Village shall adhere to the following minimum standards:

- (1) Solid waste accumulated by residences and class 2 solid waste shall be collected at least once each seven-day period.
- (2) Class 1 solid waste shall be collected at least twice in each seven-day period and more often if directed by the Village Clerk so as to avoid creation of a nuisance.
- (3) All vehicles used for collection, storing or hauling of solid waste shall have a tight covering and be so designed and operated as to prevent offensive odors escaping therefrom and be so designed and operated as to prevent solid waste from being blown, dropped or spilled therefrom, and shall comply with all valid applicable solid waste management regulations of the New Mexico Environment Department.
- (4) All persons collecting, storing or disposing of solid waste shall serve all residential premises within the Village creating solid waste and provide either carts or cans for receptacles or such other receptacle as is part of the proposal of the successful contractor selected by the Governing Body and is approved by the environmental improvement division. If the contractor providing the successful bid proposes a can, cart or other container system, the cans, carts or containers shall be kept in good repair (reasonable wear and tear excepted) by the occupiers of the premises or the persons using them, and if damaged or destroyed, they shall be responsible for replacement.

- (5) All persons collecting, storing or disposing of solid waste within the Village shall provide at their own expense a suitable sanitary landfill for dumping or disposal of solid waste. The location of such landfill is subject to prior approval by the Governing Body and shall at a minimum comply with all applicable federal and State laws and regulations and such person may charge a landfill fee to users thereof who are not paying for regular solid waste collection, storage, transportation or disposal service.
- (6) The contractor shall comply with all applicable present and future municipal, State and federal ordinances, laws, rules and regulations affecting the landfill used by the contractor for disposal of solid waste collected in the Village, whether such regulations are in force and effect at the time of the adoption of this article or may in the future be passed and to pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands, including reasonable attorney's fees, that may arise out of, or be imposed because of, the failure of the contractor to comply with the provisions of this article or on account of any tort claim by third parties.
- (7) The contractor shall not use or suffer to be used the landfill premises so as to create a nuisance or increase existing insurance rates or to make or suffer waste of any landfill.
- (8) The Village shall not be liable for any damage to persons or property arising from any cause whatsoever in or about the contractor's operations, and the contractor agrees to indemnify and save harmless the Village, its officers, agents and employees from any and all such claims and liability for damages to persons or property.
- (9) All persons engaging in the collection, storage or disposal of solid waste within the Village shall move and dispose of bodies of any small dead animals, such as cats, dogs, birds or other small wild animals, from any public street, alley or way or other public premises within the Village immediately upon notification thereof by any official or employee of the Village, without cost to the Village.
- (10) All persons collecting, storing or disposing of solid waste within the Village shall provide good quality equipment and trained employees so as to perform required obligations in a reasonable workmanlike manner.
- (11) All bulk trash, lumber, concrete, trees, scrap metal or auto parts shall be disposed of by the owner or occupier of the premises on which such is located or through special agreement and special charge of the contractor.

History: Ord. No. 208, § 2, adopted 5-1-89; Cross reference: Businesses, Ch. 10.

Section 30-29. Location of solid waste receptacles; disposal by property owner.

Each person owning or controlling real property shall place the solid waste storage receptacle, if the Governing Body selects a contractor proposing to use solid waste storage receptacles that would be on private property, so as to provide minimum visual exposure and shall screen the receptacle site in such a manner as to stop spilling, blowing or scattering of solid waste by the elements or animals. If the Governing Body selects a contractor that proposes a curbside method of collection, each person owning or controlling real property shall at the time and place designated by the Village Clerk, place the proper solid waste receptacle at curbside of the public road or street or edge of a public alley for pickup. Such persons may, on approval of the Village Clerk, place the receptacle at another location, provided that such location and any additional fee for pickup therefrom is agreed to by the contractor. This charge for special service shall be billed and collected as agreed by the Village, the contractor and the customer. These provisions do not limit the Governing Body in using its discretion with regard to the type of collection system. Any request for bids by contractors shall solicit other proposed methods, other than and including curbside collection. Notwithstanding any other provision to the contrary in this article, it is not mandatory

that persons use the services of the contractor selected by the Village. They may at their own option haul their solid waste to a sanitary landfill and shall not allow their premises to become a nuisance.

History: Ord. No. 208, § 3(A), adopted 5-1-89.

Section 30-30. Prohibited disposal methods.

It is unlawful for any person owning or controlling real property to permit burning, covering or disposal of solid waste on the property in any manner other than as provided in Section 30-29. Provided, however, persons may, if allowed by regulation of the State environmental improvement division pursuant to the Air Quality Control Act, NMSA 1978, § 72-2-1 et seq., burn tree trimmings.

History: Ord. No. 208, § 3(B), adopted 5-1-89

Section 30-31. Contracts for solid waste collection; lowest responsible bid.

(a) The Village shall enter into a contract of a duration of four years with the provision for continuance on a four-year basis thereafter, unless the Village chooses to call for written, sealed bids for such contract for the collection, storage and disposal of solid waste accumulated within the Village. The Village Clerk shall take such steps as are reasonably necessary to provide notice to persons that would be interested in engaging in such contractual services.

(b) A contract awarded pursuant to this article shall be exclusive and the Village can refuse to award more than one contract.

History: Ord. No. 208, § 4, adopted 5-1-89; Ord. No. 327, adopted 4-11-00.

Section 30-32. Contractor's responsibilities.

No person shall be awarded a contract by the Village for the collection, storage, transportation or disposal of solid waste unless such person complies with the following minimum conditions of responsibility:

- (1) Provides satisfactory evidence of insurability to the extent of the liability of the Village pursuant to the New Mexico Tort Claims Act and show satisfactory evidence of insurability of the Village, its officers, agents and employees as coinsureds to the extent of the Village, its officers, agents and employees' liability pursuant to the Tort Claims Act and be willing to agree and save and keep harmless the Village, its officers, agents and employees from any and all actions, causes of action, claims for damages and liabilities arising out of the acts or failures to act on the part of the contractor. The insurance policy shall contain a provision prohibiting cancellation unless the Village is given prior written notice of intent to cancel not less than 90 days prior to the proposed cancellation date.
- (2) Provides evidence of ability to provide a performance bond in the amount of \$25,000.00, guaranteeing performance running to the Village as obligee, the performance bond to be conditioned upon the faithful performance of all obligations contracted for. The performance bond shall contain provisions incorporating by reference and guaranteeing performance of all requirements of this article. The bond shall contain a provision prohibiting cancellation unless the Village is given prior written notice of intent to cancel not less than 90 days prior to the proposed cancellation date.
- (3) Provides evidence in satisfactory form of coverage of all employees under the New Mexico Workman's [Workers'] Compensation Act, and such coverage shall contain a provision prohibiting cancellation unless the Village is given prior written notice of intent to cancel not less than 90 days prior to the proposed cancellation date.

History: Ord. No. 208, § 5, adopted 5-1-89; Cross reference: Businesses, Ch. 10.

Section 30-33. Prohibited acts of contractor.

(a) The storing, servicing or repairing (other than that which is necessary as a result of unforeseen breakdown, and only for the time necessary) of trucks, trailers or other vehicles used for the collection, hauling or disposal of solid waste at any location within a residential area is unlawful.

(b) Preferential or discriminatory rates, charges, provision of service facilities, services, rules, regulations or practices are unlawful; provided, however, it is not unlawful to provide, establish or enforce graduated scales of charges and rate schedules to which any customer coming within such class would be entitled.

History: Ord. No. 208, § 6, adopted 5-1-89.

Section 30-34. Rates and charges - generally.

(a) Each person owning or controlling real property within the Village shall pay a reasonable fee as set by contract between the Village and the collector, for the collection, storage, transportation and disposal of solid waste, and the Village shall collect such fee and use the revenue for purposes of defraying the contract cost for collection, transportation and disposal of solid waste within the Village. If the Village performs collection and accounting services, a portion of the collected fee shall be credited to the Village general fund to help defray uncollectible and the administrative costs of the program. The fee shall only be charged against real property which is occupied or has been previously occupied, and any person owning or controlling real property shall pay the appropriate solid waste collection, storage, transportation and disposal fee whether or not solid waste collection, storage, transportation and disposal service is actually used by the person owning or controlling real property. Such fees shall be as provided from time to time by contract.

(b) In the event of a dispute with regard to rates and charges, the Governing Body will act as arbitrators and its decision will be final, binding and enforceable in any court of competent jurisdiction.

(c) If a person owning or controlling real property within the Village refuses or fails to use the refuse collection, storage, transportation and disposal service provided by a private contractor to the Village, or if any person owning or controlling real property allows solid waste to be deposited upon his property other than in the proper receptacle, or fails or refuses to allow removal, or fails or refuses to remove solid waste or to place solid waste in the proper receptacle within 24 hours after the solid waste is deposited on the real property, the Village or the contractor may remove the solid waste, or cause removal of the solid waste, from the real property and may make a charge against the real property specifically benefited by the removal of the solid waste. If such person owning or controlling the real property then fails or refuses to pay the charge imposed for the collection and disposal of the solid waste, or the charge made against the real property specifically benefited by the removal of the solid waste, the Village may make an assessment against the real property. In the event of the making of such assessment, it shall be made, enforced and collected in such manner and as provided by NMSA 1978, § 3-48-6 et seq.

(d) If the Village or the contractor, if the contractor is designated to perform the billings and collections, is notified in writing prior to a tenant or renter receiving solid waste service that the landlord or owner shall not be responsible for payment of charges incurred by the tenant or renter, and when such notice is issued pursuant to NMSA 1978, § 3-23-6, and identifies the particular property involved, the following procedure shall be in effect. The Village Clerk or contractor, when the tenant or renter applies for solid waste collection, transportation and disposal service, shall inform the applicant that because of the notice of the landlord or owner, the applicant must pay a minimum advance deposit in order to assure security to the Village or contractor for future payment. The deposit shall be held without payment of interest thereon and carried as a running credit on the account and if at termination of the service the account is overpaid, the appropriate refund shall be made. The amount of the deposit shall be calculated

by the Village Clerk or contractor equal to three months' prior average bill for service.

(e) Notwithstanding any other provision to the contrary in this article, it is not mandatory that persons use the services of the contractor selected by the Village. They may at their own option haul their solid waste to a sanitary landfill and shall not allow their premises to become a nuisance.

History: Ord. No. 208, § 7, adopted 5-1-89; Ord. No. 327, adopted 4-11-00.

Section 30-35. Same [rates and charges] - enumerated.

The rates and charges for the service of municipal solid waste collection, transportation and disposal are hereby established by contract between the Village and the Collector.

History: Ord. No. 214, § 1, adopted 4-24-89; Ord. No. 239, adopted 12-10-91; Ord. No. 327, adopted 4-11-00.

Section 30-36. Same [rates and charges] - when due and payable; lien.

(a) All charges for solid waste collection, storage and disposal shall be due and payable on the first day of the month following provision of the service. A penalty of ten percent of the outstanding balance owed shall be assessed following the 15th day of the month due.

(b) Charges and penalties shall be and constitute a lien against the property benefited and shall be enforced and collected pursuant to the provisions of the Municipal Lien Law, NMSA 1978, §3-36-1 et seq.

History: Ord. No. 208, § 8, adopted 5-1-89.

Section 30-37. Village authority to adopt ordinances, rules and regulations.

The Village reserves the complete right to adopt from time to time any ordinances, rules or regulations supplementing, amending, changing or repealing this article that it may see fit to adopt.

History: Ord. No. 208, § 9, adopted 5-1-89.

Section 30-38. Authority of contractor to adopt rules and regulations.

Any contractor under this article may adopt rules and regulations for solid waste collection and disposal service, so long as such rules and regulations are not in conflict with any provision of this article or any ordinance, rule or regulation that may from time to time be adopted by the Village. Such rules and regulations for service must be filed with the Village Clerk's office and shall not take effect until after 15 days from filing.

History: Ord. No. 208, § 10, adopted 5-1-89.

Section 30-39. Article not a franchise; contracts not assignable.

This article is not intended to be a franchise or a grant of a franchise, nor is it intended that rights accrue to any person operating under this article except those rights provided in the contract. The right to collect, store or dispose of solid waste shall not be transferable, saleable, or used as security for any debt and shall not have any value except a nominal value of \$1.00. Any attempted or actual assignment, sale, pledge or hypothecation of any rights created by this article shall be null, void and of no effect. Provided, however, the Village reserves the right to approve, by action of the Governing Body, written subcontracts for services to be performed pursuant to this article.

History: Ord. No. 208, § 14, adopted 5-1-89.