



ORDINANCE NO. 2022-003

AN ORDINANCE ADOPTING REGULATIONS FOR SOLID WASTE COLLECTION, TRANSFER, TRANSPORT AND DISPOSAL FOR ALL RESIDENTIAL AND COMMERCIAL PROPERTIES WITHIN THE MUNICIPAL BOUNDARIES OF THE CITY OF ANTHONY, NEW MEXICO AND THE INHABITANTS THEREOF.

WHEREAS, staff for the GOVERNING BODY did duly publish notice of this ordinance in accordance with law; and

WHEREAS, the GOVERNING BODY did hold a duly noticed Public Meeting; and

WHEREAS, the GOVERNING BODY did consider testimony from staff and the public before reaching its decision; and

WHEREAS, NMSA 1978, Section 3-17-1 provides that the GOVERNING BODY of a municipality may adopt ordinances to effect or discharge the powers and duties conferred upon it by law and to provide for the safety, preserving the health, promoting the prosperity and improving the morals, order comfort and convenience of the municipality and its inhabitants; and

WHEREAS the health, safety, and general welfare of the residents of the City of Anthony, New Mexico requires regulation of the solid waste collection, transfer, transport, and disposal for all residential and commercial properties within the municipal boundaries of the City of Anthony, New Mexico; and

WHEREAS, the Board of Trustees for the City of Anthony, New Mexico is authorized under NMSA 1978, Section 3-48-1 et seq. and Section 3-17-1 to adopt regulations for solid waste collection, transfer, transport, and disposal for all residential and commercial properties within the municipal boundaries of the City of Anthony, New Mexico and to provide for the health, safety and welfare of the residents of the City of Anthony; and

WHEREAS, the Board of Trustees for the City of Anthony, New Mexico is authorized under NMSA 1978, Section 3-42-1 to grant franchises to any person, firm or corporation for the operation of any public utility; and

NOW THEREFORE BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ANTHONY, NEW MEXICO that the Board of Trustees for the City of Anthony, New Mexico hereby adopts the following solid waste ordinance enacted to read as follows:

Chapter 1 SOLID WASTE

ARTICLE

Article I - In General

Article II - Litter Control

Article III - Collection and Disposal

Article I - In General

Section 1:	Short Title
Section 2:	Authority and Purposes
Section 3:	Severability
Section 4:	Effective Date
Section 5:	State Law References
Section 6:	Definitions

Section 1. SHORT TITLE.

This Ordinance may be cited as the "Solid Waste Ordinance of the City of Anthony, New Mexico."

Section 2. AUTHORITY AND PURPOSE.

AUTHORITY: This Ordinance is adopted pursuant to the enabling provisions of NMSA 1978, Section 3-17-1, as amended, Section 3-42-1, and Section 3-48-1 et seq.

PURPOSE: The purpose of this ordinance is to establish regulation for solid waste collection, transfer, transport, and disposal for all the residential and commercial properties within the municipal boundaries of the City of Anthony, New Mexico.

Section 3. SEVERABILITY.

Should any section, paragraph, clause, or provision of this Ordinance for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance.

Section 4. EFFECTIVE DATE.

This ordinance shall be in full force and effect after its adoption, approval, and publication as provided by law.

Section 5. STATE LAW REFERENCES.

Ordinances (NMSA 1978, Section 3-17-1); Franchises to Public Utilities (NMSA 1978, Section 3-42-1); Collection and Disposal of Refuse (NMSA 1978, Section 3-48-1 et seq.); Recycling and Illegal Dumping Act (NMSA 1978, Section 74-13-1 et seq.); Solid Waste Act (NMSA 1978, Section 74-

9-1 et. seq.).

Section 6. DEFINITIONS.

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

- (1) *Appliances* means large household appliances such as refrigerators, stoves, washing machines, air conditioners, swamp coolers, and the like over 1.5 cubic feet, that are received as waste by the City.
- (2) *Ashes* means the residue from the burning of wood, coal, coke, or other combustible materials.
- (3) *Backyard composting* means composting household solid waste in a confined space within personal property boundaries.
- (4) *Burning* means any form of incineration of solid waste in the open air except as otherwise provided by state law.
- (5) *Collection* means the systematic and regular removal of solid waste from property and its transport to a designated solid waste facility for disposal or for transfer and transport to a solid waste facility for final disposal.
- (6) *Compost* means organic matter produced from solid waste which has undergone a controlled process of decomposition and pathogen reduction and has been stabilized to a degree which is potentially beneficial to plant growth and which is used as a soil amendment, growing medium amendment or other similar uses.
- (7) *Composting* means the process by which biological decomposition of organic solid waste occurs under controlled conditions. The process stabilizes the organic fraction into a material, which can be easily and safely stored, handled and used in an environmentally acceptable manner.
- (8) *Construction and demolition debris* mean materials generally considered not to be water soluble and which are 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 project.
 - a. The term "construction and demolition debris" also includes rocks, soil, tree remains, trees and other vegetative matter that normally results from land clearing.
 - b. The term "construction and demolition debris" does not include asbestos or liquids including, but not limited to, waste paints, solvents, sealers, adhesives or potentially hazardous materials.
- (9) *Container* means authorized public or private receptacles designed for the intermediate storage of solid waste until such time as the refuse is collected. The term "container" includes dumpsters provided by the Contractor as well as

containers designated for the intermediate storage of recyclable materials.

- (10) *Customer* means a property owner whose property receives solid waste disposal service from a BOT-Approved Contractor.
- (11) *Day* means a calendar day unless otherwise described.
- (12) *Debris* means the unwanted or unusable remains of something broken down or destroyed.
- (13) *Dumping* means:
 - a. Disposing of solid waste or any other discarded material on property within the City which is private including, but not limited to, privately owned or controlled dumpsters, residential refuse containers, parking lots and vacant lots;
 - b. Disposing of solid waste or discarding any other items on a public place or on public property or facility, which shall include, but is not limited to, the entire width between the boundary lines of every way publicly maintained for the purpose of vehicular travel;
 - c. Allowing refuse to collect or accumulate on any privately-owned lot or other premises within the City.
- (14) *Dumpster* means a large solid waste receptacle having a capacity greater than 95 gallons, capable of being lifted and dumped by a Contractor-operated automated system.
- (15) *Facility* means real estate or buildings used for a particular function.
- (16) *Garbage* means unwanted or unusable waste products or unused materials to include, but not limited to, food, offal, ashes, waste paper, trash, rubbish, and waste or unwholesome materials generated during the consumption of resources.
- (17) *Governing body* means the Board of Trustees of the City of Anthony, New Mexico.
- (18) *Green waste* means vegetative or green organic matter resulting from landscaping, land maintenance and land clearing operations.
 - a. The term "green waste" includes yard waste.
 - b. The term "green waste" does not include dirt, rocks, asphalt, cactus or concrete chips.
- (19) *Hazardous waste* means waste which because of its concentration or physical, chemical or infectious characteristics, may pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

- (20) *Hot waste* means any waste which is on fire, smoldering, or in excess of 180 degrees Fahrenheit.
- (21) *Infectious waste* means waste containing pathogens or biologically-active material which because of its type, concentration or quantity, is capable of transmitting disease to persons exposed to the waste.
- (22) *Multifamily residential* means residential apartment or condominium dwelling units, consisting of four or more separate units.
- (23) *Nonresidential recyclables* mean recyclables generated by stores, offices, restaurants, hotels or motels, warehouses, and other manufacturing and nonmanufacturing activities.
- (24) *Nonresidential solid waste* (a.k.a. *Commercial Solid Waste*) means all types of solid waste generated by, but not limited to, stores, offices, restaurants, hotels, motels, warehouses, and other manufacturing and nonmanufacturing activities. This term shall include commercially compacted items, dead animals, and construction and demolition debris but does not include household and hazardous solid waste, or items which the City is prohibited by law from collecting or disposing.
- (25) *Ordinance* refers to this Ordinance.
- (26) *Person* means any individual, partnership, limited partnership, firm, company, corporation, association, joint-stock company, trust, estate, governmental entity, or any other legal entity, or their legal representatives, agents or assigns. The term "person" includes all federal, state or local governmental entities.
- (27) *Processing* means techniques to change the physical, chemical or biological character or components of solid waste. This term does not include composting.
- (28) *Putrescible* means organic material subject to decomposition by microorganisms.
- (29) *Recyclable material* means items which can be reused or reprocessed for reuse. Such items may include, but are not limited to, corrugated cardboard, paper, aluminum, steel, metals, glass, wood, plastic, and cloth.
- (30) *Recycling* means any process by which recyclable materials are collected, separated, processed and reused or returned to use in the form of raw materials or products.
- (31) *Refuse*. See *Solid waste*.
- (32) *Residential solid waste* means any solid waste or garbage derived from households, including single and multiple residents, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas.

- (33) *Residential unit* means a dwelling unit.
- (34) *Public Rights-of-Way* means the areas in, under, upon, over, across, and along any and all of the present and future Streets or streams now or hereafter owned or controlled by City.
- (35) Scavenging means the removal of any solid waste or recyclables from a transfer facility or from private or public containers in a manner not authorized by the City.
- (36) *Service area* means that area within the city limits and any additional area beyond those limits within which the Board of Trustees authorizes the collection of solid waste.
- (37) *Solid waste* means garbage, refuse, litter, yard waste, construction and demolition debris and other discarded solid materials, including those from industrial, commercial and agricultural operations and from community activities. This term does not include solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents, dissolved materials in irrigation return flow nor hazardous, infectious, radioactive materials which the City is prohibited by law from accepting.
- (38) *Solid waste facility* means any real estate or structure, or group of structures, designated to facilitate the collection, processing, treatment, handling, transfer, transport and disposal of municipal solid waste.
- (39) *Transfer facility* means a facility in which various types of solid waste are received and then placed in other vehicles for transport to another solid waste facility for disposal.
- (40) *Trash*. See *Solid waste*.
- (41) *User*. See *Customer*.
- (42) *Vermin* means all noxious, objectionable, or disgusting animals; especially those of a small size that are difficult to control, e.g. rats, mice, flies, and cockroaches.

Article II - Litter Control

- Section 1: Penalty
- Section 2: Littering prohibited
- Section 3: Removal of litter, damaged vehicles, etc.

Section 1. PENALTY.

Any person who shall violate any provision of this Article shall be subject to a fine of not less than fifty dollars (\$50.00) and not more than two-hundred and fifty dollars (\$250.00). In addition to, or in lieu of the fine imposed, the person so convicted may be ordered to pick up litter for not less than five (5), nor more than twenty-five (25) hours.

Section 2. LITTERING PROHIBITED.

- (a) It shall be unlawful for any person to throw, drop, or otherwise deposit solid waste upon any street, alley, yard, or public or private premises. This section does not prohibit the deposit of solid waste in authorized containers.
- (b) It shall be unlawful to drive upon any City streets with an uncovered and unsecured load of solid waste.
- (c) All waste, including but not limited to solid waste, resulting from construction, repair, or alteration of any building shall be contained and removed in a timely manner by the generator and/or its contractor.

Section 3. REMOVAL OF LITTER, DAMAGED VEHICLES, ETC.

- (a) Any person who throws, drops, or otherwise deposits solid waste upon any street, alley, yard, or public or private premises shall immediately collect, pickup, remove or cause the same to be removed.
- (b) Any person removing a wrecked or damaged vehicle from a Public Right -of- Way shall remove any glass or other dangerous debris and substances resulting from collisions or other vehicular mishaps, if such removal can be performed without the risk of serious bodily harm.

Article III - Collection and Disposal

- Section 1. Penalty
- Section 2. Authority to provide services; phase-in.
- Section 3. Additional prohibited practices.
- Section 4. Administration of services.
- Section 5. Storage and treatment of garbage.
- Section 6. Residential collection.
- Section 7. Commercial collection.
- Section 8. Special and bulk collections.
- Section 9. Frequency of collection; special pickups.
- Section 10. Removal to designated place.
- Section 11. Fees.
- Section 12. Franchise Fees
- Section 13. Lien; Foreclosure.

Section 1. PENALTY.

Any person who shall violate any provision of this Article shall be subject to a fine of fifty dollars (\$50.00). Each day of a violation shall be considered a separate offense.

Section 2. AUTHORITY TO PROVIDE SERVICE; PHASE-IN.

- (a) The Board of Trustees may, by ordinance, and as it deems in the best interests of the health and safety of the City's inhabitants, grant a franchise to a contractor ("Residential Contractor") which shall have the exclusive right within the service area to collect, remove, or dispose of residential solid waste, with the exception of dead animals, hazardous wastes and other such materials which the City is prohibited by law from collecting or disposing.
- (b) The Board of Trustees may, by ordinance, and as it deems in the best interests of the health and safety of the City's inhabitants, grant non-exclusive franchises to contractors ("Commercial Contractors") which shall have the right within the service area to solicit and enter into contracts with commercial entities to collect, remove, or dispose of nonresidential solid waste, with the exception of nonresidential recyclables.
- (c) No person or organization aside from the Residential Contractor and Commercial Contractors approved by ordinance (collectively "BOT-Approved Contractors") may offer or sell any services for the systematic and routine collection, transportation or disposal of garbage, trash or refuse.
- (d) Phase-In Period:
 - 1. Beginning on the date of enactment of the Ordinance and continuing for a period of no longer than 1,095 calendar days thereafter, any existing written contract otherwise subject to this Ordinance, with a trash collector other than one of the BOT-Approved Contractors as set forth above, shall be allowed to continue in full force and effect until expiration, but no new such contracts shall be created after the enactment of the Ordinance and no such existing contracts shall be subject to renewal after the enactment of the Ordinance except as otherwise specifically authorized or prohibited by law. This phase-in period shall not apply to any person or business that lacks authorization by the laws of the State of New Mexico or City ordinance to do business as a solid waste service provider within the service area as of the date of enactment of the Ordinance.
 - 2. It shall be the obligation of each resident of the City, both individuals and commercial entities, to engage the services of a BOT-Approved Contractor for solid waste services at or before the close of the Phase-In Period, or the expiration of any existing written contract for solid waste services, whichever date comes first, consistent with the provisions of Section 2(d)(1), herein.
- (e) Violation of the phase-in requirements as described in Section 2(d)(1-2) herein, shall result in a fine of up to five-hundred dollars (\$500), notwithstanding the provisions of Section 1 herein.
- (f) The City and its duly authorized agents shall have the exclusive right to collect or gather residential curbside recyclables, except that the City may grant a franchise to a contractor for such services.
- (g) The City reserves the right at any time to refuse to collect or receive waste, if, in the City

Manager's or the City Manager's designee's judgment, such collection is deemed to be harmful, hazardous or in violation of City and state regulations governing type of waste, weight or waste constituents. The City shall inform the person responsible for such waste and shall require compliance with this chapter.

- (h) The City shall have the right to enforce this Ordinance through appropriate written policies and regulations, except as otherwise prohibited by law.

Section 3. ADDITIONAL PROHIBITED PRACTICES.

The following actions with regard to solid waste are hereby prohibited and, notwithstanding Section 1 herein, each person who commits these violations shall be subject to a fine of one-hundred dollars (\$100.00); each day of a violation shall be considered a separate offense:

- (1) Burning;
- (2) Dumping;
- (3) Placing solid waste in any container or areas other than those specifically designated or approved by the City for collection or disposal;
- (4) Scavenging;
- (5) Depositing of hot waste in excess of 180 degrees Fahrenheit into any container or enclosure designated for refuse collection;
- (6) Presenting to the City for disposal infectious waste, hazardous waste, flammable or explosive refuse, radioactive waste or other contaminated materials which by law or regulation must be properly disposed by a specially licensed or equipped person or requires a solid waste facility specifically authorized for this purpose;
- (7) Placing furniture, mattresses, large tree limbs, tires, engine parts, appliances, or other large items at the curbside or in waste containers for routine weekly collection;
- (8) Depositing, dumping or burying dead animals, or any substance condemned by the state or City, or any other deleterious or offensive substances, except as provided for in this chapter. Dead rodents, fish, and birds shall be double-bagged and sealed;
- (9) Willfully destroying or damaging Contractor-provided garbage receptacles; and
- (10) Willfully parking or placing obstacles so as to interfere with or prevent the automated collection of garbage receptacles.

Section 4. ADMINISTRATION OF SERVICES,

The Residential Contractor shall attend to all requests for new or additional collection service, cancellation or reduction of service by residential customers.

Section 5. STORAGE AND TREATMENT OF GARBAGE.

No person owning or occupying any building, lot or premises in the City shall suffer, allow or permit to remain upon the lot or premises any garbage or trash outside of containers; provided, however, that this provision shall not be construed as preventing backyard composting, or the deposit and spreading of rotten manure upon any lawn or garden provided the same shall be

reasonably free from offensive odors and is not so deposited or spread as to constitute a nuisance. Except as provided for in this article, garbage or trash, whether in containers or not, shall not be placed in the City's rights-of-way, in any alley, upon any street, or curbside during intervals between regular collections. Failure to observe this prohibition shall constitute a public nuisance and be subject to all remedies at law and in equity.

Section 6. RESIDENTIAL COLLECTION.

- (a) All single-family dwellings and multiple-family dwellings of four or fewer dwellings on a single site shall be required to deposit garbage in containers supplied by the Residential Contractor. Garbage and refuse not enclosed in containers supplied by the Residential Contractor will not be collected, unless otherwise provided for in this article. Such uncollected garbage and refuse shall not be permitted by the owner or occupant of the premises to remain in the City's rights-of-way, in any alley, upon any street, or curbside for more than twelve (12) hours after refusal of the Contractor to collect such garbage and refuse.
- (b) Customers shall keep all refuse and garbage within their private premises or containers on their private premises until the time when containers are placed for collection. Residential garbage shall be placed out for collection no earlier than 5:00 p.m. on the day prior to the regularly scheduled day for collection. No resident may leave a container after collection for more than twenty-four (24) hours after that collection in the right-of-way.
- (c) Residential garbage shall be placed as close to the front curb as possible but shall not be placed on the sidewalk and shall be clear of pedestrian and vehicular traffic. Where a curb does not exist, the refuse container shall be placed on the property side, outside the traffic boundaries of the road. The garbage container shall be clearly visible and accessible to collection crews and free from any obstructions including, but not limited to, trees, power poles, mailboxes, shrubbery, walls, fences and vehicles. Neither the Residential Contractor nor its agents will enter upon private land in order to make collections and pickups. The garbage container shall be placed forward facing the street or alley, with the hinge top being located on the side immediately adjacent to the owner's property.
- (d) Garbage and refuse shall not be stacked so that it rises above the rim of the container, nor shall garbage and refuse be stacked on top of the closed container. The customer shall cleanup refuse spills around the receptacle within twenty-four (24) hours of the spill.
- (e) All garbage containers shall be kept in a clean and sanitary condition by the owner or person using the same, and all containers shall be tightly covered at all times except when garbage is being deposited therein or removed thereof, and shall at all times be proofed against access by vermin to the contents thereof. The garbage shall be bagged prior to depositing it into the receptacle.

Section 7. COMMERCIAL COLLECTION

- (a) Apartments, sites where there are more than four (4) residential units on a single parcel, businesses or other nonresidential premises, shall be required to use dumpsters supplied by a Commercial Contractor.

- (b) Commercial Contractors are authorized to designate the location of all containers for commercial collection, taking into consideration convenience to collection crews and to customers, traffic hazards, and other hazardous conditions.
- (c) All garbage containers shall be kept in a clean and sanitary condition by the owner or person using the same, and all garbage containers shall be tightly covered at all times except when garbage is being deposited therein or removed thereof, and shall at all times be proofed against access by vermin to the contents thereof. The garbage shall be bagged prior to depositing it into the container or dumpster.

Section 8. ROLL-OFF SERVICE AND SPECIAL AND BULK COLLECTIONS.

- (a) The Residential Contractor will supply six (6) roll-off containers for the use of City residents for a period of at least one (1) day on at least six (6) different occasions during the calendar year at a rate agreed-upon by the Residential Contractor and the City.
- (b) At intervals agreed to by the Residential Contractor and the City, the Residential Contractor shall provide for residential customers special and bulk collections of refuse, garbage, lawn and tree clippings, appliances, and other items not collected during normally scheduled pickup service, but not construction debris. Items for such collection shall be placed at curbside no earlier than twenty-four (24) hours prior to the scheduled pickup, unless otherwise coordinated with the City Manager or City Manager's designee, and in no event will the Residential Contractor's personnel enter upon private lands without the customer's permission to collect or pickup special or bulk items. The items for collection shall be placed so as not to interfere with traffic or pedestrians and shall be clearly visible to the collector.

Section 9. FREQUENCY OF COLLECTION; SPECIAL PICKUPS.

- (a) Residential and apartment collections from containers shall be at least once weekly.
- (b) Commercial collections shall be at least once weekly, but not more often than five (5) days a week.
- (c) Other collections may be made as deemed necessary by the City Manager or the City Manager's designee or the BOT-Approved Contractors. In the case of special, unscheduled pickups, the charge, if any, to the requesting party shall be determined by the appropriate commercial fee schedule.

Section 10. REMOVAL TO DESIGNATED PLACE.

- (a) All garbage removed from any premises within the City, shall be taken to a facility registered or permitted with the State of New Mexico.
- (b) For the preservation of the public health and general welfare, it is hereby declared to be unlawful for any person, including public employees, to gather, remove, dump or dispose of garbage in any other place. All scavenging in and removal of all classes of garbage, trash, refuse and debris from containers provided and maintained by the Contractor is

prohibited.

Section 11. RATES AND FEES

- (a) The service rates for all residential customers shall be adopted by ordinance of the Board of Trustees and shall become effective upon the date specified therein. Any adjustment to this rate shall take place no more often than annually and shall be based upon the Consumer-Price Index-All Urban Consumers (CPI-U) for the previous calendar year.
- (b) The service rates for all commercial customers shall be determined on a private contractual basis between the commercial customer and its Commercial Contractor. In the event the City determines that no viable competition exists for commercial collection, the Board of Trustees reserves the right to regulate Commercial Contractor rates. All fees for the collection and disposal of solid waste will be collected by the Commercial Contractor with whom the commercial customer has a contract.
- (c) The users of solid waste containers supplied by BOT- Approved Contractor shall pay a one dollar (\$1.00) monthly environmental impact fees for each container in their possession. This fee shall be collected by the BOT – Approved Contractor and remitted to the City together with any franchise fees owed.

Section 12. FRANCHISE FEES.

In consideration of the grant of a franchise to Residential Contractor and Commercial Contractor, the BOT- Approved Contractor shall pay the City a franchise fee equal to fifteen (15) percent of the gross receipts of the franchisee for services in the City. this fee shall be paid each quarter, not less than thirty (30) days after the end o the quarter. The City may inspect the books of any BOT- Approved Contractor, with or without previous notice, at any time during business hours

Section 13. LIEN; FORECLOSURE.

The failure to pay for garbage collection services shall result in a lien upon the property, and the BOT- Approved Contractor shall be authorized to take whatever steps necessary to perfect and foreclose upon said lien.

Section 14. REPEALER

This ordinance repeals and replaces current Ordinance No. 2019-003. All other ordinances or resolutions or parts thereof inconsistent with the provisions of this Ordinance are hereby repealed to the extent only of such inconsistency or conflict.

PASSED, ADOPTED AND APPROVED THIS JULY 20TH DAY OF, 2022

ATTEST:



Acting City Clerk – Gloria K. Ramirez


Diana Murillo, Mayor

ROLL CALL VOTE:

MPT Elva Flores

☒ YES ☐ NO



Trustee Javier Silva

☒ YES ☐ NO



Trustee Daniel Barreras

☒ YES ☐ NO



Trustee Gabriel I. Holguin

☒ YES ☐ NO



First reading: July 6th, 2022

Notice of publication date: June 17th, 2022

Public Comments/Discussion: July 6th, 2022 and July 20th, 2022

Second Reading/Consideration and Action to pass: July 20th, 2022