

DRAFT COPY #3⁴

TOWN OF PERALTA

SOLID WASTE ORDINANCE ORDINANCE 2019-04

- 4-1-2 Purpose**
- 4-1-3 Definitions**
- 4-1-4 Administration; Sanitation Officer.**
- 4-1-5 Accumulation of solid waste.**
- 4-1-6 Collection franchise; compulsory collection.**
- 4-1-7 Residential, commercial and construction debris collection.**
- 4-1-8 Prohibited wastes.**
- 4-1-9 Removal of dead animals.**
- 4-1-10 Disturbing solid waste receptacles.**
- 4-1-11 Burning or burying solid waste.**
- 4-1-12 Prohibited scattering or disposal.**
- 4-1-13 Collection, transport and disposal.**
- 4-1-14 Failure to deposit refuse in proper receptacles; authority of Town to remove; assessment.**
- 4-1-15 Unauthorized dump sites.**
- 4-1-16 Collection rates; increases and fees.**
- 4-1-17 Compulsory collection and service fees.**
- 4-1-18 Grievance procedure; withholding payment; delinquent payments.**

4-1-19 Proper receptacles; failure to use Town service.

4-1-20 Penalty.

4-1-2 Purpose.

The purpose of this Section 4-1 is to preserve the health, safety, comfort and convenience of the inhabitants of the Town and to preserve, protect and improve the environmental quality of the Town.

4-1-3 Definitions.

For the purpose of this Section 4-1, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

ASHES

The residue from burning of wood, coal, or other combustible materials.

COMMERCIAL ESTABLISHMENT

All structures, other than residences, together with the surrounding premises, in which any person produces or generates solid waste.

FRANCHISED COLLECTOR

Also known as "franchisee" is tThe person to whom the Town has granted an exclusive franchise to collect all solid waste within the Town for a fee.

GARBAGE

Putrescent animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

HAZARDOUS WASTES

Solid waste that is deemed hazardous under federal statutes, rules or regulations.

LANDFILL

An area of land or an excavation in which solid wastes are placed for disposal and that employs an engineered method that minimizes environmental hazards and meets the requirements of the New Mexico Solid Waste Management Regulations.

PERSON

Any individual, firm, partnership, corporation, cooperative, association or any other entity owning, operating, controlling or inhabiting any house, residence, shop, establishment or other premises with the corporate limits of the Town.

PREMISES

Any property within the Town corporate limits adaptable for human occupancy and shall also mean, but not be limited to, business places, apartment houses, offices, theaters, hotels, residences, cafes, restaurants, eating places, tourist facilities, hospitals, schools, vacant lots and any other places or locations within the Town limits where solid waste accumulates.

RESIDENTIAL COLLECTION

Solid waste collected from single-family residential homes.

RESIDENCE

A home, trailer, mobile home, or other freestanding structure used or capable of use as a human habitation, together with the surrounding premises, in which any person produces or generates solid waste; a single-family residence may include a guesthouse and other outbuildings on the same premises that are not continuously inhabited.

SANITATION OFFICER

The Town Clerk/Administrator or his or her designee and is the person responsible for the administration and enforcement of this Section 4-1.

SOLID WASTE

Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations and from community activities, but does not include those items excluded as a solid waste by the Solid Waste Management Regulations adopted by the Environmental Improvement Board of the State of New Mexico.

SPECIAL WASTES

Types of solid wastes that have unique handling, transportation or disposal requirements to assure protection of the environment and the public health and safety, as defined by the New Mexico Solid Waste Management

4-1-4 Administration; Sanitation Officer.

A.

The Sanitation Officer is responsible for the administration and enforcement of this Section 4-1.

It shall be the duty of the Sanitation Officer to oversee the handling and collection of all solid waste in the Town and disposal thereof. He/She shall have the authority to enforce this Section ~~49~~-1 and to adopt regulations to implement this Section 4-1.

C.

The Sanitation Officer shall monitor all franchisees' compliance with the terms of the franchise and monitor compliance with the terms of this Section 4-1.

D.

The Sanitation Officer shall hear and decide complaints brought by the franchisee or persons served by the franchisee concerning the franchisee's or person's compliance with the terms of any applicable franchise or the terms of this Section 4-1, subject to the rights of appeal set forth in 4-1-18.

E.

The Sanitation Officer shall notify persons whose containers are not in conformity with the requirements set forth in this Section 4-1.

F.

The Sanitation Officer shall also:

(1)

Notify persons using commercial containers if unsanitary conditions exist and order additional service if necessary.

(2)

Resolve disputes regarding the placement of solid waste receptacles.

4-1-5 Accumulation of solid waste.

No person shall allow any solid waste to accumulate upon premises or real property owned, leased or occupied.

4-1-6 Collection franchise; compulsory collection.

A.

The Town shall provide and maintain suitable equipment and personnel sufficient within the Town and shall provide adequate areas for the disposal of solid waste. To achieve those purposes, the governing body may enter into an exclusive franchise for the collection and disposal of solid waste, including residential, commercial, and any other types of solid waste. Residents and business owners are not required to utilize solid waste collection services, they may remove their own solid waste, but if they choose to do so they shall do so in the manner provided by this Section 4-1, and they shall not charge a fee to anyone do so. Only the Town's franchised solid waste collection service may charge a fee to remove solid waste that is not otherwise exempted under this ordinance.

B.

At the end of a franchise term and renewal term, the Town may elect not to renegotiate or renew the franchise. In order to provide collection and disposal after the franchise term has expired, the Town may:

(1)

Itself provide collection and disposal;

(2)

Contract or franchise with a person authorized to do business within the state and the Town; or

(3)

Arrange for collection in any other manner allowed by law.

C.

Every person owning or controlling an occupied residence or commercial establishment within the Town that chooses to use a refuse collection service will be required to use the services offered by the Town or the governing body's Franchised Collector. Fees shall be established by the Town and shall be billed by the Franchised Collector. The Franchised Collector shall have the exclusive rights to all roll-off work, including construction debris.

D.

Unless specifically exempted under this ordinance, only the Town's franchised solid waste collection service is allowed to charge a fee for the removal and collection of solid waste in the Town.

4-1-7 Residential, commercial and construction debris collection.

A.

Residential collections.

(1)

Residential container required; maintenance required. Residents of the Town of Peralta are not required to utilize solid waste collection and removal services. They may choose to remove waste from their property on their own and without charge of fee to anyone.

-Every person owning, leasing, or occupying a single-family residence and whom chooses to utilize ~~utilizing the non-mandatory~~ waste collection services shall

utilize the Town's franchised solid waste collection service and shall be provided on his/her premises a mechanically-handled container obtained from the Town's authorized franchised solid waste collector.

(2)

Mechanically handled containers provided by the franchisee shall remain the property and responsibility of the franchisee. Containers shall be maintained in mechanically sound condition by the franchisee.

(3)

The franchisee shall be entitled to seek restitution from third parties for all maintenance, repairs or loss occasioned by the negligent or intentional acts of such responsible third parties.

(4)

The combined weights of the containers and contents shall not exceed 150 pounds when placed for collection.

(5)

Containers will be loaded by residents in such a manner that they will self-empty when inverted.

(6)

Containers placed for collection by residents shall be placed roadside with lids closed. Any container deemed to be overloaded, which would cause spillage in the process of loading into the truck, will not be serviced.

(7)

The owner, occupant, tenant or lessee of each premises shall store the containers in such a manner as to keep the container from being overturned or upset and scattered in any manner.

(8)

Times and location. All residential containers, other than at the premises of a qualified physically disabled resident, shall be placed for pickup no later than 7:00 a.m. on the regularly scheduled day, but no earlier than 7:00 p.m. the evening prior to pick up, unless otherwise authorized by the Sanitation Officer. Except where special circumstances warrant otherwise and where approved by the Town, all

collections made by the franchisee for other than a qualified physically disabled resident shall be made at roadside and containers must be no farther than three feet from the driving surface of the street. Containers shall be clearly visible and accessible to collection vehicles and with three feet of clearance from any obstructions, including but not limited to trees, shrubbery, walls, fences and vehicles. If more than one container is being used by a resident, there should be a three-foot clearance between each container placed out for collection. All emptied containers shall be removed from the road area by 12:00 midnight of the collection day.

(9)

Frequency. Solid waste from all residential premises shall be collected and disposed of once per week. Collection will start no earlier than 7:00 a.m. of the collection day.

(10)

Reloading. A resident may request service of a reloaded container, at an additional charge.

B.

Commercial collection.

(1)

It is the responsibility of the owner of the premises to arrange for commercial containers with the franchised collector if they choose to use refuse collection services within the Town limits. It is also the responsibility of the owner of the premises to contact the solid waste franchisee concerning any relocation of container, change of service or change of business.

(2)

Commercial or business establishments and multiple-family dwellings with more than two dwellings on a single site are required to have a commercial container unless granted an exemption by the Sanitation Officer. The container shall be kept, by the owner of the premises, in a clean, neat and sanitary condition at all times.

(3)

The size and specifications of a commercial container shall be based on the volume and type of solid waste produced by the particular commercial or business establishment or multifamily dwelling. In cases of disputes or disagreements

concerning the appropriate size of a container or the frequency of collection, the Sanitation Officer may order a change in the size of the container or frequency of collections.

(4)

The franchised collector shall collect all solid waste, except special or hazardous wastes, which is contained inside the approved receptacle to be serviced for that premises. The solid waste shall not exceed the receptacle capacity and the container's lid must be closed when not in use. The owner shall not place any solid waste in any area other than in the solid waste container.

(5)

All solid waste receptacles shall be kept in a clean condition by the user and kept in good condition by the franchisee. The franchisee will perform or cause to be performed all maintenance and repairs upon solid waste containers in order to keep them in proper operating order. The franchisee shall maintain, repair or repaint a container upon the order of the Sanitation Officer. The franchisee shall be entitled to seek restitution from third parties for all maintenance, repairs or loss occasioned by the negligent or intentional acts of the responsible third parties.

(6)

The commercial container shall at all times be located in a manner so as to be readily accessible for removing and emptying. Criteria for placement shall include consideration of accessibility to the container by the collection vehicle and safety. In cases of disputes or complaints arising from or concerning the placement of a container, the Sanitation Officer shall designate the location of containers, taking into consideration, among other things, safety in providing the service, convenience to the customers, convenience to collection crews, and hazardous conditions such as electrical wires.

(7)

No commercial container shall be placed on any premises zoned R-1, street or alley without prior approval of the Sanitation Officer.

(8)

Collection times. Commercial containers shall be serviced between the hours of 4:00 a.m. and 8:00 p.m. on the regularly scheduled pickup days.

(9)

Container size and frequency of service. It shall be the responsibility of the franchisee and the commercial user to determine the cubic yard size and number

of pickups per week for commercial containers. The minimum number of pickups shall be one time per week. If, in the opinion of the Sanitation Officer, unsanitary premises are being maintained, written notice of this fact shall be sent by registered or certified mail or hand delivered to the user. The notice shall state if the Sanitation Officer will require the user to increase the size of the container or to increase the frequency of collection service to maintain sanitary conditions. If within 10 days after mailing or delivery of the notice the premises are not being maintained in a sanitary manner, the user shall be in violation of this Section 4-1 and shall be subject to citation.

(10)

Fees for commercial containers.

(a)

The fees for commercial collection include collection and disposal.

(b)

For commercial, business, other nonresidential establishments or premises where a commercial container is used to serve two or more establishments, the fees provided may be prorated. In the event of a conflict, the pro-ration shall be as determined by the Sanitation Officer.

C.

Construction debris.

(1)

All construction sites shall have a method of containment for construction debris to prevent the debris from blowing or scattering upon the site or adjacent property and streets. The method of containment shall meet with the approval of the Sanitation Officer.

(2)

The producer of construction debris shall arrange with the franchisee for its collection and removal, except that the producer may personally collect the debris and transport it to a state-permitted landfill. Transportation shall be in a vehicle which will prevent the debris from spilling, blowing or in any other manner from being deposited on any street, roadway or property. No third-party contractor may be used other than the franchised collector for the Town.

(3)

Any commercial roll-off container placed in the Town limits, other than that of the franchised solid waste collector, may be confiscated by the Town with the approval of the Sanitation Officer.

4-1-8 Prohibited wastes.

A.

Flammable or explosive materials. Highly flammable or explosive materials shall not be placed in residential or commercial containers. The producers of such solid waste shall provide a disposal plan for approval by the Town.

B.

Hot ashes; other combustible material. No person shall deposit the following materials into a solid waste receptacle for collection: hot ashes, cinders, or smoldering coals likely to ignite other materials unless the hot ashes, cinders, or smoldering coals have been cooled for at least 72 hours prior to the time of scheduled collection. No other oily, greasy materials or combustible substances may be placed in a collection container unless they have been placed into the waste receptacle in a metal or other noncombustible container.

C.

Special and hazardous waste. It shall be unlawful to place or cause to be placed in any container for collection any special or hazardous waste of any kind. Any special or hazardous waste will be removed from the Town to an approved site at the owner's or producer's expense. Upon request of the generator and for a fee, the contractor shall remove and transport special or hazardous waste to an appropriately approved facility.

4-1-9 Removal of dead animals.

Any person in possession, charge or control of any carrion or dead animal or who owns, controls or occupies any premises upon which the same may be located shall cause the same to be removed and disposed of. No dead animal shall be placed in a solid waste receptacle.

4-1-10 Disturbing solid waste receptacles.

It is unlawful to disturb or scatter solid waste or the contents of a solid waste receptacle.

4-1-11 Burning or burying solid waste.

It is unlawful for any person to burn or bury any solid waste, except nothing in this section shall be construed to prohibit:

A.

The disposal of solid waste by the normal or usual use of a garbage disposal unit or sanitary sewer facilities.

B.

The normal use of home fireplaces.

C.

Composting.

4-1-12 Prohibited scattering or disposal.

It is unlawful to throw, place or deposit waste in or upon any street, alley, sidewalk, gutter, public thoroughfare, driveway or any occupied or unoccupied premises within the Town, except in those places and in the manner specified in this Section 9-1.

4-1-13 Collection, transport and disposal.

Solid waste shall be collected and disposed of only by the franchised collector, except that:

A.

Construction debris may be collected and hauled from the premises involved by those engaged in construction, remodeling or demolition. No third-party hauler may collect and haul except for the franchised collector.

B.

Tree and yard trimmings accumulated by persons engaged in the business of gardening or landscaping may be collected and hauled from the premises where such trimmings have accumulated.

C.

The owner, occupant, or person in control of commercial establishments may haul occasional loads of excess solid waste.

D.

The owner, occupant, or person in control of a residence may haul occasional loads of excess solid waste.

E.

Clean sawdust, rotted manure for fertilizer or farm debris may be collected and hauled by any person.

4-1-14 Failure to deposit refuse in proper receptacles; authority of Town to remove; assessment.

If any person shall permit any solid waste to be thrown, left, or deposited in or upon real property owned or controlled by such person, other than in proper solid waste receptacles as provided in 4-1-5, and fails to remove the solid waste or to place it in proper solid waste receptacles within 48 hours after the solid waste is deposited, the Town Mayor or the Town Clerk may order the franchised collector to remove the solid waste from the real property and to bill the person owning or controlling the property from which the solid waste is removed the actual cost of the removal or a reasonable fee per half hour, whichever is greater. A separate assessment shall be made for each such removal.

4-1-15 Unauthorized dump sites.

It is unlawful to dump refuse at any place except at the designated landfill unless specifically approved in writing by the Town.

4-1-16 Collection rates; increases and fees.

A.

Collection rates for all classes and types of service shall be available for inspection at the office of the Town Clerk and at the office of the franchised contractor.

B.

Rates shall only be changed in the following manner:

(1)

Consumer price index (CPI) adjustments. Collection rates shall be adjusted administratively, if requested by the contractor, On RESIDENTIAL, commercial, roll-off and any other rates outlined in the rate sheets. CPI adjustments will become effective August 1 in years in which a request has been made. CPI increases shall be adjusted by 50% of the amount of the National Consumer Price Index for All Urban Consumers (CPI-U) for the preceding May-to-May period.

(2)

Petition for unusual or extraordinary costs. The franchisee may petition the Town, at any time, for rate adjustments on the basis of unusual changes in the costs of operations, such as future, revised or new interpretations of laws, ordinances or regulations; changes in disposal fees; differences in the cost of fuel; changes in the scope of services; redirection of solid waste, by the Town, to an alternative site; increases in the costs of licenses, permits and Town taxes; or for other good reasons. The Town shall have the right to demand inspections by it, or authorized representatives or independent auditors, of pertinent records or documents that demonstrate the basis for an adjustment to the rates. The Town shall not unreasonably withhold approval of a rate adjustment pursuant to this section. The Town shall conclude all action regarding the franchisee's request within 60 calendar days from the receipt of a petition. Failure to conclude action within 60 calendar days from the receipt of the petition may be deemed by the franchisee as approval of the franchisee's petition.

4-1-17 Compulsory collection and service fees.

A.

The owner or owner's agent of the property being served shall make the necessary arrangements for collection service. The owner or agent shall be the responsible party for billing and payment purposes. Owners of property shall be responsible for any unpaid bills left by tenants. Such persons shall pay to the franchisee the fees established and set forth by the Town, failure to pay solid waste collection charges is punishable under NMSA 1978, Section 9-1-20.

B.

If any person owning or controlling real property fails or refuses to pay the fees chargeable to such person for solid waste collection, the amount of such unpaid fees may be made an assessment against the real property from which the solid waste is collected or removed. The franchised collector may seek penalties including, but not limited to, court proceedings or lien foreclosures as provided by state law.

C.

If any customer fails to pay the quarterly bill within 45 days after the bill has been mailed, the franchised collector may send no more than two collection letters per month and may add a charge per mailing to cover the expense of postage and handling 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 Town in writing of any account/customer delinquent over 45 days; and the Town shall issue a written warning to the customer that the service may be temporarily suspended if the account is not promptly made current, and appropriate legal action may be taken as provided herein.

E.

In addition to its other rights and remedies, the franchised collector may bring civil suit against the debtor in any court of competent jurisdiction.

4-1-18 Grievance procedure; withholding payment; delinquent payments.

A.

If a person served by a franchised collector has a grievance, that person shall file a written complaint with the Sanitation Officer. The Sanitation Officer shall notify the collector of the complaint and give the collector five days to either correct the problem or respond to the complaint in writing. The Sanitation Officer shall schedule a hearing on the complaint within 15 days and send notice of the hearing to all parties by registered or certified mail no less than 15 days prior to the scheduled hearing date. The Sanitation Officer shall hear the evidence and grant the appropriate relief, including ordering the collector to change its practices, ordering adjustment of amounts paid to the collector or any other remedy that is appropriate.

B.

Any person dissatisfied with the decision of the Sanitation Officer may, within 10 days of the adverse decision, notify the Town Clerk/Administrator of his or her intent to appeal the decision of the Sanitation Officer. The appeal will be to the Town Council, which shall hear the appeal at a time set in its discretion. The decision of the Town Council shall be final.

C.

Persons shall not withhold payment owed to the franchised collector.

D.

Failure of a person to pay appropriate statements or to bring current his or her delinquent account will entitle the franchisee to pursue its legal remedies either under the franchise agreement or as afforded by applicable laws.

4-1-19 Proper receptacles; failure to use Town service.

A.

The Town may remove or order its franchisee to remove any solid waste from any real property or any premises if:

(1)

Any person owning, occupying or controlling real property or premises allow solid waste to be deposited or accumulated upon his property other than in the proper receptacle and fails to remove solid waste or to place the solid waste in the proper receptacle within 48 hours after notice from the Sanitation Officer.

B.

After the removal of solid waste, the franchisee shall bill the person the charge allowed under this Section 4-1 for the removal. Failure to pay the charge is a violation of this Section 4-1.

4-1-20 Penalty.

Violation of this Section 4-1 is a petty misdemeanor unless otherwise provided for by state or federal law, and upon conviction thereof shall be subject to the penalty provisions set forth in the Town ordinances regarding petty misdemeanors. Each instance this Section 4-1 is violated shall be considered a separate offense.