

ORDINANCE NO. 052, 2009
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING SECTION 12-19 AND ARTICLE XV OF CHAPTER 15
OF THE CODE OF THE CITY OF FORT COLLINS
RELATING TO TRASH COLLECTION

WHEREAS, in 1964, the City first enacted licensure requirements for solid waste collection services with the adoption of Ordinance No. 042, 1964; and

WHEREAS, in the intervening years, those licensure provisions have since been modified and repealed and reenacted, and are now set out in Chapter 15, Article XV of the City Code; and

WHEREAS, in June 1995, the City Council enacted Ordinance No. 058, 1995, requiring residential trash haulers in Fort Collins to apply variable ("pay-as-you-throw") rates and provide curbside recycling services at no extra charge, in order to encourage the reduction and diversion of solid waste in residential households; and

WHEREAS, in March 2000, the City Council adopted Ordinance No. 022, 2000, updating the provisions of Chapter 15, Article XV of the Code in order to provide for more effective enforcement mechanisms, including recordkeeping and audit requirements; and

WHEREAS, in April 2004, the City Council adopted Ordinance No. 025, 2004, clarifying the application of the pay-as-you-throw system to group accounts, and providing increased specificity as to how group accounts must be administered in order to accomplish the pay-as-you-throw objectives embodied in the Code; and

WHEREAS, since that time, staff has worked to review and monitor the effectiveness of the pay-as-you-throw system, and has evaluated various means by which the system could be modified to more effectively encourage waste reduction and recycling; and

WHEREAS, staff has presented its analysis and recommendations to the City Council and obtained Council feedback regarding the pay-as-you-throw system in a work session on December 9, 2008, and at previous work sessions; and

WHEREAS, staff has also met with representatives of local trash haulers to discuss staff's work and the proposals and recommendations for changes to the City Code, and staff has worked to incorporate changes to address the concerns raised by the haulers; and

WHEREAS, based on staff's review and the input received from the City Council, staff has prepared revisions to the pay-as-you-throw provisions and recommends that the Council adopt the proposed amendments to the existing Code provisions, as set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That Section 12-19 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 12-19. Group accounts for collection.

(a) Any person who solicits solid waste collection services from a solid waste collector for residential customers through a group account shall arrange for such services in a manner that offers residential customers:

- (1) Choices from amongst volume capacity categories of the containers of solid waste that are placed for collection by the residential customer;
- (2) Charges to residential customers that are based upon such volume capacity categories; and
- (3) Recycling services, including containers required to be provided for recycling, in a manner consistent with § 15-413.

(b) Any person who is subject to the requirements of Subsection (a) above shall provide written notice consistent with the notice required in § 15-413(d) to all residential customers served through the group account. Said notice shall be given to all such residential customers no more than thirty (30) days after notice of volume capacity categories, related rates and recycling services and container options have been provided by a solid waste collector. In addition, written notices shall be sent to all new residential customers who join the group account after the date of the original notice. Said additional notices shall be given to each new member no more than ten (10) days after the new member joins the group account. A copy of the form of each such notice, a list of recipients of the notice, and a record of the date and manner of distribution shall be retained by the person providing the notice for a period of five (5) years from the date each notice was provided, and shall be made available to the City for inspection upon request during said period of time.

(c) No person who is subject to the provisions of Subsection (a) above shall in any way discourage or provide disincentives to any current or prospective residential customer served through a group account who wishes to select a volume capacity category or level of recycling service that is different from that selected by other residential customers served through such account.

(d) For the purposes of this Section, the terms *contained herein* shall have the same meanings as in § 15-411.

Section 2. That Section 15-411 of the Code of the City of Fort Collins is hereby amended by the addition of a new definition "*Poly-cart*" which reads in its entirety as follows:

Poly-cart shall mean a durable, plastic, wheeled container with a hinged lid, manufactured and used for the collection of recyclable materials or for the collection of refuse.

Section 3. That Section 15-412 of the Code of the City of Fort Collins are hereby amended to read as follows:

Sec. 15-412. License requirement.

(a) *License required.* No person shall operate as a solid waste collector within the corporate limits of the City without first obtaining a collection license for such activity.

(b) *Exemptions.* The following persons or entities are not required to obtain a solid waste collection license:

(1) A civic, community, benevolent or charitable nonprofit organization that collects, transports and markets materials for resource recovery solely for the purpose of raising funds for a charitable, civic or benevolent activity;

(2) A person who transports solid waste or recyclable materials produced by such person;

(3) A property owner or agent thereof who transports solid waste or recyclable materials left by a tenant upon such owner's property, so long as such property owner does not provide solid waste collection service for compensation for tenants on a regular or continuing basis;

(4) A demolition or construction contractor or landscaper who produces and transports solid waste in the course of such occupation, where the solid waste produced is merely incidental to the particular demolition or construction work being performed by such person.

(c) *Volume-based rates.*

(1) Any person licensed to operate as a solid waste collector within the City shall charge all residential customers, including but not limited to residential customers provided service through a group account, on the basis of the volume capacity (or volume capacity category) of the containers of solid waste placed for collection by each residential customer. The amount to be charged for such containers shall be determined by each solid waste collector; provided, however, that no volume capacity category shall exceed a range of variation in volume capacity of more than thirty-two (32) gallons. Collectors shall determine a rate for the thirty-two (32) gallon service, and that rate shall be used to determine the rates for all other service levels. Said charges shall be based upon the container size, rather than the volume of

solid waste actually deposited within such containers by the residential customers. The charge for additional containers of the same volume capacity (or volume capacity category) shall be no less than the charge for the first such container. The charge for prepaid bags or labels or for solid waste volumes in excess of a customer service subscription level shall be by volume capacity and shall be proportional by volume to the collector's standard rate for a thirty-two (32) gallon container.

- (2) In order to further ensure that the charge for the collection of solid waste is based upon volume as required above, any person licensed as a solid waste collector shall provide to each residential customer disposable bags, or labels to be attached to nondisposable containers, showing the volume capacity (or volume capacity category) of such containers, or shall establish another system for accomplishing the same purpose which is acceptable to the City. A solid waste collector shall arrange for provision of service to each group account in a manner that results in an individual selection by each individual residential customer of a level of service from the full range of container sizes and levels of service offered by the hauler.
- (3) In offering or arranging for services, a solid waste collector shall provide reasonable notice of the full range of bag or container sizes or levels of service offered by the hauler, and shall provide to each residential customer that customer's requested container size or level of service.
- (4) It shall be unlawful for any person to knowingly attach any such label to a container exceeding in volume the volume capacity (or volume capacity category) shown on, or represented by, such label, and to place said container for collection.
- (5) No solid waste collector shall collect or transport solid waste which has not been placed for collection through such system or in bags or containers upon which such labels have been attached. Upon emptying any such containers, the collector shall remove or otherwise void all such labels.
- (6) The provisions of this Subsection shall not be construed as prohibiting any collector from also establishing rules and regulations regarding the maximum weight or loading of containers of solid waste and/or recyclable materials.
- (7) A collector shall not collect any overloaded container unless the collector accounts for and bills the customer the appropriate fee or charge for the collection of such excess solid waste. Loading of a container so as to prevent the lid of the container from closing securely shall be deemed to constitute overloading of the container for the purposes of this provision. The determination of overloading and charges therefor shall be made on an

individual pick-up date basis, and there shall be no “averaging” of pick-up volumes to allow for overloading at one time offset by a low volume at another time.

(d) *Fixed fees.* In addition to the volume-based rates required pursuant to Subsection (c) above, solid waste collectors may, but are not required to, charge a fixed fee only for solid waste collection services where bags or tags are used by their customers rather than reusable containers for the purpose of covering the fixed operational costs of routing service trucks for such collections. Surcharges for fuel or other special surcharges or fees shall be deemed to constitute a fixed fee and shall be permitted and charged only as set forth in this Subsection.

If a solid waste collector elects to charge such fixed fee, said fee shall not exceed thirty-five (35) percent of the monthly volume-based rate charged for one thirty-two (32) gallon container per week.

In the event that a solid waste collector elects to establish a fixed fee, all bills for services provided by such collector to residential customers shall clearly show both the fixed fee and the volume-based rate.

Section 4. That Section 15-413 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-413. Recycling requirement.

(a) *Curbside/on-site collection.*

- (1) Each solid waste collector licensed by the City shall make available to its multi-family and commercial customers, and other customers receiving solid waste collection services through a communal system of waste collection, at the customer's option, curbside collection of recyclable materials as said materials are designated from time to time by the City Manager as provided in § 15-414 of this Article. Notwithstanding the foregoing, the collection of recyclable materials from customers pursuant to this Subsection shall not be required if the collector provides documentation satisfactory to the City verifying that there is not sufficient space available to allow the placement of recycling containers without encroaching on needed parking areas or on the sidewalk or street, or without impairing or impeding bicycle, pedestrian or vehicular traffic.
- (2) Each solid waste collector licensed by the City shall provide to each residential customer in the City, as a part of any solid waste collection services provided by such solid waste collector, the collection at curbside of both solid waste and recyclable materials, as said materials are designated from time to time by the City Manager as provided in § 15-414 of this

Article. No such collector shall be permitted to divide or diminish the provision of said basic service at the request of such customer or for any other reason.

(b) *Collection of recyclable materials; rights and duties of collectors.* All licensed collectors of recyclable materials and solid waste operating within the City shall have the following duties and rights:

- (1) Except for materials which customers have not properly prepared for recycling, collectors may not commingle designated recycle materials with refuse, nor dispose of recyclable materials set out by recycling customers by any means other than at a qualified recycling facility. Recyclable materials shall include all those materials designated by the City Manager as materials which collectors must offer to collect for recycling.
- (2) On or before January 1, 2010, collectors must provide to each solid waste customer who utilizes curbside recycling services within the City a poly-cart container for storing and setting out recyclable materials meeting the requirements of this Subsection, clearly marked as a recyclables container with words or symbols or both. Collectors must annually offer each residential recycling customer, in writing, a choice of at least two (2) sizes of poly-cart recycling containers at least sixty-four (64) gallons in capacity, one of which must be at least ninety-six (96) gallons in capacity. The collector must provide the requested poly-cart without additional charge to such customer, except that the collector may require the payment of a refundable damage or loss deposit or a charge for lost or damaged poly-carts, not to exceed the actual cost of the container. The collector must provide a poly-cart for recycling to all residential recycling customers except those customers who expressly decline a poly-cart, and must provide a poly-cart to any customer at any time upon request within one (1) billing period after the request is made.
- (3) The collector may establish such reasonable and industry-accepted requirements for the preparation of materials for recycling as are necessary to provide for the orderly collection of recyclable materials, including requirements regarding the preparation of materials for collection, the collection of recyclable materials and requirements for source separation.
- (4) In the event that a collector elects to perform collection of solid waste or recyclable materials through subcontractors or agents, such agency relationship shall not relieve the collector of responsibility for compliance with the provisions of this Code and the rules promulgated hereunder.
- (5) All recyclable materials placed for collection shall be owned by and be the responsibility of the customer until the materials are collected by the collector. The material then shall become the property and the responsibility

of the collector. No person other than the customer or the collector of recyclable materials shall take physical possession of any recyclable materials placed for collection.

- (6) Any vehicle used for the collection of recyclables must be clearly and unambiguously marked as a recycling truck, whether by permanent decals or markings, or by signage or placards displayed at all times during such use.

(c) *Frequency of collection.*

- (1) All collectors providing solid waste collection services to residential customers shall provide curbside recycling collection services to all customers who desire such services. Recycling collection services shall include collection from poly-cart recycling containers for all customers except those who expressly opt to forego receipt of a poly-cart. Such curbside recycling collection services shall be provided on at least a once-weekly basis and on the same day of the week as the day of collection of solid waste from the customer; provided, however, that collection of recyclable materials need not be accomplished on the same day as the collection of solid waste for multi-family dwelling units and dwelling units located within mobile home parks. After January 1, 2010, or after a collector has offered and made available to its customers poly-cart recycling containers, whichever first occurs, said collector may modify its recycling collection schedule as long as curbside recycling collection services are provided on the same day of the week as the day of collection of solid waste from the customer and no less frequently than two (2) times per month.
- (2) Collectors providing collection services to multi-family and/or commercial customers shall provide services for the collection of recyclable materials from such customers who desire such services with such frequency as is necessary to prevent overflow of the recycling containers.

(d) *Customer notification.*

- (1) Upon the initial provision of solid waste collection services to new customers, and on or before December 31 of each year with respect to existing customers, collectors shall notify in writing such customers of the availability of the collection of recyclable materials, the range of poly-cart recycling containers available, the materials designated for recycling collection pursuant to § 15-414 and such rules and regulations as have been established by the collector for the orderly collection of recyclable materials as authorized pursuant to Paragraph 15-413(b)(2). Such notice shall further include notification of the variable rate solid waste collection service options offered by the solid waste collector and the related volume-based rates and fixed charges.

- (2) The form of notice shall be submitted to the City for review for consistency with the requirements of this Article, and to ensure that the notice is sufficient to fully inform customers of the availability of recycling and level of service options.
 - (3) For group accounts, the notices required hereunder may be sent to the group representative for said account, provided that such notice shall further notify said representative of its obligation to notify all individual residential customers within the group of the availability of recycling services and the terms of variable rate service options, pursuant to Subsection 12-19(b).
 - (4) All verbal and written communications with customers by or on behalf of a collector, whether in person, by telephone, in written form or through any other means, must be consistent with and clearly and accurately describe all components of the system employed by the collector to provide and charge for variable rate solid waste collection and recycling services.
 - (5) The collector shall deliver to the City's Natural Resources Director a true and correct copy of each form of such notification sent on or before December 31 of each year.
- (e) *Recycling only of electronic equipment.*
- (1) No collector shall collect for disposal any electronic equipment, regardless of whether such electronic equipment has been placed or set out for disposal.
 - (2) Collection of electronic equipment for recycling shall be at each collector's option; provided, however, that no collector providing collection services for electronic equipment may dispose of any such electronic equipment. Instead, each such collector must deliver any collected electronic equipment for recycling at a qualified recycling facility for electronic equipment.

Section 5. That Section 15-415 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-415. Application for license.

(a) Any person desiring to obtain a license to engage in the business of solid waste collection shall make written application to the Financial Officer on forms provided by the City. All applications for renewal of a license by a licensed collector must be submitted no later than November 30 in advance of the new license year. The application shall include, without limitation, the following information:

- (1) The name and address of the applicant;
- (2) The principal place of business for the business to be conducted;

- (3) A list of vehicles owned and/or operated by the applicant directly in the collection of solid waste and/or recyclables, or operated or located at any time in Fort Collins during the current or pending license year, including vehicle make, color, year, U.S. Department of Transportation safety inspection identification number, cubic yard capacity, Colorado license plate number and empty tare weight.
- (4) A description of the system to be used to account for and charge volume-based rates, as required under Subsection 15-412(c), and a plan describing the structure and operation of the recycling collection services to be offered to each customer class. The description of the system shall include a detailed description of the means by which residential customers are notified of and offered the full range of sizes of bags or containers provided for solid waste collection and those provided for curbside recycling. In addition, the description shall provide sufficient detail to allow the Financial Officer to determine the means by which volume-based rates are applied to residential customers receiving waste-hauling services through any group account, such as the formula used to set volume-based rates for any group accounts, and the methods used to offer and account for the volume-based charges.
- (5) All information required pursuant to § 15-418(a) for the preceding twelve (12) month period.

(b) The Financial Officer shall determine whether an application meets the requirements of this Article, and whether all taxes, fees, penalties, interest or other financial obligations to the City of the applicant or any predecessor in interest of the applicant have been met, and whether the applicant is in current compliance with the requirements of this Article. The Financial Officer may request such additional information as he or she deems relevant to a determination of whether the requirements of this Article will be met by the applicant. The Financial Officer may deny any application if the Financial Officer reasonably determines that any requirements of this Article will not be met by the operation proposed by the applicant, or if the applicant is ineligible for a license under the terms of a revocation determination by the City Manager pursuant to § 15-426.

(c) Upon a determination by the Financial Officer of whether a license shall issue under this Section, the Financial Officer shall give written notice to the applicant of his or her decision thereon. An applicant whose application has been denied may, within twenty (20) days after such decision is mailed, petition the City Manager for a hearing on the denial. The City Manager shall notify the applicant in writing of the time and place of the hearing. After such hearing, the City Manager shall make such order in the matter as he or she deems just and proper and shall furnish a copy of such final order to the applicant.

Section 6. That Section 15-416 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-416. License requirements; fees and insurance.

Upon approval of a license application, but prior to issuance, the collector shall furnish to the Financial Officer the following:

- (1) A license fee in the sum of one-hundred dollars (\$100.) for each vehicle required to be identified under § 15-415(a); and
- (2) Proof that the collector has obtained a general comprehensive liability/automobile insurance policy protecting the collector from all claims for damage to property or for bodily injury, including death, which may arise from operations under or in connection with this license and providing limits of coverage of not less than five hundred thousand dollars (\$500,000.) for bodily injury and property damage per occurrence or in the aggregate; and
- (3) Proof that each vehicle required to be identified under § 15-415(a) has been registered with the U.S. Department of Transportation.

Section 7. That Section 15-418 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-418. Plans, recordkeeping and reports.

(a) Each collector must accurately and completely account for and record, and report to the City using a form provided by the City, the following:

- (1) the specific manner in which trash collection and recycling services have been delivered in compliance with this Article, including, but not limited to, a complete list of all rate schedules used to charge for such services, including those offered to individual customers and those offered to group accounts, as well as the frequency of collection of trash collection and recycling services;
- (2) a description of any system used to impose and verify charges for trash volumes in excess of customer subscription levels;
- (3) the number of individual residential, multi-family and commercial customers who received solid waste collection services from the collector, by category, together with the number of group accounts within each category and the number of any such customer category that received services through a group account; and
- (4) the number of customers within each category that subscribe to each level of solid waste and recycling services, as well as the number of customers that utilize pre-paid bag or tag services, and the number of recycling poly-carts provided to customers, by size of poly-cart.

(b) In addition, prior to implementation of any change to operational systems, plans or structures of any licensee which are required to be reported for issuance of a license or annually hereunder, the collector must submit such changes to the City for review.

(c) All information submitted to the City pursuant to this Section shall constitute public information, except as otherwise provided in the Colorado Open Records Act. Any such information constituting confidential customer records or financial proprietary information and identified as such by the licensee shall be maintained as confidential by the City, unless otherwise required by court order or as agreed by the relevant party-in-interest. If the City receives a request for public inspection or a request for release of any collector customer records or collector financial information to a third party, the City shall provide timely notice of such request to the licensee.

(d) Each collector licensed pursuant to this Article shall maintain accurate and complete records of the service provided to each residential customer, the charges to such customer and payments received, the form and recipients of any notice required pursuant to this Article, and any underlying records, including any books, accounts, contracts for services, written records of individual level of service requests, invoices, route sheets or other records necessary to verify the accuracy and completeness of such records. It shall be the duty of each collector to keep and preserve all such documents and records, including any electronic information, for a period of three (3) years from the end of the calendar year of such records, except for paper records of route sheets, which may be discarded one (1) year after the end of the calendar year of such route sheets.

(e) Promptly upon a request by the City Manager in connection with an audit or other investigation he or she has initiated, a licensee shall make records retained pursuant to Subsection 15-418(b) available, at its place of business or in such other reasonably convenient location as the licensee shall specify, for review by the City Manager, the Financial Officer or his or her designee, or an officer of the City charged with the investigation of potential violations of the Code, for the purpose of enforcing the requirements of this Article.

(f) A licensee shall make available for review by the City such records in its possession as may be relevant to the investigation of any complaint regarding such licensee that has been submitted to the City or is under investigation by the City.

(g) All collectors shall accurately and completely report to the City the following information, which shall be deemed to constitute public information:

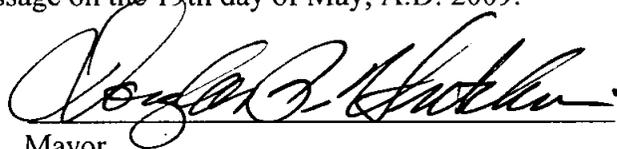
- (1) Number of tons of solid waste collected in Fort Collins from all residential, multi-family and commercial customers, and any other customer category, reported by category of customer. The weight of solid waste collected shall be documented and verified based on actual load weight measurements of

a representative solid waste load no less frequently than on a calendar quarter basis, using a scale certified by the State of Colorado, which actual weight information shall also be described and reported.

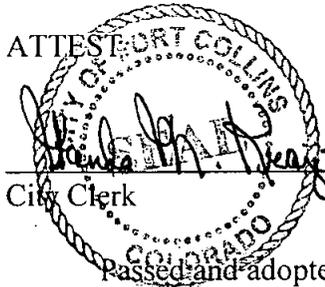
- (2) Number of tons of each type (as determined by the City Manager pursuant to § 15-414) of recyclables collected through the commercial and multi-family recyclables collection program.
- (3) Number of tons of each type (as determined by the City Manager pursuant to § 15-414) of household recyclables collected through the curbside recyclables collection program.
- (4) Number of tons of each type (as determined by the City Manager pursuant to § 15-414) of household recyclables collected by drop-off system. Such reports shall be made on forms to be provided by the City and shall be made for each full half-year of curbside collection performed by the collector. A half-year shall mean January 1 through June 30 or July 1 through December 31. All such reports shall be submitted to the City Manager no later than thirty (30) days following the close of each half-year.

Section 8. That the amendments to Section 15-412(c)(1) and (d) shall be effective as of September 1, 2009.

Introduced and considered favorably on first reading and ordered published this 5th day of May, A.D. 2009, and to be presented for final passage on the 19th day of May, A.D. 2009.

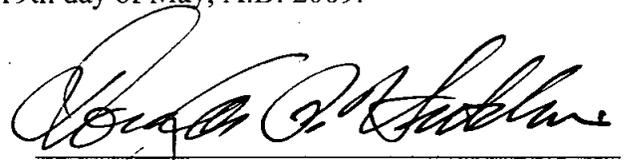


Mayor

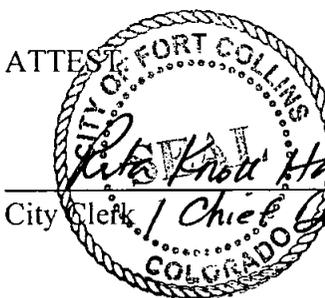
ATTEST



City Clerk

Passed and adopted on final reading this 19th day of May, A.D. 2009.



Mayor

ATTEST



City Clerk / Chief Deputy