

PUBLIC NOTICE

**ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF
TUPELO, MISSISSIPPI: CHAPTER 23.5 – SOLID WASTE COLLECTION,
REMOVAL AND DISPOSAL**

Pursuant to the Miss. Code Anno. §21-17-9 in lieu of the full text being printed, the following explanatory statement summarizes the substance of the ordinance. A copy of the full-text of the ordinance has been posted (a) on the first floor of City Hall at 71 East Troy Street, Tupelo, Mississippi 38804, (b) the Lee County Library at 219 North Madison Street, Tupelo, MS 38804, (c) the first floor of the Lee County Justice Center at 200 West Jefferson Street, Tupelo, MS 38804. Any resident may request a copy of the full text of the ordinance from City Clerk Kim Hanna on the 2nd floor of City Hall at 71 East Troy St., Tupelo, MS 38804.

SUMMARY

The above-titled ordinance amends Chapter 23.5 – Solid Waste Collection, Removal and Disposal as follows:

Adopts and incorporates prefatory paragraphs as findings: revises certain definitions; amends Section 23.5-4. Residential customer single-unit: amends contractor duties; defines contractor responsibilities for residential customers single-unit waste and recycle containers; requires business establishments to provide own containers and maintain same; provides standards for residential customer yard waste; provides criminal penalty for violation of ordinance; codifies flow control ordinance adopted October 17, 2006.

This notice of the City of Tupelo, this the 16th day of April, 2019.



Kim Hanna, CFO/City Clerk

Seal

Month April Date 16th, 2019



AMENDED ORDINANCE

ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF TUPELO, MISSISSIPPI: CHAPTER 23.5 - SOLID WASTE COLLECTION, REMOVAL AND DISPOSAL

WHEREAS, the drafting of a Request for Proposals (RFP) for multi-year, solid waste collection and removal services revealed certain definitional inconsistencies and ambiguities in the municipal code; and

WHEREAS, these definitional inconsistencies and ambiguities did not reflect actual practice or existing contracts; and

WHEREAS, the drafting of a Request for Proposals (RFP) for multi-year, solid waste collection and removal services also revealed that the municipal code did not contain the Ordinance Requiring, within the Boundaries of the City of Tupelo, Mississippi, the Mandatory Flow of Solid Waste to Three Rivers Solid Waste Management Authority Facility in Pontotoc County, Mississippi adopted October 17, 2006; and

WHEREAS, said omission may lead to RFP responses that do not reflect actual practice or existing contracts;

WHEREAS, pursuant to authority granted by Miss. Code Anno. Sections 17-1-3, 17-7-5, 21-19-1, 31-7-13 (m) (xxii) (1972 as amended) and pre-existing city ordinances, the Tupelo City Council finds and determines that it is necessary in order to protect the public health, safety, morals and general welfare to approve these amendments.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TUPELO, MISSISSIPPI as follows:

SECTION 1. The prefatory paragraphs and findings are adopted and incorporated by reference herein.

SECTION 2. City of Tupelo Code of Ordinances, Article I, Chapter 23.5-2 – Definitions, is amended to read as follows:

As used in this chapter, the following terms shall have the following meanings:

Business, commercial or industrial establishments means all buildings or premises other than those occupied by residential and governmental customers, as defined herein.

City Commercial Site shall mean all multi-family Residential Establishments and all other governmental sector customers at which Solid Waste is deposited for collection in commercial containers and for which the City has directed for collections in commercial containers and for which the City has directed that Contractors' fees for collection be billed to the city.

Commercial Container shall mean a mechanical front or rear-loading container.

Commercial waste means any and all municipal solid waste (excluding hazardous waste and excluding industrial solid waste as defined below) generated by business, commercial, or industrial establishments.

Contract hauler means any person, partnership, or corporation, other than the City of Tupelo, which is in the business of contracting with business, commercial or industrial establishments for the collection, removal, and disposal of municipal solid waste.

Container residential customer-single unit means the standard 95-gallon two-wheeled plastic Solid Waste container/cart provided by Contractor to residential customers-single unit.

Contractor means the individual, partnership, or corporation who would agree to perform the work and/or services or to furnish materials or equipment or both required by this chapter for collection, removal and disposal of solid waste from residential, both residential-single unit and residential-multi-unit/apartments/city commercial sites--and governmental sector customers pursuant to the terms and conditions of a contract between such contractor and the city for collection, removal and disposal of solid waste from residential and governmental sector customers. Contractor shall have the exclusive right to collect such waste.

Governmental sector customer means City of Tupelo-owned locations and the City of Tupelo Downtown Solid Waste Collection, Removal and Disposal District, and for which the City has directed for collections in commercial containers and for which the City has directed that Contractors' fees for collection be billed to the city.

Hazardous waste means all waste defined as "hazardous waste" by the Federal Solid Waste Disposal Act ("SWDA") or regulations promulgated thereunder as well as waste defined as "hazardous waste" in MCA 1972, § 17-17-3(n), as amended, and regulations promulgated by the commission on environmental quality.

Industrial solid waste means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under Subtitle C of RCRA. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: Electric power generation; fertilizer/ agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

Industrial waste contract hauler means permitted contract haulers as defined in 23.5-12 that collect, remove and dispose of industrial waste and commercial waste typically deposited for collection and removal in "roll-off" containers approved by the department of public works for use by a business, commercial or industrial establishment.

Municipal Solid Waste means any nonhazardous solid waste resulting from the operation of residential, commercial, governmental, industrial or institutional establishments except oil field exploration and production waste, sewage sludge, rubbish which may be disposed of in a Class I Rubbish Site or a Class II Rubbish site and recycled material.

Municipal solid waste management facility means any land, building, plant, system, motor vehicles, equipment or other property, whether real, personal or mixed, or any combination of either thereof, used or useful or capable of future use in the collection, storage, treatment, utilization, recycling, processing, transporting or disposal of municipal solid waste, including transfer stations, incinerators, sanitary landfill facilities or other facilities necessary or desirable.

Person means a person as defined by Section 17-17-3(u) of Mississippi Code of 1972 as amended.

Residential customer means anyone residing in a dwelling unit, exclusive of hotels or motels, receiving solid waste collection, removal and disposal services.

Residential customer-single unit means anyone residing in a dwelling unit (including multi-unit residential customers of eight or less units) receiving solid waste collection, removal and disposal services without the use of rear-end or front-end loading type containers.

Residential customer – multi-unit/apartment (also known as a City Commercial Site) means anyone residing in a dwelling unit of more than eight units where the use of a commercial container and compactors will be required.

Solid waste means any garbage, or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. 1342, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

SECTION 3. City of Tupelo Code of Ordinances Sec. 23.5-4. - Same—Residential customer-single unit, is amended to read as follows:

All residential customer single-unit shall cause the residential waste to be bagged and the container to be placed within five (5) feet of the street curblin and such container shall not be behind a fence or other enclosure or obstruction so that it is not accessible by employees of the contractor, with the exception of those residential customers who by reason of disability, certified by a doctor and approved by the mayor, are unable to carry the approved containers to the street. Backdoor collection of containerized solid waste for these persons shall be provided by the contractor at the regular rates. Only if necessary uncontainerized solid waste for these persons shall be bagged and placed at the curbside by these persons. All items to be picked up shall be easily and readily accessible by the contractor and its employees.

SECTION 4. City of Tupelo Code of Ordinances Sec. 23.5-5. - Contractor's duties generally, is amended as follows:

The contractor, as defined in section 23.5-2, shall within the corporate limits of the city, collect and dispose of all solid waste collected and placed at the curb by residential customers-single

unit in accordance with this chapter, all in the manner provided for by written agreement between the contractor and the city, and by applicable law. Unless otherwise provided for by contract, collection by the contractor shall be twice per week for all residential customers-single unit in the city. There shall be at least two (2) days intervening between the first collection of each week and the second collection per week. No collection shall transpire on New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving and Christmas Day, and the weeks in which those holidays fall shall be exceptions to the requirement for twice weekly collection. The contractor shall provide a recycling option for residential customers single-unit as a part of any contract.

SECTION 5. City of Tupelo Code of Ordinances Sec. 23.5-6. - Contractor to furnish residential customers-single unit containers; replacement, shall be amended to read as follows:

The contractor shall furnish, without charge to the city or to the residential customers single-unit of the city, an identical or similar residential waste container for each new residential customer within the city, and shall replace all containers which become unusable as a result of normal wear and tear or theft documented by police report. Containers damaged or destroyed by abuse or negligence of a customer will be replaced at the cost of the customer. In the case of residential customers – multi-unit/apartment (also known as a City Commercial Site), contractor and the city will agree by contract to the type of container, frequency of pickup and replacement thereof. The contractor and city shall agree by contract the containers to be used for recycling and the manner that recycling containers will be upgraded and replaced.

SECTION 6. City of Tupelo Code of Ordinances Sec. 23.5-7. - Business establishments to provide own containers; placement; interference prohibited; maintenance in sanitary condition.

(a) It shall be the duty of each business, commercial, or industrial establishment (excluding governmental sector customers and residential customers – multi-unit/apartment (also known as a City Commercial Site) to provide a suitable waste container not less than two (2) cubic yards, or as agreed by contract, with the contractor for its own use; the location of such containers shall be at street level, in accordance with development code requirements set forth in Chapter 9, sections 6.1 and 6.2 at such locations as may be determined and approved by the city and agreed to by the contract hauler. No person other than the owner or person lawfully in control of any premises, or any authorized employee of the city, the contractor, or an authorized contract hauler shall interfere in any manner with a container used for the accumulation or handling of solid waste, or remove any such container from the location where it shall have been placed by authorized persons, nor shall any such person remove the contents from any such container.

(b) It shall further be the duty of each business, commercial, or industrial establishment (including those owning or operating city commercial multi-family sites) to maintain each container and the area surrounding same, in a clean and sanitary condition. Failure to keep the property free from any accumulation of rubbish or garbage shall be a violation of this ordinance and Section 307.1 of the International Property and Maintenance Code (2018 edition.)

SECTION 7. City of Tupelo Code of Ordinances Chapter 23.5-5-8 shall be amended to read as follows:

It shall be the duty of every residential customer in the city having tree trimmings, shrubbery, shrubbery trimmings, hedge cuttings, and the like, to cut the same in lengths not to exceed six (6) feet, and place same within five (5) feet of the traveled portion of the street or sidewalk in a uniform and even manner, and at the same time as provided for waste collection for residential customers above, in order that same may be conveniently handled by the employees of the contractor. Leaves, grass clippings, hedge and shrubbery clippings must be containerized. The contractor may refuse to remove any such waste material unless same is placed in the manner required herein. It shall be unlawful for such trash to be placed in side-drain ditches, gutters, or the traveled portion of the city streets in any manner other than in an approved waste container or alternatively, in a plastic bag of a quality and quantity not to exceed thirty (30) gallons.

SECTION 8. City of Tupelo Code of Ordinances 23.5-5-18 shall be amended to read as follows:

Any person violating any provisions of Chapter 23.5 Article I shall be guilty of a misdemeanor and upon conviction shall be subject to punishment as provided in [section 1-8](#) of this Code, with each separate violation constituting a separate offense.

SECTION 9. City of Tupelo Code of Ordinances Chapter 23.5 shall be amended by adding Article II, which shall read as follows:

ARTICLE II: Flow Control

Sec. 23.5-20 Effective December 1, 2006, all municipal solid waste generated within the geographic boundaries of the City of Tupelo, Mississippi that is placed in the waste stream for disposal within the State of Mississippi shall be transported to, stored and managed at the

Three Rivers Solid Waste Management Authority Landfill in Pontotoc County, Mississippi or at a transfer station owned by the Three Rivers Solid Waste Management Authority or its members.

Sec. 23.5-21 Notwithstanding anything herein to the contrary, this ordinance shall not be applicable to any solid waste disposed of by a generator of industrial solid waste within the region which has provided for the collection, transportation and disposal of its solid waste either directly or by contract for at least ten (10) consecutive years or since the inception of the generator within the region if less than ten (10) years immediately prior to enactment of this ordinance at a single municipal solid waste management facility.

A generator of industrial solid waste within the region which meets the criteria for this exemption shall seek a permit confirming this exemption from the Authority pursuant to a procedure established by the Authority. The permit for an exception shall be valid for five (5) years from the date of issuance and may be reissued for consecutive five (5) year periods as long as the generator continues disposal in the same single municipal solid waste management facility.

Any generator of industrial solid waste which locates within the region after the effective date of this ordinance shall comply with the mandatory flow requirements set forth herein and shall not be entitled to this exemption.

Sec. 23.5.22 It shall be unlawful for any person to violate any provision of Chapter 23.5 Article II. Such violation shall be a misdemeanor and shall be punishable by a fine of not more than One Thousand Dollars (\$1,000.00) or imprisonment for a term not exceeding ninety (90) days, or by both such fine and imprisonment. For purpose of this ordinance, each day a violation continues shall constitute a separate offense.

Sec. 23.5.23 Severability.

If any provision, paragraph, or subparagraph of Chapter 23.5, Article II is adjudged by any court of law to be void or unenforceable, in whole or in part, such adjudication shall not be deemed to affect the validity of the remainder of the article, including any other provision, paragraph or subparagraph. Each provision, paragraph, and subparagraph of this article is declared to be separable from every other provision, paragraph, and subparagraph and constitutes a separate and distinct enactment.

Council Member Markel Whittington moved that that foregoing ordinance be adopted and said motion was seconded by Council Member Nettie Y. Davis, and after a full discussion of this matter and upon the question being put to vote, the results were as follows:

Councilmember L. Bryan voted	<u>Aye</u>
Councilmember M. Bryan voted	<u>Aye</u>
Councilmember Beard voted	<u>Aye</u>
Councilmember Davis voted	<u>Aye</u>
Councilmember Jennings voted	<u>Aye</u>
Councilmember Palmer voted	<u>Aye</u>
Councilmember Whittington voted	<u>Aye</u>

WHEREUPON, the foregoing Ordinance was declared, passed and adopted at a regular meeting of the Council on this the 16th day of April, 2019.

CITY OF TUPELO, MISSISSIPPI



TRAVIS BEARD, City Council President

ATTEST:

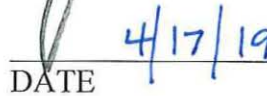


AMANDA DANIEL, Clerk of the Council

APPROVED:



JASON L. SHELTON, Mayor



DATE

AFFIDAVIT OF POSTING NOTICE

I, Amanda Daniel, have this day, June 19, 2019 placed in the following locations in the City of Tupelo, Lee County, Mississippi, the Ordinance Amending The Code of Ordinances Of The City Of Tupelo, Mississippi: Chapter 23.5 – Solid Waste Collection, Removal And Disposal

1. City of Tupelo City Hall, Front Lobby
71 East Troy Street
Tupelo, MS 38804
2. Lee County Library
219 Madison St.
Tupelo, MS 38804
3. Lee County Justice Center
200 West Jefferson St.
Tupelo, MS 38804

Amanda Daniel

AMANDA DANIEL
Council Clerk
Office of the City Council
City of Tupelo, Mississippi

