

ORDINANCE NO. 109, 2016
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CERTAIN PROVISIONS OF THE CODE OF THE CITY OF
FORT COLLINS RELATED TO COLLECTION AND DISPOSAL OF REFUSE,
RUBBISH AND RECYCLABLES, AND SOLID WASTE COLLECTION
AND RECYCLING SERVICES, INCLUDING REPEALING AND
REENACTING CHAPTER 15, ARTICLE XV OF CITY CODE

WHEREAS, pursuant to Ordinance No. 116, 1990, the Fort Collins City Council repealed and reenacted Chapter 15, Article XV of the Fort Collins City Code entitled "Solid Waste Collection and Recycling Services" to establish curbside recycling service for each single-family residential solid waste collection service customer within the City; and

WHEREAS, pursuant to Ordinance No. 058, 1995, the Fort Collins City Council amended Chapter 15, Article XV of the Fort Collins City Code to establish a requirement of volume based rates for the collection of solid waste (sometimes referred to as "pay as you throw" or "PAYT"); and

WHEREAS, pursuant to Resolution 2013-111, the Fort Collins City Council adopted a goal of diverting 75% of the community's waste stream from disposal to reuse or recycling by 2020, 90% by 2025, and 100% by 2030; and

WHEREAS, implementing recycling at multi-family and commercial locations as well as adding yard trimmings collection service for single-family residents were identified as primary next steps in the goals set pursuant to Resolution 2013-111; and

WHEREAS, 75-91% of the respondents to the City's 2011 Air Quality and Recycling Survey agreed that businesses, multi-family homes and single-family homes should be required to recycle and that yard waste collection service should be offered to single-family homes; and

WHEREAS public involvement was conducted during 2015 and 2016 at the request of the City Council, to establish the new requirements set forth in this Ordinance; and

WHEREAS in 2015, 94% of single-family residential customers but only 70% of multi-family complexes and 49% of business customers subscribed to recycling service; and

WHEREAS, in light of current recycling and economic conditions, the City's commitment to the community waste reduction goals, and public and industry input and comment, the City Council has considered and desires to adopt further modifications of Chapter 15, Article XV to allow private solid waste collectors the option to apply a service surcharge on residential trash and recycling bills, require private solid waste collectors to offer optional yard trimming collection to single family customers from April through November as a separate, opt-in fee, require private solid waste collectors to provide recycling service to businesses and apartment complexes by 2020, and require licensed collectors providing food scraps collection services to grocers to segregate and properly dispose of food scraps at a compost facility rather than a landfill ; and

WHEREAS, City Council has also considered and desires to adopt modifications of Chapter 12, Article II of the City Code to require grocers to subscribe to compost collection service by the end of 2017 and make other changes consistent with the modification of Chapter 15, Article XV; and

WHEREAS, City Council has determined that it is in the best interest of the citizens of the City, in the protection of public health, safety, and welfare, to further amend Chapter 15, Article XV as set forth in this ordinance to further promote the recycling of solid wastes for the purpose of enhancing the recovery of valuable natural resources, extending the life the Larimer County Landfill, and furthering the goals and objectives of the City with respect to the reduction of waste and generation of greenhouse gasses.

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

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Section 12-16 of Article II, Chapter 12 of the Code of the City of Fort Collins, entitled Collection and Disposal of Refuse, Rubbish and Recyclables, is hereby amended by the deletion of the definitions for the following terms and addition of new definitions for such terms, to read as follows:

At the curb, or curbside, shall have the same meaning as “*curbside*” set forth in §15-411 of this Code.

Container shall have the meaning set forth in §15-411 of this Code.

Food scraps shall have the meaning set forth in §15-411 of this Code.

Food store shall have the meaning set forth in §15-411 of this Code.

Qualified recycling facility shall have the meaning set forth in §15-411 of this Code.

Recyclable cardboard shall have the meaning set forth in §15-411 of this Code.

Section 3. That Section 12-18(a) of Article II, Chapter 12 of the Code of the City of Fort Collins, entitled Collection and Disposal of Refuse, Rubbish and Recyclables, is hereby amended by the deletion of references therein to §§15-411 through 15-421 and the insertion of a reference to §15-417 in lieu thereof.

Section 4. That Section 12-22(a) of Article II, Chapter 12 of the Code of the City of Fort Collins, entitled Collection and Disposal of Refuse, Rubbish and Recyclables, is hereby amended by the deletion of reference therein to §15-413(e) and the insertion of a reference to §15-416(b) in lieu thereof.

Section 5. That Article II, Chapter 12 of the Code of the City of Fort Collins, entitled Collection and Disposal of Refuse, Rubbish and Recyclables, is hereby amended by the addition of a new Section 12-23, and the sequential renumber of existing Sections 12-23 through 12-26 is hereby amended to Sections 12-24 through 12-27, with the new section 12-23 to read as follows:

Sec. 12-23. – Collection requirement – Food Store Food Scraps.

(a) Food stores – service requirement. Commencing on December 31, 2017, food stores within the City that dispose of more than 96 gallons of food scraps per week shall subscribe to a service for the collection of food scraps by a collector licensed to provide such services within the City or shall obtain a variance in accordance with the following provisions:

(1) If a food store desires not to obtain food scraps collection services for any reason, including space constraints, donation of all food scraps for human or animal consumption, self-hauling of food store food scraps to a location or facility permitted by the State of Colorado to accept such material (but not to a landfill), disposal of food scraps via garbage disposal or other similar technology that processes food scraps for disposal via waste water infrastructure, on-site composting or failure to generate food scraps, the food store must submit a written request for variance on a form provided by the City.

(2) Upon receipt of such a request for variance, the Director shall either approve the variance for good cause shown or disapprove the variance. If the variance is approved, the food store shall not be required to obtain food scraps collection services for a period of twelve (12) months from the date of approval. If the constraints on which the variance was based still exist at the end of any twelve (12) month variance, the food store may submit a request for an additional twelve (12) month variance.

(3) For purposes of this §12-23(a), “good cause shown” shall mean evidence presented by the food store that, to the reasonable satisfaction of the Director of the City’s Environmental Services Department, demonstrates that the customer lacks sufficient space for food scraps containers, donates all food scraps for human or animal consumption, self-hauls food scraps to a facility permitted by the State of Colorado to accept such material (but not to a landfill) or disposes of food scraps via garbage disposal or other similar technology that processes food scraps for disposal via waste water infrastructure, or by on-site composting.

(b) Collection frequency. Food stores obtaining such food scraps collection services shall require collection with such frequency as is necessary to prevent overflow of containers. Service must be provided at least one per week, but no less frequently that may be required by the Larimer County Department of Health and Environment.

(c) Disposal of food scraps. Except as permitted by a variance obtained in accordance with §12-23(a) above, a food store located within the City shall not comingle food scraps with refuse

or recyclable material or dispose of food scraps by any means other than at a location or facility permitted by the State of Colorado to collect such material (but not to a landfill).

Section 6. That Chapter 15, Article XV of the Code of the City of Fort Collins is hereby repealed in its entirety and a new Chapter 15, Article XV entitled Solid Waste Collection and Recycling Services is hereby enacted to read in its entirety as follows:

ARTICLE XV. SOLID WASTE COLLECTION AND RECYCLING SERVICES

Sec. 15-411. - Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this §15-411:

Basic service shall mean collection of solid waste and recyclable materials from a residential customer by a collector.

Collector shall mean a person or entity providing collection service for solid waste and/or recyclables and/or food scraps and/or yard trimmings.

Commercial customers shall mean any premises utilizing collection service where a commercial, industrial or institutional enterprise is carried on, including, without limitation, retail establishments, restaurants, hospitals, schools, day care centers, office buildings, nursing homes, clubs, churches and public facilities. Customers, other than residential customers, serviced using any type of collection container, including without limitation poly-carts, dumpsters, or roll-off bins, are considered commercial customers unless the service is provided for an active construction or demolition project permitted by the City of Fort Collins building department.

Communal system for the collection of waste shall mean an arrangement for the collection of waste from multiple properties or residences using collection containers shared by those properties or residences.

Composting of food scraps shall mean the process of converting these materials into a nutrient-rich soil amendment.

Container shall mean a refuse container as defined in §12-16, a poly-cart, disposable bags, bin-type containers, carts or bulk-volume dumpsters or plastic receptacles, each of variable volume capacities as defined in this Article, provided by a collector to a customer and used for the collection of refuse, recyclable materials, food scraps or yard trimmings.

Curbside shall mean at or near the perimeter of the premises, whether or not there is a curb, but does not mean or permit placement on the sidewalk. If the curb and any sidewalk are of unitary construction, the term means behind the sidewalk or on the street side of the curb so long as such location does not impede bike, pedestrian, or car traffic and is not on an arterial street.

Curbside collection shall mean the collection of solid waste or recyclables placed at a curbside location or within a dumpster site.

Director shall mean the Director of the City's Environmental Services Department.

Dumpster shall mean a metal or plastic container 1 cubic yard to 10 cubic yards in volume that is used to collect refuse or recyclables.

Electronic equipment shall mean any electronic device or electronic component as those terms are defined in the Colorado Hazardous Waste Regulations, 6 Code of Colorado Regulations 1007-3, Section 260.10.

Existing customers shall mean customers with whom a collector has a written contract for collection services or for whom a collector is providing collection services, but not recycling services, as of December 31, 2016.

Feed animals shall mean to divert for use as animal feed, in accordance with regulations established by Colorado Department of Public Health and Environment.

Feed hungry people shall mean donate extra food to food banks, soup kitchens, and shelters and/or other methods of making extra food available for human consumption consistent with state and local regulation.

Food scraps shall mean any animal- or vegetable- based staple foodstuffs, including food scraps resulting from the preparation, cooking, and serving of food, unsaleable or outdated food, and other compostable items such as food-soiled paper, provided that such materials have been designated for collection by the City Manager pursuant to §15-416.

Food store shall mean a retail establishment or business located within the City in a permanent building, operating year round, that is a full-line, self-service market and which sells a line of staple foodstuffs, meats, produce, dairy products or other perishable items. "Food store" does not include:

- (a) temporary vending establishment for fruits, vegetables packaged meats and dairy products;
- (b) vendors at farmers' markets or other temporary events;
- (c) businesses at which foodstuffs are an incidental part of the business. Food sales will be considered to be "incidental" if such sales comprise no more than 2 percent (2%) of the business' gross sales in the city as measured by the dollar value of food sales as a percentage of the dollar value of total sales at any single location.

Group account shall mean a customer account for solid waste collection services that provides for collection of waste from multiple residential customers, regardless of the method by which such services are contracted or arranged. An account for service arranged by a single property

owner for collection of solid waste from multiple locations owned by that property owner shall not constitute a group account for the purposes of this Article.

Hierarchy for materials management shall mean the same as the definition for that term formally adopted by the US Conference of Mayors in 2015 as follows: the prioritization of methods for management of materials in the following order, from preferred use to least preferred: 1) extended producer responsibility and product redesign; 2) reduced waste, toxicity, consumption, and packaging; 3) repair, reuse, and donate; 4) recycle; 5) beneficial reuse; 6) waste-based energy as disposal; 7) landfill as disposal.

Hierarchy of uses for food scraps shall mean the prioritization of methods for reducing or disposing of food scraps in the following order, from preferred use to least preferred: 1) source reduction of food scraps; 2) feed hungry people; 3) feed animals; 4) industrial uses; 5) composting; 6) disposal in a landfill or incineration.

Industrial uses of food scraps shall mean to provide waste oils for rendering and fuel conservation and food scraps for digestion to recover energy.

Landfill shall mean an area of land or excavation licensed by the State of Colorado to accept waste for permanent disposal.

Large capacity container(s) shall mean a container with a volume capacity of more than 90 gallons but not more than 99 gallons.

Medium capacity container(s) shall mean a container with a volume capacity of more than 60 gallons but not more than 69 gallons.

Multi-family customers shall mean residential properties for which there is a communal system for the collection of solid waste.

Poly-cart shall mean a durable, plastic, wheeled container with a hinged lid, manufactured and used for the collection of refuse, recyclable materials, food store food scraps, or yard trimmings. For multi-family or commercial customers, a dumpster or roll-off bin with aggregate volume of multiple poly-carts shall be deemed to constitute one or more poly-carts.

Qualified recycling facility shall mean a facility that arranges for or causes the recovery of useful materials from one (1) or more specified recyclable materials including items for reuse, and shall be deemed to include only a facility that meets any federal or state standards that may be established to regulate or designate such recycling facilities.

Recyclable cardboard shall mean corrugated cardboard, and shall include, but not be limited to, materials used in packaging or storage containers that consist of three (3) or more layers of Kraft paper material, at least one (1) of which is rippled or corrugated. Cardboard shall be considered recyclable cardboard regardless of whether it has glue, staples or tape affixed, but not if it is permanently attached to other packing material or a nonpaper liner, waxed cardboard or cardboard contaminated with oil, paint, blood or other organic material.

Recyclable materials shall mean materials which have been separated from solid waste and can be recovered as useful materials and are properly prepared for the purpose of recycling, provided that such materials have been designated by the City Manager as recyclable pursuant to §15-414 of this Article.

Recycling shall mean the process of recovering useful materials from solid waste, including items for reuse.

Recycling collector shall mean a person or entity providing recyclable collection services.

Refuse shall have the meaning set forth in §12-16 of this Code.

Residential customer shall mean a customer at a residential property for which a communal system for the collection of waste is not employed.

Roll-off bin shall mean an open-top or gable-top metal container used to collect refuse or recycling that is 10 cubic yards or greater in capacity.

Service shall mean collecting, transporting or disposing of solid waste, recyclable materials, food store food scraps or yard trimmings for consideration.

Small capacity container(s) shall mean a container with a volume capacity of more than 30 but not more than 39 gallons.

Solid waste shall mean all refuse, putrescible and nonputrescible waste, excluding discarded or abandoned vehicles or parts thereof, sewage, sludge, septic tank and cesspool pumpings or other sludge, discarded home or industrial appliances, hazardous wastes, materials used as fertilizers or for other productive purposes and recyclable materials which have been source separated for collection.

Solid waste collector shall mean the person who provides solid waste collection service on a regular, recurring schedule.

Source reduction of food scraps shall mean reduction of the volume of surplus food generated and disposed of.

Source separation shall mean to separate solid waste, recyclable materials, food scraps and yard trimmings at the waste source.

Volume capacity category of containers shall mean small capacity containers, medium capacity containers, or large capacity containers placed for collection of solid waste, recyclable materials, food scraps or yard trimmings.

Yard trimmings shall mean yard clippings, wood, branches, leaves, and twigs as designated for collection by City Manager pursuant to §15-416.

Sec. 15-412. - License requirement.

(a) License required. No person shall operate as a collector within the corporate limits of the City without first obtaining a collection license for such activity pursuant to §15-417.

(b) Exemptions. The following persons or entities are not required to obtain a solid waste or recyclable 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, recyclable materials, yard trimmings or food scraps left by a tenant upon such owner's property, so long as such property owner does not provide 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, construction or landscape work being performed by such person.

(c) Volume-based rates for solid waste service.

(1) Any person licensed to operate as a 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 category of the solid waste containers placed for collection by each residential customer. Collectors shall determine a rate for, and offer to residential customers, the small capacity container solid waste service, and that rate shall be used to determine the rates for all other service levels. Said charges shall be based upon the solid waste container size, rather than the volume of solid waste actually deposited within such containers by the residential customers. The charge for additional solid waste containers of the same volume capacity category shall be no less than one hundred (100) percent of the charge for the first such container. The charge for solid waste volumes in excess of a customer's service subscription level (based on volume capacity category) shall be proportional by volume to the collector's standard rate for a small capacity 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 collector shall provide to each residential customer containers (which may include disposable bags), or labels to be attached to customer-provided disposable bags, showing the volume capacity category of

such bags, 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 volume capacity category container sizes and levels of service offered by the collector. In the case of a group account, the solid waste collector shall require a written contract confirming compliance with the provisions of this Article.

(3) In offering or arranging for services, a collector shall provide reasonable notice of the full range of volume capacity category container sizes or levels of service offered by the collector, and shall provide to each residential customer that customer's requested volume capacity category container size or level of service.

(4) It shall be unlawful for any person to knowingly attach any label to a container exceeding in volume the volume capacity category shown on, or represented by, such label, and to place said container for collection.

(5) No collector shall collect or transport solid waste, recyclables, food scraps or yard trimmings which have not been placed for collection through such system or in containers upon which such labels have been attached.

(6) The provisions of this §15-412(c) shall not be construed as prohibiting any collector from also establishing rules and regulations regarding the maximum weight 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 (1) time offset by a low volume at another time.

(d) Fixed fees for prepaid disposable bags or labels for solid waste service.

(1) Where prepaid disposable bags or prepaid labels for customer-provided disposable bags (rather than reusable containers) are provided by a collector to its customers for solid waste collection services, solid waste collectors may, but are not required to, charge a fixed fee for the purpose of covering the fixed operational costs of routing service trucks for such collections in addition to the volume based rates for the prepaid bags or labels under §15-412(c) above.

(2) If a solid waste collector elects to charge such fixed fee, said fee shall not exceed seventy-five (75) percent of the monthly volume-based rate charged for one (1) small capacity container per week.

(3) 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.

(e) Service surcharge for solid waste service.

(1) In addition to the volume-based rates required pursuant to §15-412(c) above and any fixed fees permitted under §15-412(d) above for collection of prepaid disposable bags or prepaid labels for customer-provided disposable bags, collectors may, but are not required to, charge a service surcharge to residential customers. A service surcharge may be imposed only to cover fluctuating operational costs of doing business outside of a collector's control (such as, for example, fuel costs or market based recycling fees paid by collectors). A service surcharge shall be permitted and charged only as set forth in this §15-412(e).

(2) If a collector elects to charge such service surcharge, said surcharge shall not exceed twenty-five (25) percent of the monthly volume-based rate charged for one (1) small capacity container per week.

(3) In the event that a collector elects to establish a service surcharge, all bills for services provided by such collector to residential customers shall clearly show both the service surcharge and the volume-based rate. Additionally, in the event that a collector elects to establish a service surcharge, such collector shall, on or before January 1 of each ensuing year, deliver to the Director a true and correct copy of such rate schedule.

(f) Refusal due to recyclable materials. In the event that a collector refuses to collect any solid waste container because it contains materials required to be recycled under §12-22, the collector shall not be required under this §15-412 to credit the customer for such refused container. A collector shall not collect materials required to be recycled under §12-22 comingled in a solid waste container, except that, with respect to recyclable cardboard, a collector may, but shall not be obligated to, accept any solid waste container that has reasonably been determined, based upon visual inspection, to contain no more than twenty-five (25) percent recyclable cardboard by volume.

(g) Subcontractors or agents. 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.

Sec. 15-413. - Recycling requirement.

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

(1) 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 and without additional charge other than a service surcharge under

§15-412(e), the collection at curbside of both solid waste and recyclable materials. Charges for such basic service provided to each residential customer shall include recyclable materials in a minimum amount equal to at least eighteen (18) gallons and need not be more than two large volume capacity containers. No collector shall be permitted to divide or diminish charges for the provision of such basic service at the request of such customer or for any other reason.

(2) All collectors providing solid waste collection services to residential customers shall provide curbside recycling collection services at least once per week 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 residential customers located within mobile home parks. After a collector has offered and made available to its residential customers medium and/or large capacity containers for recycling, said collector may modify its recycling collection schedule to a minimum of two collections per month 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 residential customer. When a residential customer has two large capacity containers for recycling collection, collectors may require that all recyclable materials fit inside the container provided to a residential customer.

(b) On-site collection - Multi-Family and Commercial.

(1) Each solid waste collector licensed by the City shall, upon request, provide to each multi-family and commercial customer (and other customers receiving solid waste collection services through a communal system of waste collection) as a part of any solid waste collection services provided by such solid waste collector, the collection of recyclable materials. Such collector shall be permitted to impose an additional charge to multi-family and commercial customers (and other customers receiving solid waste collection services through a communal system of waste collection) for the collection of recyclable materials.

(2) The amount of recyclable materials collection that shall be provided to each multi-family and commercial customer as a part of such basic services shall be not less than one-third ($1/3$) of the total collection volume (including both solid waste and recyclables) for such customer based on the size of solid waste containers provided to such customer and the service frequency ("minimum recycling service"). For example, if such a customer is provided with pick-up of a 4-cubic-yard trash container that is collected once per week, the collector shall also provide minimum recycling service in an amount equal to not less than a 2-cubic-yard recycling container as a part of such basic services (2 cubic yards is one-third ($1/3$) of the total service volume (including both solid waste and recyclables) of 6 cubic yards).

(3) Commencing January 1, 2017, each solid waste collector licensed by the City shall provide to new and existing multi-family and commercial customers (and other customers receiving solid waste collection services through a communal system of waste

collection) as a part of any solid waste collection services provided by such collector, the minimum recycling service calculated under §15-413(b)(2) in accordance with the schedule set forth in this §15-413(b)(3). Each solid waste collector licensed by the City must add minimum recycling service to the solid waste collection service provided to existing multi-family and commercial customers not receiving recycling service as of December 31, 2016 ("unserved multi-family and commercial customers") in accordance with the following schedule:

- a. by December 31, 2018, forty percent (40%) of its unserved multi-family and commercial customers; and
- b. by December 31, 2020, one hundred percent (100%) of its unserved multi-family and commercial customers.

Thereafter, the cost for minimum recycling service must be billed in addition to the cost of solid waste collection service for all multi-family and commercial customers. The charge for both such services may be itemized separately for billing purposes, but shall not be reduced to exclude the cost of minimum recycling service unless a variance is granted in accordance with this §15-413(b)(3).

A variance may be granted by the City in accordance with the following provisions:

- (i) If a collector's multi-family or commercial customer declines to participate in minimum recycling collection services offered by a collector due to space constraints, self-hauling recyclables to recycling drop-off center, utilization of a separate licensed recycling collection provider other than the solid waste collector, failure to generate recyclables, or if only available location for recycling bin is not safely serviceable by hauler, the customer must submit a written request for variance on a form provided by the City and signed by the customer. A recycling bin location that is not safely serviceable is defined as a location that is substantially less safe to service than the trash bin service area for that location. Upon receipt of such a request for variance, the Director shall either approve the variance for good cause shown, or disapprove the variance. A copy of the approved or disapproved variance shall be sent by the City to the solid waste collector servicing that customer.
- (ii) For purposes of this §15-413(b)(3) "good cause shown" shall mean evidence presented by the customer that, to the reasonable satisfaction of the Director, demonstrates that the customer lacks sufficient space for recycling containers, self-hauls recyclables to a drop-off recycling center, utilizes a separate licensed recycling collector, generates recyclables in an amount less than one-third (1/3) of the customer's total solid waste and recyclables, or the only available location to service recycling bin(s) is substantially less safe to service than the trash bin service area for that location and therefore is deemed unsafe to service.

(iii) If a variance is granted for a customer not generating recycling of at least one third (1/3) of the volume of waste generated, but the customer generates at least 96 gallons of recyclables per week, the variance will require that recycling service in the volume of recycling the customer generates be included as a part of solid waste collection services.

(iv) If a variance is approved in accordance with the foregoing provisions, the collector shall not be required to provide such recycling services to such multi-family or commercial customer for the five (5) year period following approval of the variance, except as otherwise provided by the Code. If the constraints on which the variance was based still exist at the end of any five (5) year variance, the customer may submit a request for an additional five (5) year variance, except as otherwise provided by the Code.

(v) If the variance is not approved, the collector shall be required to provide minimum recycling services, in addition to solid waste collection, and charge the customer for the minimum required volume of recycling services as set forth herein.

(4) Collectors providing collection services to multi-family and/or commercial customers shall provide services for the collection of recyclable materials from such customers with such frequency as is necessary to prevent overflow of the recycling containers.

(5) Collectors shall provide each multi-family and commercial customer with educational guidelines for recycling and signage for use inside its facilities, which guidelines and signage may be designed and provided by the collector and approved by the City or the collector may utilize City-provided guidelines and signage for this purpose.

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

(1) Except for materials that customers have not properly prepared for recycling, collectors may not commingle designated recyclable 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 pursuant to §15-416 as materials which collectors must offer to collect for recycling.

(2) Collectors shall provide to each residential solid waste customer who utilizes recycling services within the City a container for storing and setting out recyclable materials meeting the requirements of this §15-413(c), 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 a medium capacity or large capacity recycling container. The collector must provide the requested container 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 containers, not to exceed the actual cost of the container. The collector must provide a container for recycling to all residential recycling customers except those customers who expressly decline a container, and must provide a container to any customer at any time upon request within one (1) billing period after the request is made. Collectors shall provide recycling containers to multi-family and commercial customers (in the form of containers, dumpsters, or roll-off bins as deemed appropriate for servicing the location) and with a capacity sufficient to meet one-third (1/3) of service as recycling volume requirement. Regardless of the type of container, it must be clearly identifiable as a recycling container and include a conspicuous chasing arrows decal on the side(s) of the container accessed by service or pedestrian access, as well as signage such as stickers or weather-resistant laminated posters or imprinting into the surface of the container during manufacture, of recyclable materials accepted in local collection programs, including graphics depicting acceptable materials; such information may be delivered by use of City-provided graphics or graphics provided by the collector and approved by the City.

(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) 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.

(5) 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.

(d) Customer notification.

(1) Upon the initial provision of collection services to new residential customers, and on or before December 31 of each year with respect to existing residential customers, collectors shall notify in writing such customers of:

- a. the availability of the collection of recyclable materials,
- b. the range of recycling containers available,
- c. the materials designated for recycling collection pursuant to §15-416; and
- d. such rules and regulations as have been established by the collector for the orderly collection of recyclable materials as authorized pursuant to §15-413(b)(2).
- e. the variable-rate solid waste collection service options offered by the solid waste collector,

- f. the related volume-based rates and service surcharges, and
- g. the availability of optional collection service for residential yard trimmings under §15-414.

In addition, such notice shall include educational guidelines and information regarding solid waste, recycling and yard trimmings provided by the City to the collectors in electronic or printed form not later than December 31 of each year. Collectors must provide notice in paper form to all customers receiving a paper bill or paper service calendar. Collectors may provide notice electronically to customers receiving only electronic communications.

(2) 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 §12-19(b).

(3) 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.

(4) The collector shall deliver to the Director a true and correct copy of each form of such notification sent on or before December 31 of each year.

Sec. 15-414. – Optional service – residential yard trimmings.

(a) Residential service required. As of April 1, 2017, each solid waste collector licensed by the City shall make available to each residential customer receiving solid waste collection services, including customers receiving solid waste collection services through a group account, curbside collection of residential yard trimmings at least once per week from April to November of each year upon a customer's request.

(b) Rates. Collectors shall be responsible for setting rates for collection of residential yard trimmings and such charges may be billed separately from any charges for basic services, as defined in §15-411 to include collection of solid waste and recyclable materials, provided by the collector, and shall not be governed by the requirements of §15-412(c).

(c) Disposal of yard trimmings. Collectors may not comingle yard trimmings with refuse or recyclable materials, nor dispose of yard trimmings at a landfill. Yard trimmings shall be disposed of by the collector at a location or facility permitted to collect organic materials for recycling, reuse or composting.

Sec. 15-415. – Collection of food store food scraps.

(a) **Frequency of Collection.** Collectors providing food scraps collection service to food stores shall provide collection with such frequency as is necessary to prevent overflow of containers. Service must be provided at least one per week, but no less frequently than may be required by the Larimer County Department of Health and Environment.

(b) **Collectors – duties.** All licensed collectors of food scraps operating within the City shall have the following duties:

(1) Except as permitted by variance allowed under §12-23(a), collectors may not commingle food scraps with refuse or recyclable material or dispose of food scraps by any means other than at a location or facility permitted by the State of Colorado to collect such material (but not to a landfill).

(2) A collector may establish such reasonable and industry-accepted requirements for the preparation of food scraps as are necessary to provide for the orderly collection of such materials, including requirements regarding the preparation of materials for collection, the collection of materials, and requirements for separation.

(3) All food scraps placed for collection shall be owned by and be the responsibility of the food store 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 food store or the collector of food scraps shall take physical possession of any such materials placed for collection.

Sec. 15-416. - Designation of recyclable materials, food scraps, and yard trimmings for collection.

(a) The City Manager shall, on or before the 1st day of October of each year, after consultation with the Larimer County Board of Commissioners, the Natural Resources Advisory Board and representatives of the licensed collectors operating within the City, determine which items (including recyclables, food scraps, and yard trimmings) shall be designated for collection based upon the following criteria:

(1) Local, state and federal laws and regulations, including, but not limited to, the requirements of this Article;

(2) Potential for waste stream reduction;

(3) Availability of markets;

(4) Market price;

(5) Safety factors and risks of transportation;

(6) Risks of comingling of liquid wastes; and

(7) Adherence to the hierarchy of materials management and hierarchy of uses of foods scraps.

(b) Notwithstanding the foregoing, collection for recycling of electronic equipment 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, but instead shall deliver any collected electronic equipment for recycling at a qualified recycling facility for electronic equipment.

(c) The City Manager is authorized to promulgate such rules and regulations as are necessary to effectuate the implementation and enforcement of this Article.

Sec. 15-417. - Application for license.

(a) Any person desiring to obtain a license to engage in the business of being a collector of solid waste, recyclable materials, food scraps, or yard trimmings within the City 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, recyclables, food scraps, and/or yard trimmings, or operated or located at any time in the City 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 §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 containers provided for solid waste collection and those provided for curbside recycling and of the availability of seasonal yard trimmings collection service. 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-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 §15-417, 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.

Sec. 15-418. - 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.
- (3) Proof that each vehicle required to be identified under §15-415(a) has been registered with the U.S. Department of Transportation.

Sec. 15-419. - Term of license.

All licenses issued pursuant to this Article shall run from the date of issuance until the 31st day of December of the year in which such license is issued. All licenses shall expire on December 31 of each year. Licenses are not transferable.

Sec. 15-420. - 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 by November 30 of each year, the following:

(1) The specific manner in which trash collection, recycling services and collection of food scraps and yard trimmings 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;

(2) A description of any system used to impose and verify charges for volumes in excess of customer subscription levels;

(3) The number of individual residential, multi-family and commercial customers, and any other customer category, who received 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;

(4) The number of customers within each category that subscribe to each level of solid waste, recycling, yard trimmings, or food scrap collection services, and the number of containers provided to residential customers, by size ;

(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 §15-420 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 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, including contracts for group accounts, written records of individual level of service requests, invoices, route sheets or other records necessary to verify the accuracy and completeness of such records; and copies of all applications for and documentation pertaining to all requests for variance pursuant to §15-413(b)(3) above. 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 §15-420(d) 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 the City 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.

(2) Number of tons of each type (as determined by the City Manager pursuant to §15-416) of recyclables collected from all residential, commercial and multi-family, and any other customer category, reported by category of customer.

(3) Number of tons of food scraps collected in the City from any customer category, reported by category of customer.

(4) Number of tons of yard trimmings collected in the City from any customer category, including group accounts, reported by category of customer.

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.

Sec. 15-421. - Disposal of solid waste.

All persons holding licenses pursuant to this Article as a collector of solid waste shall dispose of all such refuse and solid waste at the Larimer County Landfill or at any other disposal site that is approved by any state. No solid waste shall be disposed of at any other location either inside or outside of the City.

Sec. 15-422. - Identification of vehicles.

Each vehicle used by a collector to provide services within the City pursuant to a license issued under this Article shall bear an identification sticker issued by the Financial Officer in a conspicuous place upon the vehicle, which identification sticker shall be issued by the Financial Officer at the time the license is granted.

Sec. 15-423. - Hours of operation.

No collector shall operate any vehicle for the purpose of collecting solid waste, recyclables, food scraps, or yard trimmings on any street designated by the City as "local residential" or "residential collector" between the hours of 7:00 p.m. and 7:00 a.m. (the "Nighttime Hours").

Sec. 15-424. - Investigation of reports, records and other items relating to compliance with this article.

For the purpose of ascertaining the correctness of any reports, plans or other documents submitted or required to be prepared and maintained by a licensed collector pursuant to this Article XV, or for the purpose of determining compliance with any requirements of this Article XV of any person, whether or not the same is licensed under this Article XV, the City Manager may hold investigations, including audits, and hearings concerning any matters covered by this Article, and may examine any relevant books, papers, records or memoranda of any such person and may require the attendance of such person, or any officer or employee of such person, or of any person having knowledge of transactions involved, and may take testimony and proof of the information. The City Manager shall have the power to administer oaths to such persons. Except for routine or random audits, any such investigation shall be based upon reasonable suspicion of a violation as determined by the City Manager. The City Manager shall provide advance notice to the affected collector of his or her intent to conduct an investigation under this §15-424, unless the City Manager determines that provision of such notice may compromise the purpose of the investigation.

Sec. 15-425. - Subpoenas and witness fees.

All subpoenas issued under the terms of this Article may be served by any person over the age of eighteen (18) years. The fees of witnesses for attendance in response to a subpoena shall be the same as the fees of witnesses before the District Court, such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the City Manager, such fees shall be paid by the City, but when a witness is subpoenaed at the instance of any other party to such proceeding, the City Manager may require that the cost of service of the subpoena and the fee of the witness be borne by the party at whose instance the witness is summoned. In such case, the City Manager, in his or her discretion, may require a deposit to cover the cost of such service and witness fees prior to issuing such subpoenas. A subpoena issued as aforesaid shall be served in the same manner as a subpoena issued through a court of record.

Sec. 15-426. - Attendance of witnesses and production of evidence to be compelled by municipal or district judge.

Any Judge of the Municipal Court or the District Court, upon the application of the City Manager, may compel the attendance of witnesses, the production of books, papers, records or memoranda and the giving of testimony before the City Manager, by an action for contempt or otherwise in the same manner as the production of evidence may be compelled before such court.

Sec. 15-427. - Depositions.

The City Manager, or any party to an investigation or hearing before the City Manager, may cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for depositions in civil actions in courts of this State and to that end compel the attendance of witnesses and the production of books, papers, records or memoranda.

Sec. 15-428. - Suspension or revocation of license.

The City Manager may, after written notice of no less than ten (10) days and an opportunity for a hearing if requested by the licensee within twenty (20) days of such notice, suspend or revoke any license issued under this Article as he or she determines reasonably appropriate upon a finding that the licensee has failed to comply with any provision of this Article or has violated other applicable laws intended to protect public health, safety or the environment. No period of suspension shall exceed six (6) months in duration. In the event of a revocation of a license, the City Manager may further declare such licensee ineligible for licensure under this Article for a period of up to one (1) year from the date of revocation, if he or she reasonably determines that the circumstances so warrant. In lieu of suspension or revocation of a license under this §15-428, or as a condition of future eligibility for licensure, if a licensee is declared ineligible for the same, the City Manager may establish reasonable terms and conditions for continuation of a license or such future eligibility. A license shall be subject to immediate suspension in the event of violation of any such terms and conditions for continuation of a license.

Sec. 15-429. - Notices.

All written notices required to be mailed, served or given to any person under the provisions of this Article shall be hand delivered or mailed, postage prepaid, addressed to such person at the last known address of such person on file with the City and shall be deemed to have been received by such person when so mailed or delivered.

Sec. 15-430. - Review of decisions of the city manager.

The licensed collector or other person subject to final action of the City Manager under this Article may apply for review of such action in the Larimer County District Court in accordance with Rule 106 of the Colorado Rules of Civil Procedure. The review must be sought no later than thirty (30) days after the date of the decision to be reviewed.

Sec. 15-431. - Violations.

It shall be unlawful for any person to:

- (1) Fail or refuse to make or file any record, report, application or other document required to be made or filed by this Article or to make any false or fraudulent record or report or any false or fraudulent statement in any such document;
- (2) Operate as a collector within the corporate limits of the City without the license required by this Article or to continue to do business during a period of suspension of such license or after such license is revoked; or
- (3) Aid or abet another in any attempt to evade any requirements imposed by this Article.

Sec. 15-432. - Other remedies unaffected.

Nothing in this Article shall be construed to limit or forbid the City or any other person from pursuing any other remedies available at law or in equity to enforce the provisions of this Article, including, without limitation, the prosecution of violations of this Article pursuant to §1-15 of this Code.

Introduced, considered favorably on first reading, and ordered published this 6th day of September, A.D. 2016, and to be presented for final passage on the 20th day of September, A.D. 2016.

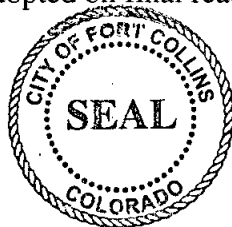


ATTEST:

Mayor

City Clerk

Passed and adopted on final reading on the 20th day of September, A.D. 2016.



ATTEST:

Mayor

City Clerk