

Passed: October 27, 2009
Published: November 4, 2009

Ordinance No. 1997

AN ORDINANCE AMENDING CHAPTER 5.28 OF THE DERBY MUNICIPAL CODE, REGULATING ACCUMULATION, STORAGE, COLLECTION AND TRANSPORTATION OF SOLID WASTE AND RECYCLABLES, AND ESTABLISHING PENALTIES FOR VIOLATION THEREOF; AND REPEALING ORIGINAL CHAPTER 5.28 OF SAID CODE AS AMENDED BY ORDINANCE NO. 1980 OF THE CITY.

WHEREAS, pursuant to K.S.A. 12-2101 *et seq.*, the City is authorized to provide for the collection and disposal of garbage or trash;

WHEREAS, the Governing Body of the City adopted ordinance no. 1980, amending the Derby Municipal Code to provide for collection of residential refuse and recyclables by the City or a contractor retained by the City; and

WHEREAS, certain of the provisions included in said Chapter 5.28, as so amended, require further refinement in order to better meet the needs of the City and its residents;

NOW THEREFORE, BE IT ORDAINED by the Governing Body of the City of Derby, Kansas:

Section 1. Chapter 5.28 of the Derby Municipal Code shall be amended to read as follows:

Article I. General

Section 5.28.010 Definitions.

Where used in this Chapter, the following words and terms shall have the meaning ascribed to them in this section unless the context clearly requires otherwise:

- A. "Cart" means a wheeled container provided by the City or a Contractor for accumulation, collection and disposal of residential refuse or recyclables and, when used with respect to storage or placement of residential refuse or recyclables for collection, includes throw-away containers whether provided by the City, a Contractor or a Customer.
- B. "City" means the City of Derby, Kansas, and includes any Contractor as defined herein.
- C. "City Manager" means the city manager of the City or his or her authorized designee.
- D. "Contractor" means any person or firm collecting, transporting and disposing of residential refuse or recyclables pursuant to a contract with the City.
- E. "Customer" means a person who has contracted with the City or a Contractor for collection, transportation and disposal of residential refuse or recyclables.
- F. "Garbage" means any waste plant or animal material generated by or resulting from processing, preparation, storage, sale, or consumption of food or food products, and includes unclean containers.

- G. "Hazardous waste" means any material identified as such pursuant to 40 C.F.R. Part 261, as it may be from time to time amended.
- H. "Multifamily" means a structure consisting of or designed to include three or more dwelling units.
- I. "Nonresidential," when used in conjunction with refuse or solid waste, means any premises not used exclusively for residential purposes.
- J. "Nonresidential Customer" means a person who contracts with the City or a Contractor for collection, transportation and disposal of refuse from any premises not used exclusively for residential purposes.
- K. "Person" means any natural person or any entity having the legal capacity to sue or be sued, including but not limited to corporations, partnerships and associations.
- L. "Recyclables" means any materials identified from time to time by the City as recyclable and generated in the same manner as residential refuse.
- M. "Refuse" means waste material of any kind or nature whatsoever, but does not include unusual or heavy waste, hazardous waste or recyclables as defined herein.
- N. "Residential," when used in conjunction with refuse or recyclables, means that such materials:
 1. Normally originate in a residential environment, or
 2. Originate in a nonresidential environment, but are of such volume and character that they may be safely accumulated in carts and economically collected and transported by the same equipment and vehicles used for collecting residential refuse or recyclables; provided; that the term shall not be construed to refer to refuse or recyclables generated on a single property occupied by one or more multifamily structures.
- O. "Rollout service" means any collection requiring the collection person to enter upon private property to access a cart for collection.
- P. "Single-family dwelling" means a building or portion of a building which is designed for occupancy by one family unit, regardless of actual occupancy, but does not include any portion of a building designed for occupancy by three or more family units.
- Q. "Solid waste" means all refuse, unusual or heavy waste, hazardous waste, and, when collected in a container for disposal in bulk, grease produced from commercial processing or cooking of food.
- R. "Throw-away container" means a plastic or water-resistant paper bag, box, carton, can, crate or basket used for accumulation and disposal of residential refuse; provided, that the term shall not include a plastic bag and contents weighing more than 30 pounds or any other container and contents weighing more than 40 pounds. No such container shall exceed 36 inches in length or have any sharp, dangerous or noxious surface which may be harmful to a collector or other person. Throw-away containers shall be secured so that the contents thereof will not be blown or scattered about, become frozen to the ground or otherwise create a nuisance.
- S. "Trash" means any refuse other than garbage.
- T. "Unusual or heavy waste" means any waste which exceeds applicable weight limitations established by agreement of the City and any Contractor, and any other waste the City Manager determines cannot be collected by regular collection service because of its dimensions, density, weight or potentially harmful nature, including ashes and cinders unless combustion thereof has been completely extinguished.

- U. “Yard waste” means waste vegetable material generated from maintenance of lawns, shrubs, trees and landscaping, including but not limited to grass clippings, leaves, weeds and tree limbs.

5.28.020 Requirements for and use of refuse containers.

Except as otherwise provided in this Chapter, each person in possession or control of any premises upon or from which refuse accumulates shall provide or cause to be provided one or more suitable containers for storing and disposing of such refuse or other solid waste. Such containers, when the contents thereof are required by this Chapter to be collected by the City, shall be provided by the City directly or by a Contractor.

5.28.030 Waste storage – multifamily dwellings and mobile home parks.

The owner of each multifamily structure or mobile home park shall provide sufficient containers, meeting the requirements of this Chapter, to contain all solid waste produced by the occupants of the premises during the collection period therefor, and shall ensure that all garbage, refuse and solid waste generated upon such property is deposited therein.

5.28.040 Permit required; exceptions.

- A. Except as otherwise provided in this Chapter, it shall be unlawful for any person other than the City to collect or transport any solid waste through, over or across the streets and alleys of the City without first securing a permit for each vehicle used for such purpose.
- B. No such permit shall be required for operation of a vehicle by a person who is:
 1. Collecting or transporting residential refuse pursuant to a contract with the City;
 2. Collecting or transporting solid waste generated on his or her own residential property; or
 3. Collecting or transporting solid waste produced on premises occupied by such person or his or her employer.
- C. Regardless of whether a vehicle permit is required hereunder, all such persons shall in all respects comply with this Chapter when transporting solid waste, refuse or recyclables through, over or across the streets and alleys of the City.

5.28.050 Transportation of garbage over City streets and public property.

Notwithstanding any other provision of this Chapter, no person shall transport garbage on, over or across any street, alley or public grounds of the City unless the same is contained in a permitted vehicle or a watertight container secured so as to prevent such material or the odor thereof from escaping.

5.28.060 Unusual or heavy waste and hazardous waste.

Except as expressly provided herein or directed by the City Manager, neither the City nor a Contractor shall collect or dispose of unusual or heavy waste or hazardous waste.

5.28.070 Prohibited acts.

- A. No person shall:
1. Collect or contract to collect residential refuse or recyclables from property located within the City unless authorized to do so by the City or a Contractor;
 2. Damage, deface, destroy, misappropriate or otherwise exert unauthorized control over a refuse or recyclables cart or the contents thereof;
 3. Place, deposit or discard, or cause or permit to be placed, deposited or discarded, any solid waste in or upon any park, sidewalk, gutter, street, alley, or other City-owned or controlled property; provided, that this subsection shall not apply to persons erecting buildings or placing materials thereon under such regulations as may be established by this Chapter or City employees in the performance of their duties;
 4. Place, deposit or discard, or cause or permit to be placed, deposited or discarded, any residential refuse in a trash or refuse receptacle located in or upon any park, sidewalk, street, alley, or other City-owned or controlled property;
 5. Unless authorized to do so by the City in writing, place, deposit or discard, or cause or permit to be placed, deposited or discarded, any solid waste or recyclables in a cart other than one assigned to such person's property; provided, that occupants of multifamily structures may use a common refuse container if the owner of such property has contracted for the collection thereof and agreed to be liable for the entire collection service charge therefor;
 6. Remove any or all of the contents of a refuse or recyclables cart not located on or assigned to such person's property;
 7. Place, deposit or discard, or cause or permit to be placed, deposited or discarded, any refuse upon private property, except in a container which complies with this Article or specifications established from time to time by the City Manager pursuant to this Article;
 8. Upset any refuse or recyclables cart, spilling the contents thereof;
 9. Place, deposit or discard, or cause or permit to be placed, deposited or discarded, any material other than refuse or recyclables in a cart provided for that purpose;
 10. Place, deposit or discard, or cause or permit to be placed, deposited or discarded, materials weighing more than the maximum allowable weight, as established from time to time by the City Manager, in a cart;
 11. Contract with any person other than the City for collection and disposal of residential refuse or recyclables; or
 12. Place, deposit or discard, or cause or permit to be placed, deposited or discarded, any refuse outside of any building within the City, other than in a wind-proof, water-tight container.
- B. Nothing in this Chapter shall be construed to apply to collection, transportation or disposal of grass cuttings, leaves and other lawn waste incident to operation of a lawn maintenance or landscaping service, or to transportation or disposal of used appliances or construction or remodeling debris when performed by or on behalf of a vendor or contractor in conjunction with such project.

5.28.080 Penalties.

- A. Any person convicted of violating paragraph 1, 2, 3, 4, 5, or 6 of subsection "A" of section 5.28.070 shall be guilty of a class "C" violation. Each day or any portion thereof during

which any such violation occurs or continues shall be deemed to constitute a separate offense.

- B. Any person convicted of violating any other provision of this Chapter shall be punished by a fine not to exceed \$100.
- C. Any person convicted of a violation of this Chapter involving damage to or destruction of real or personal property may, in addition to any other punishment authorized therefor, be ordered to pay restitution equal to the cost of repairing or replacing such property.

Article II. Collection and Transportation of Residential Refuse and Recyclables.

5.28.090 Residential refuse and recyclables collection service; general regulations.

Residential refuse and recyclables collection service within the City shall be performed exclusively by the City or by a Contractor upon the following terms and conditions:

A. Curbside collection service:

1. Each single-family dwelling shall have a minimum of one refuse cart and one recyclables cart; provided, that:
 - a. Any Customer may decline to participate in the recycling program, in which case a recyclables cart shall not be provided.
 - b. The code enforcement officer may, upon application for an exception, approve sharing of a cart:
 - (1) By two single-family dwellings located on the same property or on properties in close proximity to each other; or
 - (2) When warranted by reason of exceptional circumstances affecting the quantity of residential refuse generated on the applicant's property.
2. All residential refuse shall be collected once each week and residential recyclables shall be collected biweekly. Specialized services, including but not limited to collection of yard waste, unusual or heavy waste or hazardous waste shall be performed upon such conditions and for such fees as the City may establish or approve from time to time.
3. Weekly residential refuse collection. Each Customer shall make his or her refuse and throw-away containers, if any, available for collection on a designated collection day each week. Unless otherwise agreed upon with the Customer, all carts and throw-away containers shall be placed for collection at a point within two (2) feet of the traveled portion of the abutting street, affording easy and unobstructed access for collection. Carts and throw-away containers shall be placed for collection no earlier than 2:00 p.m. on the day preceding the collection day and no later than 6:00 a.m. on the collection day, and shall be removed from such location no later than 9:00 a.m. on the day following the collection day.
4. Biweekly residential recyclables collection. Each Customer using a recyclables cart shall make the same available for collection biweekly, on a designated collection day. All carts shall be placed for collection at a point within two (2) feet of the traveled portion of the abutting street, affording easy and unobstructed access for collection. Carts shall be placed for collection no earlier than 2:00 p.m. on the day preceding the collection day and no later than 6:00 a.m. on the collection day, and shall be removed from such location no later than 9:00 a.m. on the day following the collection day.

B. Rollout collection.

1. Rollout refuse or recyclables collection service shall, upon request of the Customer and when authorized by the City Manager, be available to any Customer who:
 - a. Is 65 years of age or older and demonstrates to the satisfaction of the City Manager that no other person in the household is able to deliver carts to the normal collection point;
 - b. By reason of a documented disability is determined by the City to be unable to transport carts or other containers to the collection point and demonstrates to the satisfaction of the City Manager that no other person in the household is able to deliver carts thereto; or
 - c. Has agreed to pay an additional charge therefor as established by the City.
2. Customers utilizing rollout collection service shall be provided with one cart for deposit of refuse and, unless declined by the Customer, one cart for deposit of recyclables.
3. Such carts may be stored at any location upon the subscriber's property which affords reasonable access for collection purposes and which does not constitute a nuisance in the neighborhood; provided, that no cart assigned to a rollout service Customer shall be stored inside a fence or building, or elsewhere when obstacles would make access unreasonable.

C. Customers shall store refuse pending collection in accordance with the following requirements:

1. Garbage shall be thoroughly drained and wrapped prior to being placed in a cart or other container.
2. No refuse other than garbage or trash shall be deposited in a cart or other container. Accumulated refuse in excess of the capacity of carts or containers provided by the City shall be placed in throw-away containers. Any Customer desiring collection of more than the allowable number of throw-away containers, as established from time to time by the City, may request collection thereof for an additional charge established or approved by the City.
3. Except as provided herein, no unusual or heavy waste, bulky refuse or hazardous waste shall be placed in a cart or throw-away container, or otherwise included with refuse to be collected by the City or a Contractor.
4. Collection of unusual or heavy waste, bulky refuse or hazardous waste by the City:
 - a. Tree limbs up to four (4) inches in diameter and less than four (4) feet in length may be bundled and placed with other residential refuse at the regular collection point for regular weekly collection. Bundles shall not weigh more than 30 lbs; each bundle shall be equivalent to one throw-away container.
 - b. Collection of heavy or bulky items such as furniture and appliances, which can be safely handled by a crew of two persons and a truck, will be made upon request. Fees established or approved by the City shall be charged for any special collection.
 - c. Ashes, cinders, sawdust and similar refuse shall be bagged or otherwise contained before being placed in a cart for collection.
 - d. Dry animal waste shall be bagged or otherwise contained before being placed in a cart.
 - e. All sharp items, including but not limited to syringes and broken glass, shall be enclosed in a hard container such as a can, plastic bottle or box before being placed in a cart.

D. Except when placed for collection pursuant to this section, all carts and other refuse or recyclables containers shall be stored at a location upon the subscriber's property which is

behind the front face of the principal structure on the property and does not constitute a nuisance in the neighborhood.

E. All customers shall:

1. Keep all such containers reasonably clean;
2. Exercise reasonable care to avoid damage to containers;
3. Reimburse the City or a Contractor, as appropriate, for the reasonable cost of repair or replacement of any cart or other container damaged as a result of the negligent or intentional act of a Customer;
4. Except to facilitate collection of refuse, refrain from removing any cart from the premises to which it is assigned;
5. Upon vacating a property to which such cart has been assigned, notify the City or the Contractor at least three (3) working days before such vacation so that such cart may be collected and returned to inventory; and
6. Comply with all regulations of the City with respect to use and care of carts and other containers.

5.28.100 Rates and Charges.

Customer shall pay such fees and charges for collection and transportation of residential refuse and recyclables, and other services rendered incident thereto, as have been established or approved from time to time by the City.

5.28.110 Franchise Fee.

Any Contractor collecting residential refuse or recyclables within the City shall pay to the City a franchise fee for such privilege. The franchise fee therefor shall be established by resolution.

5.28.120 Authority to promulgate additional regulations.

The City Manager may promulgate such additional rules and regulations as he or she deems appropriate to effectuate the purposes of this Article. Such promulgation shall be followed by notification to the governing body within 30 days and such regulations shall become effective immediately, subject only to modification or revocation by the governing body.

**Article III. Collection and Transportation of
Nonresidential Solid Waste and Recyclables**

5.28.130 General.

- A. Except as otherwise provided in this Article, no person shall collect or transport nonresidential solid waste unless licensed to do so by the City.
- B. No license shall be required for a person or firm, or an employee of either, to collect or transport nonresidential solid waste which is generated exclusively upon premises occupied by such person or firm.
- C. Regardless of whether a license is required pursuant to this Article, all persons collecting or transporting solid waste within the City shall at all times comply with all federal, state, county and city rules, regulations and laws established by governmental entities or agencies having jurisdiction.

5.28.140 Definition

Where used in this Article, “Collector” means any person or firm licensed by the City for collection and transportation of nonresidential solid waste and includes any person acting on behalf of any such person or firm.

5.28.150 Insurance requirements – conditions required generally.

A. All Collectors shall secure and maintain, during the permit period and at all other times when using the streets of the city, such insurance as is hereinafter required. The Collector shall submit written evidence of insurance with any permit application prior to obtaining a permit. Insurance shall be considered acceptable when provided by one of the following methods:

1. Issuance of an original policy designating the Collector and the city, by name, as the insured parties under the provisions of the policy;
2. Endorsement to an original policy when endorsement shall extend to the city the same coverage and protection stipulated in the paragraph above;
3. Separate contingent policy providing the required insurance coverage for the protection of the city.

B. A duplicate of the original of each policy shall be furnished showing specifically the coverage and limits, together with the underwriter thereof, for approval by the city. Regardless of such approval by the city, it shall be the responsibility of the Collector to maintain adequate insurance coverage at all times, and the failure to do so shall not relieve the Collector of any obligation or responsibility. Failure on the part of the Collector to maintain required insurance in full force and effect will be construed as a violation of this Chapter. Satisfactory certificates of insurance filed with the city shall note that fifteen calendar days' written notice will be given to the city before any policy covered thereby is changed or cancelled.

5.28.160 Insurance requirements – workmen’s compensation, automobile and general liability – amounts.

The Collector shall provide the insurance required by this section and shall list the city as a beneficiary thereon “as its interest may appear”:

A. Workmen's Compensation and Employer's Liability. This insurance shall protect the Collector against all claims under the Workmen's Compensation law. The Collector shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of a Workmen's Compensation law. The liability limits shall not be less than the following:

1. Workmen's compensation--Statutory maximum amount;
2. Employee's liability--One hundred thousand dollars each person.

B. Automobile Liability. This insurance shall be written in comprehensive form and shall protect the Collector against all claims for the operations of all motor vehicles, whether they are owned or non-owned. The liability limits shall not be less than the following:

1. Bodily injury – one hundred thousand dollars each person;
2. Bodily injury – three hundred thousand dollars each occurrence;
3. Property damage--fifty thousand dollars each occurrence. Such policy may be written to allow the first five hundred dollars of liability for damage to property to be deductible.

- C. **General Liability.** This insurance shall be written in comprehensive form and shall protect the Collector against all claims arising from injuries to any person or damage to property of others arising out of any act or omission of the Collector; and, in addition, this policy shall specifically provide Collector protective liability insurance and contractual liability insurance covering the obligations stipulated herein. The Collector shall provide and maintain insurance to protect the city against any and all claims for damages for personal injury, including accidental death, as well as from claims under such contract, whether operations thereunder are conducted by the Collector, any of his subcontractors, or by any one directly or indirectly employed by the Collector or his subcontractors. The liability limits shall not be less than the following:
1. Personal injury – one hundred thousand dollars each occurrence; three hundred thousand dollars aggregate or single, limit of three hundred thousand dollars;
 2. Property damage – fifty thousand dollars each occurrence, one hundred thousand dollars aggregate.
- D. Such policy may be written to allow the first five hundred dollars or liability for damage to property to be deductible.

5.28.170 Indemnification agreement – conditions.

Collectors shall, by virtue of using the city streets, be obligated to indemnify, defend, punctually pay and save harmless the city and all of its agents, representatives and employees from all suits, claims, demands or actions of every kind or description arising from or relating to any acts, omissions or negligence of the Collector, his servants, employees, agents or subcontractors. The Collector shall likewise punctually pay, defend, indemnify and save harmless the city and all their agents, representatives and employees for and on account of any injury or damages received or sustained by the Collector, its servants, agents or subcontractors on account of any claim or amount recovered for royalty or infringement of patent, trademark, copyright or on account of any claim or amount recovered under the Workmen's Compensation law.

5.28. 180 Work performance conditions – obstructing streets prohibited.

The Collector shall not obstruct streets and shall keep passageways open. The Collector is granted the privilege of using the streets for the work specified but is not granted exclusive use of such streets. The Collector shall handle the work in a manner which shall cause the least inconvenience to the public or property owners and shall perform his labors in a courteous, prompt manner.

5.28.190 Permit required prior to license issuance – prerequisites.

No person, firm or corporation shall, within the city limits, collect or dispose of solid waste unless a permit is first obtained from the city clerk prior to the issuance of said license. The Collector shall deliver to the city clerk copies of certificates of insurance reflecting compliance with the safety responsibility laws of the state, and, in addition, such insurance as may be required by this Chapter prior to the operation of a motor vehicle upon the streets and highways of the city and state. Such insurance shall be kept in full force and effect at all times. In addition, the Collector shall deliver to the city clerk written evidence that said Collector has complied with the solid waste code for municipalities, and this Chapter, and that his vehicle and/or vehicles in all respects comply with the provisions of the solid waste code. In addition, the Collector shall

deliver to the city clerk the insurance certificates required under the provisions of this Chapter, and the make, model and identification or registration number of each vehicle which may be operated on the city streets, and such other information as may be reasonably required to assure the governing body that the terms of this Chapter are being and will be complied with. The Collector and all employees shall at all times remain licensed to operate a motor vehicle under the laws of the state.

5.28.200 Collector – list of parties contracted with required – updating.

Any Collector collecting solid waste in the city of Derby shall deliver to the city clerk a detailed, itemized written list setting forth the names and addresses of any parties with whom it has contracted for the collection of solid waste, and the addresses from which said solid waste is being collected. Said list shall be modified and brought current in writing on the first day of each and every month thereafter. After the original list has been submitted to the city clerk, the Collector shall be responsible for delivering to the city clerk any deletions or additions to said list. Any Collector contracting with the city shall execute such contract documents as may be consistent with the terms of this Chapter.

5.28.210 Suspension or revocation of license.

In the event a Collector fails to comply with any of the provisions of this Chapter, the city clerk may, in addition to any other remedies authorized therefor and upon fourteen days' notice to such Collector, suspend or revoke such license. The Collector may appeal such suspension or revocation order to the governing body by filing a written notice of appeal within ten days after issuance of such order.

5.28.220 Annual permit fee per licensed vehicle.

An annual permit fee as established by resolution of the governing body of the city for each vehicle licensed shall be paid by the Collector to the city clerk. Said fee shall cover a period of time terminating on the thirty-first day of December of each year. No permit shall be transferred without first obtaining the written consent of the city clerk.

5.28.230 Prohibited acts; penalties

- A. No person shall:
 - (1) Collect, transport or dispose of nonresidential refuse, solid waste or recyclables within the city in violation of any provision of this Article;
 - (2) Collect, transport or dispose of nonresidential refuse, solid waste or recyclables within the city except pursuant to a valid license issued therefor by the City.
 - (3) Operate a vehicle within the City for the purpose of collecting, transporting or disposing of nonresidential refuse, solid waste or recyclables, except pursuant to a valid permit for such vehicle issued by the City pursuant to this Chapter
- B. A violation of this Article, if committed by a person who has not been convicted of any such violation within the immediately preceding 12 months, shall be punishable by a fine not to exceed \$100.
- C. A violation of this Article, if committed by a person who has been convicted of any such violation within the immediately preceding 12 months, shall be a class “C” violation.

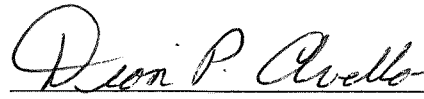
5.28.240 Waste storage – multifamily dwellings and mobile home parks.

The owner of each multifamily structure or mobile home park shall provide sufficient containers, meeting the requirements of this Chapter, to contain all solid waste produced by the occupants of the premises during the collection period therefor, and shall ensure that all garbage, refuse and solid waste generated upon such property is deposited therein.

Section 2. Original chapter 5.28 of the Derby Municipal Code, as amended by Ordinance no. 1980 of the City, is hereby repealed.

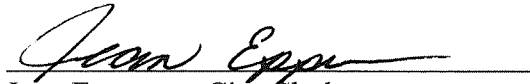
Section 3. This ordinance shall take effect and be in force on and after December 1, 2009, following its publication once in the Official City newspaper.

ADOPTED BY THE GOVERNING BODY this 27th day of October, 2009.



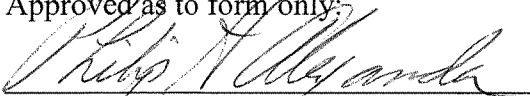
Dion P. Avello, Mayor

ATTEST:



Jean Epperson, City Clerk

Approved as to form only:



Philip H. Alexander, City Attorney