

ORDINANCE NO. 24

Series 2022

AN ORDINANCE AMENDING CHAPTER 16 PERTAINING TO REQUIREMENTS OF A LICENSED HAULER PROVIDING SOLID WASTE COLLECTION AND DISPOSAL SERVICES AND IN CONNECTION THEREWITH ADOPTING FINES AND PENALTIES

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. That chapter 16 of title 4 entitled "Solid Waste Collection and Disposal" is hereby amended to read as follows:

Chapter 16

REQUIREMENTS OF BUSINESSES IN THE INDUSTRY OF SOLID WASTE COLLECTION AND DISPOSAL

4-16-1 Short title:

This chapter shall be known and may be cited as Town of Breckenridge Requirements of Businesses in the Industry of Solid Waste Collection and Disposal.

4-16-2 Authority of Public Works to Implement and Enforce Requirements:

The Town Council hereby grants authority to public works to oversee and administer the requirements of this chapter and additional authority to adopt rules and regulations to implement and enforce the requirements of the program.

4-16-3 Findings:

The town council adopts this chapter based upon the following findings of fact:

A. The town is a home rule municipality with those powers authorized by article XX, section 6, of the Colorado constitution.

B. The Colorado general assembly has declared that the proper disposal of solid waste is a matter of mixed statewide and local concern. "Optimal solid waste management ... should include ... local efforts ... focused toward the reduction of the volume ... of the waste stream ... through source reduction, recycling, composting, and similar waste management strategies." The general assembly also recognized that "improper disposal of solid wastes poses significant public health risks, environmental hazards, and long term liability for the citizens of the state". Section 30-20-100.5, Colorado Revised Statutes.

C. The town is empowered by section 31-15-401(1)(d)(I), Colorado Revised Statutes, "[t]o provide for and compel the removal of ... rubbish of all kinds from lots and tracts of land within such municipalities ... upon such notice, and in such manner as such municipalities prescribe by ordinance ...".

D. The town is empowered by section 30-20-107, Colorado Revised Statutes, to designate and approve by ordinance a solid waste disposal site and facility as its exclusive solid waste disposal site and facility, and thereafter such site and facility shall be used for the disposal of discarded solid waste generated from within its jurisdiction.

E. The town is authorized by section 31-15-103, Colorado Revised Statutes, "to make and publish ordinances not inconsistent with the laws of this state, from time to time, for carrying into effect or discharging the powers and duties conferred by this title, which are necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of such municipality and the inhabitants thereof not inconsistent with the laws of this state".

F. The Summit County Resource Allocation Park ("SCRAP") is the only licensed solid waste disposal facility located in Summit County and is operated by the county in conjunction with the county's recycling, composting, and other solid waste management programs and facilities on county owned property within the Summit County Resource Allocation Park planned unit development.

G. The town has the legal authority to adopt ordinances regulating solid waste disposal, including the performance of solid waste hauling services in the town.

H. Persons or companies in the business of hauling discarded solid waste, including recyclable materials, within the town, through their collection and transportation activities, are able to supply the town with information necessary for long term solid waste management planning and therefore should be required to submit annual information about their hauling activities to the town.

I. The town has entered into an intergovernmental agreement regarding collection, transportation and disposal of solid waste in Summit County, Colorado, dated January 24, 2017, in order to cooperate in the development and implementation of a licensing and regulation program regarding the provision of trash hauling services and other community environmental and solid waste management goals stated therein.

J. As required by section 30-20-107, Colorado Revised Statutes, prior to adopting this chapter the town council held a public hearing to review the disposal method to be used at the Summit County Resource Allocation Park (SCRAP), as well as the fees to be charged for such disposal method. The town council finds such disposal method and fees to be reasonable and necessary and in the best interest of the public health, safety, and welfare.

4-16-4 Intent:

It is the intent of this chapter to:

A. Promote the state and local solid waste management goals referenced in section 4-16-3 of this chapter, as well as other applicable solid waste laws, rules, regulations and policies;

B. Encourage more recycling of certain discarded solid waste materials;

C. Accurately measure the volume of wastes entering the waste stream to assist in designing programs to reduce those volumes, and otherwise obtain information for long term solid waste management planning;

D. Protect the health, safety and welfare of the public by providing for the long term viability of the Summit County Resource Allocation Park (SCRAP);

E. Maintain and enhance the quality of the environment, conserve natural resources and prevent pollution by providing a comprehensive and effective program to regulate solid waste in the town; and

F. Protect the health, safety, welfare and well being of the citizens and property owners within the town.

4-16-5 Definitions:

For the purpose of this chapter the following words, terms, and phrases have the following meanings:

APPLICANT: A person who has submitted an application for license pursuant to this chapter.

APPLICATION: An application for license submitted pursuant to this chapter.

BASE UNIT RATE: The residential rate established by a licensed hauler for the combined service level including the small capacity container and recycling container shall be the cost basis of the licensed hauler's volume-based service rate for all other service levels.

BIN: Any bin, can, cart or similar vessel with or without a lid or closed top used by commercial customers for the collection of solid waste in employee spaces, lodging units, common area or other areas prior to placement in trash, recyclables or organics containers for service by a licensed hauler.

COMMERCIAL CUSTOMER: Any premises in the town utilizing collection service where a business, industrial or institutional enterprise is carried out including without limitation hotels, retail establishments, restaurants, hospitals, schools, day care centers, office buildings, nursing homes, clubs, churches and public facilities regardless of container type.

CONTAINER: Any rigid cart, dumpster, compactor or other container with a lid or closed top that is provided by or to solid waste customers for collection by licensed haulers.

DAY: A calendar day, unless otherwise indicated.

DUMPSTER: Any container for trash or recyclables with a capacity of more than ninety-nine (99) gallons.

GLASS: Glass materials established as acceptable recyclables by the Summit County Resource Allocations Park but shall only be accepted as a discrete material stream collected in a separate container and not mixed with other recyclables.

GOOD CAUSE:

For The Purpose Of Refusing Or Denying A License Renewal Under This Chapter:

A. The licensee has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of this chapter; or any other law applicable to licensee; or

B. The licensee has failed to comply with the terms, conditions, or provisions of its solid waste hauler license issued pursuant to this chapter.

For the Purpose of Exemption to Requirements of this Chapter 16: the licensee has shown an impossibility preventing compliance.

GROUP ACCOUNT CUSTOMERS: Any group of residential customers that have individual containers but receive solid waste collection under a subscription or contract that collectively serves multiple residences. If a group account changes to shared containers it shall be considered a commercial customer.

LARGE CAPACITY CONTAINER(S): a container or containers with a volume capacity of more than ninety (90) gallons but not more than ninety-nine (99) gallons.

LICENSEE: The person who has applied for and received a solid waste hauler license from Summit County and a BOLT license from the Town of Breckenridge.

MEDIUM CAPACITY CONTAINER(S): a container or containers with a volume capacity of more than sixty (60) gallons but not more than sixty-nine (69) gallons.

ON-CALL CUSTOMER: Any Residential or Commercial Generator that receives Trash collection service on an irregular or unscheduled basis.

ORGANICS: Decomposable materials used in the production of compost of chipped and ground materials such as food scraps, yard waste, clean wood, biosolids and other materials designated by the Summit County Resource Allocation Park or the Breckenridge public works director that are collected from any residential, commercial or other customer separate from trash.

RECOVERABLE MATERIAL: Any material that can be reused, remanufactured, reclaimed, recycled, mulched, composted or other action that allows the resource to be conserved. Recoverable Materials shall include those recyclables but may exclude any recyclables with 15% or more contamination by volume.

RECYCLABLE MATERIALS: Solid waste from any residential, commercial, or other source that is collected separately for the purpose of such material being reprocessed into new or different products or packaging materials, provided that such material have been designated by the licensing authority as recyclable.

RECYCLING: The process of recovering useful materials from solid waste, including items for reuse.

RESIDENTIAL CUSTOMER: An individual or individual residential property located in the Town that has a discrete container and collection provided under a discrete service subscription or contract for that property as part of a Group Account.

SMALL CAPACITY CONTAINER(S): Containers with a volume capacity of not more than thirty-nine (39) gallons.

SOLID WASTE: All putrescible and nonputrescible solid wastes discarded from any source including recyclable materials. The term "solid waste" shall exclude liquid wastes, sewage, sewage sludge, septic tank or cesspool pumpings; sand, asphalt, concrete, gravel, rock, dirt or other segregated construction materials to be used or reused in any construction project; timber, wood chips or vegetative matter hauled from the property where it is cut; agricultural wastes, solid or dissolved materials in irrigation return flows; industrial discharges which are point sources subject to licenses under the provisions of the Colorado water quality control act; materials handled at facilities licensed pursuant to the provisions on radiation control in article 11 of title 25, Colorado Revised Statutes; exploration and production waste as defined in section

34-60-103(4.5), Colorado Revised Statutes, except as such wastes may be deposited at a commercial solid waste facility; excluded scrap metal that is being recycled; shredded circuit boards that are being recycled; discarded or abandoned vehicles or parts thereof; residential appliances; materials used as fertilizers or for other productive purposes; household hazardous wastes; and hazardous materials as defined in the rules and regulations adopted by the hazardous materials transportation act of 1987.

SOLID WASTE HAULER: Any person in the business of collecting, transporting to a landfill, disposal site, transfer station or other like facility, or disposing of solid waste, for a fee or other compensation.

SOLID WASTE HAULER LICENSE (OR LICENSE): A solid waste hauler license issued pursuant to this chapter.

SUMMIT COUNTY RESOURCE ALLOCATION PARK (SCRAP): The solid waste disposal site and facility owned and operated by Summit County, Colorado government, located at 639 Landfill Road, Dillon, CO 80435. The county's solid waste drop off facility located at 284 Coyne Valley Road in the town is part of the SCRAP, and the depositing of solid waste at the Coyne Valley Road facility shall be treated as depositing such solid waste at the SCRAP.

TRANSFER STATION: A facility at which refuse, awaiting transportation to disposal site, is transferred from one type of containerized collection receptacle and placed into another or is processed for compaction. "Refuse" means all forms of solid waste, including garbage, rubbish, trash, recyclable materials, and similar material.

TRASH: Any solid waste accepted at the Summit County Resource Allocation Park excepting recoverable materials.

VALET CUSTOMERS: Residential customers who receive regular, scheduled solid waste collection service but require manual retrieval or replacement from an enclosed property, garage, home or other.

VOLUME-BASED SERVICE RATES: Residential collection rates based on container size and intended to provide equitable service pricing and an incentive for landfill diversion. Residential Volume-Based Service Rates include the cost of both trash and recyclables collection in a single, bundled rate.

4-16-6 License required; Exemptions:

- A. No person shall operate as a solid waste hauler within the town without a current solid waste hauler license.
- B. A solid waste hauler license is nontransferable and nonassignable. Any attempt to transfer or assign a license voids the license.
- C. Each licensee shall offer recycling services to its customers.

4-16-7 Licensing process:

A solid waste hauler must obtain a solid waste hauler license from Summit County, prior to applying for a business and occupational license ("BOLT" license) from the Town. The application for a BOLT license must be submitted upon all of the terms and conditions set forth in title 4, chapter 1.

4-16-8 Duties of licensee:

It is the duty and obligation of each licensee to do the following:

- A. Comply with all of the terms and conditions of the license.
- B. Comply with all of the requirements of this chapter.
- C. Comply with all other town ordinances that are applicable to the business for which the license was issued.
- D. At the time a solid waste hauler applies to renew a BOLT license, a licensee shall submit an annual report setting forth the number of accounts, itemized by residential, group, commercial, including separate line items for commercial with glass and/or commercial with organics, and include the rates established by each sort of account.
- E. Indemnify and defend the town, its officers, employees, insurers, and self-insurance pool from and against all liability, claims, and demands, on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, arising out of in any manner connected with the operation of the business for which the license was issued. The licensee shall investigate, handle, respond to, and provide defense for and defend against, any such liability, claims, or demands at the sole expense of the licensee, and bear all other costs and expenses related thereto, including court costs and attorney fees. The indemnity obligation of this subsection shall survive the expiration or revocation of the license, and shall continue to be fully enforceable thereafter, subject to any applicable statute of limitation.

4-16-9 Licensee Requirements for Volume Based Service (referred to as "Pay as You Throw").

- A. Residential Trash and Recyclable Materials Collection Service.
 - 1. Volume Based Rates. Licensed haulers shall assess volume-based service rates for the total cost of residential trash and recyclables collection exclusive of any surcharges based on the trash container size. Licensed haulers may establish any base unit rate for the small trash service level and shall establish rates that incrementally increase the base unit rate by no less than eighty percent (80%) for the medium service level and by no less than one hundred and sixty percent (160%) for the large service level.
 - a. The rates assessed by licensed haulers for residential customer trash and recyclables collection shall be bundled as one price and shall not be reduced to exclude the cost of recycling service regardless of customer request or declination of service - each customer bill shall include a statement identifying the requirement for recyclables collection as a matter of law.
 - b. Volume-based service rates shall be inclusive of container and not be assessed at an additional cost.
 - c. Licensed haulers are not required to reduce volume-based service rates for customers who provide their own containers.
 - d. Recyclable collection service shall be provided inclusive of the volume based rates for trash collection service

e. Surcharges. Volume based rates are exclusive of surcharges which a licensed hauler may impose to cover fluctuating operating costs outside of the licensed hauler's control such as fuel costs or market-based recycling fees; provided however, that no surcharge shall exceed twenty five percent (25%) of the base unit rate applied uniformly to each residential customer service and be reflected as a separate item on the customer invoice.

2. Service intervals. Licensed haulers shall provide weekly trash collection unless customer requests bi-weekly service, which shall be provided at a reduced rate.

3. Containers. Licensed haulers shall provide, or verify that each residential customer is offered at least three (3) trash container sizes and service for small, medium and large trash containers for customer selection. If a customer does not make a selection, the licensed hauler shall provide a medium trash container.

4. When customer overloads a container after being notified by the hauler more than three times of such unlawful exceedances, a licensed hauler shall provide a customer with a container with the next size up in capacity and shall impose new rates accordingly.

5. Recyclables. Licensed haulers shall comply with the following recycling requirements.

a. Provide every-other-week recyclables collection on the same day of the week as trash collection; provided, however, more frequent recyclables collection may be provided at the licensed hauler's discretion;

b. Provide a medium recyclables container unless the customer requests a small or large container;

c. Licensed haulers may provide additional recyclables containers to any residential customer to prevent overflow and mixing recyclables with trash;

d. Licensed haulers shall refuse to service any recyclables container that fails to comply with SCRAP contamination rules or may treat contaminated recyclables as trash.

e. Recyclables containers provided for any customer shall be clearly distinguishable from trash containers and shall be located proximal to and as convenient as trash containers.

B. Commercial and Special Services.

1. Commercial. If a licensee provides trash collection to a commercial customer, the hauler must also provide recycling containers with a least one-half (1/2) volume of the size of the trash container, or service equivalent of fifty percent (50%) the size of trash and shall have discretion to establish separate rates for recycling. Upon request of a commercial customer, a licensee shall provide separate containers for glass and/or organics and shall have discretion to establish separate rates for such services; provided, however, a licensed hauler shall provide glass recycling service to commercial businesses that have mandatory requirements to recycle glass under title 5, chapter 6 (e.g. restaurants, bars, taverns, tap houses).

2. On-Call. On-call customers with collection service more frequently than once in any calendar month shall be subject to the recycling requirements.

3. Valet. If a hauler provides valet trash collection service less frequently than bi-weekly, then only the recycling requirements of chapter 16 apply. If hauler provides more frequent than bi-weekly service, than volume based rates apply.

4. Group Accounts. Licensee shall provide trash collection service in a manner that results in a selection by each individual resident of a level of service from the range of volume based service options.

C. Glass/Organics for Special Services (i.e. On-Call, Valet, Group Accounts). A licensee has discretion to provide customers with separate containers for glass and/or organics and shall have discretion to establish separate rates for such services.

D. Exceedances and Overloading. Licensed haulers shall refuse to service any recyclables container under subsections B and C above that fails to comply with SCRAP contamination rules or may treat contaminated recyclables as trash. When a customer under subsections B and C overloads the container after being notified by the hauler more than three times, a licensed hauler shall provide a container with the next size up in capacity and shall charge accordingly

E. Education and outreach. Licensee shall notify all residential and commercial customers of the provisions and guidelines related to these regulations on an annual basis. All notification and guidelines shall be distributed by electronic mail or hard copy delivery to the customer account. Licensee shall maintain a website that includes current residential and commercial collection options and list of recyclables accepted by SCRAP.

F. Implementation Dates.

1. Service to Residential Customers.

a. No later than October 1, 2023, licensed haulers shall convert ninety (90) percent of residential service accounts to volume based rates and all requirements of this chapter;

b. No later than December 1, 2023, licensed haulers shall convert one-hundred (100) percent of residential service accounts to volume based rates and all requirements of this chapter;

2. Service to Group Accounts. No later than April 1, 2024, licensed haulers shall convert group accounts to volume based rates and all requirements of this chapter.

3. Service to Valet Customers. No later than April 1, 2024, licensed haulers shall convert valet customers, with bi-weekly service or more frequent than bi-weekly service, to volume based rates and all requirements of this chapter;

4. Service to Commercial Customers.

a. No later than June 1, 2024, licensed haulers that provide trash collection to a commercial customer under section 4-16-9 shall deliver at least fifty percent (50%) of recyclables containers and initiation of recyclables collection services to the commercial customers; and,

b. Not later than June 1, 2025, licensed haulers that provide trash collection to a commercial customer under section 4-16-9 shall deliver one hundred (100%) of recyclables containers to the commercial customer.

G. Exemptions/waivers: Licensed haulers may submit a written request to the director of public works or their designee for a delayed implementation or for other exemptions from this code based on good cause.

4-16-10: Suspension, revocation and other sanctions.

In addition to any grounds set forth in title 1, chapter 4, the finance director may, after investigation, suspend, revoke, or fine any licensed hauler for any violation of this chapter or any rule or regulation or law promulgated under this chapter.

4-16-11 Review of decisions:

As a prerequisite to filing a civil action in a court of competent jurisdiction, a licensee challenging a decision of the finance director with respect to issuance, renewal, or sanctions of a licensee shall file an appeal in writing with the town manager. An appeal submitted under this section of the code must set forth the factual basis for the appeal. The town manager or their designated hearing officer shall conduct a hearing in a timely matter and in accordance with procedures in Title 1, Chapter 19; provided, however any decision of the town manager or hearing officer as the case may be pursuant to this chapter shall be a final decision of the town, and may be appealed to the district court pursuant to rule 106(a)(4) of the Colorado rules of civil procedure.

4-16-12 Designated disposal site:

A. The town designates the Summit County Resource Allocation Park (SCRAP) as the exclusive solid waste disposal site and facility for all solid waste generated within the town.

B. All solid waste generated within the town shall be disposed of only at the Summit County Resource Allocation Park (SCRAP) unless otherwise expressly authorized in accordance with the provisions of this chapter; provided, however, that upon request the licensing authority may exempt from this requirement, with or without conditions, a solid waste hauler who primarily transports only source separated recyclable material in accordance with the solid waste management goals and requirements of this chapter.

C. If the Summit County Resource Allocation Park (SCRAP) is closed during normally scheduled business hours due to a weather event, an official county holiday, or other special event, solid waste haulers are authorized during such closure to transport and dispose of solid waste in another licensed disposal facility in lieu of depositing such solid waste at the Summit County Resource Allocation Park (SCRAP).

4-16-13 Administrative fines; Penalties; Injunctive relief:

It shall be unlawful and a misdemeanor offense for any person to:

A. Fail or refuse to make or file any record, report, or other document required to be made or filed by this chapter, or to make any false or fraudulent record or report, or any false or fraudulent statement in any such document.

B. Operate as a solid waste hauler anywhere within the town without a valid solid waste hauler license or Town business license, or to continue to do business during a period of suspension of such license or after such license is revoked.

C. Dispose of any solid waste generated within the town at any location other than the designated disposal site as required by section 4-16-12 of this chapter.

D. Any person convicted of having violated an offense described in this section shall be punished as set forth in title 1, chapter 4 of this code.

E. Administrative Fine and Penalties. Failure to comply with license requirements under this chapter 16 shall be punishable by an administrative penalty an amount up to one-thousand (1000) dollars per day until the violation is cured or an exemption or waiver is sought and granted by the Town. Written notice of an administrative penalty shall be provided by first class United States mail to such person at such person's last known address. The administrative penalty shall be due and payable within fourteen (14) days of the date of the notice.

F. If a business is required to have a solid waste hauler license issued pursuant to this chapter the operation of such business within the town without a valid solid waste hauler license may be enjoined by the town in an action brought in any court of competent jurisdiction. In any case in which the town prevails in a civil action initiated pursuant to this subsection, the town may recover its reasonable attorney fees plus costs of the proceeding.

G. Fines and penalties under this section may be imposed separately or cumulatively.

4-16-14 No town liability:

The adoption of this chapter and the issuance of solid waste hauler licenses pursuant to this chapter shall not create any duty to any person. No person shall have any civil liability remedy against the town, or its officers, employees or agents, for any damage or loss of any kind arising out of or in any way connected with the issuance of any solid waste hauler license pursuant to this chapter. Nothing in this chapter shall be construed to create any liability or to waive any of the immunities, limitations on liability, or other provisions of the Colorado governmental immunity act, section 24-10-101 et seq., Colorado Revised Statutes, or to waive any immunities or limitations on liability otherwise available to the town, or its officers, employees or agents.

Section 2. Except as specifically amended hereby, the Breckenridge Town Code, and the various secondary codes adopted by reference therein, shall continue in full force and effect.

Section 3. The Town Council hereby finds, determines and declares that this ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants thereof.

Section 4. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
PUBLISHED IN FULL this 26th day of July, 2022.

This ordinance was published in full on the Town of Breckenridge website on July 31, August 1, August 2, August 3 and August 4, 2022.

A public hearing on this ordinance was held on August 9, 2022.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE TOWN'S WEBSITE this 9th day of August, 2022. A copy of this Ordinance is available for inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE

Helen Cospolich, CMC, Town Clerk

Eric S. Mamula, Mayor

APPROVED IN FORM

Town Attorney

Date

This Ordinance was published on the Town of Breckenridge website on August 12, August 13, August 14, August 15 and August 16, 2022. This ordinance shall become effective on September 15, 2022.