

**ORDINANCE NO. 634**

**AN ORDINANCE ADOPTING BY REFERENCE THE SOLID WASTE CODE FOR MUNICIPALITIES, PROVIDING FOR THE MAINTENANCE, COLLECTION AND DISPOSITION OF RESIDENTIAL AND CERTAIN SOLID WASTE, PROVIDING REQUIREMENTS FOR SOLID WASTE COLLECTOR AND PROVIDING PENALTIES, CESSATION OF SERVICE AND OTHER REMEDIES FOR FAILURE TO COMPLY THEREWITH, AND REPEALING ANY CITY OF GARDEN PLAIN ORDINANCES IN CONFLICT THEREWITH.**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GARDEN PLAIN, KANSAS:**

SECTION 1.       Adoption of Solid Waste Code. In accordance with K.S.A. 12-3301, et seq., the Solid Waste Code for Municipalities of Sedgwick County, Kansas, as prepared and published by the Environmental Health Division, Wichita — Sedgwick County Department of Community Health is hereby adopted by reference in its entirety to be applicable to the City of Garden Plain, Kansas. However, and notwithstanding any other provisions herein to the contrary, in the event any provisions contained within this Ordinance are in conflict with the Solid Waste Code, then, and in that event, this Ordinance and the provisions hereof shall control.

SECTION 2.       Trash Containers and Accessibility to Solid Waste. Each owner of each occupied single family dwelling, and of each multiple family dwelling, apartment and mobile home park shall make available to the occupants and the collector, residential trash containers as herein defined, which shall at all times be made available for convenient, unobstructed access to both the solid waste collector and the occupant. Said access shall not be considered obstructed as long as the collector is able to pick up the container, whether or not same is located in any unlocked fence or unlocked garage. If, however, the owner or occupant, elects to keep the containers in an unlocked fence or unlocked garage, he or she shall not make claim against the collector for any items missing from said unlocked enclosure or garage, unless actual misfeasance can be proven. All dogs shall be kept away from the collector. No owner or occupant shall, in any manner interfere with the solid waste collector in the lawful collection of solid waste. Containers shall not be corroded and shall require at all times be maintained in a flytight, watertight and rodent-proof container with a tight fitting lid. All containers shall be thirty gallon to fifty-five gallon size. All solid waste shall be maintained within said container and the area around the containers shall be kept neat and clear and free from solid waste.

SECTION 3.       Weekly Collections. The occupant of all non-residential premises and the owner of all single family dwellings and apartments, multiple family dwellings, mobile homes and

mobile home parks shall arrange, contract and pay for collection of, and have collected solid waste at least weekly by a solid waste collector licensed by Sedgwick County, Kansas

Department of Community Health, and to whom has been granted a permit from the City of Garden Plain, Kansas, with such services being at all times in accordance with the terms of this ordinance, the Solid Waste Code of Sedgwick County, Kansas, adopted herein, and the solid waste system of Sedgwick County, Kansas. If the solid waste committee referred to in this ordinance or the Sedgwick-Wichita County Department of Health determines that, in the interest of health and safety, there shall, within fourteen days after receipt of such determination, commence the collection as recommended.

SECTION 4. Collector's License and Permit. No person, firm or corporation shall, within the city limits collect or dispose of solid waste unless licensed by the appropriate agency or department and without first obtaining a permit from the City of Garden Plain, Kansas, and paying a \$10.00 permit fee. In addition, said collector shall at all times remain in compliance with the Solid Waste Code for Municipalities for Sedgwick County, Kansas, and with the terms of this ordinance. In addition, said collector shall at all times comply with all Federal, State and local rules, regulations and laws established by governmental entities or agencies having jurisdiction in the premises.

SECTION 5. City's Right to Collect. In addition to such other rights and remedies as may be allowed either in law or in equity, or under the terms hereof, in the event said occupant and, or owner shall, for any reason, fail or refuse to comply with Section 3, then and in that event, the City may, in addition to any other rights, remedies or penalties provided for herein, arrange for the collection and disposal of said solid waste and the owner shall be responsible for the cost of said collection and disposal.

SECTION 6. Notification. The City may assume the responsibility for collection of solid waste from any non-residential premises, and shall assume the responsibility for the collection of solid waste from any single family dwelling, multiple family dwelling, apartments, mobile home and mobile home park only after the City has been notified and a determination made that the terms hereof have been violated. In such event, the City shall forward within seven (7) days written notice to the owner that solid waste has not been collected in accordance with the terms hereof. Said owner shall have ten (10) days from the date of said notice to cause said solid waste to be collected. Provided, that such notice shall be deemed properly served upon him personally, or if a copy thereof is sent by certified mail to his last known address. The owner, for all purposes herein contained, shall be considered the taxpayer listed as such owner on the ad valorem tax rolls of Sedgwick County, Kansas, unless the said owner presents such written evidence as the "Solid Waste Committee" may require to show that he has transferred ownership.

SECTION 7. City's Obligation to Collector. The City shall not be responsible for any collection of bills incurred prior to the date the City authorizes collection and contracts for services rendered. The City shall pay to the collector such reasonable rates as may be negotiated. The collector shall not be paid until such time as the City has collected for its services from the owner.

SECTION 8. Rights and Remedies. In the event the City for any reason, collects the solid waste of any owner or occupant as herein provided, and in the event the said bill for said collection is not, for any reason, paid within ten (10) days after mailing as herein provided, said cost of removal and collection of said solid waste shall be a lien against the real property of the owner. Such lien, including as a part thereof an allowance for costs, shall be assessed in the manner under the terms of K.S.A. 1975 Suppl. 65-3410, which provides, in part: "Delinquent fees shall constitute assessments against the respective parcels of land and are a lien against the property for such delinquent fees... The assessments may be collected at the same time and in the same manner as ordinary ad valorem taxes are collected..."

SECTION 9. Insurance Required of Collector. Prior to the issuance of any City permit and prior to entering into a contract with the City for solid waste disposal, said solid waste collectors shall execute such contracts and applications as may be required by the governing body, and in addition, shall deliver to the City Clerk the contracts of insurance herein provided for.

The said collector shall secure and maintain throughout the duration of any contract with the City, and, in addition, prior to the issuance of any permit and during the permit period and all other times when using the streets of the City of Garden Plain, 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 in one of the following methods:

- A. By issuance of the original policy designating the collector and the City, by name, as the insured parties under the provisions of the policy.
- B. By endorsement to an original policy when endorsement shall extend to the City the same coverage and protection stipulated in the paragraph above.
- C. By Separate contingent policy providing the required insurance coverage for the protection of the City.

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 him of any obligation

or responsibility. Failure on the part of the collector to maintain these insurances in full force and effect will, if applicable, be considered as a failure in contract performance, and , in addition, a violation of this ordinance and will be treated as such by the City. Satisfactory certificates of insurance filed with the City shall note the fifteen (15) calendar days written notice will be given to the City before any policy covered thereby is changed or cancelled.

SECTION 10. The collector shall provide the following insurance, and shall list the City as a beneficiary thereon "as its interest may appear, " and as herein required:

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:

Workmen's Compensation —Statutory maximum amount ( If required by State Law.)  
Employee's Liability - \$100,000.00 each person

B. Automobile Liability.

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

Bodily injury - \$1000,000.00 each person  
Bodily injury - \$3000,000.00 each occurrence  
Property damage - \$ 50,000.00 each occurrence

Such policy may be written to allow the first five hundred dollars (\$500.00) 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 such operations be by the collector, any of his sub-contractors, or by anyone directly or indirectly employed by the collector or his sub=contractors. The liability limits shall not be less than the following:

Personal injury - \$100,000.00 each occurrence  
\$300,000.00 aggregate or single limit of \$300,000.00.

Property damage - \$ 50,000.00 each occurrence  
\$100,000.00 aggregate.

Such policy may be written to allow the first five hundred dollars (\$500.00) for liability for damage to property to be deductible.

SECTION 11. The collector shall, by virtue of his utilizing the City streets, or his contract or agreement with the City, or by his acting on behalf of the City, bind himself 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 sub-contractors. The collector shall likewise bind himself to punctually pay, defend, indemnify and save harmless the City and all its agents, representatives and employees for and on account of any injury or damages received or sustained by the collector, his servants or his agents or sub-contractors on account of any claim or amount recovered for royalty or infringement of patent, trademark, copyright or on account of any claim or amount under Workmen's Compensation law.

SECTION 12. The collector shall not obstruct streets and shall keep passageways open. The collector is granted the privilege of using the streets and alleyways. 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.

SECTION 13. No person, firm or corporation shall receive a city permit to collect and/or dispose of solid waste within the city limits of Garden Plain, Kansas until written evidence is delivered to the City Clerk that said collector has complied with the Solid Waste Code for Municipalities, and this ordinance, and that his vehicle and/or vehicles in all respects comply with the provisions of said code. " In addition, said collector shall delivers to the City Clerk 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 ordinance are and will be complied with. Said collector and all employees shall at all times remain licensed to operate a motor vehicle under the laws of the State of Kansas.

SECTION 14. Any collector collecting solid waste in the City of Garden Plain, Kansas, shall deliver to the City Clerk a detailed, itemized written list setting forth the name and address of any party with whom he has contracted for the collection of solid waste and the address from with said solid waste is being collected. Said list shall be modified and brought current in writing on the first day of each 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 ordinance.

SECTION 15. Any and all contracts and permits hereunder are subject to revocation for any violation of this ordinance or upon the failure of collector to comply with any of the terms of the contract with the City or for any work stoppage which interrupts the normal and regular collection of solid waste. In the event any collector shall fail to comply with the consent of the governing body, upon fourteen (14) days notice to such collector, revoke and cancel any contract which the collector may have with the City. Any collector may appeal such revocation order within ten (10) days to the governing body of the City.

SECTION 16. Trash Burning. Trash burning is prohibited within the city limits within of Garden Plain, Sedgwick County, Kansas. A Sedgwick County Burn Permit can be applied for and issued by the Sedgwick County Fire Department, Station #39. The Sedgwick County Burn Permit will not be issued to the applicant, unless the applicant has a letter issued by the governing body of the City of Garden Plain. Sedgwick County Fire Department Station #39 will only issue the permit if the following conditions have been met.

1. The applicant is in legal control of the lot or parcel of land as herein described.
2. A competent person of legal age will attend burning continuously from ignition to the time of extinguishment.
3. Burning will not be permitted if the wind speeds exceed 15 miles per hour.
4. Adequate clearance shall be provided from readily combustible materials. A minimum of 100 feet from any structure and 10 feet from any property line shall be provided from the fire area.
5. Burning shall not create a smoke nuisance or hazard to neighboring properties. Precautions shall be taken to assure confinement, intensity and size of said burn.
6. Burning of **ANY HEAVY** smoke-producing material is strictly prohibited. Per Kansas State regulations burning of tires, pallets, railroad or bridge lumber, any treated lumber, plastics or rubber is illegal. When burning wood products only "clean wood" shall be burned.
7. A garden hose or other fire extinguishing equipment shall be available at the burn location.
8. Burning shall be conducted one hour after sunrise to one hour before sunset.
9. The burn permit will be in the possession of the person doing the burning for immediate inspection.

Exceptions: Backyard BBQ, Grills, Backyard Fire Places, Portable Patio Fire Pits and Patio Chimney's will be permitted.

The Chief of the Sedgwick County Fire Department or the Chief of the Garden Plain Police Department may, because of severe dry or windy weather conditions, prohibit backyard open burning for such period of time as he deems appropriate in relation to such severe, dry, or windy weather conditions. There shall be no open burning of any kind on non-residential premises.

SECTION 17. Solid Waste Committee. The City Council shall, subject to the conditions herein contain, be designate the Solid Waste Committee. The committee shall hold its monthly meeting the first Wednesday of each month. The duties shall include the following:

- A. Rendering such advice and assistance relating to the collection and disposal services herein contained as may be required.
- B. Hearing grievances, including those hereinafter provided;
- C. Assisting in the negotiations of contracts with solid waste collectors.
- D. Establishing reasonable written rules and regulations relating to the granting of a variance.

SECTION 18. Exemptions and Hearings. Any owner, or if applicable, occupant required by this ordinance to arrange and pay for the collection of solid waste collection services and disposal fee, may, when said owner, or if applicable, occupants, is not in fact producing solid waste requiring the collection and disposal of solid waste as herein required, petition the solid waste committee, in writing, for a variance to provide relief from such fees and/or services. The said owner or occupant shall supply the committee with such information and complete such forms as they may require.

The solid waste committee shall, after hearing such grievance make its written recommendation and if it is deemed that the collection of solid waste from the subject premises is not necessary, or not required as frequently as provided for herein, it may cause the cessation of such collection or it may cause such partial relief as may be determined from the circumstances involved. If, for any reason, any person aggrieved is not satisfied with the solid waste committee's determination, he or she may, within ten (10) days after said determination, appeal the determination in writing to the city council setting forth specifically the grounds for his or her grievance. If the City Council and said Solid Waste Committee are one and the same, the aggrieved person may within ten (10) days from said determination file a notice of appeal with the City Clerk setting forth specifically the rulings and dispute and the appeal shall be administered from the Municipal Court in the State of Kansas. In the event the matter is so appealed to the District Court, appellant shall post with the City Clerk a \$100.00 bond to secure the costs of the appeal which bond shall be returned to the appellant in accordance with the rules of the District Court.

SECTION 19. Solid Waste Committee. Solid Waste Committee shall be at this time the City Council. The Mayor, however, in the future may appoint a Solid Waste Committee with the consent of the City Council. The committee shall consist of three members, at least two of whom shall be residents of the City of Garden Plain, Kansas. One member may be a citizen of Sedgwick County, Kansas, and not a citizen of said City, who has sufficient expertise to assist in the deliberation of the committee. Two members of the committee shall be initially appointed for a two year terms. One of the initial members shall be appointed for a one year term. At expiration of their initial terms all members shall be appointed for two year terms.

SECTION 20. Invalidity of Part. In the event any provision of this ordinance shall be held invalid for any reason, said invalidity shall not affect the remaining parts, but this ordinance shall be construed and enforced as if the invalid provisions had never been inserted.

SECTION 21. Penalty. The violation of any portion of this ordinance shall be considered a misdemeanor and may be punished by a fine not to exceed \$300.00 or imprisonment for five (5) days or both such fine and imprisonment. Each day the violation continue shall be considered a separate offense.

SECTION 22. Additional Penalty. In addition, the Municipal Court is hereby authorized, empowered and directed to abate or suppress any violation of this ordinance and for the purpose of carrying out the provisions of this section, the said Municipal Court is hereby authorized, after giving proper notice, to give to any City law enforcement officer, County Health Department representative or County Engineer the right to enter into or upon any premises or establishment for the purpose of making thorough examinations and for the further purpose of causing any violations to be abated or suppressed.

SECTION 23. Repealing all Ordinances in Conflict Herewith. This Ordinance shall repeal all other ordinances of the City of Garden Plain, Kansas which are in conflict herewith,

SECTION 24. Effective Date. This ordinance shall take effect and be in full force and effect after its passage and publication once in the official City paper.

Passed. Approved, and adopted the   7   day of December, 2011

ATTEST:

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Larry Lampe, Mayor

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Ronda Mollenkamp, City Clerk