

AN ORDINANCE OF THE CITY OF LOWRY CROSSING, TEXAS

ORDINANCE NO. 121

AN ORDINANCE OF THE CITY OF LOWRY CROSSING, TEXAS, PROVIDING REGULATIONS FOR THE COLLECTION OF MUNICIPAL SOLID WASTE FROM CUSTOMERS WITHIN THE CITY; REQUIRING A FRANCHISE FOR THE USE OF THE CITY STREETS TO CONDUCT SUCH BUSINESS; MAKING IT UNLAWFUL TO REGULARLY CONDUCT SUCH BUSINESS WITHOUT A FRANCHISE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING PENALTIES FOR VIOLATION OF THIS ORDINANCE NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (\$500.00) FOR EACH OFFENSE AND ESTABLISHING AN EFFECTIVE DATE..

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOWRY CROSSING, TEXAS:

SECTION 1. DEFINITIONS.

- A. *City* means the City of Lowry Crossing.
- B. *Collector* means any person, corporation, partnership or similar entity that contracts for valuable consideration to pick up or collect municipal solid waste on a regular basis from any collection point within the corporate limits of the City of Lowry Crossing.
- C. *Municipal solid waste* means solid waste resulting from or incidental to municipal, community (residential), commercial, institutional, and recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial solid waste as defined by state or federal law.

SECTION 2. SOLID WASTE COLLECTION REGULATIONS.

- A. No Collector shall collect any municipal solid waste within the corporate limits of the city without first obtaining a Waste Collection Franchise issued by the city.
- B. No Collector shall collect any municipal solid waste within the corporate limits of the City without first obtaining and holding all other permits required by any other governmental agency or political subdivision having jurisdiction Collector's operations, including but not limited to the Texas Natural Resource Conservation Commission, and the North Texas Municipal Water District.
- C. No Collector shall allow any municipal solid waste to spill or fall from the Collector's equipment within the corporate limits of the City. In the event that spillage should occur, the Collector shall completely remove such spillage within twenty-four (24) hours of notice of spillage occurrence.
- D. No Collector shall cause damage, beyond normal wear and tear, to any street or roadway within the City. In the event the Collector causes damage to any street or roadway within the city, the Collector shall be given written notice to immediately cause such damage to be repaired under the supervision of the city inspector. Such notice shall provide that in the event Collector does not acknowledge responsibility for making such repairs within seven (7) days of notice, a hearing will be held by the City Council on the question of responsibility for such damage. If at such hearing the Council finds that the damage was caused by Collector and such damage was beyond normal wear and tear, the City Council may request Collector to cause such damage to be repaired under the supervision of the city inspector and if such damage is not repaired within the time stated the City Council may within its sole discretion terminate Collector's Franchise and right to use the public streets within the city to carry on its business.
- E. All Collectors shall clearly mark all collection vehicles with the Collector's name, address and telephone number.
- F. The trucks used by Collectors to collect waste within the City shall be no larger than a "single axle" type, and shall not exceed 25,000 pounds in weight, unless specific written approval is granted by the City Council.

SECTION 3. REQUIREMENTS FOR WASTE COLLECTION FRANCHISE

- A. Collector must be duly licensed or permitted to deposit municipal solid waste at or in a land fill regulated and approved by the proper State Commission.
- B. Collector must use trucks and equipment meeting the approval of the City that will prevent spillage, and damage to the streets and ways used by such trucks and equipment. Collector shall also, abide by any city regulations with regard to the placement of collection containers if it becomes necessary to establish such regulations. Unless such regulations become necessary the Collector shall establish the such locations.
- C. Collector shall provide the City with a certificate of insurance showing general public and motor vehicle liability coverage with limits of at least \$500,000.00 per person / \$1,000,000.00 per accident / \$100,000.00 property damage.
- D. Collector shall agree to defend, indemnify, and hold city and each of its officers and employees harmless from any and all suits, actions, claims, losses or damages of any character and from all expenses incidental to the defense of such suites, actions or claims based on or arising out of any injury, disease, sickness, or death of any person or persons, or any damages to any property caused by any act or omission of Collector or its officers, agents, servants, employees or anyone else under Collectors direction and control, and arising out of, occurring in connection with, resulting from, or caused by the performance or failure of performance of any work or services under the franchise or conditions created by the performance or non-performance of said work or services.
- E. Collector's Franchise Agreement shall make it clear that Collector operates as an independent contractor, that such franchise is non-exclusive, and may be terminated at the discretion of the City Council as herein provided.
- F. Franchise Collectors shall be free to contract with each individual customer, as an independent contractor, and set their fee for collection based on the type and amount of waste to be collected.
- G. Each Contractor shall pay an annual administrative fee of \$250.00, the first payment being due on the effective date of the ordinance granting the franchise and a franchise fee in an amount equal to 4% of the gross basic service charge paid by Grantee's customers located within the corporate limits of the city. Such payment to be made within sixty (60) days subsequent to Grantee's quarterly accounting period and shall be in

addition to any other tax or payment owed to the City by Grantee, including any payment for ad valorem taxes, if any.

- H. The present policy of the city is to permit Grantees (more than one) to operate within the city, each seeking its own customer base and dealing directly with its own customers. Provided, however, and notwithstanding any term established in this franchise, it is understood and agreed that this franchise may be terminated for cause after hearing before the City Council if:
 - 1. the Grantee has failed to give prompt and courteous attention to, and correct complaints filed by its customers; or
 - 2. the Grantee has failed to provide an adequate regular collection service, or is in any way in violation of its franchise agreement, after being given a reasonable time to correct such failure or violation.
- I. Each franchise shall be personal to the Collector and may not be sold or transferred to another without first obtaining City Council approval. Provided, however, such approval shall not be unreasonably withheld, but will require the transferee to obtain City Council approval, and its own franchise agreement.
- J. Each franchise term shall be for 5 years, provided however, the City Council may increase or decrease the franchise term by the number of days and months necessary to establish a termination on a specific future date approximately 5 years following the initial grant. The intent of this provision is to permit the city to establish a common date during the year for the termination of various franchises granted by the city.
- K. The franchise shall provide that the City shall retain right to place limitations on the collection, including prohibiting collection trucks on certain streets where heavy trucks will damage the street.

SECTION 4. FRANCHISE REQUIRED

- A. It shall be unlawful and a violation of this ordinance for any person, firm, corporation, or other entity, to regularly use the public streets of the city as a "Collector" of "Municipal solid waste" as those terms are herein defined, without first having obtained an collection franchise pursuant to the terms of this ordinance.

- B. Any person, firm, corporation, or other entity, may lawfully and without obtaining a collection franchise, respond to or seek the request from any citizen or property owner to pick up and charge a fee for the dispose of waste items not regularly disposed of by a regular franchise collector, such as dead animals, abandoned or junk vehicles, construction waste, scrap lumber, tree cuttings, abandoned or junk home appliances, and other such large waste items.
- C. In the event of a conflict between the requirements of this ordinance and any specific franchise agreement, the specific agreement shall control.

SECTION 4. REPEALING CLAUSE

All parts of ordinances, inconsistent or in conflict with the provisions of this ordinance are hereby repealed. Ordinance No. 88 is specifically repealed.

SECTION 6. SEVERABILITY CLAUSE

If any article, paragraph or subdivision, clause or provision of this ordinance shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of this ordinance as a whole or any part or provision thereof, other than the part so decided to be invalid or unconstitutional.

SECTION 7. SAVINGS CLAUSE

An offense committed before the effective date of this ordinance is governed by the prior law and ordinances, as amended, in effect when the offense was committed and the former law is continued for this purpose.

SECTION 8. PENALTY CLAUSE

Any person firm or corporation violating any provision of this ordinance shall be deemed guilty of a misdemeanor and upon conviction shall be subject to a fine not to exceed the sum of Five Hundred Dollars (\$500.00) for each offense, and each day that a violation occurs or continues constitutes a separate offense.

SECTION 9. EFFECTIVE DATE

This ordinance shall take effect immediately after its passage and publication of the caption, as the law in such cases provided.

DULY ADOPTED by the City Council of the City of Lowry Crossing, Texas, on the
7th day of November, 2000.

APPROVED:


MAYOR

ATTEST:


CITY SECRETARY

APPROVED AS TO FORM:


CITY ATTORNEY