

**CITY OF LOWRY CROSSING, TEXAS
ORDINANCE NO. 246**

AN ORDINANCE OF THE CITY OF LOWRY CROSSING PROVIDING FOR AND ADOPTING REGULATIONS REGARDING THE COLLECTION, TRANSPORTATION, AND DISPOSAL OF SOLID WASTE; PROVIDING DEFINITIONS; PROVIDING STANDARDS FOR TRASH RECEPTACLES, INCLUDING THEIR TYPE, LOCATION AND REMOVAL; PROVIDING STANDARDS FOR COMMERCIAL SOLID WASTE COLLECTION, INCLUDING REQUIREMENT FOR A PERMIT TO CONDUCT SUCH COLLECTION, A PERMIT FEE, THE REGULATION OF SUCH OPERATIONS, AND PERMIT REVOCATION AND APPEAL; PROVIDING A PENALTY FOR A VIOLATION OF NOT LESS THAN \$1.00 NOR MORE THAN \$500 FOR EACH OFFENSE AND THAT NO MENTAL STATE IS REQUIRED, BUT IF THERE IS AN INTENTIONAL, KNOWING, OR RECKLESS VIOLATION THE PENALTY SHALL BE NOT LESS THAN \$1.00 NOR MORE THAN \$2,000, AND EACH OFFENSE SHALL BE DEEMED COMMITTED UPON EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Lowry Crossing, Texas (“City”) is a Type A general law municipality; and

WHEREAS, the City is authorized, by Section 122.005(a), Tex. Health & Saf. Code, to take any action necessary or expedient to promote health or suppress disease; and

WHEREAS, the City Council of the City is authorized by Section 363.111(a), Tex. Health & Saf. Code, to adopt rules for regulating solid waste collection, handling, transportation, storage, processing, and disposal, and is further authorized under Chapters 363 and 364 of the Texas Health and Safety Code to take establish other regulations and take other actions pertaining to solid waste and its collection, transportation, handling, storage and disposal within the City; and

WHEREAS, the City Council desires to adopt the regulations set forth herein to protect and preserve the public health, and finds that the adoption of this Ordinance is in the best interests of the health, safety and welfare of the City and its citizens.

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

Section 1. Definitions. The following words, terms and phrases when used in this Ordinance shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Code enforcement officer means the code enforcement officer of the City or the officer’s

agent or designee.

Dry refuse or dry rubbish means tin cans, papers, dry trash, pieces of wood, boxes, crates, tree limbs and excelsior or other packing material, and other like materials and substances.

Garbage means rubbish, trash, kitchen and household waste, including meat, vegetable and fruit refuse, hedge trimmings, lawn trimmings, merchandise containers whether of paper, wood or other materials.

Receptacles means any waterproof, disposable, securely tied containers which may be discarded, such as plastic bags of not less than two-mil thickness; these being equal in strength and quality to the disposable bags specified or provided by the City.

Section 2. Location of receptacles; use.

No person shall place or throw any garbage or dry refuse of any kind or character upon any street, sidewalk, alley, public way, parking lot or open space in the City, but all such garbage, refuse, and rubbish shall be placed in a receptacle as described herein.

Such receptacle shall be placed on the rear of the premises adjoining the alley (if any) at some point accessible to the garbage collectors; and where not accessible to a paved alley, shall be placed upon the front edge of the front sidewalk so as to be accessible to garbage collectors, or if there is no front sidewalk, shall be placed at the edge of the street adjacent to the premises where the person placing the receptacle resides (the front edge of the front sidewalk and the edge of the street being referred to herein as the "curbside location"). Where a property includes an exterior "trash closet" or storage area for trash receptacles ("trash closet"), these shall be used instead of front sidewalk edge pickup. Otherwise, the garbage receptacle shall be placed at such locations as may be designated by the code enforcement officer.

It shall be illegal to permit receptacles serving residential users to remain on street right-of-way (front, side or rear), at the curbside location, or in a trash closet, on days other than those designated by the City for garbage and trash pickup.

It shall be unlawful and an offense for any owner or the person in charge of any residence to allow garbage, rubbish or refuse to be piled, placed or to accumulate on any sidewalk or street within the City. All such garbage, refuse and rubbish shall be placed in receptacles as provided for in this Ordinance.

Section 3. Receptacles.

The owners or operators of every type of business and all occupants of residences or dwelling houses in the City shall deposit garbage or refuse in an acceptable plastic container with a watertight cover, and such container shall have an adequate capacity that is acceptable to the City's waste collector that is providing service to such owner or operator.

Such receptacle shall contain handles and shall be rodent and insect-proof and shall be kept covered at all times, except when garbage and refuse are being deposited therein or removed therefrom.

Where equipment service containers or garbage receptacles are furnished by the City or its contractor, deposits of garbage and trash shall be placed in such containers and used in accordance with this Ordinance.

Section 4. Commercial Solid Waste Collection.

(a) *Purposes.* The purposes of this section are as follows:

(1) To establish minimum standards for commercial solid waste, garbage, trash, and recyclable materials collection and transportation activities, in order to ensure orderly operations and to minimize adverse impacts on the public; and

(2) To provide for the recovery of costs incurred by the City in connection with the monitoring and regulation of commercial solid waste, garbage, trash, and recyclable materials collection and transportation activities, and other costs related thereto.

(b) *Definitions.* In this section:

City Secretary means the City Secretary of the City of Lowry Crossing or the City Secretary's designee.

Commercial container means any container used for the collection or transportation of commercial solid waste, including, without limitation, a dumpster, bin, roll-off, or canister.

Commercial hauler or *hauler* means any person who collects, hauls, or transports commercial solid waste for a fee or other compensation by use of any means, including, without limitation, a dumpster, roll-off truck, a side-load or rear-load garbage truck, or a trailer.

Commercial solid waste means all solid waste, including, without limitation, garbage, trash, rubbish, bulky waste, construction debris, and recyclable materials, that is produced by or collected from a commercial user.

Commercial user means an owner or occupant of any property in the city that is not served by the City's residential solid waste contractor.

Permit means a permit issued to a commercial hauler under this section.

Permit holder means a commercial hauler that holds a permit under this section.

(c) *Scope.*

(1) The provisions of this section apply to all commercial haulers that collect, haul, or transport commercial solid waste from any location within the City.

(2) This section does not apply to collection and transportation by a commercial user of only that user's commercial solid waste.

(d) *Permit for commercial collection required.* No person, firm, corporation, or other entity, excluding the City, may use the public streets, alleys, or thoroughfares within the corporate limits of the City for the purpose of engaging in the business of collecting or transporting commercial solid waste without first having obtained a solid waste collection permit from the City.

(e) *Application for permit; permit processing; expiration.*

(1) To obtain a solid waste collection permit, a person must submit an application on a form provided by the City Secretary. The applicant must be the person who will own, control, or operate the proposed collection or transportation service.

(2) The permit application shall include the following information:

(a) Applicant's name, address, and verified signature;

(b) The form of business of the applicant, and, if the business is a corporation or association or other form of business entity, evidence of the authority of the person signing the application to represent the business;

(c) The trade name under which the applicant does or proposes to do business;

(d) The applicant's mailing address and office telephone number, and the applicant's facsimile number and e-mail address, if any;

(e) The physical address of the applicant's business, and address of the location where the applicant's vehicles and equipment will be parked or stored when not in use;

(f) The number of vehicles the applicant will operate, and the type and carrying capacity of each vehicle;

(g) The type of commercial solid waste the applicant intends to collect and transport;

(h) The location at which the applicant intends to dispose of the commercial solid waste collected by the applicant, and the name, address, and telephone number of the operator of each such location;

(i) A certificate of insurance showing current commercial general liability and motor vehicle liability insurance coverage for the applicant; and

(j) A statement that the applicant understands and agrees to abide by the provisions of this section.

(3) Application for the permit shall be accompanied by a \$50.00 non-refundable processing fee.

(4) The City Secretary will review each permit application. If the City Secretary determines that the application is complete, the City Secretary shall issue a permit to the

applicant. If the City Secretary determines that an application is incomplete, the City Secretary will inform the applicant in writing, and request that the applicant furnish additional information or materials to complete the application within 30 days. If the applicant does not furnish the additional information and materials within the 30-day period, the City Secretary will return the application materials to the applicant.

(5) The collection permit expires October 1 of each year, and may be renewed by making application as provided in this section.

(f) *Fees.*

(1) The annual fee for the commercial solid waste collection permit is an amount equal to five percent of the gross receipts on all revenues and income collected by or for the permit holder from any source derived from the operation of the collection of commercial solid waste within the corporate limits of the city.

(2) The permit holder shall remit the annual fee on a quarterly calendar basis to the City Secretary on or before the 30th day of January, April, July, and October, based upon the revenues collected during the immediately previous calendar quarter.

(4) The quarterly payment shall be accompanied by an income statement certified by the permit holder acknowledging compliance with this section.

(5) Income statements and revenue information submitted by permit holders in connection with a quarterly payment under this section are confidential to the extent permitted by and subject to the terms and provisions of the Texas Public Information Act, Chapter 552, Tex. Gov. Code, as amended or superseded.

(6) Fee payments received after the due date shall be subject to interest at the rate of ten percent per annum until the fees are paid in full. In addition, delinquent fees shall be subject to a late payment penalty of five percent for each month or portion thereof that the fees are outstanding. In no event, however, shall the penalties exceed 25 percent of the total delinquent fees nor shall interest charged or penalty assessed exceed the maximum rate allowed by law.

(g) *Requirement to furnish information.* The books and records of the permit holder shall be open at reasonable times for inspection by the City Secretary in accordance with the terms of this section.

(h) *Regulation of operations.*

(1) It is unlawful for a commercial hauler to place or maintain a commercial container on any city or state street, alley, road, or highway right-of-way within the City, unless authorized by the City. A commercial hauler must ensure that all commercial containers serviced by it are properly placed and maintained on the customer's property.

(2) A permit holder must ensure that access to each commercial container serviced by it is provided across a driveway. It is unlawful for a permit holder to cross over the curb

of a City or state street, alley, road, or highway except at an authorized driveway.

(3) A commercial hauler must ensure that each commercial container provided or serviced by it is equipped in a manner that prevents blowing or scattering of commercial solid waste materials, is in good repair and appearance and in a sanitary condition, is clearly marked with the hauler's name and telephone number, and is emptied not less than one time per week.

(4) A commercial hauler must ensure that the size of the commercial container provided to a commercial user and the frequency of servicing for the container are adequate for the volume of commercial solid waste being deposited by the user. If commercial solid waste is overflowing from or placed outside a commercial container, the hauler must notify the customer of the need to arrange for a larger container or more frequent servicing.

(5) A commercial hauler must ensure its employees take all reasonable measures to prevent spilling or leaving of commercial solid waste when making pickups. If a hauler's vehicle spills any commercial solid waste in the course of collection or transport, the hauler's employee must clean the spill by whatever means necessary before the vehicle leaves the premises. The hauler must clean up liquid and hydraulic spills with an absorbent that is carried on all vehicles. If a spill leaves a stain on a roadway, building, or other similar surface, the hauler must use all reasonable means available to remove the stain and restore the facility to the satisfaction of the City.

(6) A commercial hauler must ensure that any damage caused to City property, facilities, or equipment in connection with the hauler's provision of commercial hauling services is reported immediately to the City, and is promptly repaired or otherwise remedied to the satisfaction of the city.

(7) A commercial hauler must ensure that all commercial solid waste collected or transported within the city by the hauler is disposed of at a facility that is authorized by the State of Texas to accept the type of commercial solid waste the hauler has collected or transported.

(8) A commercial hauler must ensure that commercial solid waste collection conducted by the commercial hauler within 300 feet of a residence is conducted only between the hours of 7:00 a.m. and 7:00 p.m. on weekdays and between the hours of 7:00 a.m. and 8:00 p.m. on weekends.

(i) *Revocation of permit; appeal.* The City Secretary may revoke a permit for:

(1) The failure of the permit holder to provide required information;

(2) The failure of the permit holder to pay any fee required in connection with the permit;

(3) For the making of any false statement on the permit application or on any quarterly report required under this section;

(4) For the violation of any provision of this section; or

(5) If it has been determined by an authorized governmental entity or agency or representative thereof that the permit holder has violated a governmental law, rule, or regulation regarding the collection, transportation, handling, or disposal of commercial solid waste, including, without limitation, any law, rule, or regulation regarding the location where the same may be deposited.

A commercial hauler's whose permit has been revoked may appeal the decision of the City Secretary to the City Council, provided such appeal is in writing and is filed with the City Secretary within 7 days after the commercial hauler received notice of the revocation. The City Secretary shall notify the City Council of the appeal, and the Council shall hear the appeal at the next regularly scheduled council meeting that allows time for proper posting of the appeal, or at a special council meeting as may be called and held. The City Council shall hear the appeal and decide whether or not the decision of the City Secretary should be upheld or overturned. A decision of the City Council is final.

Section 2. Incorporation of Recitals. The above and foregoing recitals to this Ordinance are true and correct and are incorporated herein and made a part hereof.

Section 3. Penalty. It shall be unlawful for any person, firm, corporation, or other business entity to violate any provision of this Ordinance, and any person, firm, corporation, or other business entity violating or failing to comply with any provision hereof shall be fined, upon conviction, in an amount of not less than One Dollar (\$1.00) and not more than Five Hundred No/100 Dollars (\$500.00), and a separate offense shall be deemed committed each day during or on which a violation occurs or continues. For purposes of this paragraph of this section, allegation and evidence of a culpable mental state is not required for the proof of an offense under this Ordinance.

Notwithstanding the foregoing, it shall be unlawful for any person, firm, corporation, or other business entity who intentionally, knowingly, or recklessly violates any provision of this Ordinance regarding dumping, littering, or solid waste shall be fined, upon conviction, in an amount of not less than One Dollar (\$1.00) and not more than Two Thousand and No/100 Dollars (\$2,000.00), and a separate offense shall be deemed committed each day during or on which a violation occurs or continues.

Section 4. Savings. This Ordinance shall be cumulative of all other ordinances of the City affecting health and sanitation, and garbage, trash and refuse, and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance; provided, however, that an offense committed before the effective date of this Ordinance is governed by the prior law and the provisions of those ordinances in effect when the offense was committed and the former law is continued in effect for this purpose.

Section 5. Severability. The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstance is held invalid, void, unlawful or unconstitutional by a Court of competent jurisdiction, such holding shall not affect

the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, voidness, unlawfulness or unconstitutionality, which remaining portions shall remain in full force and effect.

Section 8. Effective date. This Ordinance shall become effective ninety (90) days following the date of its passage and approval and publication as may be required by law.

PASSED AND APPROVED by the City Council of the City of Lowry Crossing, Texas this ____ day of _____, 2012.

Derek Stephens, Mayor

ATTEST:

By: _____
Janis Cable, City Secretary