ORDINANCE NO. 2021-10-01

AN ORDINANCE OF THE TOWN OF POETRY, TEXAS, ADOPTING REGULATIONS RELATING TO THE COLLECTION OF SOLID WASTE FROM CUSTOMERS WITHIN THE TOWN; REQUIRING A PERMIT AND AGREEMENT FOR THE USE OF THE TOWN STREETS TO CONDUCT SUCH BUSINESS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS OF THIS ORDINANCE NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS ($500.00) FOR EACH OFFENSE AND EACH AND EVERY DAY A VIOLATION OCCURS OR CONTINUES SHALL CONSTITUTE A SEPARATE OFFENSE; PROVIDING FOR ENROLLMENT AND ENGROSSMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Poetry, Texas (the "Town") is a general law municipal corporation duly organized and validly existing under the laws of the State of Texas and located within Kaufman and Hunt Counties, Texas; and

WHEREAS, on November 3, 2020 the Town incorporated; and

WHEREAS, it is in the public interest to ensure that solid waste collection service is provided to the citizens of the Town; and

WHEREAS, all legal prerequisites for the passage of this Ordinance have been met, including but not limited to the requirements of the Texas Open Meetings Act; and

WHEREAS, the Town Council of the Town of Poetry finds and determines that a public need exists to regulate the collection of solid waste in the Town's limits in order to protect the public streets and provide for the general health, safety and welfare of the citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF POETRY, TEXAS:

SECTION 1. RECITALS. The Town Council hereby finds that the statements set forth in the recitals of this Ordinance are true and correct, and the Town Council hereby incorporates such recitals as part of this Ordinance.

SECTION 2. FRANCHISE AGREEMENT APPROVED. The Town Council of the Town of Poetry hereby approves the form of the nonexclusive solid waste franchise agreement for solid waste vendors within the Town, attached hereto and incorporated as if set forth fully herein as Exhibit A.

SECTION 3. ADOPTION OF SOLID WASTE REGULATIONS. That the following provisions shall be and are hereby adopted as the regulations of the Town of Poetry, Texas, providing for the collection of solid waste:

SECTION 1. DEFINITIONS

The following terms, as used herein, will be defined as follows:

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 Town of Poetry.

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, and other solid waste other than industrial solid waste as defined by state or federal law. Municipal Solid Waste may include construction and demolition waste.

TOWN means the Town of Poetry.

SECTION 2. PERMIT AND FRANCHISE AGREEMENT REQUIRED

A. No Collector shall collect any municipal solid waste within the corporate limits of the Town without first applying for and obtaining a permit to do so from the Mayor or his/her designee. Such permit shall be on such forms as the Town may determine. An annual permit fee in the amount of $100 is due and payable at the time of application for a permit. It shall be unlawful for any person, firm or corporation to collect municipal solid waste or to engage in the business of municipal solid waste collection without first having been issued a permit to do so from the Town.

B. In addition to the foregoing permit requirement, any person, firm corporation, or Collector collecting solid waste from any residence within the Town shall first enter into a Franchise Agreement with the Town. It shall be unlawful for any person, firm or corporation to collect municipal solid waste or to engage in the business of municipal solid waste collection without first having entered into a Franchise Agreement with the Town.

C. No Collector shall allow any municipal solid waste to spill or fall from the Collector's equipment within the corporate limits of the Town. 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 Town. In the event the Collector causes damage to any street or roadway within the Town, the Collector shall be given written notice to immediately cause such damage to be repaired under the supervision of the Town designee. 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 Town 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 Town Council may request Collector to cause such damage to be repaired under the supervision of the Town designee and if such damage is not repaired within the time stated the Town Council may within its sole discretion terminate Collector's franchise and right to use the public streets within the Town to carry on its business.

E. All Collectors shall clearly mark all collection vehicles with the Collector's name, address and telephone number. All collection vehicles used by Collectors to collect municipal solid waste within the Town shall be no larger than a "single axle" type, and shall not exceed 33,000 pounds GVWR, unless specific written approval is granted by the Town Council. Trucks used for commercial and roll-off services may be tandem axle and may not exceed 60,000 GVWR.

F. Collector must use trucks and equipment meeting the approval of the Town that will prevent spillage, and damage to the streets and ways used by such trucks and equipment. Collector shall also abide by any Town regulations with regard to the placement of collection containers if it becomes necessary to establish such regulations.

G. Collector shall provide the Town with a certificate of insurance demonstrating that Collector has obtained all required forms of insurance pursuant to this Section. It shall be unlawful for any person, firm or corporation to collect municipal solid waste or to engage in the business of municipal solid waste collection without an accepted certificate of insurance on file with the Town.

Minimum Limits of Insurance: The Contractor shall procure and maintain the following minimum types of coverages:

Type Coverage	**Occurrence Minimum**	**Aggregate Minimum**
Worker's Compensation (or other state-approved program)	As required by law and shall cover all employees including drivers.	As required by law.
Comprehensive & General Public Liability	$1,000,000	$1,000,000
Property Damage	$1,000,000	$1,000,000
Comprehensive Auto Liability Bodily Injury	$1,000,000	$1,000,000
Comprehensive Auto Liability-Property Damage	$500,000	$1,000,000

Each insurance policy to be provided to the Town shall include the conditions as described below, as well as the following conditions by endorsement to the policy:

1. the General liability insurance policy shall name Town and its officers, employees, and elected representatives as an additional insured without restrictions via blanket-form endorsement;

2. the policy phrase "other insurance" shall not apply to the Town where the Town is an additional insured; the policy shall specify that it is primary and non-contributory with any of the Town's policies and will state that each insured is provided coverage as though a separate policy had been issued to each, except that the insurer's liability will not be increased beyond the amount for which the insurer would have been liable had only one insured been covered;

3. each policy, except workers' compensation or other state approved program, shall require that 30 days prior to cancellation, non-renewal or any material change in coverage, a notice thereof shall be sent to Town by email. If the policy is canceled for nonpayment of premium, only 10 days' written notice to Town is required;

4. the term "Town" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of the Town and individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of the Town;

5. all policies are to be written through companies duly licensed to transact that class of insurance in the State of Texas;

6. all liability policies required herein shall be written with an "occurrence" basis coverage trigger;

7. prior to the effective date of cancellation of any policy, Contractor shall deliver to the Town a replacement certificate of insurance evidencing coverage;

8. each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least A-; and

9. the Special Provisions Section shall state that the liability policies have been endorsed via blanket-form endorsement to provide for waivers of subrogation, to provide that those policies are primary and non-contributory as to the Town.

Specific Additional Insurance Requirements:

1. **General Liability Insurance:**

General Liability insurance with combined single limits of not less than $2,000,000 shall be provided and maintained by the Contractor. The policy shall be written on an occurrence basis either in a single policy or in a combination of underlying and umbrella or excess policies.

If the Commercial General Liability form (ISO Form CG 0001 current edition) is used:

i. Coverage A shall include premises, operations, products, and completed operations, independent contractors, contractual liability covering this contract and broad form property damage coverage.

ii. Coverage B shall include personal injury.

iii. Coverage C, medical payments, is not required.

2. Automobile Liability Insurance:

Contractor shall provide Commercial Automobile Liability insurance with Combined Single Limits (CSL) of not less than $2,000,000 either in a single policy or in a combination of basic and umbrella or excess policies. The policy will include bodily injury and property damage liability arising out of the operation, maintenance and use of all automobiles and mobile equipment used in conjunction with this contract.

Satisfaction of the above requirement shall be in the form of a blanket-form policy endorsement for:

i. any auto, or
ii. all owned, hired and non-owned autos.

3. Worker's Compensation Coverage or other state-approved program

Contractor agrees to maintain insurance for workers' compensation or self-insured employee coverage meeting the requirements established by the Tex. Worker's Comp. Act, Texas Labor Code in the amounts not less than $500,000.

H. COLLECTOR SHALL DEFEND, INDEMNIFY, AND HOLD TOWN 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 SUITS, ACTIONS OR CLAIMS BASED ON OR ARISING OUT OF ANY INJURY, DAMAGE, LOSS, 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 COLLECTION AGREEMENT OR CONDITIONS CREATED BY THE PERFORMANCE OR NON-PERFORMANCE OF SAID WORK OR SERVICES.

I. No Collector shall collect any municipal solid waste within the corporate limits of the Town without first obtaining and holding all other permits or licenses required by any other governmental agency or political subdivision having jurisdiction over Collector's operations, including but not limited to the Texas Commission on Environmental Quality. Collector must be duly licensed or permitted to deposit municipal solid waste at or in a landfill regulated and approved by the proper State agency.

SECTION 3. DUTY OF OWNERS, OCCUPANTS TO MAINTAIN PREMISES

It shall be the duty of every person owning, controlling, managing, operating, leasing, renting or occupying any premises where municipal solid waste, garbage and/or trash accumulates to:

A. Provide and maintain suitable containers for the placement of garbage and/or trash. Such containers may consist of galvanized iron, tin or other suitable metal or plastic cans with two handles and a tight-fitting cover with a handle for removal, or such other containers as may be approved by the Town Council. Garbage and/or trash shall be placed within plastic or treated paper bags which shall then be placed within the appropriate approved container. The capacity of such containers shall be not less than twenty (20) nor more than ninety-five (95) gallons. Each person must provide a sufficient number of such containers to accommodate the garbage and/or trash in relation to the individual needs of the users.
B. Maintain containers in a sanitary condition and keep lids on containers at all times to prevent flies and other insects from coming in contact with the contents.

C. Gather any and all garbage and/or trash from their premises and place said garbage and/or trash in the specified containers and maintain and keep the area in and around the garbage containers clean and in a sanitary condition at all times.

SECTION 4. SEVERABILITY.

That should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole or any part or provision hereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the ordinances of the Town as a whole.

SECTION 5. PENALTY FOR NON-COMPLIANCE.

That any person, firm or corporation violating any of the provisions or terms of this Ordinance, as amended, shall be deemed guilty of a misdemeanor and subject to a penalty not to exceed the sum of Five Hundred Dollars ($500.00) for each offense, and each and every day a violation occurs or continues shall constitute a separate offense.

SECTION 6. ENROLLMENT/ENGROSSMENT.

The Mayor is hereby directed to engross and enroll this Ordinance by copying the exact Caption and Effective Date clause in the minutes of the Town Council and by filing this Ordinance in the Ordinance Records of the Town.

SECTION 7. EFFECTIVE DATE.

That this Ordinance shall take effect immediately from and after its passage and the publication of the caption as the law in such cases provide.

DULY ADOPTED by the Town Council of the Town of Poetry, Texas on the 21ST day of October, 2021.

APPROVED:

Tara Senkevech

MAYOR, TARA SENKEVECH

APPROVED AS TO FORM:

Patricia Adams

TOWN ATTORNEY, PATRICIA ADAMS



Exhibit A