

ORDINANCE NO. 2024-06-01

AN ORDINANCE OF THE TOWN OF POETRY, TEXAS, AMENDING ORDINANCE NO. 2021-10-01 AND ORDINANCE NO. 2023-12-01 RELATING TO THE COLLECTION OF SOLID WASTE; ADOPTING REGULATIONS AUTHORIZING THE CONFISCATION AND IMPOUNDMENT OF UNAUTHORIZED WASTE CONTAINERS; PROVIDING A REPEALING CLAUSE; 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 PROVIDING AN EFFECTIVE DATE.

WHEREAS, on November 16, 2021, the Town Council of the Town of Poetry, Texas, adopted Ordinance No. 2021-10-01, relating to the collection of solid waste and adopting regulations pertaining thereto; and

WHEREAS, on December 21, 2023, the Town Council of the Town of Poetry, Texas, adopted Ordinance No. 2023-12-01, which amended Ordinance No. 2021-10-01 to adopt franchise and permitting regulations that authorized the deployment of an exclusive solid waste service provider for residential customers and mandated franchise agreements and permits for nonresidential solid waste collection service providers; and

WHEREAS, the Town Council finds and determines that since the adoption of Ordinance No. 2023-12-01, there are several solid waste vendors continuing to conduct business in the Town in violation of the adopted regulations, who do not have the appropriate permit or franchise agreement, and, based on the number and nature of complaints received by the Town, are performing collection services poorly and inadequately; and

WHEREAS, the vendors providing collection services are doing so at the request of and with the consent of property owners, notwithstanding the Town's adoption of an exclusivity requirement whereby all customers within the Town are required to use service providers franchised or permitted by the Town; and

WHEREAS, it is in the public interest to ensure that solid waste collection service is provided efficiently and effectively to the citizens of the Town, and the Town has sought to do so by imposing exclusivity requirements; and

WHEREAS, the Town Council finds and determines that a public need exists to amend regulations relating to the collection of solid waste in the Town's limits to prevent the illegal provision of solid waste collection services by impounding solid waste containers being used illegally, and that such regulations are necessary to protect the public streets and provide for the general health, safety and welfare of the Town's citizens.

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

SECTION 1. That 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. That Ordinance No. Ordinance No. 2021-10-01, as amended by Ordinance No. 2023-12-01, be and is hereby amended by amending the consolidated Subsection A of Section 2 (“Permit And Franchise Agreement Required”) to add a new subpart (5), without amendment or repeal of any other subsection or subpart of Section A, such that subpart (5) of Subsection A of Section 2 of Ordinance No. 2023-10-01 shall read in its entirety as follows:

A. Exclusivity; Permit and Franchise Agreement.

...
(5) Unauthorized Solid Waste Containers.

- (a) For the purposes of this section, an "unauthorized waste container" is any solid waste container provided or used for residential or commercial waste collection, by a person or entity that does not have a valid franchise agreement with or permit from the town authorizing the collection or transport of solid waste. This does not include containers placed in the city for collection of hazardous waste, medical waste, special waste, and liquid waste, or any container mandated by state or federal law and subject to state or federal regulation to the specific exclusion of municipal regulation.
- (b) No person shall place or use an unauthorized waste container at any location within the town limits. The town or its authorized contractor has the authority to impound and may impound an unauthorized waste container from any location in the town without liability for the removal of the unauthorized waste container.
- (c) If an unauthorized waste container is found at any location in the town, the owner of the container or the owner or occupant of the property on which the container is located shall be given notice that the container is in violation of town ordinance and that continued use of the container may subject them to fines and impoundment of the container. Notice may be provided by telephone, if a telephone number may be reasonably ascertained by the owner's name and/or phone number located conspicuously on the exterior of the unauthorized waste container. Notice may also be attached to any unauthorized waste container by: (1) the town; (2) an authorized designee of the town; or (3) the then-current solid waste franchisee. If a designee or the franchisee applies such notice of violation, it will provide notice of that application to the mayor or designee within one (1) business day in writing, and shall include the location of the unauthorized waste container, photographic

evidence of the adhesive application, and the date and time of application.

- (d) If notice is provided by any method provided for in this section, and the unauthorized waste container is not removed within one business day after notice or is removed and subsequently placed back in its location, it is subject to impoundment by the town or its authorized contractor. Impounded containers shall be stored at a location within the county approved by the town. The owner of the container may reclaim the container after payment of impound and storage fees. Reoccurring violations will result in immediate confiscation of an unauthorized waste container without further notice.
- (e) Following impoundment, the owner of the container or the owner or occupant of the property from which the container was impounded shall be notified by mail or by telephone, unless the address and/or telephone number of the owner cannot be reasonably ascertained by conspicuous markings on the exterior of the unauthorized waste container. The notification shall inform the owner that the container has been impounded, provide the location of the impounded container, and the procedure for reclaiming the container.
- (f) If the unauthorized waste container is not reclaimed within ninety (90) days of the date of impoundment, the container and any contents will be deemed to have been abandoned by the owner and ownership will be forfeited to the town. Upon forfeiture, the owner will be forever barred from all claims or rights to the container, or any proceeds from the property.
- (g) To reclaim an impounded unauthorized waste container, the owner shall remit a reclamation fee per container, which shall be in an amount to compensate for the actual cost of such impoundment, including but not limited to administrative costs, costs of transportation, cost of disposal of contents, and costs of storage.
- (h) The impoundment or reclamation of an unauthorized waste container shall have no effect on the imposition of fines or penalties.

SECTION 3 That all ordinances of the Town of Poetry, Texas, in conflict with the provisions of this ordinance be and the same are hereby repealed and all other ordinances of the Town of Poetry not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 4. 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 other ordinances of the Town.

SECTION 5. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall, upon conviction, be punished by a fine not to exceed the sum of five hundred dollars (\$500.00) for each offense.

SECTION 6. That this ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law in such cases provides.

DULY PASSED AND APPROVED by the Town Council of the Town of Poetry, Texas,
on this the 20th day of June, 2024.

APPROVED:

Sara Bentevec
MAYOR

ATTEST:

[Signature]
TOWN SECRETARY

APPROVED AS TO FORM:

[Signature]
TOWN ATTORNEY

