

ORDINANCE NO. 493-2010

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF JOSHUA, TEXAS AMENDING ARTICLE 13.02 "SOLID WASTE" OF THE CODE OF ORDINANCES, CITY OF JOSHUA (THE "CODE"); PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Joshua is a home rule city acting under its charter adopted by the electorate pursuant of Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code;

WHEREAS, on November 19, 2009 the Joshua City Council approved an Exclusive Franchise Agreement for the Collection, Hauling, Recycling, and Disposal of Municipal Solid Waste, Construction and Demolition Waste and Recyclable Materials in the City of Joshua, Texas, effective December 1, 2009 (the "Agreement"); and

WHEREAS, the City of Joshua has agreed to assume the duty to bill its citizens for waste collection services; and

WHEREAS, some current provisions contained in Article 13.02 of the Code are inconsistent with the Agreement; and

WHEREAS, the legislature and the courts have long recognized the importance of garbage disposal to the enhancement of health and safety; and

WHEREAS, the enforcement of a comprehensive garbage plan is clearly within the police power granted to all municipalities; and

WHEREAS, it is imperative that the City ensure that fees for waste collection services are promptly paid by the customers.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY
OF JOSHUA, TEXAS:**

SECTION 1.

Article 13.02 of the Code is hereby revised to read as follows:

“ARTICLE 13.02 SOLID WASTE

Sec. 13.02.001 Definitions

For the purpose of this article, the following terms shall have the meanings ascribed to them in this section. The word "shall" is always mandatory, while the word "may" is merely discretionary.

Bag. Plastic sacks, secured at the top, designed to store refuse with sufficient wall strength to maintain physical integrity when lifted by the top. Total weight of a bag and its contents shall not exceed 35 lbs.

Bulky Item. Any item not measuring in excess of either forty-eight (48) inches in length or fifty (50) pounds in weight, including, but not limited to, refrigerators, stoves, washing machines, water tanks, chairs, couches and other similar household items.

Commercial Unit. Any non-manufacturing commercial facility that generates and accumulates Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials during (as defined in the Agreement), or as a result of, its business, including, but not limited to, restaurants, stores and warehouses.

Contractor. The individual, corporation, or business entity with whom the city contracts for the provision of a garbage, waste, or refuse collection operation or service.

Multi-Family Residential Unit. Any residential dwelling that is designed for, and inhabited by multiple family units and that generates and accumulates Municipal solid Waste and Recyclable Materials.

Residential Unit. A dwelling unit such as a home, trailer or multifamily dwelling, not including hotels and motels. Each unit of a multifamily dwelling shall be considered a separate dwelling unit for purposes of billing.

Waste Containers. Waste disposal containers constructed of metal, rubber, or plastic, including plastic bags, and designed to contain refuse or waste or recycling material in such a manner as to prevent leakage or spillage. Containers should be of such a nature as to deter insects and animals. Thirty-gallon drums and waste disposal containers that weigh in excess of fifty (50) pounds shall be strictly prohibited.

Sec. 13.02.002 Penalty

Any person violating any of the provisions this article shall be guilty of a misdemeanor and upon conviction thereof shall be fined in accordance with Section 1.01.009 of this Code.

Sec. 13.02.003 Use of public collection service required

(a) All business and residential units within the city shall be required to utilize the public waste collection service.

(b) It shall be an offense to fail to utilize the public waste collection service.

Sec. 13.02.004 Preparation of waste for collection; service regulations

(a) Residential units within the city will receive curbside waste collection services twice each week of solid waste in appropriate Waste Containers, Bundles, Bags, or Bulky Items placed within five (5) feet of the curb or as close to the public street or roadway in front of their residence as possible. Tied bundles of brush and trimmings [are] not to exceed four feet in length or fifty (50) pounds in weight. All waste collection containers, Bundles, Bags and Bulky Items must be in place for collection no earlier than 7:00 p.m. on the evening prior to collection and no later than 7:00 a.m. each morning on which pickup is scheduled and removed no later than 7:00 a.m. the next morning.

(b) All Commercial Units and Multi-Family Residential Units within the city whose waste and garbage removal requirements may be met by conventional residential collection will prepare their garbage for collection in the manner identified in subsection (a) above. Those commercial operations having a volume or type of waste or garbage which does not permit collection as in the manner of a conventional residential unit will notify the Contractor of their need for the utilization of a special time or collection or of a special location for pickup.

(c) No single piece or bundle of trash or garbage shall exceed four (4) feet in length or weigh in excess of fifty (50) pounds, or exceed more than three (3) cubic yards in total volume.

(d) Title to all waste materials shall vest in the collector immediately upon being placed in its vehicles.

(e) The service furnished hereunder to the city, and its inhabitants shall be subject to such reasonable rules and regulations as the collector may make from time to time. The city may require reasonable security for the payment of its bills, and may require of every customer a contractual right of ingress and egress upon and from the customer's property, on behalf of the waste service provider.

(f) The Exclusive Franchise Agreement for the Collection, Hauling, Recycling and Disposal of Municipal Solid Waste, Construction and Demolition Waste and Recyclable Materials in the City of Joshua, Texas, attached hereto and incorporated herein as Exhibit "A", is hereby declared to be the comprehensive plan for the collection of solid waste within the City of Joshua, and all Commercial Units, Residential Units, Multi-Family Residential Units, and other customers are required to adhere to the procedures for waste collection contained therein. A copy of the Agreement shall not be included in this Code, but shall be maintained in the office of the city secretary, and published on the city's website for public inspection.

Sec. 13.02.005 Fees for waste collection services

(a) All residents and businesses located within the city will be assessed the waste collection fees set forth in Appendix Article A4.000 of this Code. Collection fees will be subject to change upon action of the city council. Fees will be billed to customers on a quarterly basis.

(b) It shall be an offense to fail to pay for waste collection services within 60 days after receipt of a bill for the services.

(c) In addition to other penalties imposed by this Article or by law, fees for waste collection services may be referred to an attorney for collection, and there shall be imposed an additional fee of 30% of the amount owed."

**SECTION 2.
CUMULATIVE CLAUSE**

This ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the City of Joshua, Texas, as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event the conflicting provisions of such ordinances and such Code are hereby repealed.

**SECTION 3.
SEVERABILITY CLAUSE**

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**SECTION 4.
PENALTY CLAUSE**

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Five Hundred Dollars (\$500.00) for each offense unless the offense constitutes a violation governing fire safety, zoning, or public health and sanitation, in which case the fine may not exceed Two Thousand Dollars (\$2,000.00). Each day that a violation is permitted to exist shall constitute a separate offense.

**SECTION 5.
SAVINGS CLAUSE**

All rights and remedies of the City of Joshua are expressly saved as to any and all violations of the provisions of any ordinances affecting curfew which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

**SECTION 6.
PUBLICATION IN THE OFFICIAL NEWSPAPER**

The City Secretary of the City of Joshua is hereby directed to publish at least twice in the official newspaper of the City of Joshua, the caption and the penalty clause of this ordinance in accordance with Section 52.013(b) of the Local Government Code.

**SECTION 7.
EFFECTIVE DATE**

This Ordinance shall be in full force and effect from and after its passage and it is so ordained.

PASSED AND APPROVED THIS 21st DAY OF January, 2010.

MAYOR

ATTEST:

CITY SECRETARY

EFFECTIVE: _____

APPROVED AS TO FORM AND LEGALITY:

CITY ATTORNEY