

**ORDINANCE NO. 790-05-07-12**

AN ORDINANCE OF THE CITY OF PFLUGERVILLE, TEXAS, AMENDING THE CITY OF PFLUGERVILLE, TEXAS CODE OF ORDINANCES, CHAPTER 52, REGARDING COLLECTION OF REFUSE FOR MULTI-FAMILY, COMMERCIAL AND INDUSTRIAL ESTABLISHMENTS, AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PFLUGERVILLE, TEXAS:

Section 1: Definitions.

Chapter 52, Section 52.01 of the City of Pflugerville, Texas Code of Ordinances is hereby amended by adding definitions for *COMMERCIAL SERVICE PROVIDER* and *COMMERCIAL AND INDUSTRIAL CUSTOMER* and by revising the definition of *COMMERCIAL AND INDUSTRIAL UNIT* to read as follows:

***COMMERCIAL SERVICE PROVIDER.*** A person who engages in the business of providing refuse collection services to commercial and industrial customers or units within the corporate limits of the city.

***COMMERCIAL AND INDUSTRIAL CUSTOMER.*** A person, group of persons, or entity responsible for the operations, including the arrangement of and/or payment for refuse collection service, of a commercial or industrial unit.

***COMMERCIAL AND INDUSTRIAL UNIT.*** All premises, locations or entities, public or private, requiring refuse collection within the corporate limits of the city and not a residential unit, except that commercial and industrial unit includes a multi-family dwelling within the corporate limits of the city occupied by a group of persons comprising more than four families and includes residential construction sites where roll-off containers are used for the disposal of construction waste materials.

Section 2: Commercial Refuse Collection Service.

Chapter 52 of the City of Pflugerville, Texas Code of Ordinances is hereby amended by adding Sections 52.08, 52.09, 52.10, 52.11, 52.12 and 52.13 to read as follows:

**§52.08 FRANCHISE REQUIRED FOR COMMERCIAL COLLECTION.**

The city is hereby authorized to grant, and it shall be unlawful for a commercial service provider to operate within the city or to occupy or use the streets of the city to provide service to commercial or industrial customers, unless the commercial service provider has been issued a franchise which is in force and effect.

## **§52.09 TERMS OF FRANCHISE.**

(A) *Non-exclusivity.* The franchise shall be non-exclusive.

(B) *Franchise Fee/Late Fee.* In consideration of the grant of the franchise, the commercial service provider agrees to pay the city a franchise fee equal to six percent (6%) of gross revenues for services provided in the city. The franchise fee shall be paid each quarter, within thirty (30) days after the end of the quarter. The city may inspect the books of a commercial service provider with or without previous notice, at any time during regular business hours. A ten percent (10%) penalty will be assessed on delinquent amounts. An additional ten percent (10%) penalty will be added for every month or portion thereof that said payment is late.

(C) *Termination.* The franchise may be terminated by mutual agreement of the parties at any time or may be terminated upon sixty (60) days' notice by either party to the other.

(D) *Notices.* All notices from a commercial service provider to the city concerning the franchise shall be addressed to the City Manager, City of Pflugerville, P. O. Box 589, Pflugerville, Texas 78691.

(E) *Non-waiver.* A commercial service provider shall not be excused from complying with any of the terms and conditions of the franchise by any failure of the city upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

## **§52.10 COMMERCIAL AND INDUSTRIAL CUSTOMERS.**

Commercial or industrial customers shall comply with the following rules and procedures concerning screening and enclosure of bins:

(A) Bins shall be located on the side or rear of the building and screened from public view.

(B) Bins must be located at least 50 feet away from residentially-zoned property lines.

(C) Bins larger than 90 gallons shall be located on a minimum six-inch reinforced slab, sloped to drain.

(D) Bins shall be screened on four sides, using an enclosure that screens the bin from view at the property line, except that screening is not required for bins with a capacity of less than or equal to 90 gallons unless more than two such bins are used. Screening, where required, shall be a minimum of six feet (6') in height and shall be comprised of:

(1) Brick, stone, reinforced concrete, or other similar masonry materials; or

(2) Redwood, cedar, preservative pressure-treated wood, or other similar materials; or

(3) All fence posts shall be rust-protected metal, concrete-based masonry or concrete pillars; and

(4) Six-inch concrete filled steel pipes shall be located to protect the enclosure from truck operations.

(E) Bin enclosures shall have steel framed gates with spring-loaded hinges or the equivalent and fasteners to keep them closed. When in use, tie-backs should be used to secure the steel framed gates in the open position.

(F) Bin screening shall be maintained by the owner at all times.

#### **§52.11 COMMERCIAL COLLECTION RULES AND PROCEDURES.**

(A) *Operation Hours.* Collection may not occur before 7:00 a.m. or after 7:00 p.m.

(B) *Vehicle Condition.* All vehicles must be maintained in proper operating condition, and vehicles with an unsafe or unhygienic appearance may not be operated within the city. Any spill of hydraulic fluid, oil or other substance from the commercial service provider's vehicles must be promptly and diligently cleaned up and remediated. All vehicles must be clearly identified with the commercial service provider's identity and telephone number on each side of the vehicle. All vehicles must be properly and adequately covered, and no refuse or waste may be permitted to blow out of the vehicles or bins.

(C) *Property Condition.* The commercial service providers must take all steps necessary to ensure that areas where refuse is collected are left in a neat and litter-free condition, and skid marks are not left on the street as a result of vehicles routinely stopping too abruptly. Use of air brakes to stop near residences is prohibited, except in emergency conditions.

(D) *Safety.* Drivers must observe all safety laws, including speed limit and traffic control signs.

(E) *Disposal.* The collected refuse shall be disposed of in a manner complying with all city ordinances, state laws and regulations and all federal laws and regulations pertaining to the disposal of solid waste. No refuse shall be burned, except in an incinerator complying with all applicable state and county laws and regulations and federal laws and regulations.

## **§52.12 COMMERCIAL BUILDING PERMIT CONDITIONS.**

Before a building permit shall be issued for construction of any commercial or industrial unit, plans for the adequacy, location and accessibility of bins and enclosure structures must be approved by the city. No certificate of occupancy shall be issued until such approval has been obtained.

## **§52.13 INSURANCE, INDEMNITY AND BOND.**

(A) *Insurance.* A commercial service provider must secure and maintain in effect insurance to protect the commercial service provider, its employees, and the city from claims for bodily injuries, death or property damage which may arise out of the commercial service provider's performance or nonperformance of its duties under the franchise, whether that performance or nonperformance is by the commercial service provider or one directly or indirectly employed by the commercial service provider. The following minimum levels of coverage are required:

(1) Public liability and property damage (no pollution exclusion endorsement is permitted):

- (a) General Liability: \$1,000,000 per occurrence
- (b) Property Damage: \$1,000,000 per occurrence
- (c) Automobile Liability: \$1,000,000

(2) Umbrella Liability: \$1,000,000

(3) Worker's Compensation: As required by law.

(4) Employer's Liability \$500,000

Certificates of insurance confirming coverage and naming the city as an additional insured must be provided to the city on or before the date of the granting of the franchise, and renewal certificates must be provided to the city at least 15 days prior to the date of expiration of any required coverage. A commercial service provider's failure to maintain any required insurance or to furnish any required certificate will be grounds for termination of the franchise. All insurance certificates must confirm that the insurance may not be terminated or materially changed without 30 days prior notice to the city.

(B) *Indemnity.* The commercial service provider shall also execute an agreement providing that, to the fullest extent permitted by law, the commercial service provider will and does hereby indemnify and hold harmless the City and its officers, directors, agents and employees from and against all claims, damages, losses and expenses, including, but not limited to, attorney's fees, arising out of or resulting from the performance or failure to perform the work required under the franchise. This obligation will not be construed to negate or reduce any other

right or obligation of indemnity that would otherwise exist. This indemnification requirement will not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the commercial service provider under any workers compensation acts, disability benefit acts or other employee benefit acts.

Section 3:     Penalty.

Chapter 52, Section 52.99 of the City of Pflugerville, Texas Code of Ordinances is hereby amended to read as follows:

**§ 52.99     PENALTY.**

Any person found to be violating the provisions of §§ 52.02, 52.03, 52.08, 52.10, 52.11 or 52.13 shall be deemed guilty of a misdemeanor and, upon conviction, shall be subject to a fine not to exceed \$2,000. Each day of such violation shall constitute a separate offense. Such penalty shall be cumulative and not exclusive of any other rights or remedies the city may have.

Section 4:     Effective Date.

This Ordinance will take effect upon its passage by three affirmative votes on first reading; provided that this Ordinance will be posted and adopted at a subsequent meeting in accordance with the provisions of Section 3.15(d) of the City Charter.

Section 5:     Compliance.

Within ninety (90) days of the effective date of this Ordinance, each commercial service provider shall make application to the city for a franchise, pursuant to the requirements herein.

Section 6:     Severability.

If any provision of this Ordinance is illegal, invalid, or unenforceable under present or future laws, the remainder of this Ordinance will not be affected and, in lieu of each illegal, invalid, or unenforceable provision, a provision as similar in terms to the illegal, invalid, or unenforceable provision as is possible and is legal, valid, and enforceable will be added to this Ordinance.

PASSED AND APPROVED this 12 day of July, 2005.



**Agendizer**

Item Number: 6C

An ordinance amending the City of Pflugerville, Texas Code of Ordinances, Chapter 52 regarding collection of refuse for multi-family, commercial and industrial establishments.

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**Summary:** This ordinance was approved on first reading on June 28, 2005.

**Recommendation:** Approve the ordinance on second reading.

**Action Required by:** There is no deadline for action.

**Prepared by:** David Buesing, City Manager

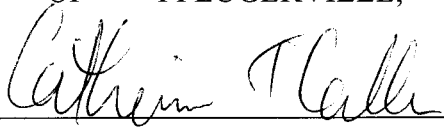
**Fiscal Impact:**

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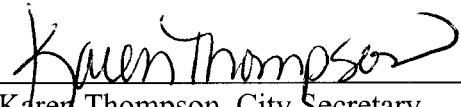
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CITY OF PFLUGERVILLE, TEXAS

By:   
Catherine T. Callen, Mayor

ATTEST:

  
Karen Thompson, City Secretary