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ORDINANCE NO. 2003-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING CHAPTER 66, SOLID WASTE, OF THE CITY CODE TO ADD AN ARTICLE 3, COMMERCIAL SOLID WASTE HAULERS; SETTING ANNUAL PERMIT FEES AND STREET USE FEES; INCLUDING PROCEDURAL PROVISIONS; AND DECLARING AN EFFECTIVE DATE.

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. The title of Article 2 of Chapter 66 of the City Code is changed from "Collection and Disposal" to "Residential Collection and Disposal".

SECTION 2. Chapter 66, Solid Waste, of the City Code is amended to add an Article 3, Commercial Solid Waste Haulers, to read as follows:

ARTICLE 3. COMMERCIAL SOLID WASTE HAULERS

Sec. 66.075. Purposes.

The purposes of this article are as follows:

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

(2) To provide for compensation to the city for wear and tear on city streets resulting from commercial solid waste collection and transport in the city.

Sec. 66.076. Definitions.

In this article:

(1) *Commercial container* means any container used for the collection or transport of commercial solid waste, including but not limited to a dumpster, bin, roll-off, or canister.

(2) *Commercial solid waste* means all solid waste, including garbage, rubbish, bulky waste, construction debris, stable matter, dead animals, and recyclable materials, as those terms are defined in section 66.001, that is produced by or collected from a commercial user.

(3) *Commercial hauler* or *hauler* means any person who collects, hauls, or transports commercial solid waste for a fee by use of any means, including, but not limited to, a dumpster truck, roll-off truck, a side-load or rear-load garbage truck, or a trailer.

(4) *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.

(4) *Director* means the director of the city's department of public works or a designee of that director.

(5) *Permit* means a permit issued to a commercial hauler under this article.

(6) *Permit holder* means a commercial hauler that holds a permit under this article.

Sec. 66.077. Scope.

(a) The provisions of this article apply to all commercial haulers that collect, haul, or transport commercial solid waste from any location in the city.

(b) This article does not apply to the following:

(1) Services performed by a commercial hauler under a contract between the hauler and the city.

(2) Collection and transport by a commercial user of only that user's commercial solid waste.

Sec. 66.078. Commercial hauler permit required.

It shall be unlawful for a person to collect or offer to collect commercial solid waste from any location in the city and transport the waste on any public street, alley, road or right-of-way in the city, other than on federal or state highways, if the person does not hold a current valid commercial hauler permit issued by the director under this article.

Sec. 66.079. Application required.

(a) Any person desiring a new or renewal commercial hauler permit must submit a permit application to the director.

(b) The application shall set forth or be accompanied by all of the following:

(1) The name and address of the applicant;

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

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

(4) 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;

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

(6) The type(s) of solid waste the applicant intends to collect and transport;

(7) The location(s) at which the applicant intends to dispose of the solid waste collected by the applicant, and the name, address and phone number of the operator of each location;

(8) An insurance certificate verifying the liability insurance required by this article;

(9) A statement that the applicant understands and agrees to abide by the provisions of this article;

(10) The permit fee set under section 66.082; and

(11) A copy of the applicant's sales tax permit issued by the comptroller of public accounts.

Sec. 66.080. Processing of permit applications.

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

(b) If the director determines that an application is incomplete, the director 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 director will return the application materials to the applicant.

Sec. 66.081. Insurance.

(a) Each permit holder is required to maintain motor vehicle liability insurance in full force and effect at all times in the amount of at least the following limits of coverage as a condition of operation under the holder's permit:

Coverage	Minimum Limits
Injuries to one person per occurrence	\$500,000
Injuries to all persons per occurrence	\$1,000,000
Property damage per occurrence	\$250,000
Combined single limit per occurrence	\$1,000,000

(b) All required insurance must be written by a company licensed to do business in the State of Texas.

(c) A permit may not be issued or renewed until the applicant provides satisfactory proof to the director that the applicant has liability insurance in force as required by this section.

(d) If the required insurance coverage for a commercial hauler will expire during the course of a permit term, the hauler must provide satisfactory proof to the director that the coverage has been renewed prior to expiration, or the hauler's permit will be automatically suspended as of the time of expiration of coverage, and will not be reinstated until the hauler submits satisfactory proof to the director that the coverage has been reinstated.

Sec. 66.082. Permit term; permit fee.

(a) Commercial hauler permits shall remain in effect for a period of one year from the date of issuance or renewal, unless suspended or revoked in accordance with the terms of this article.

(b) The annual fee for a commercial hauler permit is established by the city council.

Sec. 66.083. Street use fee; reports; records.

(a) Each permit holder is required to pay a street use fee as a condition of operation under the holder's permit. This fee is in addition to all special assessments and taxes, including, but not limited to, ad valorem and sales taxes, paid to the city.

(b) The amount of the permit fee is 5% of the permit holder's gross revenue from commercial solid waste hauling operations in the city. The term "gross revenue" means the value of all cash consideration that a permit holder derives from the provision of commercial hauling services in the city, including but not limited to the following:

(1) All fees charged to the permit holder's customers for commercial hauling services;

(2) All revenues derived from the sale of recyclable materials collected in the city in connection with the permit holder's commercial hauling services; and

(3) Sale or rental of lists of the permit holder's customers in the city.

"Gross revenue" does not include any revenue not actually received by a permit holder. Revenue not actually received includes amounts deemed uncollectible.

(c) Each permit holder must file with the director a quarterly report of its gross revenue from commercial solid waste hauling operations in the city. Reports must be submitted so that they are received by the director within 30 days of the end of the preceding calendar quarter. Reports must be on forms provided by the director. Payments of street use fees must accompany reports when submitted. Late reports and payments shall be charged a \$100.00 penalty.

(d) Each permit holder must file with the director a statement of the permit holder's gross revenue for each calendar year not later than the 90th day after the end of the calendar year. The statement must contain a detailed description of gross revenue and uncollectible accounts for the year.

(e) Each permit holder will keep complete and accurate records and books of accounts of its business and operations in the city in accordance with generally accepted accounting principles. The city will have the right to audit, inspect and copy all of books, accounts and other records of each permit holder as reasonably required by the city to determine the amounts of street use fee payments to be made by permit holders to the City. The city will have the right to verify amounts deemed uncollectible and to determine the legitimacy of such amounts.

Sec. 66.084. Suspension or revocation of permit.

(a) *Authority of director to suspend or revoke permits.* The director may suspend or revoke a permit if the director determines that a permit holder:

(1) has violated any of the provisions of this article, or any applicable provision of this Code;

(2) has failed to pay a required fee or fine in a timely manner;

(3) has violated any federal or state law or regulation relating to the collection, transport, or disposal of solid waste collected at a location in the city; or

(4) has failed to respond to a notice of violation or alleged violation of a city, state or federal ordinance, law or regulation in a timely manner.

(b) *Effect and duration of suspension or revocation.*

(1) It is unlawful for a permit holder whose permit is suspended or revoked to collect, transport, or dispose of any commercial solid waste from a location in the city.

(2) A permit suspension will be for a period not to exceed 90 days.

(3) A permit revocation will be for the remainder of the current permit term.

(c) *Reinstatement of suspended permit.* After suspension of a permit under this section, a permit holder may submit a written request for reinstatement of the permit. If the director determines that the permit holder has paid all fees and fines, has corrected all violations, and has taken precautions to prevent future violations, the director may reinstate the permit before the end of the suspension period.

(d) *Appeal of revocation of a permit.*

(1) A permit holder may appeal the revocation of a permit to the city manager. An appeal must be in writing and must be submitted so that it is received by the city manager within three working days of the revocation.

(2) The city manager will hold an appeal meeting with the director and the permit holder within five days of receipt of the appeal. Notice of the holding of the hearing may be communicated to the permit holder by any reasonable means. The meeting will be informal.

(3) Within five working days of the appeal meeting, the city manager will issue a decision to sustain, modify, or reverse the revocation. The city manager may impose reasonable conditions in connection with a modification or reversal of a revocation. The city manager's decision will be final.

Sec. 66.085. Regulation of operations.

(a) 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. A commercial hauler must ensure that all commercial containers serviced by it are placed and maintained on the customer's property.

(b) 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.

(c) 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 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.

(d) 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 solid waste being deposited by the user. If 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.

(e) A commercial hauler must ensure its employees take all reasonable measures to prevent spilling or leaving of solid waste when making pickups. If a hauler's vehicle spills any 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 director.

(f) 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 director, and is promptly repaired or otherwise remedied to the satisfaction of the director.

(g) 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 solid waste the hauler has collected or transported.

Sec. 66.086. Penalty.

Any person who violates any provision of this article commits a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than \$150.00 nor more than \$2,000.00 for each violation.

SECTION 2. The amount of the fee for an annual commercial solid hauler permit, authorized by Section 66.082 of the City Code, is set at \$100.00.

SECTION 3. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 4. All ordinances and resolution or parts of ordinances or resolutions in conflict with this ordinance are repealed.

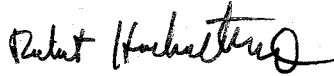
SECTION 5. Any person violating any provision of this ordinance commits a misdemeanor and is subject to the penalty provided in Section 1.015 of the San Marcos City Code upon conviction.

SECTION 6. This Ordinance will take effect ten days after the date of its final passage, and the City Clerk will publish notice of its adoption in a newspaper of general circulation in the City.

PASSED on first reading on April 28, 2003.

PASSED on second reading on May 12, 2003.

PASSED, APPROVED AND ADOPTED on May 28, 2003



Robert Habingreither
Mayor

Approved:



Mark B. Taylor
City Attorney

Attest:



Janis K. Womack
City Clerk

PUBLISHED IN THE SAN MARCOS DAILY RECORD ON FRIDAY, JUNE 6, 2003.