Ordinance No. 2009.04
Village of Salado
County of Bell
State of Texas
April 16, 2009

REFUSE FRANCHISE ORDINANCE

AN ORDINANCE OF THE BOARD OF ALDERMEN OF THE VILLAGE OF SALADO, BELL COUNTY, TEXAS GRANTING TO REFUSE MUNICIPAL SOLID WASTE COLLECTORS, THEIR SUCCESSORS AND ASSIGNS, THE RIGHT TO ESTABLISH, OPERATE AND MAINTAIN TRASH AND REFUSE COLLECTION ROUTES WITHIN THE VILLAGE OF SALADO; AND PROVIDING INSURANCE REQUIREMENTS AND PERMIT FEES.

WHEREAS, the Village of Salado ("Village") is a municipal corporation organized under the laws of the State of Texas and, pursuant to the Texas Constitution and state law, possesses the power to protect and promote the public health, safety, and welfare, to regulate the use of the Public rights-of-way and to issue and revoke licenses; and

WHEREAS, the Village owns or is the proprietor over public streets, rights-of-way, alleys, and other public property and acts as trustee and guardian for the benefit of Village citizens; and

WHEREAS, pursuant to the laws of the State of Texas, the Texas Legislature has recognized and established that an incorporated municipality may make a reasonable, lawful charge for the use of public rights-of-way within the municipality; and

WHEREAS, the Board of Aldermen has determined that the availability of refuse collection services in the Village will promote the public health, safety, and general welfare of the residents of the Village and would serve the public interest; and

WHEREAS, several private refuse contractors are presently collecting and charging citizens and businesses for collection and disposal of refuse; and

WHEREAS, these collectors are utilizing Village streets in their daily operation and are not contributing to right-of-way maintenance, street repair, or traffic safety.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE VILLAGE OF SALADO, TEXAS:

SECTION 1: DEFINITIONS

A. General

For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Words not defined shall be given their common and ordinary meaning.

B. Specific Definitions

Board: The Board of Aldermen, the governing body of the Village of Salado.

Grantee: A waste hauling service authorized to do business in Texas, or its successor, transferee or assignee, which is granted a franchise to collect refuse within the Village of Salado pursuant to this Franchise ordinance.

Gross Revenues: All revenues derived directly or indirectly by the Grantee, its affiliates, subsidiaries, parent, and any person in which the Grantee has a financial interest, from or in connection with the operation of the waste hauling service pursuant to this Ordinance. "Gross Revenues" shall not include any taxes or fees on waste hauling services furnished by the Grantee imposed directly upon any customer by the state, Village or other governmental unit and collected by the Grantee on behalf of such governmental units.

Permittee: A person granted a permit to collect refuse in the Village of Salado pursuant to this Franchise ordinance.

Person: Any human individual, association, corporation, partnership, proprietorship, trust or agency.

Refuse: Municipal Solid Waste, as defined by Texas law. For purposes of this Ordinance, the term is synonymous with trash, litter, debris, and garbage.

Street: A publicly dedicated or maintained right-of-way, a portion of which is open to use by the public for vehicular travel. The term also includes any alley or highway. Sidewalk" means that portion of a street that is not improved and maintained for vehicular travel.

Village: The Village of Salado, a municipal corporation, located in Bell County, Texas.

SECTION 2: AUTHORIZATIONS REQUIRED

A. **Franchise:** No person shall collect refuse or empty refuse containers for compensation within the Village without having been first granted a franchise by the Village.

B. **Permit:** No person shall collect refuse, empty refuse containers, or convey / transport refuse, garbage or trash on the streets, alleys and public thoroughfares within the Village without first having applied for and been issued a permit by the Village. The purpose of a permit is to cause franchise holders to submit updated (current) registration information to the Village annually.

C. **Exception:** It shall be an exception to subsections A. and B. (above) that Salado resident owners or public institutions, churches, businesses and industrial firms that use a vehicle rated less than one ton to haul their own refuse shall not be required to have a franchise or a permit.

SECTION 3: GRANT OF FRANCHISE

There is hereby granted by the Village of Salado Texas (hereinafter called Village), to the following private refuse collectors:

(a) Al Clawson Disposal, Inc.
(b) Eagle Disposal
(c) Centex Waste Management
(d) Temple Iron and Metal

(hereinafter called "grantees"), and their successors and assigns, for the full term of three (3) years from the effective date of this Ordinance, the right and privilege to collect, transport and to contract for refuse collection within the Village of Salado, Texas.

SECTION 4: FRANCHISE RENEWAL

This franchise may be renewed by the Village upon application of a Permittee pursuant to the procedure established as follows, and in accordance with the then applicable law:

A. At least twelve (12) months prior to the expiration of the initial term of this franchise, a Permittee shall inform the Village in writing of its intent to seek renewal of the franchise. Subsequent renewals shall be filed for as specified by the Village Board of Aldermen.

B. After giving public notice, the Village shall proceed to determine whether the Permittee has satisfactorily performed its obligations under the franchise.

C. If the Board of Aldermen finds a renewal of the franchise with Permittee is within the public interest, the Board may enter into a renewal of the franchise with the Permittee

under the then appropriate terms and conditions for an additional term of three (3) years. Subsequent renewal for three (3) year periods may be applied for by a Permittee in accordance with procedures outlined in the Section.

D. A Permittee shall not have any express or implied right of renewal of this franchise and any such renewal determination rests solely with the Village Board of Aldermen whose decision therein shall be final.

SECTION 5: PERMIT CONDITIONS

A. As a condition for the issuance of a permit, the applicant shall;

(1) Maintain minimum insurance coverage in the amount of $100,000/$300,000 for personal injury and $25,000 for property damage for each vehicle to be operated in the Village of Salado and showing the Village of Salado as an additional insured.

(2) Indemnify and hold Village harmless from any liability or damages which may occur as a result of the applicant's operation in the Village of Salado and indemnify the Village of Salado for liability or damages created as a result of the applicant's operation in the Village of Salado.

(3) When all conditions have been met, the Village shall issue an annual permit which shall cover the period of January 1 through December 31 of each year.

(4) Permittees agree to make quarterly reports and payments, as hereinafter provided, no later than thirty (30) days after each quarterly due date, such dates being October 1, January 1, April 1, and July 1 of each year. Each payment shall be a sum of money equal to four percent (4%) of the gross revenue received for refuse collection by Permittee within the incorporated limits of the Village of Salado, Texas for the preceding calendar quarter.

This subsection shall never be pleaded in defense or in bar against the imposition of a gross receipts tax or charge by the Village of Salado, Texas, which is greater than the percentages set forth in this subsection, if the Village is hereafter, by statute, authorized to impose the same, and if it has imposed said greater tax or charge uniformly upon all persons, firms or corporations then engaged in rendering gas, water, electric, telephone service or cable television within the Village, but the amounts due under the Section shall be included and credited upon any such greater tax or charge, if the same is ever imposed.

(5) The street use or rental fee set forth in the preceding subsection of this ordinance shall be additional to all ad valorem taxes and to all other lawful taxes and charges imposed by the Village of Salado upon permitted sanitation collections.

(6) The permit granted under this section shall be reviewable any time and may be cancelled upon thirty days written notice by the Village of Salado. Said permit does not create any vested rights, which the Village of Salado may not cancel and terminate upon said notice.

(7) No grant, right or privilege afforded to the applicant shall be assigned or transferred in any manner without written permission of the Village Board of Aldermen.

B. In the event the Village staff shall refuse to grant a permit to any applicant, the action will be final unless the applicant shall, within ten (10) days after refusal to grant such permit, file a written appeal with the Village Secretary addressed to the Village Board of Aldermen, requesting a review.

C. The Village reserves the right of reasonable regulation of the placement of any equipment and/or facility by a Permittee and to reasonably designate where such equipment, facilities or other property of Permittee are to be located. A Permittee shall, when requested by the Village, make changes in the location of its equipment, provided however, such changes shall be reasonable and shall conform to the requirements of the Village. Such change shall be effected within a reasonable amount of time after such request is made, without charge to the Village or customer. In no instance shall a Permittee's equipment interfere with or obstruct the public rights-of-way.

SECTION 6: VIOLATIONS

The rights and privileges granted herein shall become void upon the failure or refusal of a Permittee, its successors and assigns, to observe the terms and provisions of this Ordinance. Should a Permittee be in violation of this Ordinance by way of any act or omission, Village shall serve a notice upon such Permittee, or its agent, specifying with particularity the acts or omissions deemed to be a violation of the provisions of this Ordinance, and if such Permittee shall not eliminate, cure or obviate such violation within ninety (90) days after such notice is received, the rights and privileges granted herein shall terminate.

SECTION 7: PERMITTEE'S OBLIGATIONS

A. Permittees shall render efficient service, and interrupt service only for good cause.

B. Permittees shall have a listed telephone, and have an employee on duty during reasonable hours so that complaints, requests or adjustments may be received.

C. In case of any emergency or disaster, a Permittee shall, upon request of the Village Board of Aldermen, make available its facilities to the Village for emergency use during the emergency or disaster period.

D. Upon termination of service to any subscriber, a Permittee shall promptly remove all its equipment from the premises of such subscriber upon its request without cost to the subscriber.

E. Permittees agrees to extend their services to areas annexed into the Village limits within sixty (60) days of receiving notification from the Village.

F. In a situation when a Permittee must dump a load in Salado due to fire, the Permittee shall immediately notify the Salado Volunteer Fire Department and the Salado Police Department. Failure to immediately report the dumping of a load within the Village shall constitute breach of the franchise and permit, and may carry criminal or civil penalties.

SECTION 8: PERMIT APPLICATION

Refuse Collector shall have fifteen (15) days after final passage of this Ordinance in which to file its written application for a permit with the Village Secretary.

SECTION 9. ENFORCEMENT

A. Civil & Criminal Penalties

The Village shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Ordinance is hereby declared to be a nuisance.

B. Criminal Prosecution

Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding five hundred dollars ($500.00). Each day that a provision of this Chapter is violated shall constitute a separate offense. An offense under this Ordinance is a misdemeanor.

C. Civil Remedies

Nothing in this Ordinance shall be construed as a waiver of the Village's right to bring a civil action to enforce the provisions of this Ordinance and to seek remedies as allowed by law, including, but not limited to the following:

(a) Stop work orders mandating the immediate cessation of all unauthorized activities; and
(b) injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance; and
(c) a civil penalty up to one thousand dollars ($1,000.00) a day when it is shown that the defendant was actually notified of the provisions of the Ordinance and after receiving notice committed acts in violation of the Ordinance or failed to take action necessary for compliance with the Ordinance; and

(d) other available relief.

SECTION 10: SEVERABILITY

If any section, sentence, clause or phrase of this Ordinance is for any reason held illegal or unconstitutional, such invalidity shall not affect the validity of the remainder of this Ordinance.

SECTION 11: RATES

The determination of the Permittees rates shall be subject to the Rules and Regulations of any State or Federal Authority, which may subsequently by due process of law, acquire jurisdiction over this type of industry or enterprise.

SECTION 12: ASSIGNMENT

This franchise shall not be assignable without approval of a simple majority of the Village Board of Aldermen.

SECTION 13: EFFECTIVE DATE

This Ordinance shall take effect on April 16, 2009.

SECTION 14: REPEALER

All Ordinances, part of Ordinances, or resolutions in conflict herewith are expressly rescinded in their entirety.

READ, PASSED, and ADOPTED this, the 16 day of April 2009.

THE VILLAGE OF SALADO, TEXAS

Mayor Merle Stalcup

ATTEST:

Diana Zulauf, Village Secretary