

## ORDINANCE NO. 2013-2015

AN ORDINANCE OF THE CITY OF NEW PORT RICHEY, FLORIDA, AMENDING DIVISION 2 OF CHAPTER 10, ARTICLE II OF THE NEW PORT RICHEY CITY CODE TO PROVIDE FOR FRANCHISE AGREEMENTS BETWEEN PERSONS ENGAGING IN THE BUSINESS OF WASTE HAULING AND THE CITY, AND TO REQUIRE THAT PERSONS SEEKING TO BECOME FRANCHISED AND TO QUALIFY FOR WASTE HAULING SPECIAL PERMIT EXECUTE A FRANCHISE AGREEMENT WITH THE CITY, DEMONSTRATE ABILITY TO COMPLY WITH ALL LAWS, RULES OR ORDINANCES, AND PROVIDE RECYCLING SERVICES TO ITS CUSTOMERS ONCE PER WEEK, AND TO PROVIDE FOR REQUIREMENTS OF FRANCHISE AGREEMENTS INCLUDING, BUT NOT LIMITED TO, FRANCHISE FEES; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR SEVERABILITY.

WHEREAS, the City of New Port Richey desires to amend its ordinance and thereby authorize and require non-exclusive franchise agreements for solid waste collection services within the City for the privilege of using the public rights-of-way and places and conducting business thereon within the territorial limits of the City and the exercise of other special privileges granted by the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW PORT RICHEY, FLORIDA:

Section 1. Section 10-41 of the New Port Richey City Code is hereby amended to as follows:

### **Sec. 10-41. - Required.**

It shall be unlawful for any person to engage in the business enterprise of collecting, transporting or disposing of garbage, trash or refuse within this city or to use the streets, alleys or rights-of-way of this city for such purpose, regardless of whether such person is required by law to hold a local business tax receipt issued by this city, without first being issued a special permit by the city council and entering into a Franchise Agreement with the city, the form of which shall be approved by the city council. For purposes of this Chapter of the New Port Richey City Code and all sections hereof, "garbage, trash, or refuse" shall mean and include all solid waste refuse, roll-off services of construction and debris (C&D), special waste, and special pickups of seasonal trash and debris, but does not include the collection of "recovered materials" as defined in Section 403.703, Florida Statutes as regulated pursuant to Chapter 403, Florida Statutes.

Section 2. Section 10-42 of the New Port Richey City Code is hereby amended to as follows:

**Sec. 10-42. – Qualification.**

In order for any person to qualify for a special permit as required by this division, the city council shall determine by competent, substantial evidence that such person has complied with the following criteria. Such person shall:

- (1) Own, possess, lease or otherwise maintain or control the necessary equipment of a type, design and specification which is generally manufactured for the collection of garbage, trash and refuse in sufficient quantity to assure the prompt, sanitary and efficient collection, transportation and disposition of the garbage, trash and refuse which is to be collected by such person within this city in the performance of such a business; provided, however, that the body of all garbage collection vehicles used by such person shall be watertight to the extent that it shall be impossible for water or other liquids to escape prior to the unloading of the contents thereof at the disposal area and all packer vehicles so listed shall have an enclosed cab, well located handrails, adequate door fastenings, hydraulic unloading capabilities, and ample racks or supports for tools, containers and other equipment and all such vehicles shall have adequate cover to prevent the contents thereof from falling, spilling or being blown from any such vehicle while in transit and all such vehicles shall be adequate in number and type to perform, satisfactorily, the duties prescribed for the same and shall be maintained in good mechanical condition; provided, however, that all such vehicles or other equipment shall also conform to any requirements as prescribed by the laws of the state or the rules and regulations of the state department of health and rehabilitative services, the state department of pollution control and any other governmental agency having jurisdiction to prescribe the type, standards or specifications of any such vehicles or equipment;
- (2) Employ, supervise, manage and control a required number of qualified employees who are necessary in order to operate and maintain such equipment so that the use thereof will conform with the requirements of this article and all other laws, rules or ordinances;
- (3) Own, possess, lease or otherwise maintain or control the necessary collection equipment and employ, supervise, manage and control the required number of competent employees to ensure that the residential, commercial and industrial customers of such applicant will receive collection service at a frequency of not less than two (2) times per week, between Mondays and Saturdays, inclusive the hours of 6:00 a.m. and 7:00 p.m. on Mondays and Thursdays within those residential areas of the City where single or multiple family structures exist, and garbage cans

for garbage, trash or refuse, or blue bags for recyclable materials are used, at intervals of not less than three (3) calendar days between collections during such a workweek except during weeks which contain legal holidays in which event the applicant shall possess the necessary equipment and employ the necessary personnel to ensure that there will be a collection of garbage, trash and refuse from those customers receiving such service on the day immediately following the holiday, if the holiday occurred on the day which was scheduled for collection, and recycling collection services of not less than one (1) time per week; provided, however, that nothing contained in this subsection will prevent such applicant and any customer of such applicant from entering into a special agreement for a collection schedule of less or greater frequency than required by this subsection;

- (4) Be insured by a comprehensive liability insurance policy in an amount not less than one hundred thousand dollars (\$100,000.00) per person bodily injury, three hundred thousand dollars (\$300,000.00) per occurrence, and twenty-five thousand dollars (\$25,000.00) property damage per occurrence, and that the employees of such person are properly insured as required by F.S. chapter 440, and that the insurance shall be evidenced by delivering a certificate of such insurance with the application for such a special permit; and
- (5) Have the capacity and willingness to comply with all applicable local, state, and federal laws, rule, and regulations.

Section 3. Division 2 of Article II, Chapter 10 of the New Port Richey City Code is hereby amended to add the following section:

**Sec. 10-49. Franchise Agreement**

(a) The Franchise Agreement required by Section 10-41 shall be in addition to all other provisions of this division, including the required special permit. No person shall utilize public rights of way, alleys, streets, and other public infrastructure within the city for the purpose of engaging in the business enterprise of collecting, transporting or disposing of garbage, trash or refuse within this city without first entering into a Franchise Agreement with the city, the form and terms of which shall be set by resolution of the city council.

(b) A person may not execute a Franchise Agreement with the city unless and until they have met all requirements contained in this article and obtained a special permit pursuant to this division and which is valid and in good standing.

(c) Upon execution of the Franchise Agreement, the person shall be considered a "franchisee" with all benefits and privileges set forth in the Franchise Agreement and must at all times comply with all requirements set forth in this article, the Franchise Agreement, as well as any and all laws, rules, regulations, ordinances, and orders of regulatory bodies applicable to the business enterprise of collecting, transporting or disposing of garbage, trash or refuse within this city. Failure of the city or any governmental agency to take action on any violation shall not relieve the franchisee of compliance nor be deemed a waiver of franchisee's obligation to comply with all such requirements and laws.

(d) Franchise Fees:

- a. Each Franchise Agreement shall provide for payment of franchise fees from the franchisee to the city as compensation for the rights and benefits granted hereunder, including but not limited to, the right to engage in the business enterprise of collecting, transporting or disposing of garbage, trash or refuse within this city and the right to utilize public rights of way, alleys, streets, and other public infrastructure within the city and all benefits associated therewith.
- b. The franchise fee shall be based on the collected revenues of the franchisee, and shall be in the form of a percentage set by resolution of the city council. Use of a billing method that has the affect of reducing or avoiding the payment of franchise fees under the Franchise Agreement shall be cause for immediate termination and revocation of the Franchise Agreement, without prejudice as to any additional penalties for such actions.
- c. Nothing contained herein shall be construed to permit or allow any franchisee to charge a rate amount to its customers within the city in excess of those prescribed by the Pasco County Board of County Commissioners.
- d. Franchise fees shall be paid monthly and must be accompanied by a statement of the franchisee's collected revenues in a form prescribed by the city's finance department. Failure to remit the franchise fees and documentation required herein shall be grounds for termination and revocation of the Franchise Agreement.

(c) The city reserves its right to enter into Franchise Agreements and grant other similar rights to more than one person, business, or entity. The Franchise Agreement is not an exclusive right to provide the services described herein within the

City. The city further reserves its right to provide its services, including but not limited to, the waste collection services described herein, to any person. The execution of the Franchise Agreement, and any renewal thereof, shall not be construed as creating any vested rights. Each Franchise Agreement shall be terminable and revocable in accordance with its terms and the terms of this article.

Section 4. This Ordinance shall become effective immediately upon its adoption. The adoption of this Ordinance shall be the final adjudication of the issues presented unless proper steps are initiated in a court of competent jurisdiction to secure relief within twenty (20) days from the date of the Council's adoption of this Ordinance.

Section 5. If any phrase or portion of this Ordinance, or the particular application thereof, shall be held invalid or unconstitutional by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases and their application shall not be affected thereby.

Section 6. The above and foregoing Ordinance was read and approved on first reading at a duly convened meeting of the City Council of the City of New Port Richey, Florida, this 16th day of July, 2013.

The above and foregoing Ordinance was read and approved on second reading at a duly convened meeting of the City Council of the City of New Port Richey, Florida, this 4th day of February, 2013.



ATTEST:

Doreen Summers

Doreen Summers

City Clerk

(Seal)

Bob Consalvo

Bob Consalvo

Mayor-Council Member

APPROVED AS TO LEGAL FORM AND CONTENT

By: Michael S. Davis

Michael S. Davis, City Attorney