



**CITY OF TYLER
CITY COUNCIL COMMUNICATION**

Agenda Number: O-3

Date: April 12, 2006

Subject: Request that the City Council consider adoption of an ordinance amending City Code Chapter 16 "Solid Waste Disposal Regulations", to reflect changes making the provision requiring indemnity for collection on private property inapplicable to commercial services provided under contract.

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Item Reference: Tyler City Code Chapter 16

The Solid Waste Department is proposing a change to Section 16-6., "Indemnity for collection on private property". The proposed amendment, if approved, will:


- 1) exclude commercial customers from having to indemnify the City, its officers, agents and employees for all claims, including injuries to persons and property damage, arising out of the City's entry and exit on property subject to the commercial service provided by the City, and
- 2) require that all commercial customers have a written agreement with the Solid Waste Department governing the services and protections provided thereunder.

Currently, all commercial customers of the Solid Waste Department have written contracts which include language indemnifying the City against any and all liability which the City may be responsible for as a result of bodily injuries, property damage, or violation of law to the extent caused by any negligence, omission or willful misconduct of a commercial customer. Therefore, the net effect of this amendment will be that the City no longer is indemnified for liability arising out of or in connection with the City's entry and exit onto private property as a result of the negligent or intentional acts or omissions of the City, its officers, agents or employees in the performance of such commercial service agreements.

RECOMMENDATION:

It is recommended that the City Council adopt the attached ordinance amending City Code Chapter 16, "Solid Waste Disposal Regulations", to reflect changes making the provision requiring indemnity for collection on private property inapplicable to commercial services provided under contract.

Drafted/Recommended By:
Department Leader


Dan Brotton
Director of Solid Waste

Edited/Submitted By:
City Manager

ORDINANCE NO. 0-2006-37

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING TYLER CITY CODE CHAPTER 16., "SOLID WASTE DISPOSAL REGULATIONS", PROVIDING FOR CHANGE MAKING PROVISION REQUIRING INDEMNITY FOR COLLECTION ON PRIVATE PROPERTY INAPPLICABLE TO COMMERCIAL SERVICES PROVIDED UNDER CONTRACT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, Texas Health and Safety Code Section 363.111 provides that the governing body of a municipality may adopt rules for regulating solid waste collection, handling, transportation, storage, processing, and disposal.

WHEREAS, Texas Health and Safety Code Section 363.113 provides that each municipality shall review the provision of solid waste management services in its jurisdiction and shall assure that those services are provided to all persons in its jurisdiction by a public agency or private person.

WHEREAS, Texas Health and Safety Code Section 363.116 provides that A public agency may enter into contracts to enable it to furnish or receive solid waste management services on the terms considered appropriate by the public agency's governing body.

WHEREAS, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for the good government, peace, or order of the municipality; and

WHEREAS, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

WHEREAS, the Solid Waste Department requires all commercial customers to have a written agreement with the Solid Waste Department which governs the services and protections provided thereunder and which include provisions outlining the necessary protections for such service.

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

PART 1: That Tyler City Code Chapter 16, "Solid Waste", Article I, "Solid Waste Disposal Regulations", Section 16-6, "Indemnity for collection on private property", is hereby amended by adding a new subsection d. to read as follows:

Sec. 16-6. Indemnity for collection on private property.

d. The provisions of this section shall not apply to commercial service customers of the City of Tyler Solid Waste Department. All commercial service customers shall be required to have a written agreement with the Solid Waste Department governing the services and protections provided thereunder, and such agreement provisions regarding indemnity for collection on private property shall control for such commercial service operations. (Ord. No. 0-2006-37, 4/12/06)

PART 2: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 3. That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall become effective upon its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be April 14, 2006.

PASSED AND APPROVED this 12th day of April, A. D., 2006.

JOSEPH O. SEEBER, MAYOR OF
THE CITY OF TYLER, TEXAS

ATTEST:

APPROVED:

CASSANDRA BRAGER, CITY CLERK

CITY ATTORNEY