

ORDINANCE NO. O-20-009

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS AMENDING CHAPTER 11, GARBAGE AND TRASH, OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS PROVIDING FOR THE REGULATION OF RESIDENTIAL AND COMMERCIAL SOLID WASTE COLLECTION, DISPOSAL AND RECYCLING SERVICES WITHIN THE CITY LIMITS; PROVIDING FOR THE REGULATION OF COMMERCIAL OR RESIDENTIAL ROLL-OFF SERVICES AND FRANCHISE AGREEMENTS; PROVIDING FOR A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR PROPER NOTICE AND MEETINGS

SECTION 1.

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2.

Chapter 11, Garbage and Trash, of the Code of Ordinances of the City of Brenham, Texas, is hereby amended in its entirety to read as follows:

ARTICLE I. GENERAL PROVISIONS

Sec. 11-1. - Definitions.

As used in this chapter, the following terms shall have the respective meanings ascribed to them in this section:

Brush shall mean cuttings or trimmings from trees, shrubs, or lawns and similar materials.

Bulky Waste shall mean non-hazardous, non-freon containing items too large to fit in a Residential Customer's garbage container. Bulky waste does not include tires. Collection and acceptance of these items will be determined case by case.

Cart shall mean a receptacle/container, equipped with wheels and a bar, with a capacity of approximately sixty-four (64) or ninety-six (96) gallons, designed to be mechanically dumped into collection equipment via a fully automated truck arm or semi-automated truck tipper.

City shall mean the City of Brenham, Texas and the City's officers, elected officials, employees, agents, volunteers, and representatives.

City Council shall mean the governing body of the City.

City Facility shall mean a City-owned or operated facility.

Collect or Collection shall mean the act of removing Solid Waste, Recyclables, or Yard Waste for transport to a disposal or recycling facility.

Commercial Refuse shall mean all Refuse, Garbage, Solid Waste, and other waste generated by, at, or within a Commercial Unit, but not including Construction Debris.

Commercial Unit shall mean all premises, locations or entities, public or private requiring Refuse, Garbage and/or Solid Waste collection within the corporate limits of the City that are not classified as a Residential Unit or City Facility.

Construction Debris shall mean waste building materials resulting from construction, remodeling, repair, or demolition operations, typically collected in roll-off bins without lids or accepted at a permitted disposal or permitted processing facility.

Container shall mean a weatherproof container easily identifiable and designated for solid waste or recycling collection.

Contaminated Materials shall mean Recyclable Materials and/or Yard Waste mixed with solid waste or altered in a way that results in materials being unrecyclable or non-compostable.

Curbside shall mean the location within three (3) feet of the curb of the street abutting Customer's property that provides primary access to the Service Unit unless such placement interferes with or endangers movement of vehicles or pedestrians in the public right-of-way.

Customer(s) shall mean an occupant of a Residential Unit or Commercial Unit that has a City utility account that is billed for Solid Waste and/or Recyclable Materials service on a monthly basis.

Dead Animal (Small) shall mean an animal or part of an animal equal to or greater than ten (10) pounds in weight, but less than one hundred fifty pounds (150) pounds in weight, that has expired from any cause except those slaughtered or killed for human use.

Dead Animal (Large) shall mean an animal or part of an animal equal to or greater than one hundred fifty (150) pounds in weight, that has expired from any cause except those slaughtered or killed for human use.

Disposal shall mean the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or non-containerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater, as defined in 30 Texas Administrative Code § 330.3(44).

Disposal Site or Facility shall mean all contiguous land, structures, other appurtenances, and improvements on the land that is licensed and permitted, as required by all governmental bodies having jurisdiction, for disposing of Solid Waste. A Disposal Site may be publicly or privately owned and may consist of several Disposal operational units.

Dumpster shall mean a watertight receptacle, with a capacity of approximately two (2) cubic yards up to approximately eight (8) cubic yards, equipped with a tight-fitting lid and designed to be mechanically dumped into a loader-packer type truck.

Excluded Waste means Hazardous Waste, Special Waste, and Construction Debris.

Facility means all contiguous lands and structures, other appurtenances, and improvements on the land used for the storage, processing or disposal of Solid Waste or Recyclable Materials.

Garbage shall mean solid waste consisting of non-hazardous refuse, dead animals (small), putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products, as defined in 30 Texas Administrative Code §330.3(56).

Generator shall mean any person or entity that produces Solid Waste.

Hazardous Waste shall mean any solid waste identified or listed as a Hazardous Waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 United States Code, §6901 et seq., as amended and defined in 30 Texas Administrative Code §330.3(62).

Heavy Trash shall mean refuse that is of such size and weight that it cannot be placed in a sixty-four (64) or ninety-six (96) gallon container. Heavy trash shall include tree limbs less than four feet (4') in length and loose lumber less than five feet (5') in length.

Landfill shall mean a permitted municipal solid waste landfill.

Municipal Solid Waste (MSW) shall mean solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste, as defined in 30 Texas Administrative Code §330.3(88).

Non-Compacted Waste means Solid Waste not easily containerized in a Cart such as, but not limited to, appliances, furniture, etc.

Recyclables or Recyclable Materials shall mean materials, recovered from the solid waste stream for the purpose of reuse or reclamation, a substantial portion of which are consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Recyclable materials are not solid waste unless they are abandoned or disposed of as garbage rather than reprocessed into another product.

Recycling service shall mean the Collection of Recyclables for transport to a recycling facility for the purpose of reuse or reclamation.

Refuse or Rubbish shall mean non-putrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials, combustible rubbish, including paper, rags, cardboard, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; noncombustible rubbish, including glass, crockery, tin cans, aluminum cans, metal furniture and like materials which will not burn at ordinary incinerator temperatures (1600° F to 1800° F), as defined in 30 Texas Administrative Code §330.3(130).

Resident shall mean a person who resides in a Residential Unit.

Residential Unit(s) shall mean an improved property which is used, or capable of being used, for a dwelling, including but not limited to a single-family dwelling, duplex, four-plex, townhouse, apartment, condominium unit and similar dwellings. A Residential Unit shall be deemed occupied when either water or electric services are being supplied thereto.

Residential Service shall mean Solid Waste Services, Yard Waste Services, and Recycling Services for Residential Units.

Residue shall mean the material regularly associated with and attached to Recyclable Materials as a part of the original packaging or usage of that material that is not recyclable.

Roll-off shall mean an open top receptacle, having a minimum capacity of approximately ten (10) cubic yards up to approximately forty (40) cubic yards, intended to be loaded onto a motor vehicle.

Roll-off Compactor shall mean an enclosed, watertight Roll-off with a Compactor.

Roll-off Service shall mean the temporary placement of a roll-off or roll-off compactor for use other than regularly scheduled sanitation service, or collection/servicing of the same.

Solid Waste shall be defined in accordance with 30 Texas Administrative Code §330.3(145), as garbage, rubbish, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

- 1) Solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Texas Water Code, Chapter 26;
- 2) Soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or
- 3) Waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or re-pressurizing plants and is Hazardous Waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 United States Code, §6901 *et seq.*).

Solid Waste Services shall mean the collection of Solid Waste and Disposal of Solid Waste at a Disposal Site.

Special Waste shall be defined in accordance with 30 Texas Administrative Code §330.3(148), as any solid waste or combination of solid wastes that because of its quantity, concentration, physical or chemical characteristics, or biological properties requires special handling and Disposal to protect the human health or environment. If improperly handled, transported, stored, processed, or disposed of or otherwise managed, it may pose a present or potential danger to the human health or the environment. Special wastes are:

- 1) Hazardous Waste from conditionally exempt small-quantity generators that may be exempt from full controls under Chapter 335, Subchapter N of Title 30 TAC (relating to household materials which could be classified as hazardous wastes);
- 2) Class 1 industrial nonhazardous waste;
- 3) Untreated medical waste;
- 4) Municipal wastewater treatment plant sludges, other types of domestic sewage treatment plant sludges, and water-supply treatment plant sludges;
- 5) Septic tank pumpings;

- 6) Grease and grit trap wastes;
- 7) Wastes from commercial or industrial wastewater treatment plants; air pollution control facilities; and tanks, drums, or containers used for shipping or storing any material that has been listed as a hazardous constituent in 40 Code of Federal Regulations (CFR) Part 261, Appendix VII but has not been listed as a commercial chemical product in 40 CFR §261.33(e) or (f);
- 8) Slaughterhouse wastes;
- 9) Dead animals (large);
- 10) Drugs, contaminated foods, or contaminated beverages, other than those contained in normal household waste;
- 11) Pesticide (insecticide, herbicide, fungicide, or rodenticide);
- 12) Discarded materials containing asbestos;
- 13) Incinerator ash;
- 14) Soil contaminated by petroleum products, crude oils, or chemicals in concentration of greater than 1,500 milligrams per kilogram total petroleum hydrocarbons; or contaminated by constituents of concern that exceed the concentrations listed in Table 1 of § 335.521(a)(1) of Title 30 TAC (relating to Appendices);
- 15) Used oil;
- 16) Waste from oil, gas, and geothermal activities subject to regulation by the Railroad Commission of Texas when those wastes are to be processed, treated, or disposed of at a solid waste management facility authorized under this chapter;
- 17) Waste generated outside the boundaries of Texas that contains;
 - a. Any industrial waste;
 - b. Any waste associated with oil, gas, and geothermal exploration production, or development activities; or
 - c. Any item listed as a special waste in this paragraph;
- 18) Lead acid storage batteries; and,
- 19) Used oil filters from International combustible engines.

TAC shall mean the Texas Administrative Code now and as amended.

Unit shall mean Residential and Commercial Units that qualify for services.

Yard Waste shall be defined in accordance with 30 Texas Administrative Code § 330.3 (181) as leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscaping maintenance and land-clearing operations. This term does not include stumps, roots, or shrubs with intact root balls, as defined in 30 Texas Administrative Code § 330.3 (181). Brush, tree limbs and similar materials must be securely tied together forming an easily handled package not exceeding four (4) feet in length or fifty pounds (50 lbs.) in weight; tree limbs shall not exceed three (3) inches in diameter.

Yard Waste Services shall mean the Collection of Yard Waste and Disposal of Yard Waste at a Disposal Site.

Sec. 11-2. Exclusivity.

The City retains the exclusive right to provide solid waste services, disposal and recycling services for commercial and residential customers within the city limits. The City may provide such services directly or by granting a franchise to one or more independent contractors. It shall be unlawful for any person, firm or corporation to provide solid waste services or recycling services without a franchise from the City.

Sec. 11 -3. Container Assignment

Solid waste and recycling containers are assigned and issued to the physical address of the customer. Containers shall not be removed, transferred, or replaced by the customer. This prohibition does not apply to City employees or an independent contractor with a franchise from the City.

Sec. 11-4. Unauthorized use of and or damage to residential or commercial containers.

It shall be unlawful for any person or business to place anything in a container, scavenge through or remove anything from a container, or relocate a container, or interfere with the servicing of a container that belongs to another customer or business.

It shall be unlawful to set fire to or burn any material in a container or paint or mark upon a container. Damage to a container caused by a customer's abuse, misuse, or neglect may result in additional charges equal to the cost of a new container. Sanitation service may also be discontinued until such fees for a replacement are paid in full. It is the customer's responsibility to file police reports for damaged, stolen or vandalized containers.

Sec. 11- 5. Obstruction of Containers Prohibited.

It shall be unlawful to park, place, allow, permit, or cause to be parked or placed any motor vehicle, trailer, boat, or similar obstruction within three (3) feet of a container, or in a way that obstructs the servicing of a container. If an obstruction prevents the servicing of a container, the City is authorized to remove the obstruction. Any and all costs associated with the removal of the obstruction shall be the responsibility of the customer.

Sec. 11- 6. Covering on vehicles to prevent scattering.

It shall be unlawful for any person to transport by vehicle or trailer any refuse, garbage, rubbish or junk within the City unless such refuse, garbage, rubbish or junk is covered in a manner sufficient to prevent any such from blowing out of or falling from said vehicle or trailer onto any public street or right-of-way.

Sec. 11- 7. Burning refuse.

It shall hereafter be unlawful for any person to burn any trash, waste, or rubbish within the corporate limits of the City. The fire marshal may adopt and promulgate rules necessary for the administration of this section consistent with the fire marshal's duties under Chapter 8 of this Code of Ordinances regarding the safety and welfare of the public.

Sec. 11-8. Rates for collection, removal and/or disposal of solid waste and recycling.

The charges for residential and commercial solid waste services, recycling services, and yard waste services from customers shall be established by the City Council.

Sec. 11-9. Failure to Pay.

Any customer who fails or refuses to pay the monthly charges established by the City Council when due shall no longer receive solid waste services, recycling services, or yard waste services until all related charges are paid in full.

Sec. 11-10. Holidays.

Thanksgiving, Christmas Day, and New Year's Day are designated as holidays. No solid waste services or recycling services shall be provided on these designated holidays. If a regularly scheduled pickup day falls on a holiday, collection shall take place within twenty-four (24) hours of the scheduled collection day unless a longer delay is approved by the City Manager.

Sec. 11- 11. Special programs.

The City Council may authorize special programs to assist eligible customers with the collection of solid waste and recyclable materials. Programs may include, but are not limited to, assistance moving containers to and from the curb, recycling opt-out programs, and reduced-size containers.

A customer's participation in any special program offered by the City shall be approved by the City Manager or his designee. The Customer will be responsible for any fees associated with a special program, change or reduction in service.

Sec. 11 - 12. Unlawful Dumping.

It shall be unlawful for any person, by his own action or that of his agent, employee or any person under his control, to cause any garbage, trash, refuse or other waste matter to be dumped, deposited or otherwise discharged or disposed of on any street, lot, park, public place or other area whether publicly or privately owned, except an area legally established as a dumping area. Waste matter includes, but is not limited to, tires, household furnishings, mattresses, appliances, household hazardous waste, vehicle parts, construction debris, solid waste, special waste, or brush.

Sec. 11 - 13. Special Sanitation Services.

When deemed necessary, in the best interests of the general public, the City may direct a special clean-up of unprepared waste, unbundled brush and limbs, and/or bulky waste in circumstances which constitute a health and sanitation or public safety concern. Rates for such special clean-up shall be set by City Council.

Sec. 11 - 14. Penalty.

Any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction of any such violation such person shall be punished by a fine of not less than one dollar (\$1.00) and not more than two thousand dollars (\$2,000.00). Each and every day, or portion thereof, during which any violation of any of the provisions of this chapter is committed, continued or permitted, shall be deemed a separate offense.

Secs. 11-15 – 11-19. - Reserved.

ARTICLE II. RESIDENTIAL WASTE COLLECTION

Sec. 11-20. Solid waste collection and prohibitions.

Only residential refuse is to be placed in the solid waste container. Yard waste, brush and limbs, construction debris, tires, special waste, large dead animals, hot ashes/coals and stable matter such as dirt, brick and rock will not be accepted. All solid waste shall be bagged prior to placement in a container to minimize wind-blown litter and scattered debris caused by spills or animals.

It shall be unlawful for any person to place any solid waste in or around a container that cannot be completely contained within the container. Any waste not placed in the container will not be collected and will remain the responsibility of the customer. Container lids shall be kept closed to prevent scattering of the contents thereof by the wind, and so that insects and vermin may not have access to the contents thereof.

Sec. 11-21. Container availability, placement and collection.

Customers shall be provided one (1) solid waste container per residential unit that has a City utility account that is billed for residential solid waste service on a bi-weekly basis. Additional containers may be available upon request, for an additional fee as established by the City Council.

Residential containers will be collected once per week on a regularly scheduled day. Containers must be placed at the curb, or other approved collection point, no later than 8:00 a.m. on the customer's designated collection day. Containers shall not be placed at the curb for collection before 8:00 p.m. on the day prior to the scheduled collection day. Serviced containers shall be removed from the curb, or other approved collection point, and returned to a location near or adjacent to the dwelling structure no later than 8:00 p.m. on the day of collection.

Customers shall ensure that containers placed for collection are not blocked by a motor vehicle and are at least three (3) feet from other carts, mailboxes, vehicles, trees, telephone poles, water or gas meters, or other fixed objects. Containers shall be placed with arrows on the top of the cart facing the street. Carts shall not be placed on a sidewalk, over sprinkler heads, or under low-hanging tree limbs or cable/electrical wires.

Containers cannot be stored at the curb. All containers must be stored near or adjacent to (side or back) the residential dwelling occupied by the customer. Residential structures that do not have an area on the side or back may store containers in front of the residential dwelling as long as they are stored in manner that is not displeasing to neighbors or diminish the overall look of the neighborhood.

Sec. 11-22. Yard waste disposal and collection.

Customers needing collection of brush and yard waste must request a special pick-up by contacting the Collection/Transfer Station. Prior to collection, yard waste and brush must be cut into four-foot lengths or shorter and put in a separate pile for collection.

Secs. 11-23 – 11-29. Reserved.

ARTICLE III RESIDENTIAL RECYCLING SERVICES

Sec. 11-30. Residential curbside recycling collection.

Only recyclable materials shall be placed in the recycling container. Solid waste, yard waste, brush and limbs, construction debris, tires, special waste, large dead animals, hot ashes/coins and stable matter such as dirt, brick and rock will not be accepted. In the event a customer places garbage or any other item in the container designated for recycling, the customer shall be responsible for removing the garbage or other items from the container.

It shall be unlawful for any person to place any recyclable materials in or around a container that cannot be completely contained within the container. Any recyclable materials not placed in the container will not be collected and will remain the responsibility of the customer. Container lids shall be kept closed to prevent scattering of the contents. Shredded paper may be recycled but must be contained in a clear plastic bag before placement in the container.

Sec. 11-31. Container availability, placement and collection.

Customers shall be provided one (1) recycling container per residential unit that has a City utility account that is billed for residential solid waste service on a monthly basis. Additional containers may be available upon request, for an additional fee as established by the City Council.

Recycling containers will be collected bi-weekly on a regularly scheduled day. Containers must be placed at the curb, or other approved collection point, no later than 8:00 a.m. on the customer's designated collection day. Containers shall not be placed at the curb for collection before 8:00 p.m. on the day prior to the scheduled collection day. Serviced containers shall be removed from the curb, or other approved collection point, and returned to a location near or adjacent to the dwelling structure no later than 8:00 p.m. on the day of collection.

Customers shall ensure that containers placed for collection are not blocked by a motor vehicle and are at least three (3) feet from other carts, mailboxes, vehicles, trees, telephone poles, water or gas meters, or other fixed objects. Containers shall be placed with arrows on the top of the cart facing the street. Carts shall not be placed on a sidewalk, over sprinkler heads, or under low-hanging tree limbs or cable/electrical wires.

Containers cannot be stored at the curb. All containers must be stored near or adjacent to (side or back) the residential dwelling occupied by the customer. Residential structures that do not have an area on the side or back may store containers in front of the residential dwelling as long as they are stored in manner that is not displeasing to neighbors or diminish the overall look of the neighborhood.

Secs. 11-32 – 11-39. Reserved.

ARTICLE IV: COMMERCIAL WASTE COLLECTION

Sec. 11-40. Commercial solid waste disposal and collection.

Commercial solid waste service is available to commercial customers within the city limits. Commercial solid waste rates shall be based on container size and customer's requested service level. All commercial solid waste rates shall be set by the City Council.

Sec. 11-41. Container availability, placement and collection.

Commercial solid waste containers issued to customers shall remain the property of the entity providing the solid waste services. Customers shall only use the containers for their proper and intended purpose and shall not overload (by weight or volume) or alter the containers.

Containers must be set in a place and manner approved by the City. Lids and doors of all containers shall be kept closed at all times except when the container is being filled. Screening must comply with applicable zoning regulations. The City may provide exceptions to screening requirements on a case-by-case basis.

All solid waste shall be bagged prior to placement in a container to minimize wind-blown litter and scattered debris caused by spills or animals. The customer for whom a container has been furnished shall be responsible for keeping the area around the container clean and clear of all garbage and trash. Container lids shall be kept closed to prevent scattering of the contents thereof by the wind, and so that insects and vermin may not have access to the contents thereof.

Customers shall provide safe and unobstructed access to containers on their designated collection days. If a container is blocked or contains prohibited items, it will not be serviced. The customer may be charged for an additional pickup, at a rate to be established by City Council.

Secs. 11-42 – 11-49. Reserved.

ARTICLE V COMMERCIAL RECYCLING SERVICES

Sec. 11-50. Commercial recycling.

Commercial recycling service is available to commercial customers within the city limits. Commercial recycling rates shall be based on container size and customer's requested service level. All commercial recycling rates shall be set by the City Council.

Secs. 11-51 – 11-59. Reserved.

ARTICLE VI COLLECTION/TRANSFER STATION SERVICES

Sec. 11-60. Authorized users of the Collection/Transfer Station.

The City owns a collection/transfer station which acts as a receiving and transfer point for certain municipal solid waste. Persons authorized to utilize the facility are:

- (a) City of Brenham residents and commercial businesses; and
- (b) Washington County residents and commercial businesses.

Sec. 11-61. Rules and regulations for Collection/Transfer Station.

The collection/transfer station must operate in compliance with all applicable Texas Commission on Environmental Quality (“TCEQ”) rules, regulations, and the approved operating site plan. It shall be unlawful for the operator of the collection/transfer station to not comply with all applicable TCEQ rules, regulations, and the approved operating site plan.

Sec. 11-62. Hazardous and special waste.

The collection/transfer station is not permitted to receive hazardous waste or special waste. It shall be unlawful for any person, firm, or corporation to dispose of hazardous waste or special waste at the collection/transfer station.

Sec. 11-63. Operating hours.

The collection/transfer station shall be open during the hours set by the operator of the collection/transfer station. It shall be unlawful for any person to enter onto the premises or leave any waste on the premises when the collection/transfer station is not open.

Secs. 11-64 – 11-69. Reserved.

**ARTICLE VII. COMMERCIAL OR RESIDENTIAL ROLL-OFF SERVICE;
FRANCHISE REQUIRED.**

Sec. 11-70. Roll-off container and commercial compactor services; franchise required.

Commercial and residential roll-off service shall be for the sole purpose of engaging in the business of collecting solid waste using roll-off containers and commercial compactors from commercial and residential sites within the city limits, as approved by the City Council.

No person, firm or corporation shall use any city street, alley or other public right of way in any manner for commercial or residential roll-off or compactor service, unless such person, firm or corporation obtains a franchise from the City for such purpose. Franchise payments shall be made to the City upon acceptance and approval of a franchise agreement by the City Council. The City Council reserves the right to grant an exclusive franchise to one person, firm, or corporation to provide roll-off and commercial compactor services within the city limits.

Any person, firm or corporation that obtains a franchise from the City shall use a Type I permitted landfill for the disposal of all solid waste collected from within the corporate limits of the City.

PASSED and APPROVED on the 7th day of May 2020.

ORDINANCE NO. O-20-026

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS, AMENDING CHAPTER 23 – “SUBDIVISIONS” OF THE CODE OF ORDINANCES, CITY OF BRENHAM, TEXAS BY AMENDING SECTION 23-30 – “REQUIRED IMPROVEMENTS” TO REQUIRE ALL UTILITIES TO BE LOCATED UNDERGROUND THROUGHOUT ALL DEVELOPMENT; AMENDING SECTION 23-31 “COSTS-PAYMENT FOR INSTALLATION OF IMPROVEMENTS BY SUBDIVIDER” TO CLARIFY RESPONSIBILITIES OF DEVELOPERS IN THE INSTALLATION AND CONSTRUCTION OF PUBLIC INFRASTRUCTURE; AMENDING SECTION 23-10 TO REMOVE SUBSECTION (B)(4); PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; PROVIDING FOR PROPER NOTICE OF MEETINGS; AND PROVIDING FOR AN EFFECTIVE DATE.

SECTION 1.

That Chapter 23 – “Subdivisions” of the Code of Ordinances of the City of Brenham, Texas Section 23-30 – Required Improvements, is hereby amended to read as follows:

Section 23-30. – Required Improvements.

(4) *City utilities.* Each developer shall provide city utilities within the subdivision that conform to construction standards of the city for water, sanitary sewerage, gas and electric systems as provided in the current design standards.

(5) *Private utilities.* All private, franchised utilities, including, but not limited to, electric lines, telephone cables, television cables and natural gas mains, shall be located underground throughout any new development; except that overhead electric lines may be utilized in the perimeter easements of a development, where primary electric lines and/or feeders are necessary to provide services to the development and adjacent areas. Such underground utilities shall be buried in dedicated utility easements or in street rights-of-way, as appropriate and approved by the city engineer. The placement and separation of the various utilities within an easement or street right-of-way shall be determined by the city engineer in accordance with city design standards and any other specifications as approved by the city engineer.

SECTION 2.

That Chapter 23 – “Subdivisions” of the Code of Ordinances of the City of Brenham, Texas Section 23-31 – Costs-payment for installation of improvements by subdivider, is hereby amended to read as follows:

Sec. 23-31. – Assurances for Completion of Improvements.

The subdivider shall have the responsibility for construction costs for street and utility improvements within a subdivision and for off-site utility extensions.

- (1) **Purpose.** The provisions of this Chapter, as set forth in this section, are designed and intended to insure that, for all subdivisions of land within the jurisdiction of the City, all improvements as required herein are installed in a timely manner in order that:
 - (a) The City can provide for the orderly and economical extension of public facilities and services; and
 - (b) All purchasers of property within the subdivision shall have a usable, buildable parcel of land; and
 - (c) All required improvements are constructed in accordance with the City’s applicable rules, regulations, standards, and specifications.

- (2) **Policy.** Upon approval of a final plat by the Planning and Zoning Commission, and prior to it being signed by the chairperson of the Planning and Zoning Commission, and before said final plat shall be allowed to be recorded in the plat records of Washington County, Texas the applicant requesting final plat approval shall, within the time period for which the final plat has been conditionally approved by the City:
 - (a) Construct all improvements as required by this Chapter, and provide a surety instrument guaranteeing their maintenance as required herein; or
 - (b) Provide a surety instrument guaranteeing construction of all improvements required by this Chapter, and as provided for herein.
 - (c) In all instances, the original copy of the final plat, without benefit of required signatures of City officials, shall be held in escrow by the City and shall not be released for any purpose until such time as the conditions of this section are complied with.
 - (d) Upon the requirements of this section being satisfied, the final plat shall be considered fully approved, except as otherwise provided for in this Chapter, and the original copy of the final plat shall be signed by the appropriate persons and City staff shall record said final plat in the plat records of Washington County, Texas.

(3) Completion of improvements.

(a) Prior to the signing of the approved final plat by the chairperson of the Planning and Zoning Commission, the applicant shall complete all improvements required by this Chapter in accordance with the approved construction plans and subject to the approval of the Development Services Director or designee and acceptance by the City Council, except as otherwise provided for in this Chapter.

(b) Alternative to completing improvements. The Development Services Director or designee may waive the requirement that the applicant complete all improvements required by this Chapter prior to the signing of the approved final plat, contingent upon securing from the applicant a guarantee, as provided for by this Section, for completion of all required improvements, including the City's cost for collecting the guaranteed funds and administering the completion of improvements, in the event the applicant defaults. Such guarantee shall take one (1) of the following forms:

(1) Performance bond. The applicant shall post a performance bond with the City, as set forth herein, in an amount equal to one hundred ten percent (110%) of the estimated construction costs for all remaining required improvements, using the standard City form.

(2) Escrow account. The applicant shall deposit cash, or other instrument readily convertible into cash at face value, either with the City, or in escrow with a bank, savings and loan or other financial institution acceptable to the City. The use of any instrument other than cash shall be subject to the approval of the City. The amount of the deposit shall equal one hundred ten percent (110%) of the estimated construction costs for all remaining required improvements. In the case of any escrow account, the applicant shall provide the City with an agreement between the financial institution and the applicant, the form and substance of which is subject to approval of the City, guaranteeing the following:

(A) That the funds of said escrow account shall be held in trust until released by the City and may not be used or pledged by the applicant as security in any other matter during that period; and

(B) That in the case of a failure on the part of the applicant to complete said improvements, the financial institution shall immediately make the funds in said account available to the City for use in the completion of those improvements.

(3) Letter of credit. The applicant shall provide an irrevocable letter of credit from a bank, savings and loan or other financial institution acceptable to the City. This letter shall be submitted to the City and shall certify the following:

(A) That the creditor does guarantee funds equal to one hundred ten percent (110%) of the estimated construction costs for all remaining required improvements; and

- (B) That, in the case of failure on the part of the applicant to complete all remaining required improvements within the required time period, the creditor shall pay to the City immediately upon written request of the City, and without further action, such funds as are necessary to fully pay for the completion of those improvements, up to the limit of credit stated in the letter; and
 - (C) That this letter of credit may not be withdrawn, or reduced in amount, until approved by the City according to provisions of this Section.
 - (4) Cost estimates. A licensed professional engineer licensed to practice in the State of Texas shall furnish estimates of the costs of all required improvements to the Development Services Director or designee for approval, who shall review the estimates to determine the adequacy of the guarantee instrument for ensuring the construction of all remaining required improvements.
 - (5) Surety acceptance. The bank, financial institution, insurer, person or entity providing any letter of credit, bond or holding any escrow account pursuant to this Chapter shall meet or exceed the minimum requirements established by this Chapter and all other applicable ordinances, laws and regulations, and shall be subject to the approval of the City.
 - (6) Sufficiency. Such surety shall comply with all statutory requirements, and all associated documents and instruments shall be subject to the approval of the City Attorney as to form, sufficiency, and manner of execution. All such surety instruments shall be both a payment and performance guarantee.
- (c) Time limit for completing improvements. The period within which required improvements must be completed shall be incorporated in the surety instrument and shall not in any event, without prior written approval of the City, exceed one (1) year from date of final plat approval.
- (1) The Development Services Director or designee may, upon application of the applicant and upon proof of hardship, extend the completion date set forth in such bond or other instrument for a maximum period of one (1) additional year. An application for extension shall be accompanied by an updated estimate of construction costs prepared by a professional engineer licensed to engage in the practice of engineering in the State of Texas. A surety instrument for guaranteeing completion of remaining required improvements must be filed in an amount equal to one hundred ten percent (110%) of the updated estimate of construction costs as approved by the Development Services Director or designee.

- (d) Assurances for completion shall be posted or improvements shall be completed within two (2) years of final plat approval, unless otherwise approved by the City. In those cases where a surety instrument has been required and posted, and improvements have not been completed within the terms of said surety instrument, the City may declare the applicant and/or surety to be in default and require that all of the required improvements be installed.
- (e) Inspection and acceptance of improvements. The Development Services and Public Utility Departments shall inspect all required improvements, to ensure compliance with City requirements and the approved construction plans.
- (1) The applicant shall provide a certificate of compliance from the state department of licensing and regulation for all pedestrian improvements within the subdivision.
 - (2) When all required improvements have been satisfactorily completed, the applicant shall request a final inspection.
 - (3) The Development Services Department shall have ten (10) working days to complete this inspection upon notification by the applicant that all required improvements have been completed and are ready for inspection by the City.
 - (4) Within ten (10) working days after the date of inspection the Development Services Department shall issue an inspection report including issuance of a punch list to the applicant denoting remaining items to be completed.
 - (5) Provided that all improvements have been satisfactorily completed, the City Council shall accept in writing the improvements having been satisfactorily completed. The City shall not accept dedications of required improvements or release or reduce a performance bond or other assurance until such time it is determined that:
 - i. All improvements have been satisfactorily completed.
 - ii. One (1) set of as-built plans measuring twenty-two by thirty-four inches (22" x 34") has been submitted to and approved by the Development Services Director or designee, along with a statement prepared by a professional engineer licensed to engage in the practice of engineering in the State of Texas that all improvements have been installed and constructed in accordance with the submitted as-built plans and the City's applicable rules, regulations, standards, and specifications.
 - iii. Copies of all inspection reports, shop drawings and certified test results of construction materials have been submitted to and approved by the Development Services Director or designee.
 - iv. Two (2) copies of the approved maintenance bond meeting the requirements of this Chapter have been provided to the City.

- v. Electronic copy containing computed generated Auto CAD drawings of all public improvements shown on the construction plans, and all lot lines shown on the plat, have been submitted to the Development Services Department to update City maps.
 - vi. An affidavit of all bills paid and a release of liens have been provided to the City.
 - vii. An inventory of infrastructure including infrastructure type, location (latitude and longitude coordinates), length, size and dollar value has been provided, using the standard City form.
 - viii. Any and all other requirements identified in the final plat process have been satisfied.
- (f) Reduction or release of improvement surety instrument.
- (1) The principal amount of a surety instrument may be reduced with the approval of the Development Services Director or designee, and the City Manager or designee, upon actual construction of required improvements by a ratio that the improvement bears to the total public improvements required for the subdivision, as determined by the Development Services Director or designee.
 - (2) Before the City may reduce said surety instrument, the applicant shall provide a new surety instrument in an amount equal to one hundred ten percent (110%) of the estimated cost of the remaining required improvements, and such new surety instrument shall comply with this Chapter and all other applicable ordinances, laws and regulations.
 - (3) The substitution of a new surety instrument shall in no way change or modify the terms and conditions of the performance surety instrument or the obligation of the applicant as specified in the performance surety instrument.
 - (4) In no event shall a surety instrument be reduced below ten percent (10%) of the principal amount of the original estimated total costs of improvements for which surety was given, prior to completion and acceptance of all required improvements.
 - (5) The City shall not release a surety instrument unless and until all of the requirements and conditions of this Chapter have been fulfilled.

(g) Maintenance bond required.

- (1) Before the release of any surety instrument guaranteeing the construction of all required subdivision improvements, or the signing of the final plat where subdivision improvements were made prior to the filing of the final plat for recordation, the applicant shall furnish the Development Services Department with a maintenance bond or other acceptable surety to assure the quality of materials, workmanship, and maintenance of all required improvements including but not limited to the City's costs for collecting the guaranteed funds and administering the correction and/or replacement of covered improvements.
- (2) The maintenance bond or other surety instrument:
 - i. Shall be satisfactory to the City Attorney as to form, sufficiency, and manner of execution.
 - ii. Shall clearly state both the applicant as the principal and the City as the obligee.
 - iii. Shall cover all improvements and facilities requested for City acceptance, including but not necessarily limited to water, wastewater, gas, electric, street and drainage improvements.
 - iv. Shall be in an amount equal to ten percent (10%) of the cost of improvements for one (1) calendar year from the date of City Council acceptance of operation and maintenance of the subdivision. A statement of construction value or final pay estimate shall be provided to the Development Services Department to support said warranty and maintenance bond amounts.
 - v. Shall require the surety to notify the City at least thirty (30) days prior to the expiration of the one (1) year maintenance period.
- (3) In an instance where a maintenance bond or other surety instrument has been posted and a defect or failure of any required improvement occurs within the period of coverage, the City may declare the principal on said bond or surety instrument to be in default of its repair and/or maintenance obligations. Surety shall, within thirty (30) days following written notice of default and request for performance from obligee:
 - i. Notify obligee in writing of its election to correct all defects and workmanship in the subdivision improvements and shall commence and complete construction, re-construction, replacement, repair or maintenance of the subdivision improvements; or
 - ii. Notify obligee in writing that surety elects not to complete, re-construct, replace, repair, or maintain the subdivision improvements.
 - iii. If the surety fails to give such written notice, then it will be deemed to have elected not to complete, re-construct, replace,

repair, or maintain the subdivision improvements. In either event, surety shall be obligated to pay obligee for all loss, cost and expense which the obligee incurs to correct all defects and workmanship in the subdivision improvements. In the event that surety elects to proceed under 3(i) above, the contractor selected by surety to perform such work shall be approved by obligee, which approval shall not be unreasonably withheld.

- (4) Whenever a defect or failure of any required improvement occurs within the period of coverage, the City shall require that a new maintenance bond or surety instrument be posted for a period of one (1) full calendar year sufficient to cover the corrected defect or failure.

SECTION 3.

That Chapter 23 – “Subdivisions” of the Code of Ordinances of the City of Brenham, Texas Section 23-10 – Final Plat Application, is hereby amended by deleting subsection 23-10(b)(4).

PASSED and APPROVED on the 5th day of November 2020.