

City of Cincinnati

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An Ordinance No. _____

- 2021

MODIFYING the provisions of Chapter 730, “Commercial Waste Franchises,” of the Cincinnati Municipal Code by **AMENDING** Section 730-1-A, “Applicant,” Section 730-1-C2, “Clean Hard Fill,” Section 730-1-C3, “Commercial Waste,” Section 730-1-C6, “Construction and Demolition Debris,” Section 730-1-R, “Recyclable Materials,” Section 730-3, “Applicability; Requirement for Franchise; Term of Franchise,” Section 730-5, “General Provisions,” Section 730-7, “Award of Franchises,” Section 730-9, “Basis for Award of Franchise,” Section 730-19, “Bond Requirements,” Section 730-21, “Insurance Requirements,” and Section 730-25, “Methods of Solid Waste Collection”; **ORDAINING** new Sections 730-1-C2, “Clean Hard Fill,” 730-1-L, “Legitimate Recycling Facility,” 730-1-R2, “Recycling,” and 730-27, “Program Rules and Regulations,”; and **REPEALING** Section 730-1-D, “Department,” to clarify the definition of “commercial waste” and the application process for franchisees.

WHEREAS, Council passed Ordinance No. 337-2019 on September 11, 2019, amending the definition of “commercial waste” contained in Section 730-1-C3 of the Cincinnati Municipal Code to include construction and demolition debris; and

WHEREAS, the City wishes to further refine the definition of commercial waste to clarify that non-recyclable construction and demolition debris generated by new construction is encompassed within the scope of the term; and

WHEREAS, the City further wishes to refine the terminology associated with the procurement process for obtaining a commercial waste collection franchise, and to amend references to the City officials administering the franchise application process to reflect current practice; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That Section 730-1-A, “Applicant,” of Chapter 730, “Commercial Waste Franchises,” of the Cincinnati Municipal Code is hereby amended to read as follows:

Sec. 730-1-A. –Applicant.

“Applicant” shall mean a person who ~~responds to a request for proposals (“RFP”) or~~ completes an application or responds to a request for services seeking to be awarded a franchise.

Section 2. That existing Section 730-1-A, “Applicant,” of the Cincinnati Municipal Code is hereby repealed.

Section 3. That new Section 730-1-C2, "Clean Hard Fill," of Chapter 730, "Commercial Waste Franchises," of the Cincinnati Municipal Code is hereby established as follows:

Sec. 730-1-C2. - Clean Hard Fill.

"Clean Hard Fill" shall have the same meaning as the term is defined in Ohio Administrative Code section 3745-400-01.

Section 4. That Section 730-1-C3, "Commercial Waste," of Chapter 730, "Commercial Waste Franchises," of the Cincinnati Municipal Code is hereby amended to read as follows:

Sec. 730-1-C3. – Commercial Waste.

"Commercial Waste" shall mean any of the following ~~all waste generated by a commercial establishment. "Commercial Waste" does not include:~~

- (a) All waste generated by a commercial establishment; or
- (b) Construction and demolition debris generated in connection with:
 - (1) the construction, alteration, or demolition, in whole or in part, of a structure subject to regulation by the Ohio Building Code, including associated site improvements, utilities, and infrastructure; or
 - (2) the construction of a new structure subject to regulation by the Residential Code of Ohio, including associated site improvements, utilities, and infrastructure; or
 - (3) public infrastructure improvements.

"Commercial Waste" does not include:

- (a) Infectious waste or hazardous waste; or
- (b) Recyclable materials delivered to a legitimate recycling facility, food waste materials, or yard waste materials unless those items are taken to: (i) a sanitary landfill facility or incinerator as those terms are defined in Ohio Administrative Code section 3745-27-01, or (ii) any other traditional waste disposal site not designed to recycle or compost materials.

Section 5. That existing Section 730-1-C3, "Commercial Waste," of the Cincinnati Municipal Code is hereby repealed.

Section 6. That Section 730-1-C6, “Construction and Demolition Debris,” of Chapter 730, “Commercial Waste Franchises,” of the Cincinnati Municipal Code is hereby amended to read as follows:

Sec. 730-1-C6. –Construction and Demolition Debris.

“Construction and demolition debris” shall have the same meaning as the term is defined in Ohio Administrative Code section 3745-400-01 ~~definition listed in Ohio Revised Code Chapter 3714.~~

Section 7. That existing Section 730-1-C6, “Construction and Demolition Debris,” of the Cincinnati Municipal Code is hereby repealed.

Section 8. That existing Section 730-1-D, “Department,” of Chapter 730 of the Cincinnati Municipal Code is hereby repealed.

Section 9. That new Section 730-1-L, “Legitimate Recycling Facility,” of Chapter 730, “Commercial Waste Franchises,” of the Cincinnati Municipal Code is hereby established as follows:

Sec. 730-1-L. –Legitimate Recycling Facility.

“Legitimate Recycling Facility” shall have the same meaning as the term is defined in Ohio Administrative Code section 3745-27-01(L)(2).

Section 10. That Section 730-1-R, “Recyclable Materials,” of Chapter 730, “Commercial Waste Franchises,” of the Cincinnati Municipal Code is hereby amended to read as follows:

Sec. 730-1-R~~1~~. – Recyclable Materials.

“Recyclable materials” shall mean those materials which would otherwise become solid waste and which may be collected, separated, or processed and returned to the economic mainstream in the form of raw materials or products. Examples of potential recyclable materials include, but are not limited to, newspapers, junk mail, magazines, phonebooks, cardboard, paperboard, glass bottles, aluminum cans, bi-metal cans, steel cans, plastic bottles, food waste, yard waste materials, clean hard fill, and certain construction and demolition debris, and the city manager may deem other materials that meet this definition to be recyclable ~~have the same definition listed in CMC §729-1-R.~~

Section 11. That existing Section 730-1-R, “Recyclable Materials,” of Chapter 730 of the Cincinnati Municipal Code is hereby repealed.

Section 12. That new Section 730-1-R2, “Recycling,” of Chapter 730, “Commercial Waste Franchises,” of the Cincinnati Municipal Code is hereby established as follows:

Sec. 730-1-R2. –Recycling.

“Recycling” shall have the same meaning as the term is defined in Ohio Administrative Code section 3745-27-01(R)(1).

Section 13. That Section 730-3, “Applicability; Requirement for Franchise; Term of Franchise,” of Chapter 730 of the Cincinnati Municipal Code is hereby amended to read as follows:

Section 730-3. – Applicability; Requirement for Franchise; Term of Franchise.

- (a) This chapter shall apply to any person engaged in the business of providing commercial waste collection services in the city on or after May 1, 2013.
- (b) This chapter applies to the collection of commercial waste, as defined in section 730-1-C3, on or after May 1, 2013.
- (c) The requirements in this chapter shall supplement the requirements in Chapter 729, “Waste Disposal,” of the Cincinnati Municipal Code.
- (d) On or after May 1, 2013, no person shall engage in the business of providing commercial waste collection services in the city unless that person has obtained a franchise from the city to provide such services.
- (e) No person shall obtain a franchise from the city until that person has complied with the following:
 - (1) Submitted a timely and complete ~~response to the request for proposals or timely completed an application for franchise~~ or submitted a timely and complete response to a request for services conducted by the city;
 - (2) Paid an application fee in the amount established in Section 730-7(d);
 - (3) Posted a bond and obtained the insurance required in Sections 730-19 and 730-21; and
 - (4) Executed a franchise agreement with the city for commercial waste collection services.

- (f) Each franchise agreement shall take effect ~~on May 1 upon execution~~, unless the applicant requests and the city approves a different later effective date. ~~Each franchise agreement that takes effect prior to May 1, 2014 shall expire on April 30, 2014, unless terminated prior to expiration or renewed pursuant to the agreement.~~ Each franchise agreement that takes effect on or after ~~May 1, 2014~~ July 1, 2021 shall expire ~~on April 30 of the following year following one year from~~ the date of its issuance, unless terminated prior to expiration or renewed pursuant to the agreement. Each franchise agreement shall renew for two one-year periods unless notice is given.

Section 14. That existing Section 730-3, “Applicability; Requirement for Franchise; Term of Franchise,” of Chapter 730 of the Cincinnati Municipal Code is hereby repealed.

Section 15. That Section 730-5, “General Provisions,” of Chapter 730, “Commercial Waste Franchises,” of the Cincinnati Municipal Code is hereby amended to read as follows:

Sec. 730-5. – General Provisions.

- (a) It is unlawful for any person to commence or engage in the business of providing commercial waste collection service within the city without first obtaining a franchise and entering into a franchise agreement with the city. No person may obtain a license, permit, permission, or other approval from the city in furtherance of providing commercial waste collection service within the city without first obtaining a franchise and entering into a franchise agreement with the city.
- (b) A franchise shall be awarded to a person only if that person ~~successfully responds to the request for proposals or~~ completes an application for franchise or request for services and the person’s ~~proposal or~~ application or request for services submittal is selected as one of the most advantageous to the city under Sec. 730-7 and the criteria specified in the application or request for services.
- (c) Each franchisee shall comply with all laws of the city of Cincinnati, the state of Ohio, and the federal government. Each franchisee shall obtain and maintain all applicable licenses and permits required by federal, state, and local laws, rules, regulations, and orders of regulatory bodies.
- (d) A franchisee shall not be relieved of its obligation to comply with all requirements of this chapter and the franchise agreement by failure of the city to enforce compliance with such requirements.
- (e) The city reserves its right to grant franchises and similar rights to more than one (1) person ~~but not more than eight (8).~~
- (f) Each franchisee shall totally enclose or securely cover any commercial waste that the franchisee is transporting within the city. Each franchisee shall immediately clean up any commercial waste that the franchisee spills on public or private property in the city.
- (g) A franchisee providing commercial waste collection services is not and shall not be deemed to be an agent or employee of the city. A franchisee shall be solely responsible for any

losses or damages of any kind arising from its performance or nonperformance under its franchise. A franchisee shall indemnify, defend, and hold the city harmless against any and all claims and suits brought against the city resulting from the franchisee's performance or nonperformance under the franchise agreement.

- (h) All of the commercial waste collected by franchisees in the city shall be delivered to a licensed municipal solid waste management landfill facility, licensed sanitary landfill facility, licensed solid waste transfer facility, or a licensed construction and demolition debris facility. Recyclable material shall be delivered to a legitimate recycling facility.
- (i) The execution of the franchise agreement and the issuance of a franchise ~~by the city manager,~~ and the renewal thereof, is at the sole discretion of the city manager and shall not be construed as creating any vested rights in the franchisee. Each franchise is revocable in accordance with the terms of this chapter and the terms of the franchise agreement.
- (j) A franchise may not be assigned or transferred to another person.
- (k) A franchise authorizes a franchisee to provide commercial waste collection services in the city of Cincinnati.

Section 16. That existing Section 730-5, "General Provisions," of the Cincinnati Municipal Code is hereby repealed.

Section 17. That new Section 730-7, "Award of Franchises," of Chapter 730, "Commercial Waste Franchises," of the Cincinnati Municipal Code is hereby established as follows:

Sec. 730-7. – Award of Franchises ~~RFP and Application Requirements for a Franchise.~~

- ~~(a) Any person wishing to obtain a franchise to engage in the business of providing commercial waste collection services within the city in 2013 when franchises are first available shall submit a response to an RFP to the city manager.~~
- (a) ~~After initial franchises are awarded in 2013, any~~ Any person wishing to obtain a franchise to engage in the business of providing commercial waste collection services within the city shall submit an application ~~or response to an RFP~~ to the city manager in compliance with the process established for awarding franchises.
- (b) Where appropriate, the city may choose to conduct a request for services pursuant to Cincinnati Municipal Code Section 321-1-R6 to solicit qualified franchisees in lieu of an application process.
- (c) An applicant for a franchise shall provide the city with satisfactory evidence demonstrating that:

- (1) The applicant has the experience, personnel, equipment, and other resources necessary to provide commercial waste collection services in compliance with the requirements in this chapter; and
 - (2) The applicant has the capacity and willingness to comply with all applicable local, state, and federal laws.
- (d) Applicants for a new franchise and applicants for the renewal of an existing franchise shall provide the information requested by the city manager and any other relevant information. The application ~~or RFP response~~ and supporting information shall be submitted under oath and on forms supplied by the city manager. At a minimum, the application ~~or RFP response~~ shall include the following information:
- (1) The name and mailing address of the applicant; contact information for the applicant's designated representative; the name of the person to be granted the franchise; if the applicant is a corporation, the names of the corporation's principal officers; the names of the local operating managers who will be responsible for performing collection services for the applicant, together with the business address and telephone number of each manager;
 - (2) If the applicant is a corporation, proof that the corporation is in good standing in the state of Ohio and, if the applicant is not an Ohio corporation, proof that the applicant is authorized to do business in the State of Ohio. If the applicant is operating under a fictitious name, the applicant shall be required to submit information that such fictitious name is registered and held by the applicant;
 - (3) A statement of whether the applicant operates or has operated a solid waste collection business in Ohio or any other state or territory. If the applicant has provided or is providing solid waste collection services, the applicant shall describe all cases where and when it provided such services (but not more than ten (10) communities), and whether any of the applicant's permits, approvals, or licenses to provide such services have ever been revoked or suspended within the last five (5) years;
 - (4) A complete record of all felony convictions, and all misdemeanor convictions within the last five (5) years, involving the applicant's collection, receiving, storing, separating, transportation, or disposal of solid waste. If the applicant is not an individual, the applicant also shall provide the complete record of such convictions for any person who is an officer, director, member, majority shareholder, or partner in the applicant, and any person having a controlling interest in the applicant;
 - (5) A complete record of all civil penalties and liquidated damages in excess of five thousand dollars (\$5,000.00) assessed against the applicant by local, state, and federal governmental entities within the last five (5) years involving the collection, transportation, or disposal of waste;
 - (6) The types of commercial waste materials and, if applicable, recyclable materials to be collected, transported, or disposed of by the applicant under the franchise; and
 - (7) A list of the vehicles, equipment, and containers that will be used by the applicant to provide commercial waste collection services. The list shall be provided on a form prescribed by the city manager. At a minimum, the list shall identify the make, model, and year of each vehicle and piece of collection equipment, as well as the size and type

of each container that will be used by the applicant. Identifiers including, but not limited to, license plate numbers, company vehicle numbers, and company equipment numbers shall be provided. The city manager may inspect all of the vehicles, equipment, and containers identified by the applicant and thereby determine whether the applicant possesses vehicles, equipment, and containers that are capable of providing safe and efficient commercial waste collection services in compliance with this chapter; and

- (8) A chart identifying the maximum rates that the applicant charges customers for various types of commercial waste collection services.
- (e) Each applicant shall submit a non-refundable application fee to the city in the amount of one hundred (\$100) dollars. The application fee is due and payable when the application is submitted. This fee shall not apply to ~~proposals submitted in responses to an RFP~~ a request for services.
- (f) New applications must be submitted to the ~~city manager department~~ city manager at least sixty (60) days before the applicant plans to begin providing commercial waste collection services. Renewal applications must be submitted to the ~~city manager department~~ city manager at least thirty (30) days before the applicant's existing franchise expires.

Section 18. That existing Section 730-7, “RFP and Application Requirements for a Franchise,” of Chapter 730 of the Cincinnati Municipal Code is hereby repealed.

Section 19. That Section 730-9, “Basis for Award of Franchise,” of Chapter 730, “Commercial Waste Franchises,” is hereby amended to read as follows:

Section 730-9. - Basis for Award of Franchise.

A franchise for commercial waste collection services may be granted to a person when the city manager concludes that the applicant has satisfied the requirements in this chapter. This includes successfully responding to the request for services proposals or completing the application, ~~the availability of a franchise~~ and the city rating the person’s proposal or application as most advantageous.

Section 20. That existing Section 730-9, “Basis for Award of Franchise,” of Chapter 730 of the Cincinnati Municipal Code is hereby repealed.

Section 21. That Section 730-19, “Bond Requirements,” of Chapter 730. “Commercial Waste Franchises,” is hereby amended to read as follows:

Section 730-19. - Bond Requirements.

At the time of the execution of a franchise agreement, each franchisee shall provide the city with a bond in the amount of twenty percent (20%) of the franchisee's gross revenues for the quarter immediately preceding the execution date of the franchise agreement. ~~For the initial franchises that begin on May 1, 2013, the bond amount shall be fifty thousand dollars (\$50,000).~~ For franchisees who did not hold a franchise in the quarter immediately preceding the execution date of the franchise agreement, the bond shall be in the amount of fifty thousand dollars (\$50,000). The bond shall conform with the requirements of CMC Chapter 304. The bond shall be used to insure the franchisee's performance under this chapter and the franchise agreement. Among other things, the bond shall be used to ensure the franchisee's payment of franchise fees and other sums that are due and owing to the city. The bond shall also be used to indemnify the city from any damages that may be suffered by the city in any manner as a result of the city's award of a franchise to the applicant, including but not limited to damages resulting from the applicant's performance or non-performance of the conditions and requirements of the franchise agreement, the applicant's use of the city's streets, the failure of the applicant to conform with applicable laws, and any negligent, reckless or intentional wrongful act or omission of the applicant or the applicant's employees, agents, officers, or representatives. The bond shall be kept in full force at all times during the term of the franchise. The bond shall be released by the city within one year following the expiration or termination of the franchise agreement~~if the application is denied, or the franchise agreement expires or is terminated.~~

Section 22. That existing Section 730-19, "Bond Requirements," of Chapter 730 of the Cincinnati Municipal Code is hereby repealed.

Section 23. That Section 730-21, "Insurance Requirements," of Chapter 730, "Commercial Waste Franchises," is hereby amended to read as follows:

Section 730-21. – Insurance Requirements.

- (a) Each franchisee shall maintain in effect at all times, and shall furnish to the city a certificate evidencing, the following types of insurance coverage and specified limits of coverage, issued by an insurance company licensed to do business in the state of Ohio, acceptable to the city, and as required and set forth in greater specificity in the franchise agreement:
- (1) Comprehensive general liability insurance with a limit of a one million dollar (\$1,000,000.00) per occurrence and a two million dollar (\$2,000,000.00) general aggregate. This policy must include the following coverages: premises and operations liability, independent contractors, products and completed operations, personal injury, contractual liability, and fire damage;
 - (2) Automotive liability insurance coverage providing a combined single limit of not less than one million dollars (\$1,000,000.00) per occurrence. This policy must include the following coverages: bodily injury and property damage including premises and operations;

- (3) Workers compensation insurance shall be provided for all of franchisee's employees as required under Ohio law; and
 - (4) Employers liability insurance providing a single limit of not less than one million dollars (\$1,000,000.00), bodily injury by each accident, and providing a single limit of not less than one million dollars (\$1,000,000.00), bodily injury disease per each employee, and providing a single limit of not less than one million dollars (\$1,000,000.00) bodily injury by disease policy limit.
- (b) When an applicant submits an application for a franchise, and when a franchisee submits an application for the renewal of its franchise, the franchisee shall furnish the city a certificate evidencing this insurance coverage is in effect for the same term as the franchise agreement, and naming the city as an additional insured (except with regard to the workers compensation and employers liability insurances). The franchisee shall notify the city in writing by registered or certified mail thirty (30) days in advance of any cancellation, intent not to renew, or any other changes in the insurance coverage. Upon the cancellation or lapse of any policy of insurance required by this chapter or the franchise agreement, the franchisee's license to operate as a franchisee in the city under its franchise agreement shall be immediately revoked unless, before the expiration date of the policy of insurance, another policy of insurance containing all the requirements of the original policy of insurance is obtained and a new certificate is provided to the ~~department~~ city manager.

Section 24. That existing Section 730-21, "Insurance Requirements," of the Cincinnati Municipal Code is hereby repealed.

Section 25. That Section 730-25, "Methods of Solid Waste Collection," of Chapter 730, "Commercial Waste Franchises," of the Cincinnati Municipal Code, is hereby amended to read as follows:

Section 730-25. – Methods of Solid Waste Collection.

- (a) Each franchisee shall collect commercial waste in the manner required by this chapter and the franchise agreement. At a minimum, each franchisee shall comply with the following requirements:
 - (1) *Hours of collection.* Hours of commercial waste collection services within the city shall be governed by the rules and regulations established by the Chapter 729 of the Cincinnati Municipal Code and as set forth in the franchise agreement.
 - (2) *Equipment.* All vehicles, equipment, and containers used to provide commercial waste collection services shall be maintained at all times in a clean, sanitary, and neat condition, and in good repair. All of the franchisee's collection vehicles, equipment, and containers shall bear the franchisee's name, ~~and~~ current phone number in letters that are at least two (2) inches tall, or other identifying marks or decals prescribed by the city manager.

- (3) *Maximum weight of loaded vehicles.* The total gross weight of any loaded vehicle used by the franchisee on a city road shall not exceed the maximum gross weight allowed per vehicle under any applicable federal, state, or city law.
 - (4) *Prohibited material.* A franchisee shall take all reasonable measures to prevent prohibited materials from being collected, transported, or disposed of in a manner that poses a threat to human health, public safety, or the environment.
 - (5) *Delivery to Solid Waste Management Facility.* If a franchisee collects, receives, transports, stores, or separates commercial waste that was generated within the city, the franchisee shall deliver such waste to a solid waste management facility.
 - (6) *Receipts from designated solid waste management facility.* A franchisee, upon request of the ~~department~~ city manager, shall produce receipts or other documents demonstrating that all of the commercial waste collected by the franchisee in the city was delivered to a solid waste management facility pursuant to Sec. 730-05(h).
- (b) Each franchisee shall offer recycling services to all of its customers. A franchisee, upon request of the city manager, shall produce receipts of other documents demonstrating that all recyclable materials collected by the franchisee in the city were delivered to a legitimate recycling facility.

Section 26. That existing Section 730-25, “Methods of Solid Waste Collection,” of the Cincinnati Municipal Code is hereby repealed.

Section 27. That new Section 730-27, “Program Rules and Regulations,” of Chapter 730, “Commercial Waste Franchises,” of the Cincinnati Municipal Code is hereby established as follows:

Section 730-27. – Program Rules and Regulations.

The city manager is authorized to adopt, promulgate, and enforce rules and regulations consistent with the provisions of this chapter to provide for the effective administration and enforcement of the city’s commercial waste franchise program.

Section 28. That the proper City officials are authorized to do all things necessary and proper to carry out the terms of Sections 1 through 27 hereof.

Section 29. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2021

John Cranley, Mayor

Attest: _____
Clerk

Deletions are struck through. Additions are underlined.