

ORDINANCE NO. 830.7-09-08

**AN ORDINANCE RELATING TO NON-EXCLUSIVE FRANCHISEES
TO COLLECT, TRANSPORT AND DISPOSE
OF INDUSTRIAL SOLID WASTE
WITHIN THE CITY OF FRANKLIN, KENTUCKY**

WHEREAS, the City Commission of the City of Franklin, Kentucky, acting under the authority granted to it by Chapters 109 and 224 of the Kentucky Revised Statutes and with powers delegated to it in KRS 82.081, advertised a request for proposals for the collection, transport and disposal of household, commercial and industrial solid waste, and the collection, transport and resale or reuse of recoverable (recyclable) materials in the City of Franklin intending to award an exclusive and/or non-exclusive franchise or franchises for the services described in the request for proposals;

WHEREAS, on May 1, 2008, proposals were received by the Franklin City Commission to perform the services described in the request for proposals;

WHEREAS, on May 29, 2008, City staff recommended that the City Commission issue non-exclusive franchises to collect, transport and dispose of industrial solid waste within the City of Franklin because issues and concerns associated with the collection, transport and disposal of solid waste from industrial customers are unique and distinct from the issues associated with the same service offered to commercial businesses and residents such as different types of containers used by the customer, the type of collection vehicles typically used by the collector, the pricing method, the customer's service expectation and sensitivity to price.

WHEREAS, City staff recommended that the City Commission issue non-exclusive franchises to collect, transport and dispose of industrial solid waste within the City of Franklin because industrial areas are more suited for a heavier volume of large truck traffic than ordinary commercial and residential areas;

WHEREAS, City staff recommended that the City Commission issue non-exclusive franchises to collect, transport and dispose of industrial solid waste within the City of Franklin because industrial customers are used to and prefer dealing with multiple and competing vendors for services;

WHEREAS, City staff recommended that the City Commission issue non-exclusive franchises to collect, transport and dispose of industrial solid waste within the City because all proposals could result in substantial reductions in current rates.

WHEREAS, City staff recommended that the City Commission issue non-exclusive franchises to collect, transport and dispose of industrial solid waste within the City because each business/industry is better suited to make the best choice if allowed to select its service from competing vendors.

NOW, THEREFORE, BE IT ORDERED by the City Commission of the City of Franklin, Kentucky that the following Ordinance and attached City of Franklin Industrial Non-Exclusive Franchise Agreement which is incorporated herein by reference be approved, and that the Mayor be authorized to execute said Industrial Franchise Agreement on behalf of the City of Franklin with each proposal selected.

SECTION I: DEFINITIONS

The following terms as used in this Ordinance shall have the meaning set forth below:

1.1 **"Industrial Franchisee"** means a corporation, partnership or other business association that has been selected by the City to collect, transport and dispose of industrial solid waste and has executed an Industrial

Franchise Agreement with the City of Franklin, Kentucky.

1.2 **“Industrial Franchise Agreement”** means a Franchise Agreement entered into between the City and an Industrial Franchisee, as the same may from time to time be amended, modified, or supplemented in accordance with the respective terms hereof, including attachments and exhibits.

1.3 **“Industrial Franchise Area”** means the City of Franklin and/or the Industrial Parks located therein, including any annexed areas to the extent that they are not being service by Simpson County’s Solid Waste Collection Agreement.

1.4 **“Industrial Solid Waste”** means solid waste generated in a designated industrial park or by manufacturing or industrial processes that is not a hazardous waste or a special waste as designated by KRS 224.50-760, including but not limited to, waste resulting from the following manufacturing process: electric power generation; fertilizer or agricultural chemicals; food and related products or by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing; foundries, organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment.

1.5 **“Solid Waste”** means any garbage, refuse, sludge and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining (excluding coal mining wastes, coal mining by-products, refuse, and overburden), agricultural operations and from community activities, but does not include those materials including, but not limited to, sand, soil, rock, gravel or bridge debris extracted as part of a public road construction project funded wholly or in part with state funds, recovered material, special wastes as designated by KRS 224.50-760, solid or dissolved material in domestic sewage, manure, crops, crop residue, or a combination thereof which are placed on the soil for return to the soil as fertilizers or soil conditioners, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954.

SECTION II: NON-EXCLUSIVE RIGHT AND SOLICITATION OF BUSINESS

2.1 Non-exclusive Right

A. Only companies selected by the City of Franklin to collect, transport and dispose of industrial solid waste and having executed an Industrial Franchise Agreement the City of Franklin may collect, transport and dispose of industrial solid waste.

2.2 Solicitation of Business

A. All contracts pertaining to commercial and industrial solid waste collection, transport and disposal solicited and/or executed which differ in terms from the provisions of this Ordinance are modified by this Ordinance to the extent of the conflict.

B. Each Industrial Franchisee shall not solicit or cause another on its behalf to solicit businesses or industries in any manner contrary to the language or intent of this Ordinance.

C. Each Industrial Franchisee shall not use service contracts which carry a term longer than the Franchise Agreement. Service contracts which provide for the provision of specialized equipment unique to a particular business or industry’s needs may provide for a term greater than one year provided that the business or industry still retains the right to early termination upon compensating the Industrial Franchisee for its expense relating to the purchase of equipment which would go unrecouped if the service contract was terminated early.

D. Industrial Franchisees shall not use service contracts which waive or infringe upon a business or industry's right to a jury trial.

E. All service contracts must allow for termination on behalf of the business or industry upon ninety (90) days notice without restriction. Industrial Franchisees may require as part of any service contract which relates to specialized equipment unique to a particular business or industry's needs the requirement that upon early termination, the business or industry must compensate the Industrial Franchisee for its expense relating to the purchase of equipment which would go unrecouped if the service contract was terminated.

SECTION III: SCOPE OF SERVICES

3.1 Collection

A. Each business located in any Industrial Park or industry located in the Industrial Franchise Area shall contract with an Industrial Franchisee for industrial solid waste services.

B. Each Industrial Franchisee may offer solid waste collection, transport and disposal services to businesses and industries located within the Industrial Franchise Area.

C. Each Industrial Franchisee shall collect industrial solid waste from any business or industry requesting services in such a manner that complies with all federal, state and local statutes and regulations pertaining to solid waste collection.

D. Each Industrial Franchisee shall obtain all necessary federal, state and local permits to collect solid waste. Each Industrial Franchisee shall deliver to the City copies of all permits required for the collection of solid waste, including subsequent permit revisions or modifications.

3.2 Transport

A. Each Industrial Franchisee shall transport all the industrial solid waste it collects under this Ordinance and its Industrial Franchise Agreement in compliance with all federal, state and local statutes and regulations and in such a manner that prevents the blowing of debris, nor shall the Industrial Franchisee allow debris, liquid or waste to escape from collection vehicle.

B. Each Industrial Franchisee shall obtain all necessary federal, state, and local permits to transport solid waste. Each Industrial Franchisee shall deliver to the City copies of all permits required for the transport of solid waste, including subsequent permit revisions or modifications.

3.3 Disposal

A. Each Industrial Franchisee shall dispose of or arrange for disposal of all industrial solid waste it collects under this Ordinance and its Industrial Franchise Agreement in compliance with all federal, state and local statutes and regulations. Each Industrial Franchisee shall notify the City of its chosen method of disposal and provide all appropriate documentation evidencing the disposal site's compliance with all state, federal and local regulations.

3.4 Equipment and Personnel

A. Each Industrial Franchisee shall have sufficient personnel and shall have on hand at all times and in good working order such equipment and vehicles as shall permit the Industrial Franchisee to adequately and efficiently perform the services encompassed by this Ordinance and its Industrial Franchise Agreement. All equipment shall be kept in good repair, appearance and in a sanitary and clean condition at all times.

Equipment and vehicles shall be painted uniformly with the name of the Industrial Franchisee, business telephone number and vehicle number. All vehicles shall be numbered and a record kept of the vehicles to which each number is assigned.

B. All containers used by each Industrial Franchisee must be uniformly painted and clearly marked as a "Solid Waste" container.

C. Each Industrial Franchisee's supervisory personnel must be available for consultation with the City's representatives and/or customers within a reasonable time after notification of a request for such consultation.

D. Each Industrial Franchisee's employees shall service the public in a courteous, helpful and impartial manner. Care shall be taken to prevent damages to any customer's property, including but not limited to, the customer's containers, buildings, structures and landscaping.

E. Each Industrial Franchisee's employees shall wear a clean and presentable uniform bearing the company and employee's name.

F. Each Industrial Franchisee shall comply with state, federal and local laws relating to wages, hours and other applicable laws relating to the employment and protection of employees, now or hereafter in effect.

SECTION IV: PERFORMANCE STANDARDS

4.1 Compliance

A. Each Industrial Franchisee must perform its duties under this Agreement in compliance with all applicable state, federal and local laws and regulations.

B. Each Industrial Franchisee agrees to provide to the City immediately upon sending or receipt, copies of all correspondence sent to or received from state or federal regulatory authorities and notice of all communications with said regulatory authorities in connection with or related to services performed by the Franchisee under this Agreement.

C. Each Industrial Franchisee must maintain its equipment and perform the services encompassed by this Ordinance and its Industrial Franchise Agreement in such a way as to avoid excessive debris, liquid, or other material being strewn or deposited along collection routes.

SECTION V: FEE STRUCTURE AND FRANCHISE FEES

5.1 Fees

A. Each Industrial Franchisee is responsible for billing its services and bears all costs associated with billing, including costs relating to collection of unpaid fees.

B. Each Industrial Franchisee bears all costs associated with performing the services described in this Ordinance, which include, but are not limited to, the collection, transport and disposal of industrial solid waste under this Ordinance.

5.2 Franchise Fees

A. Each month each Franchisee must remit to the City ten percent (10%) of the gross

receipts received by the Franchisee attributable to its operations in the Industrial Franchise Area.

B. Each Industrial Franchisee hereby agrees to bear the cost of an annual audit of its records regarding the remitting of the franchise fee if the City, in its discretion, deems an audit necessary.

C. Each Industrial Franchisee shall cooperate with the City Manager in providing collection, transport and disposal services for public events and illegal dump cleanups on a pro rata basis with other Industrial Franchisees.

SECTION VI: REPORTING REQUIREMENTS

6.1 Monthly Reports to the City of Franklin

A. Each Industrial Franchisee shall maintain records and report monthly to the City the volume and source of all industrial solid waste collected by it under this Ordinance and its Industrial Franchise Agreement during the previous month and the ultimate disposal location of the waste collected.

B. Each Industrial Franchisee must maintain a summary of customer service calls and its response.

C. The City shall have the authority to request each Industrial Franchisee to report to the City Commission on any aspect of services provided under this Ordinance and its Industrial Franchise Agreement.

D. Each Industrial Franchisee shall retain all records required to be maintained under this Agreement for five (5) years.

6.2 Right of Inspection/Audit

A. Upon reasonable notice, the City reserves the right to inspect each Industrial Franchisee's operations at any time in such a way as to not unreasonably interfere with the Industrial Franchisee's operations. Each Industrial Franchisee hereby grants the City right-of-entry as necessary to exercise this right.

B. The City reserves the right to require each Industrial Franchisee's records relating to the Industrial Franchisee's operations under this Ordinance and its Industrial Franchise Agreement to be audited at any time. The Industrial Franchisee shall bear the cost of any audit required by the City. Should the audit reveal inconsistencies or any other problems, the Industrial Franchisee must provide the City with a written explanation, including the Industrial Franchisee's plans to remedy any problem identified.

SECTION VII: REQUIRED INSURANCE AND BONDING

7.1 Insurance

A. General Liability Insurance – Each Industrial Franchisee shall maintain insurance from companies approved by the City, such approval not to be unreasonably withheld. Said insurance coverage must protect the City and the Industrial Franchisee and their officers, agents, and employees from and against any and all claims, losses, damages, costs and expenses, including cost of defense and reasonable attorneys fees for injury or damage to persons or property, both real and personal, caused by the Industrial Franchisee's operations under the terms of this Agreement. Each Industrial Franchisee bears all responsibility for all costs associated with this coverage. Each Industrial Franchisee shall maintain the

following minimum coverages:

| | |
|--------------------------------|-------------|
| Bodily Injury Per Person | \$2 Million |
| Bodily Injury Per Occurrence | \$2 Million |
| Property Damage Per Occurrence | \$2 Million |
| Property Damage Aggregate | \$2 Million |

B. Automobile Insurance – Each Industrial Franchisee shall maintain sufficient automobile insurance from companies approved by the City, such approval not to be unreasonably withheld, to protect the City and the Industrial Franchisee and their officers, agents, and employees from and against any and all claims, losses, damages, costs and expenses, including cost of defense and reasonable attorney fees for injury or damage to persons or property, both real and personal, caused by the operation of the Industrial Franchisee’s vehicles. Each Industrial Franchisee bears all responsibility for all costs associated with this coverage. Each Industrial Franchisee shall maintain the following minimum policy limits:

| | |
|--------------------------------|-------------|
| Bodily Injury Per Person | \$2 Million |
| Bodily Injury Per Occurrence | \$2 Million |
| Property Damage Per Occurrence | \$2 Million |
| Property Damage Aggregate | \$2 Million |

C. Workers’ Compensation Insurance – Each Industrial Franchisee shall maintain workers’ compensation insurance as required by the laws of the Commonwealth of Kentucky. Each Industrial Franchisee bears all responsibility for all costs associated with this coverage.

D. Builder’s Risk – If an Industrial Franchisee intends to construct or substantially repair any facilities associated with performing services under this Ordinance and its Franchise Agreement, then it must carry builder’s risk coverage, or provide the City with equivalent security of performance, with the limits of insurance equal to 100% of the completed value of the project. The coverage shall include the transport and installation of all machinery and/or equipment installed in the facility and each Industrial Franchisee bears all responsibility for all costs associated with this coverage.

E. City as Additional Insured/Loss Payee – All insurance required under this terms of the Agreement shall name the City as additional insured and shall provide a thirty (30) days notice to the City in the event of a material alteration or cancellation of any coverage forwarded in said policies prior to the effective date of said alteration or cancellation. Copies of all policies required under this Agreement shall be furnished to and filed with the City Manager and the City Clerk prior to commencement of operations or the expiration of prior policies.

7.2 Performance Bond

A. Each Industrial Franchisee shall furnish proof of the posting of a faithful performance bond equal to the Franchisee’s estimated gross receipts for sixty (60) days running to the City with good and sufficient surety approved by the City.

B. The City hereby reserves the power to require each Industrial Franchisee to increase the amount of the performance bond, in its reasonable discretion, at any time upon making a determination that the amount of the bond is insufficient.

C. Each Industrial Franchisee shall give thirty (30) days notice to the City of any change or alteration on the performance bond.

SECTION VIII: OWNERSHIP OF COLLECTED MATERIALS

8.1 Ownership of Materials

A. Title or ownership of all industrial solid waste collected by each Industrial Franchisee under this Ordinance passes to the Industrial Franchisee at the point the item is removed from the container and placed in its vehicle.

IT IS NOW ORDAINED by the City Commission of the City of Franklin, Kentucky that the attached City of Franklin Industrial Non-Exclusive Franchise Agreement which is incorporated herein by reference be approved and that the Mayor be authorized to execute said agreement on behalf of the City of Franklin, Kentucky.

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holdings shall not affect the validity of the remaining portions of Ordinance.

All ordinances or parts of ordinances in conflict herewith, are, to the extent of such conflict, hereby repealed.

Sept 11, 2008 FIRST READING

Sept 22, 2008 SECOND READING

At a meeting of the City Commission of the City of Franklin, Kentucky, held on September 22, 2008, on motion made by Commissioner Henry Stone and seconded by Commissioner Bill Austin, the foregoing ordinance was adopted, after full discussion, by the following vote:

Yes HERBERT WILLIAMS

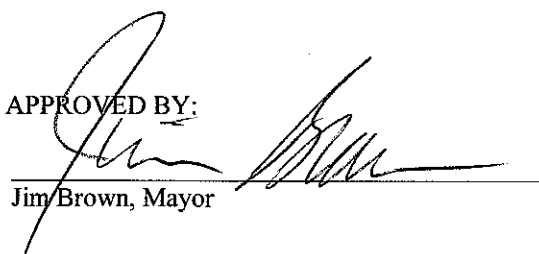
Yes BILL AUSTIN

Yes WENDELL STEWART

Yes HENRY STONE

Yes JIM BROWN, MAYOR

APPROVED BY:



Jim Brown, Mayor

ATTEST:



Kathy Stradtner, City Clerk