

AMENDMENT OF SECTIONS 4-6-130 AND 7-28-215 OF MUNICIPAL CODE CONCERNING REGULATION AND LICENSING OF DISPOSAL AND RECYCLING MANAGEMENT COMPANIES.

[SO2017-6420]

The Committee on Finance submitted the following report:

CHICAGO, April 18, 2018.

To the President and Members of the City Council:

Your Committee on Finance, having had under consideration a substitute ordinance authorizing the amendment of Chapters 4-6 and 7-28 of the Municipal Code of Chicago regarding private scavengers, having had the same under advisement, begs leave to report and recommend that Your Honorable Body *Pass* the proposed substitute ordinance transmitted herewith.

This recommendation was concurred in by a viva voce vote of the members of the committee, with no dissenting vote.

Respectfully submitted,

(Signed) EDWARD M. BURKE,
Chairman.

On motion of Alderman Burke, the said proposed substitute ordinance transmitted with the foregoing committee report was *Passed* by yeas and nays as follows:

Yeas -- Aldermen Moreno, Hopkins, Dowell, King, Hairston, Sawyer, Mitchell, Harris, Beale, Sadlowski Garza, Thompson, Cárdenas, Quinn, Burke, Lopez, Foulkes, D. Moore, Curtis, O'Shea, Cochran, Brookins, Muñoz, Zalewski, Scott, Solis, Maldonado, Burnett, Ervin, Taliaferro, Reboyras, Santiago, Waguespack, Mell, Austin, Ramirez-Rosa, Villegas, Mitts, Sposato, Laurino, O'Connor, Napolitano, Reilly, Smith, Tunney, Arena, Cappleman, Pawar, Osterman, J. Moore, Silverstein -- 50.

Nays -- None.

Alderman Beale moved to reconsider the foregoing vote. The motion was lost.

The following is said ordinance as passed:

WHEREAS, The City of Chicago is a home rule unit of government pursuant to the 1970 Illinois Constitution, Article VII, Section 6(a); and

WHEREAS, Pursuant to its home rule power, the City of Chicago may exercise any power and perform any function relating to its government and affairs including the power to regulate for the protection of the public health, safety, morals, and welfare; and

WHEREAS, Waste collection is a critical public health, public way, and consumer protection matter for the City of Chicago; and

WHEREAS, The City of Chicago requires licensing of all "private scavengers", defined in its Municipal Code as "private companies engaged in the removal and disposal of waste and recyclables"; and

WHEREAS, The City of Chicago requires private scavengers to register each vehicle, submit proof of inspection of the State of Illinois, replace unsuitable vehicles, submit information about method of disposal, offer adequate recycling programs, submit annual recycling reports, provide suitable containers free from graffiti with the name and address of the scavenger prominently displayed, and remove and replace containers as required; and

WHEREAS, In Chapter 7-28 of the Municipal Code of Chicago, the City of Chicago requires private scavengers to collect and remit to the City the appropriate permit fee for each refuse container; and

WHEREAS, "Waste brokers" are intermediaries between customers with waste hauling needs and vendors who undertake the physical trash removal; and

WHEREAS, Although some waste brokers only offer consulting services to customers regarding reducing waste streams and saving money, other waste brokers contract directly with customers to manage the removal of waste and recyclables from the customers' premises; and

WHEREAS, These waste brokers outsource or subcontract the actual removal and disposal of waste and recyclables, and often themselves have no physical presence within the limits of cities in which they conduct business; and

WHEREAS, Waste brokers are increasingly targeting less sophisticated, smaller commercial establishments imposing draconian contracts on these unsuspecting customers such as disclaiming any representation regarding timelines, quality, or availability of service; and

WHEREAS, In some instances, these contracts do not guarantee compliance, safety or availability of subcontractor vehicles, and they allow the broker to unilaterally amend the contract's terms merely by posting these terms on its website; and

WHEREAS, In addition, these contracts may apply another state's law, and require the customer to submit to binding arbitration which waives any right to trial by jury and participation in class action lawsuits; and

WHEREAS, Customers have reported aggressive and misleading sales practices by these waste brokers, with exaggerated claims about savings and efficiencies and inaccurate descriptions of the terms and conditions of the contract the customers are required to sign; and

WHEREAS, Upon cancellation or realization by customers that they have been misled, waste brokers engage in aggressive collection efforts utilizing outside agencies, and seek to charge customer credit cards on file for "liquidated damages" and other penalties; and

WHEREAS, The current City ordinance does not specifically address waste brokers, therefore they are not licensed as private scavengers by the City, not subject to government inspections, not subject to the requirements of the Department of Streets and Sanitation, not subject to the City laws ensuring proper, sanitary collection and disposal of waste and recyclables, not subject to City laws requiring procurement of container permits and payment of container fees, and not subject to City laws requiring labeling and maintenance of containers; and

WHEREAS, Some of these waste brokers are located outside the City of Chicago and do not conduct business operations at a facility located within the City; and

WHEREAS, As a result of this lack of physical presence within the City, these waste brokers are less able to timely and adequately address municipal code violations and other issues arising from the collection and disposal of waste and recyclables from customers' premises; and

WHEREAS, These non-resident waste brokers do not hold any City licenses and are therefore not subject to the City's enforcement powers under Chapter 4-4 of the Municipal Code of Chicago; and

WHEREAS, The City of Chicago must regulate and require waste brokers to obtain a private scavenger license, thereby obligating them to comply with all provisions applicable to companies that own and operate private scavenger vehicles, and making waste broker companies jointly and severally liable and responsible to the same extent as private scavenger companies for obtaining, or failing to obtain, container permits and paying, or failing to pay, the associated fees; and

WHEREAS, The City of Chicago will hold entities that directly contract with customers accountable and liable and ensure they comply with all laws and ordinances; now, therefore,

Be It Ordained by the City Council of the City of Chicago:

SECTION 1. The above recitals are expressly incorporated herein and made hereof as though fully set forth herein.

SECTION 2. Section 4-6-130 of the Municipal Code of Chicago is hereby amended by inserting the underscored language, as follows:

4-6-130 Private Scavenger.

(a) Definitions. As used in this section:

“Backhauler” has the meaning ascribed to the term in Section 11-5-020.

“Construction and demolition debris” has the meaning ascribed to the term in Section 11-4-120.

“Disposal and Recycling Management Company” means any person engaged in the business of managing the removal and disposal of recyclable material, or grease, fats and oils, or table refuse or animal or vegetative matter usually known as garbage, or other wastes other than construction or demolition debris from any premises through the use of scavenger vehicles owned by another person. The term “Disposal and Recycling Management Company” does not include any person who qualifies as a “City-based business” pursuant to Chapter 2-92-412 of this Code or any person engaged in the business of managing the removal and disposal of recyclable material, or construction and demolition debris, or grease, fats and oils, or table refuse or animal or vegetative matter usually known as garbage, or other wastes from any premises pursuant to a contract with the City.

“Private scavenger” means any person engaged in the removal and disposal of recyclable material, or construction and demolition debris, or grease, fats and oils, or table refuse or animal or vegetative matter usually known as garbage, or other wastes, from any premises where the removal and disposal of such matter is not provided for by the city. The term “private scavenger” includes any Disposal and Recycling Management Company. The term “private scavenger” does not include any: (i) person who gathers, removes or disposes of garbage or other waste from such person’s own premises without the aid of a licensed private scavenger, if such person has received written permission to do so, in the form of a permit issued by the commissioner of streets and sanitation, and such person gathers, removes and disposes of the aforementioned material in the manner specified in such permit; or (ii) person who removes manure from his own premises; or (iii) backhauler meeting the requirements of Article V of Chapter 11-5 of this Code.

(Omitted text is not affected by this ordinance.)

(b) Application -- Additional Information Required. In addition to the requirements set forth in Section 4-4-050, an application for, and, if requested, renewal of, a regulated

business license to engage in the business of private scavenger shall be accompanied by the following information:

- (1) the number of scavenger vehicles that the applicant owns or intends to operate or use in connection with said business;
- (2) the method of disposal and place of disposal of garbage or other waste being proposed by the applicant;
- (3) a valid and current inspection approval license, issued by the State of Illinois for each scavenger vehicle used in the conduct of the business;
- (4) in the case of an applicant that is a Disposal and Recycling Management Company, the name of each person the applicant intends to subcontract with for the removal and disposal of garbage or other waste, and proof establishing that each such person and all vehicles owned and operated by each such person comply with the provisions of this section and all other provisions of this Code and applicable regulations.

(c) License Issuance And Renewal -- Prohibited When. No regulated business license to engage in the business of private scavenger shall be issued to the following persons:

- (1) any applicant or licensee, as applicable, if such person has not obtained an inspection approval license meeting the requirements of subsection (b)(3) or (b)(4) of this article for each scavenger vehicle owned or used in the conduct of business;

(Omitted text is not affected by this ordinance.)

(g) Any licensee that is a Disposal and Recycling Management Company shall be jointly and severally liable with the scavenger service providers with which it contracts for any failure to perform the duties set forth in Section 4-6-130(e) and for violations of Section 4-6-130(f).

(h) (g) Construction Of Section. Nothing in this section shall be construed to conflict with any existing or future provision of this code concerning the removal and disposal of dirt, filth, litter, garbage, ashes, manure, offal, swill, dead animals, recyclable material and other material from the public way by the city acting through its contractors or otherwise.

SECTION 3. Chapter 7-28 of the Municipal Code of Chicago is hereby amended by inserting the underscored language, as follows:

7-28-215 Commercial Refuse Containers -- Permit Required.

(A) Definitions. For purposes of this section the following terms shall have the following meanings:

“Provider” shall mean the person who provides refuse collection services, and if applicable, the Disposal and Recycling Management Company as defined in Section 4-6-130, for a refuse container that has been provided for use at a requested location.

(Omitted text is not affected by this ordinance.)

(C) Application. An application for a refuse container permit shall be made to the commissioner of transportation. In addition to such other information as the commissioner may require, the applicant shall state the name, address, container locations, container sizes and telephone number of the provider or providers of the refuse container. The information shall be updated periodically or otherwise as prescribed by the commissioner of transportation.

(Omitted text is not affected by this ordinance.)

(F) Penalties.

(1) Any person violating this section or any rule of regulation promulgated under this section shall be subject to a fine of not less than \$250.00 nor more than \$1,500.00 for each offense.

(2) Each day that violation is permitted to exist shall constitute a separate offense. In addition, any refuse container not validly permitted may be removed by the city, and all costs associated with such removal shall be borne by the provider of the refuse container. The owner of a refuse container, if different from a provider, shall be jointly and severally liable with the provider for any violation of this section.

(3) Where a provider has contracted with a Disposal and Recycling Management Company (“company”), as defined in Section 4-6-130, for the provision of those services, the provider and the company shall be jointly and severally liable for the penalties provided by this section.

SECTION 4. This ordinance shall be in full force and effect immediately upon passage and approval.