

ORDINANCE NO. 040220
0-04-78

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4 An ordinance of the City of Gainesville, Florida, amending
5 sections of Division 2, Article III, Chapter 27 of the City of
6 Gainesville Code of Ordinances, relating to the registration and
7 renewal of the term of solid waste providers of commercial service
8 and/or construction and demolition debris collection; amending
9 section 27-79, general provisions; amending recycling goals
10 through September 30, 2007; revising language regarding
11 penalties and fines; creating 27-79.1, term of franchise; providing
12 for the issuance of renewal of franchises until September 30, 2007;
13 amending section 27-86, registration of recovered materials
14 collectors; revising and updating application and registration
15 requirements; making clarifying changes; extending registration
16 period from one to five years; providing directions to the codifier;
17 providing a severability clause; providing a repealing clause; and
18 providing an immediate effective date.
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21 WHEREAS, on July 26, 2004, the City Commission authorized amendment to certain
22 provisions of the City's Code of Ordinances relating to solid waste; and

23 WHEREAS, at least 10 days notice has been given once by publication in a newspaper of
24 general circulation notifying the public of this proposed ordinance and of a Public Hearing to be held
25 in the City Commission Auditorium, City Hall, City of Gainesville; and

26 WHEREAS, the Public Hearings were held pursuant to the published notice described at
27 which hearings the parties in interest and all others had an opportunity to be and were, in fact, heard.

28 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE
29 CITY OF GAINESVILLE, FLORIDA:

30 Section 1. Section 27-79, City of Gainesville Code of Ordinances, is hereby amended to
31 read as follows:

32 Sec. 27-79. General provisions.

33 (a) It shall be unlawful to commence or engage in the business of providing containers for
34 commercial service or providing commercial service or construction and demolition debris collection

1 and disposal to properties in the city without a franchise issued by the city in accordance with this
2 ~~division~~ article.

3 (b) No franchise shall be awarded until the city determines that the franchisee is capable of
4 complying with the requirements of this ~~division~~ article.

5 (c) ~~The term of each franchise issued on or after October 1, 1996, shall extend until 11:59 p.m.,~~
6 ~~September 30, 1999, unless forfeited or revoked sooner as provided herein. The renewal of this~~
7 ~~franchise shall be by application and the term shall extend until 11:59 p.m., September 30, 2004,~~
8 ~~unless forfeited or revoked sooner as provided herein.~~

9 (d) Each franchise shall be subject to the charter of the city and this Code of Ordinances. Each
10 franchise shall be subject to, and franchisees shall abide by, all present and future laws, regulations,
11 orders of regulatory bodies, city code provisions and administrative rules applicable to the
12 performance of the collection services hereunder. Each franchise shall obtain all licenses and permits
13 presently required by federal, state and local governments, and as required from time to time.

14 (e)(d) All commercial franchises issued on or after October 1, 1996, may be by contract, which may
15 include, among other things, agreement on the disposal site for solid waste collected by the
16 franchisee.

17 (f)(e) Each commercial franchisee shall make available daily (except Sunday) collection of solid
18 waste. Collection shall begin no earlier than 6:00 a.m., and shall cease no later than 9:00 p.m.,
19 Monday through Saturday, except in areas of mixed residential and commercial occupancy, where
20 collections shall begin no earlier than 7:00 a.m. and cease no later than 9:00 p.m., Monday through
21 Saturday. The city manager or designee may authorize collection on Sunday where special needs of
22 the customer make it necessary. In the event of an emergency, a franchisee may collect at times not
23 allowed by this section, provided the city manager grants prior approval, to be later evidenced by a
24 written memorandum. If no written memorandum is obtained, there shall be a presumption that the
25 franchisee had not obtained prior approval.

1 ~~(g)~~(f) Franchisee shall not be relieved of the obligation to promptly comply with any provision of
2 the franchise by failure of the city to enforce compliance with the franchise.

3 ~~(h)~~(g) The franchise granted hereunder shall not be exclusive. The city reserves the right to grant
4 similar rights or franchises to more than one person or corporation as well as the right in its own
5 name to use its streets for purposes similar to or different from those allowed to franchisees
6 hereunder.

7 ~~(i)~~(h) For all contracts between customers and commercial franchisees as of January 1, 1997, the
8 franchisee shall pass through to its customers any savings realized through reduced service levels that
9 the franchisee experiences due to the customers' participation in the mandatory recycling program.

10 ~~(j)~~(i) If a franchisee fails to perform its contract with any customer for longer than two weeks, the
11 city may perform the work using its own equipment or assign the work to another franchisee, who
12 shall be entitled to receive the revenue from the customer for work performed that would have gone
13 to the defaulting franchisee.

14 ~~(k)~~(j) The franchisee shall submit to any load inspection program that the city may reasonably
15 devise.

16 ~~(l)~~(k) Yard waste from a commercial generator or customer shall be collected separately from other
17 solid waste. Each commercial franchisee shall inform all of its commercial customers of this
18 requirement.

19 ~~(m)~~(l) A commercial franchisee shall respond to and, if feasible, resolve all complaints received by
20 12:00 noon on any business day by 5:00 p.m. of the same day and shall respond to and, if feasible,
21 resolve all complaints received after 12:00 noon on any business day by 12:00 noon the next day. An
22 emergency telephone number where the commercial franchisee can be reached shall be given to the
23 city manager or designee.

24 ~~(n)~~(m) A commercial franchisee shall handle commercial service containers with reasonable care
25 and return them to the approximate location from which they were collected. A commercial.

1 franchisee shall clean up all solid waste spilled during the collection operation.

2 ~~(e)~~(n) A commercial franchisee shall not be required to provide collection services when all
3 appropriate disposal sites are closed or an emergency or imminent emergency exists, as determined
4 by the city manager or designee. Collections shall resume on the instruction of the city manager or
5 designee.

6 ~~(p)~~(o) A commercial franchisee shall not be deemed to be an agent of the city and shall be
7 responsible for any losses or damages of any kind arising from its performance or nonperformance
8 under its franchise. The franchisee shall defend at its own expense or reimburse the city for its
9 defense, at the city's option, on any and all claims and suits brought against the city, its elected or
10 appointed officers, employees, and agents resulting from the franchisee's performance or
11 nonperformance of service pursuant to the franchise.

12 ~~(e)~~(p) Each commercial franchisee shall report to the city by December 15 of each year (beginning
13 in 2002) the percentage participation of its clients in commercial recycling and the amount of
14 recycled material collected as a percentage of total solid waste collected from its customers for the
15 year ending September 30. Failure of the franchisee to meet the capacity goals established below for
16 commercial recycling shall be considered a breach of the franchise, and the franchisee shall be
17 subject to penalties as established by the policy adopted under section 27-85(a) of this Code. The
18 following goals are established:

Year Ending	Participation	Capacity of recyclables (weight)
September 30, 2002	60%	25%
September 30, 2003	75%	40%
September 30, 2004	80%	50%
<u>September 30, 2005</u>	<u>30%</u>	<u>20%</u>
September 30, 2006	40%	25%
September 30, 2007	50%	30%

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1 ~~(p)~~(q) Each franchisee must provide the city with the location of the disposal site it uses for
2 construction and demolition debris.

3 ~~(s)~~(r) In order to ensure that the franchisee provides a quality level of solid waste and recycling
4 collection services, the following standards ~~and fines are set:~~

5 (1) All complaints received by the city and reported to the franchisee shall be promptly
6 resolved. Any complaint received by the franchisee shall be entered on a form approved by the city.
7 All complaints received during the business day shall be transmitted on the approved form by 5:00
8 p.m. each business day. Any complaint received before noon shall be resolved the same business day.
9 All other complaints shall be resolved by the end of the next business day.

10 (2) In the event legitimate complaints shall exceed two percent of the total customers
11 served by the franchisee during any city fiscal year, or 0.5 percent of the total customers serviced by
12 the franchisee during any calendar month, the city may ~~levy a \$100.00 fine per incident~~ seek fines for
13 the following violations of this ordinance, on a per incident basis, when committed for the following
14 incidents related to service by the franchisee:

- 15 a. Commingling solid waste with vegetative waste and/or recyclable materials.
16 b. Failure to replace damaged container within seven days of notification (48
17 hours for commercially collected residential customers).
18 c. Throwing of garbage cans or recycling containers.
19 d. ~~Failure to clean spillage.~~ Failure to transmit commercial complaint forms as
20 specified in section 27-79(r).
21 e. Failure to repair damage to customer's property.

22 (3) The city may ~~levy fines of \$100.00~~ seek fines for the following violations of this
23 ordinance, on a per day basis, for the following violations of when committed by the franchisee:

- 24 a. Failure to provide clean, safe, sanitary equipment.
25 b. Failure to maintain required office hours.

- c. Failure to maintain proper licenses.
- d. Failure to display franchisee name and phone number on equipment or containers.
- e. Failure to collect solid waste upon notification by city. Franchisee will also be charged the cost incurred by the city if city personnel are required to collect the solid waste due to such failure.
- f. Using improper truck to service commercial or commercially collected residential customer solid waste.
- g. Failure to provide monthly recycling reports by the 30th day after each month in the format specified by the city.
- h. Collection outside hours specified in section 27-79.

(4) j. Failure to clean up spillage of any substance required to be cleaned up pursuant to federal, state or local laws, rules or ordinance. ~~by and in accordance with the city may result in a \$2500.00 fine per day, per incident.~~

Section 2. Section 27-79.1 of the City of Gainesville Code of Ordinances is hereby created to read:

Sec. 27-79.1. Term of Franchise.

The term of each franchise issued on or after October 1, 1996, shall extend until 11:59 p.m., September 30, 2004 unless forfeited or revoked sooner as provided herein. Any new franchise issued or renewal of an existing franchise shall be by application. The term of any new or renewal franchise shall extend until 11:59 p.m., September 30, 2007, unless forfeited or revoked sooner as provided herein.

Section 3. Section 27-86 of the City of Gainesville Code of Ordinances is hereby amended to read as follows:

Sec. 27-86. Registration of recovered materials collectors.

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CODE: Words ~~stricken~~ are deletions; words underlined are additions.

1 (a) *Registration required.* On and after October 1, 1996, no person, including a commercial
2 franchisee, shall collect, transport, convey or process recovered materials in the city without a
3 registration certificate from the city. Each commercial franchise holder as of October 1, 1996, who
4 desires to collect recovered materials as part of the commercial recycling program shall be granted a
5 registration certificate upon filling out an application and providing the necessary documentation. No
6 application fee will be required until such time as the commercial franchise would have terminated
7 had it not been extended by subsection ~~27-79(e)~~27-79.1.

8 (b) *Application for certificate.*

9 (1) Applications for registration shall be obtained from and returned to the department of
10 solid waste.

11 (2) The applicant shall state whether it is a processor, a transporter, or both.

12 (3) Requested information on the application shall be limited to that information required
13 by F.S. § 403.7046.

14 (4) The application must be accompanied by

15 a. ~~payment of a nonrefundable application fee as specified in Appendix A;~~

16 ba. a copy of state certification as required by F.S. § 403.7046;

17 eb. disclosure of ownership as set forth below; and

18 ec. proof of insurance as set forth below.

19 (c) *Renewal of registration.* The certificate of registration shall be valid for ~~one year~~five years,
20 and ~~shall~~ may be renewed ~~annually~~ up to two times upon

21 ~~(1)~~ payment of renewal fee specified in Appendix A;

22 ~~(2)~~ disclosure of ownership as set forth below;

23 ~~(3)~~ proof of insurance as set forth below as of the time of renewal; and

24 ~~(4)~~ proof that the registrant is still providing service to customers.

25 (d) *Operating requirements for registrants.* Persons collecting, transporting, conveying or

1 processing recovered materials in the city shall comply with the following operating requirements:

2 (1) Disclosure of ownership. Each registrant shall annually provide two copies of a
3 notarized statement disclosing the names of its owners, general and limited partners, or corporate or
4 registered name under which it will conduct its business as authorized by this article.

5 (2) *Response to complaint.* Each registrant shall be responsible for responding to any and
6 all complaints which involve registrant's actions that create a nuisance or have the potential to create
7 a nuisance. Response shall be within 24 hours of the complaint, or by 5 p.m. Monday if the
8 complaint was received during a weekend.

9 (3) *Clean-up.* A registrant shall handle recovered materials containers with reasonable
10 care and return them to the approximate location from which they were collected. A registrant shall
11 clean up all materials spilled during its collection operation.

12 (4) *Emergencies.* A registrant shall not be required to provide collection services when
13 all appropriate recycling sites are closed or a city emergency or imminent emergency exists, as
14 determined by the city manager or designee. Collections shall resume on the instruction of the city
15 manager or designee.

16 (5) *Non-agency.* A registrant shall not be deemed an agent of the city and shall be
17 responsible for any losses or damages of any kind arising from its performance or nonperformance
18 under its registration. The registrant shall defend at its own expense or reimburse the city for its
19 defense, at the city's option, of any and all claims and suits brought against the city, its elected or
20 appointed officers, employees, and agents resulting from the registrant's performance or
21 nonperformance of service pursuant to the registration.

22 (6) *Trucks.* A registrant shall use trucks that are capable of preventing spillage or
23 accidental release of recovered material during transport.

24 (7) *Insurance.* A registrant shall purchase and maintain the types and amounts of
25 insurance set forth below from companies authorized to do business in the State of Florida. The city

1 shall be named as an additional insured on the general liability insurance if the registrant utilizes city
2 facilities. Failure to maintain insurance shall result in revocation of registration.

- 3 a. General liability insurance - \$500,000.00 per occurrence if the registrant
4 utilizes city facilities
- 5 b. ~~Business automobile~~ Commercial motor vehicle insurance as required by F.S.
6 Ch. 627.
- 7 c. Workers compensation as required by F.S. Ch. 440.

8 (8) *Other laws, rules and regulations.* A registrant shall procure at its own expense all
9 local, state and federal franchises, certificates, permits or other authorizations necessary for the
10 conduct of its operations. A registrant and its employees, officers and agents shall comply with all
11 relevant local, state, and federal laws, rules and regulations, orders and mandatory guidelines
12 applying to the collection or processing services being rendered.

13 (9) *Effect of certificate.* Issuance of a registration certificate by the city shall not be
14 deemed to be a waiver of any applicable local, state or federal law or regulation, including but not
15 limited to zoning or planning regulations, with respect to a recycling operation of any kind, nor shall
16 it create any vested right to own or operate any type of recycling operation.

17 (10) *Hours of operation.* A registrant shall make available daily (except Sunday)
18 collection of designated recyclable materials. Collection shall begin no earlier than 6:00 a.m. and
19 shall cease no later than 9:00 p.m. Monday through Saturday, except in areas of mixed residential
20 and commercial occupancy where collections shall begin no earlier than 7:00 a.m. and shall cease no
21 later than 9:00 p.m. Monday through Saturday. The city manager or designee may authorize
22 collection on Sunday where special needs of the customer make it necessary.

23 (e) *Separation of residential and commercial materials.* Curbside collection of
24 designated recyclable materials from commercial generators shall be allowed only with prior
25 approval of the city manager or designee, when considering a request to provide curbside collection,

1 the city manager or designee shall consider the following factors:

- 2 a. accessibility of collection vehicles to property.
- 3 b. available space for placement of containers.
- 4 c. predominant use of property.
- 5 d. safety.

6 (f) *Delivery of materials.* All recovered materials shall be delivered to a recovered materials
7 dealer that has been certified by the Florida Department of Environmental Protection or subsequent
8 responsible agency, and the city.

9 (g) *Reports.* The registrant shall submit to the city manager or designee reports as authorized by
10 F.S. § 403.7046, and the regulations promulgated by pursuant to the authority ~~of~~ stated in statute.

11 **Section 4.** It is the intention of the City Commission that the provisions of Sections 1, 2 and
12 3 of this ordinance shall become and be made a part of the Code of Ordinances of the City of
13 Gainesville, Florida, and that the Sections and Paragraphs of this Ordinance may be renumbered or
14 relettered in order to accomplish such intentions.

15 **Section 5.** If any section, sentence, clause or phrase of this Ordinance is held to be invalid or
16 unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the
17 validity of the remaining portions of this Ordinance.

18 **Section 6.** All ordinances, or parts of ordinances, in conflict herewith are to the extent of
19 such conflict hereby repealed.

20 **Section 7.** This Ordinance shall become effective immediately upon final adoption.

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PASSED AND ADOPTED this 27th day of September, 2004.


PEGGIEN HANRAHAN, MAYOR

ATTEST:

Approved as to form and legality


KURT M. LANNON
CLERK OF THE COMMISSION


MARION J. RABSON
CITY ATTORNEY

SEP 28 2004

This Ordinance passed on first reading this 13th day of September, 2004.
This Ordinance passed on second reading this 27th day of September, 2004.