



# MEMORANDUM

Office of the City Attorney

Legistar No. 990306

Phone: 334-5011/Fax 334-2229  
Box 46

**TO:** Mayor and City Commissioners

**DATE:** September 27, 1999  
SECOND READING

**FROM:** City Attorney

**SUBJECT:** Ordinance No. 0-99-80

An ordinance of the City of Gainesville, Florida, amending section 27-79 of the Code of Ordinances relating to commercial solid waste collection franchise requirements; providing for franchises to expire on September 30, 2004; providing goals for commercial franchisees related to participation of commercial customers in recycling; setting quality standards and providing for fines for failure to meet the standards; providing each franchisee to report its disposal site for construction and demolition debris; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

---

Recommendation: The City Commission adopt the proposed ordinance, as amended.

At its meeting of August 9, 1999, the City Commission authorized the City Attorney to draft and the Clerk of the Commission to advertise an ordinance amending the franchise term of the ordinance to expire September 30, 2004, adding service level provisions, adding construction and demolition disposal tracking, and adding recycling goals and service quality provisions aimed at the franchise holders.

At first reading, changes were made as recommended by the City's Solid Waste Manager, Stephen Hiney. A new subparagraph (h) has been added per the direction of the City Commission.

Prepared by:

Patricia M. Carter  
Sr. Assistant City Attorney

Approved and  
Submitted by:

Marion J. Radson  
City Attorney

MJR:PMC:sw



- 1 (c) The term of each franchise issued on or after October 1, 1996, shall extend until  
2 11:59 p.m., September 30, 2004 1999, unless forfeited or revoked sooner as provided  
3 herein.
- 4 (d) Each franchise shall be subject to the charter of the city and this Code of  
5 Ordinances. Each franchise shall be subject to, and franchisees shall abide by, all present  
6 and future laws, regulations, orders of regulatory bodies, city code provisions and  
7 administrative rules applicable to the performance of the collection services hereunder.  
8 Each franchise shall obtain all licenses and permits presently required by federal, state  
9 and local governments, and as required from time to time.
- 10 (e) All commercial franchises issued on or after October 1, 1996, shall be by contract,  
11 which may include, among other things, agreement on the disposal site for solid waste  
12 collected by the franchisee.
- 13 (f) Each commercial franchisee shall make available daily (except Sunday) collection  
14 of solid waste. Collection shall begin no earlier than 6:00 a.m., and shall cease no later  
15 than 9:00 p.m., Monday through Saturday, except in areas of mixed residential and  
16 commercial occupancy, where collections shall begin no earlier than 7:00 a.m. and cease  
17 no later than 9:00 p.m., Monday through Saturday. The city manager or designee may  
18 authorize collection on Sunday where special needs of the customer make it necessary. In  
19 the event of an emergency, a franchisee may collect at times not allowed by this section,  
20 provided the city manager grants prior approval, to be later evidenced by a written  
21 memorandum. If no written memorandum is obtained, there shall be a presumption that  
22 the franchisee had not obtained prior approval.

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

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

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

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

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

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

20 (m) A commercial franchisee shall respond to and, if feasible, resolve all complaints  
21 received by 12:00 noon on any business day by 5:00 p.m. of the same day and shall  
22 respond to and, if feasible, resolve all complaints received after 12:00 noon on any

1 business day by 12:00 noon the next day. An emergency telephone number where the  
2 commercial franchisee can be reached shall be given to the city manager or designee.

3 (n) A commercial franchisee shall handle commercial service containers with  
4 reasonable care and return them to the approximate location from which they were  
5 collected. A commercial franchisee shall clean up all solid waste spilled during the  
6 collection operation.

7 (o) A commercial franchisee shall not be required to provide collection services when  
8 all appropriate disposal sites are closed or an emergency or imminent emergency exists,  
9 as determined by the city manager or designee. Collections shall resume on the  
10 instruction of the city manager or designee.

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

17 (q) Each commercial franchisee shall report to the city by December 15 of each year  
18 beginning in 2002 the percentage participation of its clients in commercial recycling and  
19 the amount of recycled material collected as a percentage of total solid waste collected  
20 from its customers for the year ending September 30. Failure of the franchisee to meet  
21 the capacity goals established below for commercial recycling shall be considered a  
22 breach of the franchise, and the franchisee shall be subject to penalties as established by

1 the policy adopted under section 27-85(a) of this Code. The following goals are  
2 established:

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

7 (r) Each franchisee must provide the City with the location of the disposal site it uses  
8 for construction and demolition debris.

9 (s) In order to ensure that the franchisee provides a quality level of solid waste and  
10 recycling collection services, the following standards and fines are set.

11 (1) All complaints received by the City and reported to the franchisee shall be  
12 promptly resolved. Any complaint received by the franchisee shall be entered on  
13 a form approved by the City. All complaints received during the business day  
14 shall be transmitted on the approved form by 5:00PM each business day. Any  
15 complaint received before noon shall be resolved the same business day. All  
16 other complaints shall be resolved by the end of the next business day.

17 (2) In the event legitimate complaints shall exceed two percent of the total  
18 customers served by the franchisee during any City fiscal year, or 0.5 percent of  
19 the total customers serviced by the franchisee during any calendar month, the City  
20 may levy a \$100.00 fine per incident for the following incidents related to service  
21 by the franchisee:

22 a. Commingling solid waste with vegetative waste and/or recyclable  
23 materials.

- b. Failure to replace damaged container within seven days of notification (48 hours for commercially collected residential customers)
- c. Throwing of garbage cans or recycling containers.
- d. Failure to clean spillage.
- e. Failure to repair damage to customer's property.

(3) The City may levy fines of \$100.00 per day for the following violations of the franchise:

- a. Failure to provide clean, safe, sanitary equipment.
- 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 30<sup>th</sup> day after each month in the format specified by the City.
- h. Collection outside hours specified in section 27-79.

(4) Failure to clean up spillage of any substance required to be cleaned up by and in accordance with the City may result in a \$2500.00 fine per day, per incident.

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

5 **Section 3.** If any section, sentence, clause or phrase of this ordinance is held to be invalid  
6 or unconstitutional by any court of competent jurisdiction, then said holding shall in no  
7 way affect the validity of the remaining portions of this ordinance.

8 **Section 4.** All ordinances, or parts of ordinances, in conflict herewith are to the extent of  
9 such conflict hereby repealed.

10 **Section 5.** This ordinance shall be effective immediately upon final adoption.

11 **PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

12

13

14

15

16

17

\_\_\_\_\_  
PAULA M. DeLANEY  
MAYOR

18

ATTEST:

Approved as to form and legality

19

20

21

22

\_\_\_\_\_  
KURT M. LANNON  
CLERK OF THE COMMISSION

\_\_\_\_\_  
MARION J. RADSON  
CITY ATTORNEY

23

24

This Ordinance passed on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

25

This Ordinance passed on second reading this \_\_\_\_\_ day of \_\_\_\_\_,  
26 1999.

27

28

29

carter:ordinances:0-99-80 commercial solid waste franchises