

1 **DIVISION 2. COMMERCIAL SERVICE AND CONSTRUCTION AND**
2 **DEMOLITION DEBRIS FRANCHISE**
3

4 **Sec. 27-79. General provisions.**

5 (a) It shall be unlawful to commence or engage in the business of providing
6 containers for commercial service or providing commercial service or construction and
7 demolition debris collection and disposal to properties in the city without a franchise
8 issued by the city in accordance with this article.

9 (b) No franchise shall be awarded until the city determines that the franchisee is
10 capable of complying with the requirements of this article.

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

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

20 (e) Each commercial franchisee shall make available daily (except Sunday) collection
21 of solid waste. Collection shall begin no earlier than 6:00 a.m., and shall cease no later
22 than 9:00 p.m., Monday through Saturday, except in areas of mixed residential and
23 commercial occupancy, where collections shall begin no earlier than 7:00 a.m. and cease
24 no later than 9:00 p.m., Monday through Saturday. The city manager or designee may

1 authorize collection on Sunday where special needs of the customer make it necessary. In
2 the event of an emergency, a franchisee may collect at times not allowed by this section,
3 provided the city manager grants prior approval, to be later evidenced by a written
4 memorandum. If no written memorandum is obtained, there shall be a presumption that
5 the franchisee had not obtained prior approval.

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

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

12 (h) For all contracts between customers and commercial franchisees as of January 1,
13 1997, the franchisee shall pass through to its customers any savings realized through
14 reduced service levels that the franchisee experiences due to the customers' participation
15 in the mandatory recycling program.

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

20 (j) The franchisee shall submit to any load inspection program that the city may
21 reasonably devise.

1 (k) Yard waste from a commercial generator or customer shall be collected separately
2 from other solid waste. Each commercial franchisee shall inform all of its commercial
3 customers of this requirement.

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

9 (m) A commercial franchisee shall handle commercial service containers with
10 reasonable care and return them to the approximate location from which they were
11 collected. A commercial franchisee shall clean up all solid waste spilled during the
12 collection operation.

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

17 (o) A commercial franchisee shall not be deemed to be an agent of the city and shall
18 be responsible for any losses or damages of any kind arising from its performance or
19 nonperformance under its franchise. The franchisee shall defend at its own expense or
20 reimburse the city for its defense, at the city's option, on any and all claims and suits
21 brought against the city, its elected or appointed officers, employees, and agents resulting
22 from the franchisee's performance or nonperformance of service pursuant to the
23 franchise.

1 (p) Each commercial franchisee shall report to the city by December 15 of each year
2 beginning in 2002 the percentage participation of its clients in commercial recycling and
3 the amount of recycled material collected as a percentage of total solid waste collected
4 from its customers for the year ending September 30. ~~Failure of the franchisee to meet the~~
5 ~~capacity goals established below for commercial recycling shall be considered a breach~~
6 ~~of the franchise, and the franchisee shall be subject to penalties as established by the~~
7 ~~policy adopted under section 27-85(a) of this Code. The 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%
September 30, 2005	30%	20%
September 30, 2006	40%	25%
September 30, 2007	50%	30%

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9 (q) Each franchisee must provide the city with the location of the disposal site it uses
10 for construction and demolition debris.

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

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

8 (2) In the event legitimate complaints shall exceed two percent of the total
9 customers served by the franchisee during any city fiscal year, or 0.5
10 percent of the total customers serviced by the franchisee during any
11 calendar month, the city may seek fines for the following violation of this
12 article, on a per incident basis, when committed by the franchisee:

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

22 (3) The city may seek fines for the following violations of the article, on a per
23 day basis, when committed by the franchisee:

- 1 a. Failure to provide clean, safe, sanitary equipment.
- 2 b. Failure to maintain required office hours.
- 3 c. Failure to maintain proper licenses.
- 4 d. Failure to display franchisee name and phone number on equipment or
5 containers.
- 6 e. Failure to collect solid waste upon notification by city. Franchisee will
7 also be charged the cost incurred by the city if city personnel are required
8 to collect the solid waste due to such failure.
- 9 f. Using improper truck to service commercial or commercially collected
10 residential customer solid waste.
- 11 g. Failure to provide monthly recycling reports by the 30th day after each
12 month in the format specified by the city.
- 13 h. Collection outside hours specified in section 27-79.
- 14 i. Failure to clean up spillage of any substance required to be cleaned up
15 pursuant to federal, state or local laws, rules or ordinance.

16 **Sec. 27-79.1. Term of franchise.**

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

22 **Sec. 27-80. Franchise fees.**

- 23 (a) *Amount of fee.*

1 (1) The commercial franchisee providing commercial service shall pay as
2 compensation to the city, for the rights and benefits granted hereunder, a
3 monthly fee as described in Appendix A. For purposes of the calculation
4 stated as Appendix A, gross revenues shall consist of all revenues from the
5 sale or lease of containers, all revenues from garbage and trash collection
6 services, all disposal billed, late fees, bad debt recoveries and other fees
7 collected from customers, with no deductions except for bad debts actually
8 written off.

9 (2) The commercial franchisee providing construction and demolition debris
10 collection service shall pay as compensation to the city, for the rights and
11 benefits granted hereunder, an annual fee calculated based on all vehicles
12 owned, leased, or otherwise used in construction and demolition debris
13 collection service as described in Appendix A.

14 (3) Commercial franchisees providing both commercial service and
15 construction and demolition debris collection service shall pay both fees
16 described in subsections (1) and (2) above, but shall not be required to pay
17 the fees in Appendix A deriving from subsection (2) above for vehicles
18 which are not intended and shall never be used to haul construction and
19 demolition debris.

20 (b) Compensation payments for commercial service shall be due 20 days after the end
21 of each month, accompanied by statements of gross revenues as prescribed by the city's
22 finance department, and shall be paid directly to the city's finance department. Statements
23 and remittances shall be accepted as timely if postmarked on or before the 20th day of the

1 month; if the 20th day falls upon a Saturday, Sunday or federal or state holiday,
2 statements and remittances shall be accepted as timely if postmarked on the next
3 succeeding workday. Compensation payments for construction and demolition debris
4 collection service shall be due on October 15 of each year, and will be accepted as timely
5 if postmarked on or before October 15, or the next succeeding workday if October 15
6 falls upon a Saturday or Sunday or state or federal holiday. Payments not received by the
7 due date shall be assessed interest at the rate of one percent per month compounded
8 monthly from the due date.

9 (c) All amounts paid shall be subject to confirmation and recomputation by the city.
10 An acceptance of payment shall not be construed as an accord that the amount paid is, in
11 fact, the correct amount, nor shall acceptance of payment be construed as a release of any
12 claim the city may have for further or additional sums payable.

13 (d) Billing maneuvers that have the effect of reducing or avoiding the payment of
14 franchise fees are expressly prohibited and will be cause for termination of the franchise,
15 as well as punishment as provided by section 1-9.

16 (e) Payment of this franchise fee shall not exempt the commercial franchisee from the
17 payment of any other license fee, tax or charge on the business, occupation, property or
18 income of the franchisee that may be imposed by the city.

19 **Sec. 27-81. Books, records and reporting requirements.**

20 (a) The city shall have the right to review all records maintained by a franchise
21 providing commercial service concerning its franchise on 30 days' written notice.

22 (b) Each commercial franchisee providing commercial service shall file written
23 monthly reports within 30 days after the end of each month with the city manager or

1 designee. The report shall contain an accurate statement of all receipts under the franchise
2 from all sources, the number of accounts by service level, the quantities of garbage and
3 trash collected and the number of routes for garbage and trash collection.

4 (c) Each commercial franchisee providing commercial service shall file an annual
5 report including a schedule of total gross revenues as defined in section 27-80(a). This
6 annual report shall be examined by an independent certified public accountant ("auditor")
7 to certify that the computation of gross revenue used to calculate franchise fees remitted
8 is in accordance with the terms of the franchise. The auditor's report shall state that the
9 examination was performed in accordance with professional standards established by the
10 AICPA and shall be filed with the city manager or designee within 120 days of the
11 franchisee's year end.

12 (d) Each commercial franchisee shall submit by September 1 of each year an updated
13 list of the type, number and complete description of all equipment to be used for
14 providing service pursuant to this division. Vehicles placed into service since the
15 preceding September 1 shall have the in-service dates noted, and vehicles no longer in
16 service shall have the retirement dates noted. Commercial and demolition debris
17 collection service franchisees will be invoiced for all net increases in vehicles operating
18 during the prior year on a prorated basis, as well as invoiced for vehicles intended to be
19 operated during the coming year.

20 **Sec. 27-82. Application requirements.**

21 (a) Applications for a franchise shall be made to the city manager or designee on such
22 forms and in such manner as prescribed by the city. Application may be made for one or
23 both of the following types of franchise:

1 (1) Commercial limited to collection of garbage and trash from commercially-
2 collected residential dwellings and collection or processing of garbage and
3 trash from commercial generators.

4 (2) Construction and demolition limited to collection and disposal of
5 construction and demolition debris.

6 (b) Application forms will require, at a minimum, the following information and
7 supporting documents.

8 (1) If the applicant is a partnership or corporation, the name(s) and business
9 address(es) of the principal officers and stockholders and other persons
10 having financial or controlling interest in the partnership or corporation;
11 provided, however, that if the corporation is a publicly owned corporation
12 having more than 25 shareholders, then only the names and business
13 addresses of the local managing officers shall be required.

14 (2) Criminal convictions, including withheld adjudication and plea of nolo
15 contendere for any felonies of the applicant if an individual, or any person
16 having any controlling interest in a firm, corporation, partnership,
17 association or organization making application, if requested by the city
18 manager or designee.

19 (3) A statement of whether such applicant operates or has operated a solid
20 waste collection business in this or any other state or territory under a
21 franchise, permit or license; and if so, where, and whether such franchise,
22 permit or license has ever been revoked or suspended and the reasons
23 therefor.

- 1 (4) Proof that corporation is in good standing in the state of corporation, if
2 applicant is a corporation, and, if not a Florida corporation, that applicant
3 is qualified to do business in the State of Florida. If applicant is other than
4 a corporation and is operating under a fictitious name, applicant shall be
5 required to submit information that such fictitious name is registered and
6 held by applicant.
- 7 (5) A list of the type, number and complete description of all equipment to be
8 used by the applicant for providing service pursuant to this division. The
9 city manager or designee may conduct an inspection of all equipment
10 utilized in providing the services as outlined in the franchise to determine
11 that the franchise possesses equipment capable of providing safe and
12 efficient services.
- 13 (6) The applicant shall maintain in full force and effect insurance as specified
14 herein and shall furnish a comprehensive general liability policy to the city
15 manager or designee and also file with the city manager or designee a
16 certificate of insurance for all policies written in the applicant's name. The
17 applicant shall carry in its own name a policy covering its operations in an
18 amount not less than \$200,000.00 per occurrence for bodily injury and
19 \$200,000.00 per occurrence for property damage regarding comprehensive
20 general liability. The applicant shall carry in its own name a policy
21 covering its operation in an amount not less than \$100,000.00 per person,
22 \$200,000.00 per occurrence for bodily injury, and \$50,000.00 per

1 occurrence for property damage liability regarding automobile liability
2 insurance.

3 (7) The insurance policies shall be filed in the office of the city manager or
4 designee and shall remain on file so long as the franchisee operates a
5 franchise.

6 (8) The applicant shall pay the city a nonrefundable application fee, as
7 specified in Appendix A, at the time application is filed.

8 **Sec. 27-83. Denial of application; suspension or revocation of franchise; right of**
9 **appeal.**

10 (a) Upon a finding of just cause, the city manager or designee shall deny a franchise
11 in the case of application for new or renewed franchises, and suspend or revoke a
12 franchise for a specified period of time in the case of previously issued franchises. Just
13 cause shall include but not be limited to a failure to meet the requirements of this article,
14 violation of any of the provisions of this article or any of the ordinances of the city, or the
15 laws of the United States or the state of Florida, the violations of which reflect
16 unfavorably on the fitness of the holder to offer solid waste collection services to the
17 public.

18 (b) Prior to denial, suspension or revocation, the applicant or holder shall be given
19 reasonable notice of the proposed action to be taken and shall have an opportunity to
20 present to the city manager or designee evidence as to why the franchise should not be
21 denied, revoked or suspended. The notice of intention shall be served upon the applicant
22 or franchisee by registered mail or personal service.

1 (c) Any applicant or franchisee whose franchise is denied, suspended or revoked by
2 the city manager or designee may appeal the decision to the city commission. The appeal
3 shall be taken by filing written notice thereof, in duplicate, with the clerk of the
4 commission within ten days after the decision of the city manager or designee. The clerk
5 of the commission shall notify the city manager of the appeal and the city manager or
6 designee shall forthwith transmit to the clerk copies of all papers constituting the record
7 upon which the action appealed is based. The clerk of the commission shall place the
8 appeal on the agenda of the next regularly scheduled city commission meeting which is
9 not less than ten days from the date of the filing of the appeal. The city commission shall
10 review the record and decide whether the decision of the city manager was based on
11 competent, substantial evidence. It [If] the commission finds competent, substantial
12 evidence for the city manager's decision, it will uphold the manager's decision; otherwise,
13 it will reverse the manager's decision. The decision of the city commission shall
14 constitute final administrative action.

15 **Sec. 27-84. Penalties for violation.**

16 Except as otherwise provided, any person violating or failing to comply with any of the
17 provisions of this division shall be punished as provided by section 1-9.