

ORDINANCE NO. 13-305

AN ORDINANCE AMENDING CHAPTER 78, CITY CODE, ENTITLED "SOLID WASTE"; REPEALING ARTICLES I, II, AND III OF CHAPTER 78 IN THEIR ENTIRETY; ADOPTING NEW ARTICLES I, II, AND III TO REGULATE SOLID WASTE ACCUMULATION, COLLECTION, TRANSPORT, AND DISPOSAL; PROVIDING DEFINITIONS; PROHIBITING LITTERING; PROVIDING GENERAL RESTRICTIONS RELATED TO PLACEMENT, REMOVAL, TRANSPORT, AND DISPOSAL OF REFUSE; PROVIDING FOR A CITY REFUSE CONTRACTOR TO SERVE ALL REAL PROPERTY IN THE CITY SUBJECT TO CERTAIN EXCEPTIONS; REQUIRING CUSTOMER COMPLIANCE WITH THE TERMS OF THE CITY REFUSE CONTRACT; AUTHORIZING SOLID WASTE SERVICE FEES TO BE ESTABLISHED BY RESOLUTION OF THE CITY COMMISSION WITH AUTOMATIC ANNUAL ADJUSTMENT; PROVIDING FOR BILLING AND PAYMENT OF SERVICE FEES; PROVIDING PENALTIES AND REMEDIES FOR NON-PAYMENT, INCLUDING LIENS ON REAL PROPERTY; ESTABLISHING REQUIREMENTS FOR CONTAINMENT, STORAGE, AND PLACEMENT OF REFUSE FOR PICKUP; AUTHORIZING SPECIAL SERVICE CHARGES; AUTHORIZING APPROVAL OF NONEXCLUSIVE FRANCHISES FOR CERTAIN SERVICES AND SERVICE PROVIDERS; AUTHORIZING A FEE SCHEDULE TO BE ESTABLISHED BY RESOLUTION OF THE CITY COMMISSION FOR NONEXCLUSIVE FRANCHISE, REGISTRATION, AND RELATED FEES; PROVIDING REQUIREMENTS AND STANDARDS FOR APPLICATION, REVIEW, AND APPROVAL OF NONEXCLUSIVE FRANCHISES; ESTABLISHING NONEXCLUSIVE FRANCHISE OPERATIONAL REQUIREMENTS AND STANDARDS; PROVIDING PENALTIES AND REMEDIES FOR FAILURE TO COMPLY WITH NONEXCLUSIVE FRANCHISE REQUIREMENTS AND STANDARDS, INCLUDING ADMINISTRATIVE CHARGES AND SUSPENSION AND REVOCATION OF FRANCHISE; PROVIDING REGISTRATION, REPORTING, AND OPERATIONAL REQUIREMENTS FOR EXEMPT RECOVERED MATERIALS DEALERS; PROVIDING FOR DENIAL, SUSPENSION, AND REVOCATION OF REGISTRATION.PURSUANT TO STATE LAW; PROVIDING FOR APPEALS; PROVIDING PENALTIES FOR VIOLATIONS;

REPEALING ALL ORDINANCES OR PARTS OF  
ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING  
AN EFFECTIVE DATE.

WHEREAS, Articles I – III of Chapter 78, City Code, regulate the accumulation, collection, transport, and disposal of solid waste in the City, provide for and regulate City solid waste management services and fees by a City contractor, and provide for additional solid waste services by franchisees and exempt providers; and

WHEREAS, the provisions were reviewed by staff and it was been determined that a major revision is needed in order to better organize and clarify the regulations, and to update requirements to reflect current solid waste practices and state laws; and

WHEREAS, proposed revised Articles I-III have been prepared and submitted;  
and

WHEREAS, the Deputy City Manager/Operations recommends approval of the revised regulations.

NOW, THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF  
DAYTONA BEACH, FLORIDA:

SECTION 1. Articles I, II, and III of Chapter 78, City Code, are repealed in their entirety and replaced with new Articles I, II, and III, to read as follows:

#### **ARTICLE I. - IN GENERAL**

##### **Sec. 78-1. Definitions.**

When used in this chapter, the following words and phrases will have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning.

*Biological waste* has the same meaning as set forth in § 403.703, Florida Statutes.

*Biomedical waste* has the same meaning as set forth in § 403.703, Florida Statutes.

*City refuse contract* means the written agreement between the City and the City's refuse contractor for provision of collection, transport, and disposal of refuse and related services.

*City refuse contractor* means the firm under contract with the city to provide collection, transport, and disposal of refuse as part of the city's solid waste management program as described in this chapter.

*Construction and demolition debris* has the same meaning as set forth in § 403.703, Florida Statutes.

*Curbside* means the area immediately adjacent to the edge of the traveled portion of a public or private street affording reasonable access to waste collection vehicles. Typically this area is the parkway or lawn area between the street and the sidewalk. For properties without such parkways or lawn areas, curbside means on the customer's property within five feet from the street.

*Deminimis amount* means no more than 10% of the total volume contained.

*Garbage* means every accumulation of animal, fruit, or vegetable matter relating to the storage, preparation, use, and consumption of meats, fish, fowl, fruit, vegetables, and any other matter, of any nature whatsoever which is subject to decay, putrefaction, and the generation of noxious and offensive gasses or odors, or which, during and after decay, may serve as breeding or feeding material for flies or other germ carrying insects. The term includes bottles, cans, and other food containers which, due to their ability to retain water, may serve as a breeding place for mosquitoes or other water breeding insects, but not recovered materials. The term also includes animal feces.

*Hazardous waste* has the same meaning as set forth in § 403.703, Florida Statutes.

*Living unit* means a room or set of rooms equipped with facilities for the storage and preparation of food for consumption, designed for or used by one or more persons as a single household establishment.

*Mobile home* means a trailer equipped with facilities for the storage and preparation of food for consumption and designed for or used by one or more persons as a single household establishment.

*Motel* means any motel, hotel, apartment motel, described as a building or group of buildings containing sleeping rooms without kitchen facilities contiguous thereto; this classification will apply to sleeping rooms not contiguous to or available to or benefitted by a room used for the storage and preparation of food, whether or not such

sleeping rooms are located in a building or group of buildings on one parcel of land that also contains rooms with contiguous kitchen facilities.

*Multifamily building* means a residential building, other than a duplex or triplex, containing more than one single-family living unit.

*Multifamily residential complex* means a building or complex of buildings that contain one or more multifamily buildings.

*Principal* means any person having any controlling interest in a firm, corporation, partnership, association, or organization.

*Recovered materials* has the same meaning as set forth in § 403.703, Florida Statutes.

*Recyclable materials* has the same meaning as set forth in § 403.703, Florida Statutes. The term may also be referred to herein as “recyclables.”

*Refuse* means all garbage and trash, including construction and demolition debris and recyclable materials but not biological waste, biomedical waste, hazardous waste, or recovered materials.

*Refuse container or container* means any of the following:

- (1) *Compaction container* means a mechanical container used for the collection of refuse using electric, hydraulic, or other means of compaction.
- (2) *Garbage bag* means a bag designed for the storage and disposal of garbage and trash, made of plastic or other suitable material.
- (3) *Garbage can* means a container made of plastic or galvanized material with a capacity of not less than 20 gallons and not more than 32 gallons. Each can must have two handles on the sides or a bail by which it may be lifted and a tight fitting lid without holes.
- (4) *Garbage container* means garbage bag, garbage can, or mobile container.
- (5) *Mechanical container* means a container for the deposit of refuse that, due to its capacity, size, or other physical characteristics, must be emptied by mechanical means.
- (6) *Mobile container* means a polyethylene container, with a tight fitting lid, mounted on wheels and designed for ease of use and durability, approved for use by the city. Roll-off containers are not considered “mobile containers.”

- (7) *Recycling bin* means a container made of plastic or galvanized material designed for the storage and collection of recyclable materials.
- (8) *Roll-off container* means a non-compacted, metal, construction and demolition debris and recycling storage and collection container with a capacity of at least ten cubic yards, which container is transported to a disposal facility for emptying then returned to the collection or storage site.

*Residential customer* means a city solid waste customer receiving collection service for a single-family premises, a duplex, a triplex, or a multifamily residential complex, regardless of the type of container provided or used for collection of refuse.

*Service provider* means the city refuse contractor, or any person or firm authorized to provide services pursuant to article III when acting within the scope of such authorization.

*Sharps* has the same meaning as provided in § 381.0098, Florida Statutes.

*Single-family living unit* means a single-family home, or one living unit of a duplex, triplex, multifamily building, or mobile home park. The term does not include units in motels.

*Solid waste* has the same meaning as set forth in § 403.703, Florida Statutes.

*Trash* means and includes commercial trash, household trash, and yard trash, defined as follows:

- (1) *Commercial trash* means any and all accumulations of refuse generated by the operation of hotels, stores, offices, and other business places, which is not garbage or recovered material, including discarded paper, rags, excelsior, wooden or paper or cardboard boxes or containers, sweepings, furniture, appliances, car parts, tires, and any other accumulations; and all waste placed in public receptacles on public streets, parks, playgrounds, and other public places.
- (2) *Household trash* means any and all accumulations of refuse generated from the operation of a residential unit which is not garbage or recovered materials, including all bulky wastes, yard toys, and building material waste from residential do-it-yourself projects.
- (3) *Yard trash* means any and all accumulations of refuse consisting of grass, palm fronds, leaves, branches, shrubs, vines, cut trees, tree stumps, and other similar items generated by the maintenance of lawns, shrubs, gardens, and trees. The term excludes boards or lumber.

**Sec. 78-2. Administration.**

The city manager will administer the provisions of this chapter and may establish written regulations implementing this chapter. Written regulations will be kept on file in the public works department and the office of the city clerk.

**Sec. 78-3. Violation and penalties.**

Any person violating this article may be punished as provided in section 1-14. Alternatively, the code enforcement board and special magistrates will have jurisdiction to enforce these provisions pursuant to chapter 162, Florida Statutes, and any person determined to be in violation will be subject to all penalties and remedies available as provided by law.

**Sec. 78-4. Littering, depositing of refuse in unauthorized places.**

- (a) No person will litter, throw, or deposit any refuse:
  - (1) On the sidewalk or upon any street, lane, alley, or other public property, including any gutter, catch basin, storm sewer, storm drain, or drainage ditch.
  - (2) In or on any fresh water lake, river, stream, fountain, pond, tidal, or coastal water of the state or other body of water.
- (b) No person will deposit any refuse or other solid waste on the private property of another.
- (c) No person will deposit refuse for collection which originated from property other than the property from which the refuse is being collected.
- (d) No person will deposit refuse in any place within the city limits except as specifically authorized by this chapter.
- (e) No person will transport any refuse over any public road except in full compliance with applicable federal, state, and local laws and regulations, and unless the refuse is securely tied, covered, or otherwise contained as to prevent leakage or spillage onto the road.
- (f) No person will allow refuse to spill, blow, or drop from any vehicle on any road.

**Sec. 78-5. Other prohibited acts.**

It will be unlawful for any person to:

- (a) Burn any solid waste within the city, except as authorized by federal or state permit.
- (b) Allow any scattered refuse materials to remain at or near the curbside, or to fail to remove any solid waste materials from right-of-way or other public property which have blown or otherwise scattered from the person's property.
- (c) Place any solid waste in an underground container for pickup.
- (d) Place sharp materials such as razor blades, broken glass, sharp pieces of metal, light bulbs, or similar material, for collection in a manner that could cause injury to collection personnel. The owner of such materials is responsible for wrapping or boxing these materials so as to minimize potential for such injuries. This section will not be deemed to authorize a person to deposit sharps for collection. Sharps and all other biomedical wastes are excluded from the definition of refuse in this code.
- (e) Remove from any container belonging to another person, materials set out for refuse collection or recycling, without proper authority.
- (f) Collect, transport, or dispose used oil, biohazardous waste, biomedical wastes, or other hazardous wastes or materials except in full compliance with applicable federal and state laws and regulations.
- (g) Collect, transport, or dispose of biological waste, biomedical waste, or hazardous waste except in strict compliance with all applicable federal and state laws.
- (h) Place a propane tank for collection unless the tank has been emptied with the valve removed.

**Sec. 78-6. Collection and removal of refuse, and related services.**

All refuse and all recovered materials accumulated in the city will be collected, conveyed, and processed or disposed of by the city, the city refuse contractor, or other service provider, except as follows:

- (1) Any owner or occupant of property within the city may transport and dispose of their own refuse provided they safely transport the refuse and properly dispose of it in an approved landfill.

- (2) Building contractors and landscaping contractors may self-perform the disposal of refuse associated with their work in compliance with section 78-7 below.

**Sec. 78-7. Refuse generated from construction or landscaping work.**

(a) All construction, renovation, and demolition sites are to be kept clean and free of debris and litter during the construction, renovation, or demolition process. All refuse, including construction and demolition debris, will be neatly contained during the process. A certificate of occupancy for a newly constructed or renovated building will not be issued until all refuse and litter caused by the construction or remodeling is removed from the site.

(b) Building contractors must collect, transport, and dispose of all refuse generated from their work, including limbs, tree trunks, roots, concrete slabs, concrete blocks, bricks, and all other materials; or arrange for collection, transportation, and disposal by a service provider.

(c) Tree trimmers, tree surgeons, and other landscaping contractors must collect, transport, and dispose of all yard waste and other vegetative debris generated from their work; or arrange for collection, transportation, and disposal by a service provider.

(d) A building contractor or landscaping contractor self-performing its obligations under subsections (b) or (c) of this section must safely transport such waste, properly dispose of such waste in an approved landfill, and keep a copy of the disposal ticket provided by the licensed facility and provide a copy of the ticket to the city upon request, and must fully comply with all applicable laws and regulations.

**Secs. 78-8 – 78-35. Reserved.**

**ARTICLE II - CITY SOLID WASTE MANAGEMENT SERVICES**

**Sec. 78-36. Policy and intent.**

(a) It is the city's intention to provide for an adequate, safe, and sanitary system for the collection, transportation, and disposal of all refuse and recovered materials accumulated within the city. To aid the city in fulfilling its responsibility, the city may engage the services of a city refuse contractor to provide refuse collection, transportation, and disposal services for city customers through a written contract approved by city commission resolution; and may authorize additional service providers to provide specific services as described in article III of this chapter.

(b) The city commission has determined that regular solid waste collection services are essential services for all real property within the city limits, that the real properties served or for which collection services are available receive a special benefit, and has provided for the establishment of fees which are fairly and reasonably apportioned among the real properties served.

**Sec. 78-37. City refuse contract; compliance with terms.**

(a) Every owner, occupant, resident, or tenant of property within the city must abide by the terms of any properly adopted and executed contract in effect between the city and the city refuse contractor, except, in accordance with chapter 403, part IV, Florida Statutes, and other applicable provisions of law, the following:

- (1) Owners, occupants, residents, and tenants of certain properties listed in the city refuse contract as excluded commercial accounts may use the services of a service provider other than the city refuse contractor. Such persons are exempt from the city service fees established pursuant to this article provided they remain an excluded commercial account and continue to provide for proper collection and disposal of solid waste generated from the property.
- (2) Owners, occupants, and tenants of commercial establishments that generate source-separated recovered materials may use the services of a service provider other than the city refuse contractor to collect such materials. Any person who elects to do so is exempt from the city service fees established pursuant to this article for collection and transport of recyclable materials.

The city refuse contract and the schedule governing frequency of collection of refuse and recovered materials, and current rates and franchise fees, will be on file in the office of the city clerk.

(b) Any owner, occupant, resident, or tenant of property who leaves refuse for collection which does not comply with the terms of the city's refuse contract and the provisions of this article will remove it promptly after notice. The city refuse contractor may agree to collect such refuse for a fee to be paid by the owner, occupant, resident, or tenant directly to the city refuse contractor where authorized in the city refuse contract. In the absence of such agreement by the city refuse contractor, if the owner, occupant, resident, or tenant fails to remove such refuse the city may provide for its collection and collect the costs thereof in the same manner as provided for service fees.

**Sec. 78-38. Fees imposed for services.**

(a) The city commission will by resolution establish and from time to time amend a schedule of fees to be paid by city solid waste customers for services rendered in the

collection and disposal of refuse and recovered materials, for rental of mechanical containers, and for the availability of service for the collection and disposal of refuse (hereinafter collectively "service fees"). These service fees are separate and apart from special service charges that a customer may be required to pay directly to the city refuse contractor for special pickups or other services where provided by this article or the refuse contract. A schedule of current service fees will be maintained in the city clerk's office.

(b) All service fees will be adjusted annually by the amount of the percentage change in the Consumer Price Index as published by the United States Department of Labor from July 1 of the preceding calendar year until June 30 of the present calendar year. The adjusted rate will be applied to all billings dated on or after October 1 of each year. The percentage change in the Consumer Price Index will be applied to the charges as follows:

- (1) Multiply the percentage change in the Consumer Price Index from July 1 of the preceding calendar year through June 30 of the present calendar year times the existing charges. The Consumer Price Index used to make this calculation will be the same as the Index required to be used for cost adjustments in the city refuse contract, if applicable; or, if the city refuse contract does not use an Index for such adjustments, the Index used for annual adjustments to water and sewer rates pursuant to chapter 98 of this code.
- (2) Add the product as determined in subsection (b)(1) of this section to the existing charges and round to the nearest cent.

This annual adjustment will be applied automatically to all billings dated on or after October 1 of the year in which the adjustment is made.

(c) Owners or occupants of property within the city who transport and dispose of their own refuse as authorized in sec. 78-6(1) will not be relieved from the obligation to the pay service fees established in this section.

**Sec. 78-39. Liability for fees; billing and collection; penalties for nonpayment.**

(a) The city will bill for city solid waste services on a monthly basis. If the customer receives a combined utility bill pursuant to chapter 98 of this code, the service fees will be included in the combined bill. If neither the property owner nor tenant receives a combined utility bill, the city will bill the property owner at the address as listed in the latest tax roll. The property owner is ultimately responsible for any service fees owed.

(b) The bill for service must be paid by the 20th day following the original date of billing. Any bill not paid when due will be subject to a penalty charge equal to the penalty charge imposed under chapter 98 for late payments for water service.

(c) When any payment is made for service fees owed hereunder, payment will first be applied toward any delinquent service fees.

(d) Nothing in this section will be deemed to elect, waive, limit, or restrict other collection procedures provided by law.

**Sec. 78-40. Fees declared to be debt to city; lien against property.**

The solid waste management services referenced in this article are essential services that provide a special benefit to all properties within the city limits, and the fees charged are proportional to the benefit received. All unpaid fees will constitute and are hereby imposed as special assessment liens against the real property and, until fully paid and discharged, will remain liens equal in rank and dignity with the lien of ad valorem taxes and superior in rank and dignity to all other liens, encumbrances, titles, and claims in, to, or against the real property involved.

**Sec. 78-41. Preparation and containment of refuse for collection.**

(a) *Preparation.*

- (1) All garbage and household trash should be drained of liquids prior to being deposited for pickup. All garbage, except for oversized items of household trash, should be bagged or otherwise secured. Garbage and household trash may be combined in garbage containers. Oversized items of household trash should be placed next to refuse containers for collection on regularly-scheduled collection days. Doors with latches will be removed from refrigerators or freezers placed for collection.
- (2) All trash, except oversized items of household trash, must be contained within closed garbage containers, plastic bags, or securely tied bundles not exceeding 40 pounds; except that trimmings resulting from ordinary yard care, including palm fronds, tree trunks, and limbs not exceeding six inches in diameter and five feet in length, may be placed for collection not within closed containers. Where the volume of garbage and trash generated exceeds the capacity of the containers provided, the customer may temporarily use alternate containers so long as they do not exceed 40 pounds in capacity and the containers are reasonably secure. Oversized items exceeding the size or capacity of the containers provided may be set out for collection separately.

- (3) Prior to placement for recyclable collections, recyclable glass, plastic containers, and metal food containers should be rinsed, and plastic container caps and pumps should be removed. Metal cans are not required to be flattened and labels are not required to be removed from cans, plastic, or glass. Newspapers should be free of food and other contaminants when placed in recycling container.
- (4) Construction and demolition debris and yard trash should be separated from other refuse at the point of collection.
- (5) The owner, occupant, resident, or tenant is responsible for promptly cleaning any spillage or overflow of refuse from containers.
- (6) Persons served by the city refuse contractor will comply with all requirements set forth in the city refuse contract for preparation of refuse and recyclable materials for collection, including the special provisions applicable to yard waste. In case of conflict between a provision of this section and the provisions of the refuse contract, the more stringent provision will apply.

(b) *Containment.*

- (1) All containers used for collection of refuse or recyclable materials must be industry standard and are subject to city approval. Unless otherwise approved in writing by the city:
  - a. All persons will use the containers provided by the service provider as the primary collection containers.
  - b. Refuse containers of the following type will be used to contain refuse for collection, except as provided in paragraph d. below:
    - (i) Single-family homes, residential duplexes and triplexes, and multifamily buildings containing fewer than ten living units will use mobile containers.
    - (ii) A multifamily building containing ten or more living units, or any commercial, industrial, or institutional use, may elect to use mobile, compaction, or mechanical containers.
  - c. Containers provided by a service provider for recyclable collections will be used solely for collection of recyclable materials. In general recyclable bins will be used; however, the city may allow the use of mobile containers for collection of recyclable materials provided they are clearly

distinct from containers used for refuse collection and meet the additional specifications provided in this section.

- d. If necessary based on factors such as volume of refuse generated, the manner in which such refuse is collected, and the configuration of the customer's property, the city may authorize or require any multifamily residential complex or commercial, industrial, or institutional establishment to use one or more compaction, mechanical, or roll-off containers for the collection and storage of refuse or recyclable materials.
- (2) Roll-off and mechanical containers will include the name and telephone number of the service provider in lettering and numbering at least 6" in height.
  - (3) Containers may not contain advertising, but may include the corporate logo of the service provider.
  - (4) Containers used for collection of recyclable materials must include words such as "recycling" or "recyclable," the "chasing arrows" recycling symbol, "No Trash," or other suitable language identifying that the use of such container is restricted to collection of recyclable materials.
  - (5) Upon demand by the city, the owner, occupant, resident, or tenant will replace containers not meeting the requirements of this section.
  - (6) The city manager may adopt written regulations establishing requirements relating to capacity, composition, durability, size, volume, and other physical characteristics of containers to generally promote public health and safety, protect city right-of-way, and encourage recycling.

(c) *Special service charges.* Pursuant to the city refuse contract, customers of the city refuse contractor may be required to pay special service charges where the customers do not meet the requirements or recommended practices listed above, or for certain types of collections. For example, special service charges may be imposed:

- (1) Where a customer fails to source separate construction and demolition debris or yard trash from other refuse, and the city authorizes or requires the city refuse contractor to separate such construction and demolition debris or yard trash from the other refuse;
- (2) For special collections or where refuse left for collection includes oversized items of household trash or other refuse which, by reason of its bulk, shape, weight, or volume, cannot be placed in a container or bundled, or which exceeds the size and weight limitations of any section of this article; and

- (3) Where the refuse left for collection is not properly contained, such that the city refuse contractor is required to spend an inordinate amount of time to make collection.

Special collections will be scheduled, conducted, billed, and paid for by the customer in accordance with the city refuse contract.

**Sec. 78-42. Placement and storage of mobile containers.**

(a) Residential customers, excluding multifamily buildings containing ten or more units, will place mobile containers for curbside collection, unless the city specifically authorizes an alternative location for collection. Back door collections may be authorized for residential customers with disabilities, or in other circumstances upon the customer's request. If the city approves backdoor collection for reasons other than the customer's disability, the customer may be required to pay a special service charge.

(b) Multifamily buildings of ten units or more and commercial customers using mobile containers will place the containers for back door collection; unless some other location is expressly approved by the city based on factors such as the constraints of the site, the impact on vehicular and pedestrian traffic, and the type of mobile container used.

(c) When not in place for collection, mobile containers will be stored in a suitable location. Mobile containers may not be stored in a front or side yard abutting a public right-of-way, or between the building line and the adjoining public right-of-way, or upon any public right-of-way, except where specifically authorized in writing by the city.

(d) Mobile containers placed for curbside collection must be located at the curbside adjacent to a driveway and not over five feet from the curb line or ten feet from the edge of the pavement or edge of a traveled way. Containers may be placed for collection no earlier than 6:00 p.m. on the day prior to the day of collection, and must be removed for storage no later than 10:00 p.m. on the day of collection.

(e) The city may remove and relocate any container placed in violation of this section to a suitable location on the subject property and may assess a service fee to place the container in an appropriate location. The service fee will be for each container and will be assessed and collected in the manner provided by sections 78-39 and 78-40. The fee will be supplemental to any other penalties provided for violation of this section.

**Sec. 78-43. Placement and screening of mechanical, compaction, and roll-off containers.**

(a) Mechanical, compaction, and roll-off containers will be stored in a location mutually agreed upon by the property owner or occupant and the service provider, provided that the location allows for collection to be performed in a manner that does not interfere with the use of adjoining property or the public's use of right-of-way. Where no such agreement is reached, the city will designate a reasonable location.

(b) All permanently located mechanical, compaction, and roll-off containers in use within the city will be screened from view of the public right-of-way as follows:

- (1) Screening will be on at least three sides, using wood, cyclone fence with slats, brick, stone, concrete, or shrubbery. The unscreened side will not face a paved public right-of-way. The screening will encompass the full height, length, and width of the container. All screening will be maintained for function, safety, and appearance.
- (2) Gates intended for service access will provide an opening of at least ten feet in width for each mechanical container.
- (3) Where a gate in the screening faces the public right-of-way, the gate will be closed and latched at all times. The city may close any gate left open in violation of this subsection. A service fee for each such closure service will be assessed and will be collected in the manner provided by sections 78-39 and 78-40. The fee will be supplemental to any other penalties provided for violation of this section.

The city may grant exceptions to these screening requirements where specific lot conditions make compliance impractical.

(c) Mechanical, compaction, and roll-off containers having an individual or combined capacity exceeding one cubic yard serving any building constructed after January 1, 1972, will be located as follows:

- (1) The container will be set back 20 feet from the front lot line and ten feet from any side lot line abutting a street.
- (2) The container pad will be of suitable strength paving and level with the service vehicle approach area to allow alignment of the loading mechanism with the container sleeves.
- (3) The pad area for each container will provide a service opening at least ten feet wide. The minimum depth will be at least eight feet for two- and

three-cubic-yard dumpsters, and at least ten feet for four-, six-, and eight-cubic-yard dumpsters. The pad area for roll-off containers and compaction dumpsters that are not standard sizes will be sufficient to meet service needs.

- (4) The container will be located to provide direct access by the collection vehicle and to ensure that the vehicle will not encroach on street traffic lanes during collection, will not have to traverse marked parking spaces for access, and will not have to back up more than 50 feet.

(d) The city may approve the temporary use of mechanical, compaction, or roll-off containers and may exempt such temporary containers from the container screening requirements.

(e) Mechanical containers on wheels and which are normally kept out of view may be placed for curbside collection in the same manner as authorized for mobile containers.

**Sec. 78-44. Violation and penalties.**

(a) Any person violating this article, or written regulations implementing this article issued by the city manager pursuant to section 78-2, may be fined as provided in section 1-14 but will not be subject to imprisonment. Alternatively, the code enforcement board and special magistrates will have jurisdiction to enforce these provisions pursuant to chapter 162, Florida Statutes, and any person determined to be in violation will be subject to all penalties and remedies available as provided therein.

(b) The imposition of a fine will not alter or diminish the city refuse contractor's rights to charge special fees pursuant to the solid waste contract, where a violation of this article requires the service provider to engage in special services.

**Secs. 78-45 – 78-75. Reserved.**

**ARTICLE III.**

**REGULATION OF SOLID WASTE SERVICE PROVIDERS**

**Sec. 78-76. Policy statement; applicability; administration.**

(a) The city will grant nonexclusive franchises to (i) providers of refuse removal for exempt customers listed in the city refuse contract, (ii) providers of construction and demolition debris removal through use of roll-off containers, (iii) providers of roll-off compaction containers for rental, and (iv) recyclable materials contractors,

except those contractors exempt by state law. For the right and privilege of using the city streets and roadways and to compensate the city for the burden of monitoring and regulating the nonexclusive franchisee's services, nonexclusive franchise fees are provided. Nonexclusive franchises will be granted only for those services which are not described as exclusive services under the city refuse contract.

(b) The city refuse contractor is granted all nonexclusive franchises authorized by this article.

(c) Recyclable materials contractors who are exempt by state law from the obligation to obtain a non-exclusive franchise must register and provide reporting in accordance with this article.

**Sec. 78-77. Fee schedule.**

(a) The city commission will by resolution establish and may from time to time amend, a Fee Schedule for non-exclusive franchises. The Fee Schedule may include fees for reviewing and approving applications for non-exclusive franchises; franchise fees, including flat fees, percentage of revenue-based fees, administrative fees and charges, and other types of fees; and registration fees for those service providers who are required to be registered by this article. The Fee Schedule will be available for public inspection in the city clerk's office during regular business hours.

(b) The city refuse contractor will be exempt from any application fees and base franchise fees established pursuant to this section. The city refuse contractor will be required to pay other applicable franchise fees and charges established pursuant to this article, when the refuse contractor is providing services outside the scope of the city refuse contract. For example, the city refuse contractor will be required to pay any franchise fees that are based upon the volume of recovered materials collected, where the refuse contractor is collecting and transporting recovered materials for commercial businesses.

**Sec. 78-78. Nonexclusive franchise application procedure; conditions of approval.**

(a) An application to provide nonexclusive franchise services pursuant to this article will be submitted in writing on forms provided by the city. In order to be considered complete, the application must be accompanied by a non-refundable application fee as established in the Fee Schedule, and must include the following information:

(1) If the applicant is a partnership, corporation, or limited liability company:

- a. The names and business addresses of the applicant's principals; provided, however, that if the corporation is a publicly-owned corporation having more than 25 shareholders, then only the names and business addresses of the local managing officers will be required;
  - b. Proof that the corporation, limited liability company, or partnership is in good standing in the state where formed; and
  - c. Proof that applicant is qualified to do business in the State of Florida.
- (2) If the applicant is operating under a fictitious name, the applicant must submit information that such fictitious name is registered and held by applicant.
  - (3) A list of the type, number, and complete description of all equipment to be used by the applicant for providing service pursuant to this division. The city may inspect all such equipment for purposes of reviewing the application.
  - (4) If requested by the city, criminal convictions of the applicant, including withheld adjudication and plea of *nolo contendere* for any felonies.
  - (5) A statement of whether such applicant operates or has operated a solid waste collection business in this or any other state or territory under a franchise, permit, or license; and if so, where, and whether such franchise, permit, or license has ever been revoked or suspended and the reasons for such revocation or suspension.
  - (6) Other information requested by the city to allow for a determination as to whether the application meets the criteria contained in subsection (b) of this section.

For purposes of (4) and (5) above, the term "applicant" includes all of the applicant's principals unless the applicant is a publicly-owned corporation having more than 25 shareholders, in which case the term includes the local managing officers.

(b) Upon receipt, the completed application will promptly be reviewed for conformity to the requirements of this article. The city manager will grant a nonexclusive franchise only upon making the determination that the applicant has demonstrated that:

- (1) There is need for such additional services within the city; and
- (2) The applicant has the financial and technical capability, including the requisite personnel and equipment, to provide the services in accordance with all applicable requirements of this article and state law.

(c) The city manager may deny any application under any of the following conditions:

- (1) The application contains incomplete, false, or misleading information.
- (2) The applicant is legally incompetent to contract or to sue and be sued.
- (3) The applicant refuses to comply with all requirements of this article, including requirements to remit all fees and deposits and, where applicable, provide insurance.
- (4) The applicant has on prior occasions damaged public or private property while providing services of a kind authorized by this chapter, and has not paid in full for such damage.
- (5) The applicant has any outstanding past due debts to the city.
- (6) The applicant has had a prior non-exclusive franchise terminated due to non-compliance with the requirements of this article or willful, false, or misleading statement in an application during the four years prior to application.

For purposes of (4) through (7) above, the term “applicant” includes all of the applicant’s principals unless the applicant is a publicly-owned corporation having more than 25 shareholders, in which case the term includes the local managing officers.

(d) The written franchise will include the type of services permitted consistent with the requirements of this chapter, and any exclusive rights granted to the city refuse contractor.

(e) Whenever the city manager denies an application for franchise, the applicant will be notified in writing with the reasons for such denial. Such notice will be deemed given when placed into the U.S. mail, addressed to the applicant at the address listed in the application.

(f) Any nonexclusive franchise awarded by the city pursuant to this section will be subject to compliance with the terms and conditions of this article and the terms and conditions of a written franchise agreement.

**Sec. 78-79. General franchise requirements.**

In addition to paying all applicable franchise fees, the franchisee will comply with each of the following general requirements:

- (a) The franchisee may contract to provide nonexclusive service in accordance with the terms of the franchise. All customer service contracts must be approved by the city prior to or within three working days of the placement of containers for service, except that for construction and demolition debris containers placed on private property, notification to the city within three days of placement will be sufficient. For each container placed in service without the required submittal of a customer service contract to the city for approval or notice, the city will assess a late fee as established in the Fee Schedule. No customer service contract will exceed the term of the nonexclusive franchise. The franchisee will provide the city with notification of proposed customer service contracts on forms provided by the city. The customer service contract will not include a franchise or city fee as a separate charge to the customer.
- (b) The franchisee will provide the city with a current list containing the name and address of and the type and frequency of service provided for each nonexclusive customer within the city limits by the 15th day of each month. The monthly report must identify all customers within the city limits served and the amount and frequency of service provided during the preceding month. The monthly report must be accompanied by franchise fee payments then owed.
- (c) The franchisee's company or business name and telephone number must be maintained on all collection vehicles and service containers operating within the city limits in letters and figures not less than six inches high. The city reserves the right to approve the color of collection vehicles and service containers. No advertising will be allowed on the franchisee's collection vehicles that are used to service properties within the city.
- (d) The franchisee will annually update the list of collection vehicles used to serve properties within the city. The franchisee will notify the city within 14 days after the addition or deletion of any collection vehicle from its collection fleet.
- (e) The city reserves the right to inspect all collection vehicles and container equipment used by the franchisee to service accounts within the city. If the city determines that any equipment is unsafe or unsanitary, the franchisee will have 24 hours to correct the deficiency or cease operations at the offending location. Cleaning and disinfecting of containers and collection vehicles will be performed on an as-needed basis, but not less than one time each month.
- (f) The franchisee will maintain a local or toll-free telephone number for customer service. Unless waived by the city, the franchisee will also maintain an office within the city.
- (g) The city reserves the right to audit the franchisee's books and records relating to nonexclusive franchise services, upon 24-hour written notice, including disposal

and recycling weight tickets, customer service invoices, customer service records, and all other records deemed appropriate by the city to ensure compliance with this article. Such books and records must be kept or promptly made available by the franchisee in a location no more than 50 miles from the city limits for purposes of the city's audit. All service records of the franchisee must be kept in a manner that segregates services that are subject to the city's nonexclusive franchise fees. Such records of the franchisee are confidential and are not to be reproduced or duplicated in any manner by the city or its agents, subject to public records law requirements.

- (h) The franchisee is solely responsible for the billing and collection of all fees and charges. Failure of the customer to pay the invoice does not relieve the franchisee from the responsibility of paying the city's franchise fee. All franchise fees are levied on the franchisee, not on the franchisee's customer.
- (i) Within one month after the close of the franchisee's fiscal year, the franchisee will provide the city with a certified audit report by an independent certified public accountant using generally accepted auditing standards. The report will reflect the accuracy of the franchisee's monthly payments to the city as defined in this article and will ensure and include the following:
  - (1) That all city accounts which operate under a nonexclusive franchise are properly coded to reflect charges due and accrued to the city.
  - (2) That the number and frequency of city-franchised container rentals and collections have been correctly reported to the city.
  - (3) That all franchise payments have been correctly computed and remitted to the city on a timely basis.
- (j) The franchisee will cooperate with the city and its authorized representatives in every reasonable manner to satisfactorily collect and dispose of the materials authorized for collection.
- (k) The franchise may not be assigned unless specifically authorized by the city. For purposes herein, the term "assignment" includes the transfer or attempted transfer of the controlling interest in the franchisee if the franchisee is a corporate entity or partnership. Any franchisee requesting city approval of a transfer will pay the city the non-refundable review fee established in the Fee Schedule.
- (l) The grant of a franchise to collect recyclable materials includes the right to sell such materials. If the franchisee engages in recyclable collections and temporarily or permanently stores such materials on a site within the city, the materials must be located so as not to be visible from the right-of-way. The franchisee may use

fencing or landscaping to meet this requirement in compliance with all city ordinances. The materials must also be secured so as to not scatter onto adjoining properties, including the city right-of-way.

- (m) The grant of franchise is subject to the franchisee's continued compliance with all federal, state, and local laws and regulations, applicable to the performance of the services authorized by the franchise. Each franchisee will obtain all licenses and permits required by federal, state, and local laws and regulations. The term "local laws and regulations" includes this chapter and implementing regulations.

**Sec. 78-80. Franchisee service standards.**

In providing franchised services, the franchisee will comply with the following service standards:

- (a) The franchisee will devote sufficient personnel, time, and attention to provide services described herein in an efficient, sanitary, and thorough manner.
- (b) Collection will be available between the hours of 7:00 a.m. and 7:00 p.m. each day except Sunday. If residential dwelling units are located within 100 feet of a commercial collection location, the city at its sole discretion may restrict collections until after 8:00 a.m. Sunday collections and expanded collection times may be approved by the city if necessary based on unusual circumstances, such as during major event periods.
- (c) All containers provided by the franchisee for customer use will meet industry standards and the specifications provided in article II above, including restrictions on advertising and requirements for identifying the franchisee by name and phone number on all containers.
- (d) The franchisee will not litter or cause any spillage (including waste streams, hydraulic fluid, oil, fuel, or otherwise) in providing the services. The franchisee will provide immediate cleanup of any litter or spillage caused by the contractor. If the franchisee fails to provide immediate cleanup, the city may do so and assess the franchisee the city's costs, which will be in addition to any administrative charges or penalties that may be assessed.
- (e) The franchisee will operate service vehicles in a manner that maximizes safety and minimizes interference with vehicular and pedestrian traffic. To the extent practical, the franchisee will avoid making collections on major travel ways during the morning and evening rush hours. The franchisee will not suffer or permit the service vehicles to be unattended while on the streets. The city reserves the right to deny the franchisee's vehicles access to certain roadways

or alleys where, because of road conditions or other circumstances, denial of such access is in the public interest.

- (f) All of the franchisee's vehicles providing service within the city must comply with the following requirements:
  - (1) Each non-packer collection vehicle will be equipped with a cover. The cover may be net with mesh not greater than one and one-half inches, or tarpaulin, or a fully enclosed metal top. The cover will be kept in good order and used to cover the load going to and from the disposal facility, during loading operations, or when parked if the contents are likely to be scattered if not covered.
  - (2) Collection vehicles will not be overloaded so as to scatter refuse.
  - (3) Each vehicle will be equipped with a spill kit, pitchfork, rake, shovel, and broom for purposes of providing immediate cleanup of any spills caused by the franchisee.
  - (4) Each vehicle will be equipped with safety equipment such as a fire extinguisher and reflectors.
  - (5) No advertising other than the franchisee's standard company logo will be permitted on vehicles, dumpsters, or roll off containers.
- (g) The franchisee will at all times operate in a manner that does not cause a nuisance or undue noise.
- (h) Upon completing a collection service the franchisee will return containers other than roll-off containers to the point of collection, and close the gates as to any containers enclosed by fencing. Special conditions for roll-off containers are provided below.
- (i) The franchisee will dispose of all materials collected pursuant to the franchise at a state-licensed county disposal or recycling facility, unless an alternative disposal or recycling site is approved in writing by the city.
- (j) The franchisee will be responsible for responding to any and all complaints which involve the franchisee's actions that create a nuisance or have the potential to create a nuisance. Response will be within 24 hours of the complaint, or by 5 p.m. Monday if the complaint was received during a weekend.

**Sec. 78-81. Additional conditions relating to mechanical and compaction containers.**

(a) A franchisee will not be permitted to rent or provide mechanical or compaction containers for use on any site within the city unless the franchise expressly authorizes such use. The city will authorize the franchisee to rent such containers only for collection and disposal of refuse generated by building contractors performing construction services or landscape contractors performing landscape services, as described in section 78-7; or for use by persons who are excluded commercial accounts under the city's refuse contract.

(b) Mechanical and compaction containers will meet the following specifications:

- (1) The entire exterior of any nonaluminum container will be painted with a durable paint in an unobtrusive color, such as an earth tone, with the container owner's name, telephone number, and month and year of last renovation clearly identified in a contrasting color.
- (2) The container will be completely enclosed, with deposit openings held closed by latching doors or gravitational force and emptying openings closeable by the collection vehicle operator without exiting the vehicle.
- (3) The container will be sanitary and free of grease, noxious odors, vermin, insects, and other animals and will be disinfected at least monthly.
- (4) The containers will be renovated at least annually.

**Sec. 78-82. Additional conditions relating to construction and demolition debris services.**

Where a franchise authorizes a franchisee to provide construction and demolition debris roll-off collection, transportation, and disposal services, any roll-off containers holding more than a de minimis amount of other refuse must be collected as refuse by the city refuse contractor unless collection is being made from a property that is described as an excluded commercial account in the city refuse contract.

**Sec. 78-83. Additional conditions relating to roll-off containers.**

(a) A franchisee will not be permitted to rent or provide roll-off containers for use on any site within the city unless the franchise expressly authorizes such use. A franchisee providing roll-off container rental or collection service may not leave a roll-off container on any portion of the right-of-way, or in a location on the customer's property that would create safety issues for public pedestrian or vehicular traffic, without prior written consent of the city.

(b) A franchisee will not provide or transport a roll-off container that fails to comply with the provisions of this code or any city regulations implementing this code, or where the collected debris within the roll-off container exceeds the height of the sides of the roll-off container.

**Sec. 78-84. Bonds, insurance, and indemnification.**

(a) The franchisee must maintain a commercial general liability insurance policy issued by a Florida-licensed insurance company, with a combined single limit for bodily injury and property damage of no less than \$1,000,000.00 per person and \$2,000,000.00 per occurrence; and umbrella coverage in an amount not less than \$5,000,000.00. The policy must name the city as an additional insured. The franchisee must provide evidence of such insurance coverage with the city's risk manager. The franchisee must immediately notify the city if the franchisee receives notice from the insurance carrier that a required insurance policy will be canceled; and must obtain replacement coverage prior to such cancellation.

(b) The franchisee will indemnify, and hold the city harmless, from and against all claims, suits, actions, damages, liabilities, expenditures, or causes of action of any kind arising from the activities herein, or the use of the public streets for the purposes authorized in this article, or resulting or accruing from any negligent act, omission, or error of the franchisee, or the franchisee's officers, employees, or agents, arising from the failure of the franchisee, or the franchisee's officers, employees, or agents, to comply with a provision of the applicable franchise agreement or any federal, state, or local, law, including this code and any other city ordinance, resulting in or relating to bodily injury, loss of life or limb, damage to property, or environmental liability sustained by any person. The franchisee will also hold the city harmless from and against all judgments, orders, decrees, attorney's fees, costs, expenses, and liabilities incurred in and about any such claim, investigation, or defense thereof, which may be entered, incurred, or assessed as a result of the foregoing. The franchisee will defend, at its sole cost and expense, any legal action, claim or proceeding instituted by any person against the city as a result of any claim, suit, or cause of action accruing from activities authorized by this article, for personal injuries, property damage or environmental claims, as set forth above. For purposes of this paragraph the term "city" includes the city's officers, employees, and agents.

(c) The franchisee will deposit with the city a performance guarantee as a guarantee of franchisee's faithful compliance with the provisions of this chapter. The guarantee will be in the form of an irrevocable letter of credit, or a performance bond in a form acceptable to the city and written by a surety authorized to write such bonds in the State of Florida. The initial amount of the guarantee will be the amount established by the city commission in the Fee Schedule. The city manager may

require an increase in the required amount of the guarantee in accordance with section 78-88. If the city draws upon the guarantee, the franchisee may be required to replenish or replace the guarantee so as to have the full amount available in the future.

**Sec. 78-85. Failure to pay fees.**

(a) Whenever the franchisee fails to pay a fee established in the Fee Schedule by the due date, a late fee equal to 10% will be assessed on the fee or any portion of the fee not paid by the due date.

(b) The franchisee will be required to reimburse the city's costs of auditing the franchisee's books and records whenever the audit reveals that the franchisee has failed to pay the city all of the fees due under this article. Reimbursement will be due within 30 days of receipt of the city's invoice.

(c) Payment of any additional fees due under this section will not alter the city's right to suspend or revoke a franchise for failure to pay the fees originally due.

**Sec. 78-86. City's right to inspect.**

As a condition of the franchise granted, the city will have the right to inspect all of the franchisee's facilities and equipment located in the city and used to provide franchised services. The city will provide on-site inspections during normal business hours except in emergency conditions. The franchisee will ensure that its drivers are trained to stop for any vehicular inspections undertaken by the city while the vehicle is in transit.

**Sec. 78-87. Administrative charges for non-compliance with franchise.**

(a) Administrative charges for non-compliance with franchise requirements or standards may be provided in the Fee Schedule.

(b) If a franchisee commits an infraction for which an administrative charge is provided, the city will have the right to assess the charge. The city will provide written notice of the imposition of the charge, and the franchisee will pay the fee within 30 days of receipt of the notice. If the franchisee fails to pay the administrative charge within this time period, the city may apply the performance guarantee for payment of such charges.

(c) The city's assessment and collection of administrative charges will not be deemed to diminish or waive any other enforcement rights or remedies that the city may have to enforce the provisions of this chapter.

**Sec. 78-88. Suspension and revocation.**

(a) The city manager is authorized to suspend or revoke a franchise if the city manager determines that any of the following have occurred:

- (1) The franchisee no longer meets one or more of the conditions for an initial grant of franchise.
- (2) A violation of this article or the terms and conditions of the franchise.
- (3) A violation of any other city code or ordinance, or of federal or state law or regulations, which has a bearing on the franchisee's fitness as a franchised service provider.
- (4) A conviction of any of the franchisee's drivers, while providing service, for driving a motor vehicle while under the influence of alcohol or a controlled substance, or reckless driving, or leaving the scene of an accident.
- (5) An accident or property damage is caused through use of a collection vehicle while the driver is using a cell phone or texting.
- (6) The franchisee damages any public or private property and fails to timely and appropriately repair such property.
- (7) In any other case in which the continued operation of the franchise may jeopardize public health, safety, or welfare.

(b) The city manager may immediately and without notice suspend or revoke the franchise whenever, due to any of the factors set forth in subsection (a) above, there is cause to believe that the franchisee's continued operation poses an immediate risk to public health and safety. In such instance suspension will take effect upon the city manager's provision of notice to the franchisee as provided in section 78-91.

(c) Where the franchisee's continued operation does not pose an immediate risk to public health and safety, suspension or revocation will become effective 15 days after notice has been provided to the franchisee, unless the franchisee files a written appeal in accordance with section 78-92. If the franchisee files an appeal, suspension or revocation will not be effective until the appeal process provided in section 78-92 is concluded.

(d) In lieu of revocation or suspension, the city may require the nonexclusive franchisee to increase the amount of the performance guarantee previously provided, in an amount of up to \$10,000.00.

**Sec. 78-89. Registration of exempt recovered materials dealers.**

(a) *Registration required.* Any person who is exempt by state law from the requirement to obtain a franchise to collect, transport, and dispose of recovered materials and who wishes to collect, transport, and dispose of such materials within the city, may register in accordance with this section in lieu of obtaining a non-exclusive franchise to provide such services.

(b) *Application for registration.*

(1) Applications for registration will be made on forms approved or provided by the city. Requested information on the application will be limited to that information required by § 403.7046, Florida Statutes.

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

(3) The application must be accompanied by each of the following:

a. A copy of state certification as required by § 403.7046, Florida Statutes.

b. Disclosure of ownership as set forth below.

c. Proof of insurance as set forth below.

d. A registration fee in the amount set forth in the Fee Schedule.

(c) *Certificate.* The city will issue a certificate of registration to any applicant who qualifies. The certificate is valid for five years. Any person whose certificate of registration is scheduled to expire or whose certificate has expired may apply for a new registration.

(d) *Operating requirements for registrants.* Registrants will comply with the following operating requirements:

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

(2) *Service standards.* A registrant will meet the service standards for non-exclusive franchisees set forth in section 78-80, to the extent applicable. In addition, a registrant will handle recovered materials containers with reasonable care and return them to the approximate location from which they

were collected. A registrant will clean up all materials spilled during its collection operation. A registrant will use trucks that are capable of preventing spillage or accidental release of recovered material during transport.

- (3) *Emergencies.* A registrant will not be required to provide collection services when all appropriate recycling sites are closed or a city emergency or imminent emergency exists, as determined by the city manager. The registrant will resume collections on the instruction of the city manager.
- (4) *Non-agency.* A registrant will not be deemed an agent of the city and will be responsible for any losses or damages of any kind arising from its performance or nonperformance under its registration. The registrant will defend at its own expense or reimburse the city for its defense, at the city's option, of any and all claims and suits brought against the city, its elected or appointed officers, employees, and agents resulting from the registrant's performance or nonperformance of service pursuant to the registration.
- (5) *Insurance.* A registrant will purchase and maintain commercial motor vehicle insurance as required by chapter 627, Florida Statutes, and workers compensation as required by chapter 440, Florida Statutes. Failure to maintain required insurance will result in revocation of registration.
- (6) *Other laws, rules, and regulations.* A registrant will procure at its own expense all local, state, and federal franchises, certificates, permits, and other authorizations necessary for the conduct of its operations. A registrant and its employees, officers, and agents will comply with all relevant federal, state, and local laws and regulations, code enforcement orders, orders of regulatory bodies, and mandatory guidelines, applying to the collection or processing services being rendered.
- (7) *Limited effect of registration.* Registration under this exemption will not relieve the registrant from having to obtain a franchise to provide non-exempt services, such as for collection and disposal or refuse. In addition, registration does not give the registrant authorization to operate a materials recovery facility as defined by section 403.703, Florida Statutes.

(e) *Separation of residential and commercial materials.* Curbside collection of designated recyclable materials from commercial generators will be allowed only with prior approval of the city manager. When considering a request to provide curbside collection, the city manager will consider each of the following factors:

- (1) Accessibility of collection vehicles to property.
- (2) Available space for placement of containers.

(3) Predominant use of property.

(4) Safety.

(f) *Delivery of materials.* All recovered materials must be delivered to a recovered materials dealer certified by the Florida Department of Environmental Protection or subsequent responsible agency.

(g) *Reports.* The registrant will submit to the city manager reports as authorized by § 403.7046(3)(a), Florida Statutes, and implementing regulations promulgated by the Florida Department of Environmental Protection.

(h) *Rights of existing franchisees.* Any existing non-exclusive franchisee who becomes eligible to register under this section may apply for registration. If the city grants registration, the non-exclusive franchise will be amended to eliminate requirements established under the franchise relating to collection, transport, and disposal of recyclable materials, or terminated, as applicable.

**Sec. 78-90. Denial, suspension, and revocation of registration.**

(a) Upon a finding of just cause, the city manager will deny a registration in the case of application for new or renewed registration, and suspend or revoke a registration for a specified period of time in the case of previously issued registration. As required by section 403.7046, Florida Statutes, the term “just cause” means repeated violation of state or local laws and regulations, code enforcement orders, orders of regulatory bodies, and mandatory guidelines, relating to the applicant's or registrant's operation; or loss of state certification as a recovered materials dealer.

(b) Prior to denial, suspension, or revocation, the city will provide written notice of intent to the applicant or registrant at the address provided in the application for registration. The notice will include a summary of the charges against the applicant or registrant. If the applicant or registrant files a notice of appeal in accordance with section 78-92, the denial, suspension, or revocation, will not become effective until the completion of the appeal process.

**Sec. 78-91. Notices.**

Notices authorized or required by this article will be in writing and will be provided to the address as listed in the application for franchise or registration, or on the franchisee's or registrant's business tax receipt if different from the address listed in the application. Notice will be deemed to be provided five calendar days after being placed in regular U.S. Mail, or next business day if delivered overnight by recognized national courier service.

**Sec. 78-92. Appeal procedure.**

(a) A written appeal may be filed within 15 calendar days after notice of any city decision to deny a franchise application or application for registration, or to terminate, suspend, or revoke an existing franchise or registration, within 15 calendar days after notice of such decision. The appeal must be filed with the city clerk, who will coordinate the appeal hearing.

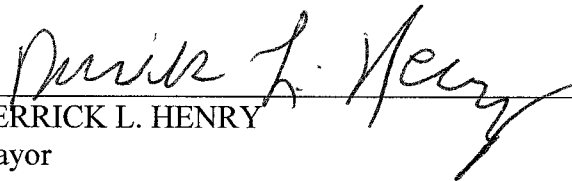
(b) The appeal will be placed on the city commission agenda and heard by the city commission at the next regularly scheduled city commission meeting.

(c) At the hearing the city commission will hear such evidence as the commission deems desirable in order to determine whether to uphold the city manager's decision. The hearing will be informal. The party appealing the decision will have the right to present evidence.

(d) At the conclusion of the hearing the city commission may uphold, reverse, or modify the decision. The city commission's decision will be final action.

SECTION 2. All ordinances and resolutions or parts of ordinances and resolutions in conflict herewith are hereby repealed.

SECTION 3. This Ordinance shall take effect immediately upon its adoption.

  
DERRICK L. HENRY  
Mayor

ATTEST:

  
LETITIA LAMAGNA  
Assistant City Clerk

Passed: November 20, 2013  
Adopted: December 04, 2013