

ORDINANCE NO. 07-2019

AN ORDINANCE OF THE CITY OF DELTONA, FLORIDA, AMENDING CHAPTER 50, SOLID WASTE TO AMEND PROVISIONS RELATING TO FRANCHISES, PROVIDING DEFINITIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2, *Constitution of the State of Florida*, authorizes the City of Deltona to exercise any power for municipal purposes except as otherwise provided by law; and

WHEREAS, the City of Deltona desires to amend Chapter 50- Solid Waste, Article II – Services; Division 2. – Private Collection Services, Section 50-21 Franchises to provide, definitions, regulatory requirements, clarity and transparency as to private waste collection services; and

WHEREAS, the City of Deltona desires to add code provisions so that the collection, transporting and disposal of waste and recyclables shall be accomplished only by those persons or entities authorized by the City by means of a franchise agreement, and that such disposal shall only be accomplished at City- approved waste facilities.

WHEREAS, for purposes of this Ordinance, underlined type shall constitute additions to the original text, and ~~strikethrough~~ shall constitute deletions to the original text.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELTONA, VOLUSIA COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1. AMENDMENTS. Chapter 50 Solid Waste is amended, as follows:

Chapter 50 - SOLID WASTE

ARTICLE II. - SERVICES

DIVISION 2. - PRIVATE COLLECTION SERVICES

Sec. 50-1. - Authority.

Under the authority of F.S. § 166.021 and § 403, this section is hereby enacted.

(Ord. No. 19-2008, § 1, 7-7-2008)

Sec. 50-21. - Franchises.

Generally, the city reserves the right to establish and require franchise agreements with all ~~solid~~ waste authorized collectors providing service to any non-residential real property owner or occupant within the city boundary limits. Applicants for franchises shall apply on forms and upon conditions required by the city. Franchises may only be granted after a duly noticed public hearing after considering the application and upon a resolution of the city commission. Performance, maintenance and operation standards shall be determined pursuant to the ~~solid~~ waste franchise agreement, along with any restrictions, insurance, bonds and other requirements, as follows;

1. Definitions:

- a. "Biomedical Waste" has the meaning given to it in Chapter 64E-16, Florida Administrative Code.
- b. "Biological Waste" means solid waste that can cause or causes or has the capacity of causing disease or infection and includes biomedical waste and other wastes capable of transmitting pathogens to humans or animals. The term does not include human remains that are disposed of by persons licensed under Florida Statutes, Chapter 470.
- c. "Commercial Recycling" means non-residential materials that are capable of being recycled and which would otherwise be processed or disposed of as solid waste.
- d. "Construction and Demolition Debris" means discarded materials generally considered to not be water soluble and non-hazardous in

nature, including but not limited to steel, glass, brick, concrete, asphalt material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, including such debris from construction of a structure at a site remote from the construction or demolition project site. The term includes rocks, soils, tree remains, trees and other vegetative manner that usually result from the land clearing or the land development operations for a construction project.

- e. "Hazardous Waste" means a solid waste regulated as a hazardous waste pursuant to Chapter 62-730 Florida Administrative Code, which includes used oil.
 - f. "Shredding" means a process of reducing the articles of solid waste, usually metals through the use of grinding, shredding, milling or rasping machines.
2. The provisions of this Ordinance shall not apply to waste or recyclables collection services performed exclusively by the City or, if a contract or contracts with the City exists as to such services and such contract will include a negotiated franchise fee. This may include residential waste/recyclables and commercial waste. It excludes Commercial Waste unless same is approved by the City under a statutory (Section 403.70605(3)(b)(2)) approval process. Commercial Recyclers, Construction & Debris collectors, Biological Waste, Biomedical Waste, Hazardous Waste, Debris and Waste products generated by land clearing, Items not allowed at the County Landfill or other approved landfill, Yard waste produced by landscape maintenance contractors which is hauled away, Container Rental and Tree removal debris, and such other miscellaneous waste/recyclable services, are all excluded and subject to separate franchise agreements.
 3. The City may enter into an exclusive or non-exclusive franchise agreement or agreements with any person or persons to provide for any waste and/or recyclables collection services within the City to include but not be limited to those waste collection services as enumerated in #2 above and/or as may be prescribed by State law.

4. Any franchise granted under the provisions of this Ordinance shall include the right to operate collection vehicles on the public streets of the City and to conduct a waste and/or recyclables collection business within the City.
5. The provisions of this Ordinance shall not apply to refuse collection services performed by the City in the scope of providing emergency services.
6. Terms of a Franchise Agreement;
 - a. Description of the service area.
 - b. Name of the person to perform commercial collection, transport and disposal services in the service area.
 - c. Term of the contract.
 - d. Negotiated Fee or set fee and application fee.
 - e. Method of payment.
 - f. Services to be furnished.
 - g. Performance Bond and conditions thereof.
 - h. Insurance provisions.
 1. Responsibilities and obligations.
7. This Ordinance grants no independent authority to operate a waste/recyclables collection services business to any person - this includes all waste collection services listed in #2 above. Such a grant can only be made by the approval of an exclusive City waste/recyclables (residential) agreement and/or commercial approval- subject to statutory process. For all excluded waste as listed in #2 above, the granting of a franchise agreement to a specific franchisee who has complied with the provisions of this Ordinance by the City Commission is required to legally operate within the City.
8. Terms;

- a. For the initial 1-year term of any franchise granted after this Ordinance is adopted the franchisee shall pay:
 1. A \$500.00 application fee.
 11. A franchisee fee of \$1700.00/year and 15% of the gross receipts/month of waste/recyclables collected within the City's geographical limits.
 111. The franchise agreement must be renewed each year and a new franchise fee will be assessed.
 - b. The City Commission may amend and or set future charges and fees by adoption of a resolution.
 - c. No Franchise Agreement shall be transferred or assigned to another person without first obtaining the written and formal approval of the City Manager. Application for a transfer must be made in writing and provide the City Manager with such information as he or she may determine to be reasonably necessary and each application shall be accompanied by an application fee in the amount of \$500.00 or such other amount established by a future resolution adopted by the City Commission.
9. All assessed Administrative Charges against the contractor will be due and payable to the City from the contractor within 30 days of notification to the contractor by the City.
 10. Failure of the franchisee to correct violations and/or pay any assessed administrative charges shall be handled as a code violation under Chapter 2, Article II – Code Enforcement & Special Master, whereby the franchisee shall receive notice of a code violation and failure to take proper action to resolve same will result in hearing in front of the City's Special Master.
 11. NO OPPORTUNITY FOR CURE. The following administrative charges may be assessed without the need to give the Franchisee the opportunity to cure:
 - a. Collection Services outside of permitted hours.

\$300 per incident

- b. Failure to clean spillage of any type in accordance with franchise provisions.

\$200 per incident

- c. Failure to repair damage to customer's property within seven (7) days.

\$350 per incident

- d. Failure to provide clean, safe and sanitary equipment at beginning of each work schedule.

\$500 per incident

- e. Failure to provide documents and reports in a timely and accurate manner as per franchise agreement.

\$250 per incident

- f. Equipment operator not properly licensed.

\$500 per incident

- g. Failure to cover materials, if appropriate, on all collection vehicles.

\$250 per incident

- h. Name and phone number not displayed on all equipment and containers.

\$250 per incident

1. Using improper equipment to service customers.

\$250 per incident

- J. Causing hydraulic spills or leaks as well as any other fluids having potential damage or stain to asphalt, concrete or other roadway surface, skid marks and or spillage marks on roadways, private driveways or any thoroughfare within the City. Franchisee will carry appropriate (non-hazardous) materials to effectively clean up the spill and follow recommended protocol (Florida Fire Prevention Code - 2017, as amended & National Incident Management System- Region 5) to prevent fluids reaching stormwater/drainage ditches that flow into the City's water supply.

\$500 per incident

- k. Failure to close gates on dumpster enclosures as well as any container lids.

\$250 per incident

1. Loaded vehicles left standing on street unnecessarily.

\$150 per incident

- m. Failure to report accidents, damage, or spillage to the City immediately and provide a copy of a written report the same day to the City.

\$250 per incident

- n. Failure to clean spillage caused from commercial route vehicles leaking from collected waste.

\$200 per incident

- o. Failure to drive in proper direction.

\$100 per incident

- 12. Should the Franchisee commit any of the breaches described herein in franchisee's obligations under a Franchise Agreement, the City shall be entitled to require franchisee to come into compliance and assess against the franchisee the amounts listed above, not as a penalty but as administrative charges.

SECTION 2. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application of this ordinance, which can be given effect without the invalid provision or application.

SECTION 3. Effective date. This ordinance shall take effect upon its final adoption by the City Commission.

**PASSED AND ADOPTED BY THE CITY COMMISSION OF
THE CITY OF DELTONA, FLORIDA, THIS ____ DAY OF
_____ 2019.**

FIRST READING: _____

ADVERTISED: _____

SECOND READING: _____

BY: _____
Heidi K. Herzberg, MAYOR

ATTEST:

Joyce Raftery, CITY CLERK

Approved as to form and legality for use
and reliance of the City of Deltona, Florida

CITY ATTORNEY