

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AMENDING CHAPTER 74 – SOLID WASTE OF THE CODE OF ORDINANCES OF THE CITY OF WEST PALM BEACH, FLORIDA, AMENDING AND REPLACING ARTICLE V – COMMERCIAL COLLECTION FRANCHISE; PROVIDING A CONFLICTS CLAUSE, A CODIFICATION CLAUSE, AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the City Commission of the City of West Palm Beach has plenary jurisdiction over the City roads and streets within the municipal boundary; and

WHEREAS, the State of Florida, through Section 403.7063, Florida Statutes, encourages municipalities to allow solid waste services through private entities, to encourage cost-effectiveness; and

WHEREAS, local governments typically grant franchises for solid waste collection within their jurisdictions to allow the use of public infrastructure, such as roads and rights of way, for such private commercial services; and

WHEREAS, franchise fees are commonly charged by local governments for such franchises; and

WHEREAS, the City's current commercial collection franchise ordinance and fee structure was adopted in 2006; and

WHEREAS, the current commercial franchise fee calculations are presently based on the weight hauled by each franchisee, and is time and labor-intensive for the City of West Palm Beach to administer; and

WHEREAS, Raftelis Financial Consultants, Inc., conducted a study for the City which reviewed the franchise method and fees charged by other Florida municipalities, which found that all other municipalities reviewed charge franchise fees based on revenue, not the weight hauled; and

WHEREAS, the consultant recommended that the City of West Palm Beach convert to a franchise fee based on revenue rather than volume to reduce the City's administrative burden and help ensure that revenue keeps up with inflation; and

WHEREAS, the City Commission desires to amend and restate the regulations for franchises for the collection of commercial solid waste within the City with franchise fees based on revenue.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, that:

SECTION 1: The City Commission hereby finds and determines that granting franchises for the collection of commercial solid waste within the City provides a cost-effective and efficient means of providing such services, benefits the health and general welfare of the businesses and residents of the City and serves a public purpose.

SECTION 2: The City Commission hereby finds and determines that the amendment to the Code of Ordinances of the City of West Palm Beach set forth in this Ordinance are consistent with the Utility Element of the Comprehensive Plan of the City adopted pursuant to Chapter 163, Part II, Florida Statutes.

SECTION 3: The City Commission of the City of West Palm Beach, Florida, hereby amends Chapter 74 – Solid Waste, of the Code of Ordinances of the City of West Palm Beach, by amending and replacing Article V – Commercial Collection Franchise, in its entirety, and Article V shall now read as follows:

ARTICLE V. COMMERCIAL COLLECTION FRANCHISE

Sec. 74-121. Definitions

Biomedical waste means any solid waste or liquid waste which may present a threat of infection to humans. The term includes, but is not limited to, non-liquid human tissue and body parts; laboratory and veterinary waste which contain human disease causing agents; used disposable sharps; human blood, human blood products and body fluids; and other materials which in the opinion of the Florida Department of Health and Rehabilitative Services represent a significant risk of infection to persons outside the generating facility.

Biological waste means solid waste that causes or has the capability of causing disease or infection and includes, but is not limited to, biomedical waste, diseased or dead animals, 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.

Commercial establishments means: (1) motels, hotels, stores, offices, restaurants, service stations, laundries, shopping centers, warehouses, hospitals, clinics, and other businesses; and (2) apartments, condominiums, trailer parks, and other residences that use a common, centralized container for the storage of the solid waste generated on their premises. However, commercial establishments do not include schools, religious organizations, and government buildings.

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Commercial solid waste means garbage, rubbish, and other processible waste generated by commercial establishments as a result of their daily operations in the city. However, notwithstanding anything else contained herein, commercial solid waste does not include: (1) biomedical waste; (2) biological waste; (3) construction and demolition debris; (4) hazardous waste; (5) industrial solid waste; (6) prohibited materials; (7) recovered materials; (8) sludge; (9) special waste; (10) white goods; (11) yard trash; and (12) residential wastes.

Commercial solid waste collection service means organized collecting, transporting, and disposal of any type of commercial solid waste within the city. Commercial solid waste collection service includes all attendant services, such as providing, selling, leasing, moving, cleaning, repairing, and maintaining containers for commercial establishments in the city.

Construction and demolition debris means discarded materials generally considered to be not water soluble and non-hazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt material, asphalt roofing 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, and includes rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing or land development operations for a construction project; including such debris from construction of structures at a site remote from the construction or demolition project site. Mixing of construction and demolition debris with other types of solid waste will cause it to be classified as other than construction and demolition debris.

The term also includes:

- (1) Clean cardboard, paper, plastic, wood, and metal scraps from a construction project;
- (2) Except as provided in F.S. § 403.707(9)(j), yard trash and unpainted, non-treated wood scraps and wood pallets from sources other than construction or demolition projects;
- (3) Scrap from manufacturing facilities that is the type of material generally used in construction projects that would meet the definition of construction and demolition debris if it were generated as part of a construction or demolition project. This includes debris from the construction of manufactured homes and scrap shingles, wall board, siding concrete, and similar materials from industrial or commercial facilities; and
- (4) De minimis amounts of other non-hazardous wastes that are generated at construction or demolition projects provided such amounts are consistent with the best management practices of the construction and demolition industries.

Container means a dumpster, roll-on/roll-off box, compactor, refuse bin, heavy duty waterproof plastic bag, garbage can, molded polyethylene barrel, roll cart, or other receptacle used to store commercial solid waste.

Department means the city's public works department.

Director means the city's director of the public works department.

Franchise means the city's grant of authority for a person to engage in the business of providing commercial solid waste collection services in the city, as evidenced by a franchise agreement between such person (i.e., the franchisee) and the city.

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Franchise agreement means a "franchise agreement for commercial solid waste collection services" between the city and a franchisee.

Franchisee means a person who is authorized by the director to provide commercial solid waste collection services within the city, subject to the requirements of this article and a franchise agreement.

Garbage means all kitchen and table food waste, and animal or vegetative waste that is attendant with or results from the storage, preparation, cooking or handling of food materials.

Gross revenues means all revenues the franchisee is entitled to collect from the franchisee's customers for providing commercial solid waste collection services in the city. Gross revenues are equal to the franchisee's billings for commercial solid waste collection services, with no deductions, except for bad debts written off in accordance with generally accepted accounting principles issued by the financial accounting standards board.

Hazardous waste means any waste, or a combination of solid wastes, which, because of its quantity, concentration, or physical, chemical or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed. The term does not include human remains that are disposed of by persons licensed under F.S. Ch. 497. These materials include, but are not limited to, volatile, chemical, biological, explosive, flammable, radioactive and toxic materials.

Industrial solid waste means by-products or discarded materials generated by manufacturing or industrial processes that is not a hazardous waste. Such waste may include but is not limited to, waste from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products or byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; non-ferrous metal manufacturing or foundries; organic chemicals; plastic and manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

Prohibited materials includes, but is not limited to: hazardous and biomedical wastes; asbestos; liquid paint; sludge; vehicular batteries; explosives; ammunition; pressurized gas cylinders that are five (5) gallons or greater; welding cylinders; ignitable and flammable wastes; cesspool wastes; human remains; animal carcasses or parts; PCBs; radioactive materials; contaminated medical waste, mercury, lead, closed cartridge filters from dry-cleaning establishments; ashes; foundry sand; motor vehicles, including major parts such as transmissions, rear ends, springs and fenders; large machinery and equipment; motor oil; materials exceeding the size, weight and quantity limitations established by the director; and any other waste that poses a threat to the health, safety, or welfare of the public or which cannot be legally disposed of at the county solid waste facilities.

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Recovered materials means metal, paper, glass, plastic, organic waste, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted or source separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but not does not include materials destined for any use that constitutes disposal. Recovered materials as defined herein are not solid waste.

Recycling means any process by which solid waste or materials that would otherwise become solid waste are collected, separated or processed and reused or returned to use in the form of raw materials or products.

Regulation means the requirements in this article and the requirements established by the director relating to the storage, collection, transportation, disposal, and recycling of solid waste.

Rubbish means an accumulation of discarded paper, trash, rags, cans, bottles, boxes, or other waste material resulting from normal housekeeping activities and operations in commercial establishments.

Sludge includes the accumulated solids, residues, and precipitates generated as a result of waste treatment or processing, including wastewater treatment, water supply treatment, or operation of an air pollution control facility, and mixed liquids or solids pumped from septic tanks, grease traps, privies, portable toilets, or similar waste disposal appurtenances. Sludge may be a solid, liquid, or semi-solid waste, but does not include the treated effluent from a wastewater treatment plant facility.

Solid waste means sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.

White goods means inoperative and discarded air conditioners, heaters, refrigerators, ranges, washers, water heaters, freezers, and other similar domestic and commercial large appliances.

Yard trash means vegetative matter resulting from landscaping maintenance and land clearing operations and includes associated rocks and soils.

Sec. 74-122. Requirement for franchise for commercial collection services; term of franchise.

- (a) This article applies to the collection of commercial solid waste. including the collection of solid waste, recyclables, and/or construction debris,
- (b) No person, firm or corporation shall engage in the business of commercial collection services, over the streets or public rights-of-way of the city, for hire or salvage, without first applying for and receiving a nonexclusive franchise from the city to carry on such a business issued in the name of the corporation or company which will perform the services. The

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nonexclusive franchise required by this section shall be in addition to any other licenses, certificate of use, or business tax, which otherwise may be required by law.

- (c) No franchise granted pursuant to this article shall be deemed the property of the holder thereof. The city may grant a franchise subject to specific terms and conditions necessary to ensure that the terms of this article will be met. The city may limit the number of nonexclusive franchises granted where such limitation is deemed to be in the public interest.
- (d) *Not applicable.* This article shall not apply to:
 - (1) Roofing contractors who remove roofing debris when replacing a roof pursuant to a permit, provided the removal of roofing debris is not accomplished by use of a rolloff container, trailer or other container whose transport has been removed;
 - (2) Collection of only biomedical waste or biological waste;
 - (3) Collection of hazardous waste, industrial solid waste or sludge;
 - (4) Prohibited materials;
 - (5) Recovered materials;
 - (6) White goods;
 - (7) Yard trash;
 - (8) Construction and demolition debris, except as provided in section 74-123;
 - (9) Other materials that are not commercial solid waste.
- (e) The nonexclusive franchise required by this section may be used only by the firm, company or corporation issued the franchise, and its direct employees, but not related or affiliated firms. The firm, company or corporation which holds the franchise may not subcontract with any other individual, firm, company or corporation to provide services under the franchise. Commercial collection services may only be provided by the firm, company or corporation holding a valid franchise.
- (f) No person, firm, or corporation shall obtain a franchise from the city until they have completed the following steps:
 - (1) Submitted a complete application and sworn affidavit to the city for a franchise;
 - (2) Paid the appropriate business tax;
 - (3) Posted a bond
 - (4) Obtained the required insurance;
 - (5) Been approved by the director of public works for a franchise; and
 - (6) Executed a franchise agreement with the city for commercial solid waste collection services.
- (g) A franchise shall not be granted until the franchise agreement has been duly executed by the applicant and the city. Each franchise agreement shall take effect on October 1, unless the applicant requests and the city approves a different effective date. The franchise shall be granted for a period of approximately three years. Regardless of the effective date of the

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initial year of the franchise term, each franchise shall terminate as of September 30th of the third calendar year of the franchise term, unless such franchise is terminated earlier. It shall be the obligation of the franchisee to apply to renew its franchise prior to each expiration date.

- (h) The execution of the franchise agreement and the issuance of a franchise by the director, and the renewal thereof, shall not be construed as creating any vested rights. Each franchise is revocable in accordance with the terms of this article. Each franchise agreement is revocable in accordance with its terms and this article.
- (i) A franchise may not be assigned or transferred to another person. Upon the sale or legal transfer of a franchisee company or corporation, the new owner must apply to the city for a transfer of the franchise, in writing, within 30 days of the transfer and shall provide the requisite evidence of required insurance and financial responsibility. A franchise may not be transferred to a new operational location. Transfer of a franchise to a successor entity is not final until an amendment to the franchise agreement is fully executed. Once transferred, the franchise shall remain in effect until the original expiration date, unless earlier terminated.

Sec. 74-123. Demolition debris; debris hauling fee; volume determination for debris.

- (a) *Debris hauling equipment.* Contractors appropriately licensed and contracted to perform demolition services may haul their own demolition debris utilizing the contractor's own equipment, provided that all equipment utilized for debris hauling services in the city must be conspicuously marked on both sides of the automotive unit with the name of the contractor, vehicle number, tare weight and cubic yard capacity. Identification information must also be marked on all trailers and container units. All markings must be in letters and numerals at least two inches in height. In addition, all vehicles utilized in the provision of such services within the city must comply with federal and state department of transportation regulations pertaining to the operation of commercial vehicles. All drivers must be appropriately licensed.
- (b) *Debris hauling fee.* A demolition debris hauling fee shall be paid at the time a demolition permit application is made and the owner or contractor intends to haul its own debris. The demolition debris hauling fee will be established by resolution of the city commission.
- (c) *Demolition debris.* The cubic yards of debris hauled from a demolition project shall be determined by multiplying the length times the width times the height in feet of the structure to be demolished, times a conversion constant which provides the volume of debris contained is the structure in cubic yards. The conversion constant for a wood or metal frame structure is 0.009. The conversion constant for a CBS or masonry structure is 0.011.

Sec. 74-124. General Provisions.

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- (a) Each franchisee shall comply with all federal and state laws, this article, and all other city code provisions, administrative rules, regulations, and orders of regulatory bodies, applicable to the commercial solid waste collection services provided by the franchisee. The grant of a franchise does not relieve any corporation or company from complying with the requirements of F.S. ch. 403, Department of Environmental Protection rules and regulations, OSHA rules and regulations, Department of Transportation rules and regulations, and all applicable federal, state and local laws.
- (b) Each franchisee shall obtain and maintain all licenses and permits required by federal, state and local laws, rules, regulations, and orders of regulatory bodies that are applicable to the franchisee's collection of commercial solid waste in the city.
- (c) The city reserves its right to grant multiple non-exclusive franchises and similar rights to more than one person, firm or corporation. The city also reserves its right to provide its services, including but not limited to commercial solid waste collection services, to any person.
- (d) The city reserves, in its sole discretion, the power to modify the commercial collection franchise program established in this article; including but not limited to the right to revoke all franchises granted, to change or limit the rights granted, or to otherwise modify the franchise program. Any such revision, modification or revocation of the franchise program shall be by ordinance duly enacted by the city commission.
- (e) Each franchisee shall provide an emergency telephone number and other contact information to the director.
- (f) A franchisee providing commercial solid waste collection services shall not be deemed to be an agent or employee of the city. A franchisee shall be solely responsible for any losses or damages of any kind arising from its performance or nonperformance under its franchise. A franchisee shall indemnify, defend, and hold the city harmless against any and all claims and suits brought against the city resulting from the franchisee's performance or nonperformance under the franchise.
- (g) The franchisee shall hold the city harmless from any and all liabilities, claims, losses or damages the city may suffer as a result of claims, demands, costs or judgments against the city arising out of the wrongful acts or omission of the franchisee or its employees, in the performance of commercial collection services within the city.
- (h) A franchisee shall not be relieved of its obligation to comply with all requirements of this article and the franchise agreement by failure of the city to enforce compliance with such requirements.

Sec. 74-125. Application requirements for a franchise.

- (a) *Application required.* Any person wishing to obtain a franchise to engage in the business of providing commercial solid waste collection services within the city shall submit an application to the public works department.
- (b) *Experience.* The applicant must have at least three years of commercial collection and disposal experience.
- (c) An applicant for a franchise shall provide the city with satisfactory evidence demonstrating that:
 - (1) The applicant has the experience, personnel, equipment, and other resources necessary to provide commercial solid waste collection services in compliance with the requirements in this article;
 - (2) The applicant has the capacity and willingness to comply with all applicable local, state, and federal laws; and
 - (3) Based on the applicant's past experience and performance in the city or other jurisdictions, the award of a franchise to the applicant will be in the public interest.
- (d) *Application.* Applicants for a new franchise, and applicants for the renewal of an existing franchise, shall provide the information requested by the director and any other relevant information. The application and supporting information shall be submitted under oath and on forms supplied by the department. At a minimum, the application shall include the following information:
 - (1) The applicant's legal name, physical address and mailing address of the applicant; contact information for the applicant's designated representative; if the applicant is a corporation, the names of the corporation's principal officers; the names of the local operating managers who will be responsible for performing collection services for the applicant, the business address and telephone number of each manager; the applicant's tax identification number.
 - (2) If the applicant is a corporation, proof that the corporation is in good standing in the State of Florida and, if the applicant is not a Florida corporation, proof that the applicant is authorized to do business in the State of Florida. If the applicant is operating under a fictitious name, the applicant shall be required to submit information that such fictitious name is registered and held by the applicant;
 - (3) A statement of whether the applicant operates or has operated a solid waste collection business in Florida or any other state or territory. If the applicant has provided or is providing solid waste collection services, the applicant shall describe all cases where and when it provided such services (but not more than ten (10) communities), and whether any of the applicant's permits, approvals, or licenses to provide such services have ever been revoked or suspended within the last five (5) years;
 - (4) A complete record of all felony convictions, and all misdemeanor convictions within the last five (5) years, involving the applicant's collection, receiving, storing, separating,

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- transportation, or disposal of solid waste. If the applicant is not an individual, the applicant also shall provide the complete record of such convictions for any person that is an officer, majority shareholder, or partner in the applicant, and any person having a controlling interest in the applicant;
- (5) A complete record of all civil penalties and liquidated damages in excess of \$5,000 assessed against the applicant by local, state, and federal governmental entities within the last five (5) years involving the collection, transportation or disposal of solid waste;
 - (6) The representations and affidavits required by statute, as set forth in the application form;
 - (7) The types of materials to be collected, transported, or disposed of by the applicant under the franchise; and
 - (8) A list of the vehicles, equipment, and containers that will be used by the applicant to provide commercial solid waste collection services. At a minimum, the list shall identify the make, model, and year of each vehicle and piece of collection equipment, as well as the size and type of each container that will be used by the applicant. The director may inspect all of the vehicles, equipment, and containers identified by the applicant and thereby determine whether the applicant possesses vehicles, equipment, and containers that are capable of providing safe and efficient commercial solid waste collection services in compliance with this article.
 - (9) Evidence that the applicant maintains the insurance required in sec. 74-129 of this article.
 - (10) The city may request that the applicant submit additional information as part of the application process. Other considerations such as references, business history, financial records, and other matters deemed pertinent to the city may be requested and be evaluated as part of the application review.
- (e) *Submittal times.* New applications must be submitted to the department at least 90 days before the applicant plans to begin providing commercial solid waste collection services. Renewal applications must be submitted to the department at least 60 days before the applicant's existing franchise expires.
 - (f) *Decision deadline.* Applications for commercial collection franchises shall be approved or denied, in writing to the applicant within 90 days after receipt of a complete application or the last item of requested additional material is received, whichever occurs last. Such notice may be sent by email. Notice of denial of a franchise shall be sent by regular mail and certified mail, return receipt requested., in addition to email.
 - (g) *Additional requirements.* If approved, a franchisee shall be authorized to provide commercial collection services only upon execution of a franchise agreement, posting of the required bond, submission of proof of required insurance, and evidence of compliance with any other terms and conditions.

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- (h) *Basis for denial of a franchise application.* The director may deny an application for a franchise for commercial solid waste collection services for any of the following reasons:
 - (1) The applicant does not meet the requirements established in this article;
 - (2) The applicant has not submitted a complete application with all of the required supporting documents, and/or has not paid the application fee, or has not provided an appropriate bond and insurance, as required by this article;
 - (3) The applicant has submitted false or materially misleading statements in the application;
 - (4) The applicant or a partner, director, or officer of the applicant has been convicted of a felony within the past five (5) years, or has been convicted of a misdemeanor within the past three (3) years, involving the collection, transportation or disposal of solid waste;
 - (5) For any reason that would justify the suspension or revocation of a franchise, as described in this article;
 - (6) It is safe, practicable, and cost-effective for the city to provide the commercial solid waste collection service proposed by the applicant.
- (i) *Appeal.* The denial of a franchise may be appealed to the city commission. The notice of appeal shall be filed in writing with the city attorney no later than 14 days after the receipt of the letter advising applicant of the denial. The appeal hearing shall be held not more than 60 days after receipt of the notice of appeal. The city commission shall either affirm the denial or direct the issuance or reinstatement of the franchise.

Sec. 74-126. Requirement to execute a franchise agreement.

- (a) Each approved applicant shall execute a franchise agreement in the form approved by the city attorney and furnished to the applicant, including all required attachments. The franchise agreement shall contain terms and conditions consistent with this article. Upon execution of the franchise agreement by the applicant and the city, the applicant shall comply at all times with all requirements set forth in this article and the franchise agreement.
- (b) A franchisee shall be authorized to provide commercial collection services only upon execution of a franchise agreement, posting of the required bond, submission of proof of required insurance, and evidence of compliance with any other terms and conditions.

Sec. 74-127. Franchise Fees.

- (a) Each franchisee shall pay monthly franchise fees to the city as compensation for the rights and benefits granted by the franchise, including but not limited to the right to collect commercial solid waste in the city and to use the city streets in providing the collection

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services. Each franchisee shall submit franchise fees and appropriate documentation to the city in the manner provided in this article.

- (b) The franchise fee shall be equal to ten (10) percent of the franchisee's gross revenues from the commercial solid waste collection services provided by the franchisee within the city.
- (c) The franchisee shall, each month, within 20 days of the last day of the previous month, deliver to the city
 - (1) A true and correct statement of the total amount billed to all accounts during the previous month certified correct and signed by a company or corporate official.
 - (2) Payment of monthly commercial franchise fees, in the amount of 10 percent of gross revenue billed during the previous month for commercial collection services within the city.
 - (3) A monthly report containing a list of the customer names and address of each location served during the monthly reporting period, the rates charged each account by the franchisee for commercial collection services and the size of the container serviced per account..
- (d) Payments not received by the due date shall be assessed (1) an administrative fee to reimburse the city for the reasonable administrative costs associated with collecting such monies and (2) interest for each day of delinquency at the maximum allowed by law for each day of delinquency until the total unpaid amount due and owing is paid in full. The administrative fee shall be established by resolution of the city commission.
- (e) No property owner may share a commercial collection account with another property owner.
- (f) All amounts paid by the franchisee shall be subject to confirmation and re-computation by the city. An acceptance of payment shall not be construed as an accord that the amount paid is the correct amount, nor shall acceptance of payment be construed as a release of any claim the city may have for further or additional sums payable.
- (g) Billing methods that have the effect of reducing or avoiding the payment of franchise fees are prohibited and will be cause for termination of the franchise.
- (h) A franchisee's failure to timely remit the franchise fees and documentation required by this section shall be grounds for the suspension or revocation of the franchise.
- (i) Payment of the franchise fee shall not exempt the franchisee from the payment of any other fee, tax or charge on the business, occupation, property or income of the franchisee that may be imposed by the city, or any county, state or federal government agency.
- (j) Each franchisee shall allow city auditors, during regular business hours, and after advance notice of three business days, to audit, inspect and examine the franchisee's fiscal books, records and tax returns, insofar as they relate to city accounts, to confirm the franchisees' compliance with this section.

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- (j) Any person who uses false, misleading, or fraudulent billing methods for the purpose of reducing or avoiding the payment of franchise fees may be subject to penalties for violation of the city code and the city may take action to collect the franchise fees that should have been due if correct and proper billing methods were followed. If the franchisee fails to pay accurate monthly commercial franchise fees, the unpaid fees shall bear interest at the rate of one percent per month on the outstanding balance until fully paid, and the franchisee shall be liable to the city for all expenses of collection, including court costs and reasonable attorneys' fees. Failure to accurately pay monthly commercial franchise fees may be cause for revocation of the franchise, as provided in this chapter and allowed by law.
- (k) The city may seek judicial relief to recover all fees, costs, and interest due and owing by the franchisee. The franchisee shall pay the city's court costs, reasonable attorney fees, accounting and auditing costs, and other collection costs incurred by the city as a result of franchisee's failure to remit the franchise fees and documentation required by this article and the franchise agreement.

Sec. 74-128. Bond requirements.

Each applicant for a commercial collection franchise shall provide the city with a bond in the amount of fifty thousand dollars (\$50,000.00). The form of the bond shall be subject to the approval of the city attorney. The bond shall be issued by a surety licensed to do business in the State of Florida. The bond shall be used to ensure the franchisee's performance under this article and the franchise agreement. Among other things, the bond shall be used to ensure the franchisee's payment of franchise fees and other sums that are due and owing to the city. The bond also shall be used to indemnify the city from any damages that may be suffered by the city in any manner as a result of the city's award of a franchise to the applicant, including but not limited to damages resulting from the applicant's performance or non-performance of the conditions and requirements of the franchise agreement, the applicant's use of the city's streets, the failure of the applicant to conform with applicable laws, and any negligent, reckless or intentional wrongful act or omission of the applicant or the applicant's employees, agents, officers, or representatives. The bond shall be kept in full force at all times during the term of the franchise. The bond shall be released by the city if the application is denied, or the franchise agreement expires or is terminated.

Sec. 74-129. Insurance requirements.

- (a) Each franchisee shall maintain in effect at all times, and shall furnish to the city a certificate evidencing, the following types of insurance coverage and specified limits of coverage, issued by an insurance company licensed to do business in the State of Florida, acceptable to the city, and as required and set forth in greater specificity in the franchise agreement:
 - (1) Comprehensive general liability insurance broad form coverage to include coverage in an amount not less than a one million dollar (\$1,000,000.00) per occurrence and a two

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million dollar (\$2,000,000.00) general aggregate. This policy must include the following coverages: premises and operations liability, independent contractors, products and completed operations, personal injury, contractual liability, and fire damage, and may not be subject to a self-insured retention or deductible exceeding \$25,000;

- (2) Automotive liability insurance coverage providing a combined single limit of not less than one million dollars (\$1,000,000.00) per occurrence. This policy must include the following coverages: bodily injury and property damage including premises and operations, and may not be subject to a self-insured retention or deductible exceeding \$10,000 ;
 - (3) Workers compensation insurance shall be provided for all of franchisee's employees as required under Florida law.
- (b) Self-insurance shall not be acceptable. All insurance policies shall be issued by companies that (a) are authorized to transact business in the State of Florida, (b) have agents upon whom service of process may be made in Palm Beach County, Florida, and (c) have a Best's rating of A- VI or better.
 - (c) *Additional Insured.* The "City of West Palm Beach, its commissioners, officers, and employees" shall be named as additional insureds by endorsement, with the exception of the workers' compensation policy.
 - (d) *Certificate of Insurance:* Franchisee shall provide the city with a copy of the certificates of insurance and endorsements evidencing the types of Insurance and coverage required prior to the commencement of services within the city. It is the franchisee's responsibility to ensure that the city's has a current Insurance certificate and endorsements at all times during the franchise term.
 - (e) The policy shall contain an endorsement requiring that the city be furnished with 30 days' notice by registered mail prior to cancellation or material changes in the policies.
 - (f) Upon the cancellation or lapse of any policy of insurance required by this article or the franchise agreement, the franchisee's license to operate as a franchisee in the city under its franchise agreement shall be immediately revoked unless, before the expiration date of the policy of insurance, another policy of insurance containing all the requirements of the original policy of insurance is obtained and a new certificate is provided to the city.

Sec. 74-130. Methods of solid waste collection; customer service.

- (a) Each franchisee shall collect commercial solid waste in the manner required by this article and the franchise agreement. At a minimum, each franchisee shall comply with the following requirements:
 - (1) *Hours of collection.* Hours of commercial solid waste collection services within the city shall be governed by any the rules and regulations established by the city for all

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commercial solid waste haulers operating within the city and as set forth in the franchise agreement.

(2) *Equipment.*

(i) All vehicles, equipment, and containers used to provide commercial solid waste collection services shall be maintained at all times in a clean, sanitary, and neat condition, and in good repair. All of the franchisee's equipment, vehicles and containers shall be subject at all times to inspection by the city. The city may require the franchisee to clean, repair, refurbish, or replace any equipment, vehicle, or container that fails to comply with the requirements in this article or the franchise agreement.

(ii) All of the franchisee's collection vehicles, equipment, and containers shall bear the franchisee's name, current phone number, and vehicle number, in letters and numerals that are at least two (2) inches in height.

(iii) All vehicles utilized in the provision of services within the city must comply with federal and state department of transportation regulations pertaining to the operation of commercial vehicles. All drivers must be appropriately licensed.

(3) Franchisees shall not litter or cause any spillage to occur upon the premises or the rights-of-way. During transportation, all waste shall be contained, tied or enclosed so that spillage and litter is prevented. In the event of any spillage or litter caused by the franchisee, the franchisee shall promptly clean up all spillage or litter at no cost to the city or franchisee's customer.

(4) Each franchisee shall handle its customers' containers with reasonable care and return them to the approximate location from which they were collected.

(5) *Maximum weight of loaded vehicles.* The total gross weight of any loaded vehicle used by the franchisee on a city road shall not exceed the maximum gross weight allowed per vehicle under any applicable federal, state, or city law.

(6) Any and all solid waste material collected by a franchisee within the city shall be disposed of only at facilities designated or approved by the Florida Department of Environmental Protection and/or the solid waste authority and at no other location or facility. A franchisee may not improperly dispose of any collected waste if its customer does not pay for services. The franchisee shall directly pay the county solid waste authority and/or the authorized disposal facility for all costs of disposal at the designated facilities.

(7) A franchisee shall take all reasonable measures to prevent prohibited materials from being collected, transported, or disposed of in a manner that poses a threat to human health, public safety, or the environment. A franchisee shall not collect such materials in the city without the city's prior written approval.

(8) *Reporting.*

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- (i) *Monthly.* Each franchisee providing commercial solid waste collection services shall file a monthly report with the city as required by sec. 74-127(c). The monthly reports shall be submitted electronically to the city in a format approved by the city.
 - (ii) *Annually.* Each franchisee providing commercial solid waste collection services shall file an annual report concerning the franchisee's total gross revenues for the year. This annual report shall be examined by an independent certified public accountant ("auditor") who shall confirm that the franchisee's computations concerning gross revenues and franchise fees were performed in accordance with the requirements of this article. The auditor's report shall state that its examination of the franchisee's records was performed in accordance with professional standards established by the American Institute of Certified Public Accountants or successor organization. The auditor's report shall be filed with the city on or before December 31st each year, for the franchise term ending the prior September 30th. The auditor's services shall be contracted and paid by the franchisee.
- (b) *Customer service.*
- (1) All franchisees shall maintain an office within the county where complaints can be received.
 - (2) Each franchisee shall have an answering service, answering machine, or other method of receiving and immediately responding to emergency calls and complaints that are made by the franchisee's customers after the franchisee's normal business hours. Each franchisee shall provide an emergency telephone number and other contact information to the director.
 - (3) If a franchisee receives a complaint before 12:00 p.m. (noon) on a business day, the franchisee shall respond to and, if feasible, resolve the complaint by 5:00 p.m. on the same day. If a franchisee receives a complaint after 12:00 p.m. (noon) on a business day, the franchisee shall respond to and, if feasible, resolve the complaint before 12:00 p.m. (noon) on the next business day.
 - (4) Rates and charges for commercial collection services shall be determined by agreement between the franchisee and its customer. The franchisee shall be responsible for billing and collecting all fees and charges for its services directly from its customers. The franchisee shall be required to identify and disclose the commercial collection fee payable to the city as a line item on each customer invoice.

Sec. 74-131. Suspension or revocation of franchise.

- (a) The city reserves the power to revoke all nonexclusive franchises issued pursuant to this article at any time.

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- (b) The city may suspend or revoke a franchise and the corresponding franchise agreement if the city concludes that:
 - (1) The franchise was issued by mistake of law or fact;
 - (2) The franchise was issued based upon a false statement or misrepresentation by the applicant;
 - (3) The franchisee has violated an applicable provision of the city code, a city regulation, or a federal or state law;
 - (4) A necessary permit, approval, or license of the franchisee has become invalid;
 - (5) The commercial solid waste collection service authorized by the franchise is not being performed by the franchisee;
 - (6) The commercial solid waste collection services and other activities authorized under the franchise are not being performed in accordance with the requirements of this article, the franchise agreement, or the application for a franchise;
 - (7) Timely and full payment of the franchise fee has not been made by the franchisee in compliance with section 74-127 of this article;
 - (8) Franchisee's failure to timely submit the documentation required by this article and the franchise agreement;
 - (9) Franchisee's use of false, misleading, or fraudulent billing methods for the purpose of reducing or avoiding the payment of franchise fees;
 - (10) Franchisee's failure to timely submit the monthly and annual reports;
 - (11) Franchisee's failure to provide, pay for and maintain the required insurance coverage;
 - (12) Franchisee's failure to provide, pay for and maintain the required bond;
 - (13) The franchisee violated a requirement of this article or the franchise agreement;
 - (14) The franchisee or one of its principals has been convicted under a local, state, or federal law for a crime involving the collection, transportation, or management of solid waste;
 - (15) The franchisee's actions or inactions demonstrate that the franchisee is not competent or fit to provide commercial solid waste collection services to the public;
 - (16) Actions by the franchisee or its employees or agents endanger the public health, safety and welfare;
- (c) *Notice.* Before the city suspends or revokes a franchise, the city shall provide written notice to the franchisee of the suspension or revocation and the reasons therefor, by personal service or certified mail, addressed to the franchisee or its registered agent at the address last provided by the franchisee. Such notice may also be sent by email.
- (d) *Appeal.* The franchisee may appeal such suspension or revocation to the special magistrate and the appeal and hearing thereon shall be conducted in accordance with the procedures

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set forth in chapter 26 of this code. At the hearing, the department and the appellant may introduce testimony and other evidence in support of their respective positions. The decision of the reviewing official shall be final and the appellant shall be deemed to have exhausted all administrative remedies.

- (e) The revocation of a franchise shall automatically terminate the corresponding franchise agreement.
- (f) A franchise that has been revoked under this article shall not be reinstated or reissued unless, at a minimum, the franchisee has complied with all of the requirements of this article, submitted a complete application, paid the application fee, executed a franchise agreement, and been approved by the city.

Sec. 74-132. Violations; enforcement; revocation of permits.

- (a) It shall be unlawful for any person, firm, or company to engage in the business of collecting, removing, transporting, or disposing of any commercial solid waste, or to provide commercial solid waste collection services, in the city without complying with all applicable provisions of this article.
- (b) Owners and/or occupants of property and/or building contractors that contract the services of non-franchised commercial collection service operators shall be deemed to have violated the provisions of this article.
- (c) Penalties and *remedies*. The penalties and remedies provided in this article are not mutually exclusive. The city may pursue any remedy authorized by law or equity when enforcing the city's rights under this article. Among other things, the city may take any, all, or any combination of the following actions against a violator of this article:
 - (1) Franchisees in violation of this article are subject to the suspension or revocation of their franchise, as provided in section 74-130, in addition to the remedies provided in this section.
 - (2) *Recovery of monies owed or other damages*. The city shall invoice the franchisee or any other person, firm or company, who owes money to the city under the requirements of this article or the franchise agreement. If the invoice is not paid, the city may take such actions as shall be appropriate to obtain payment of all monies due, plus costs and attorneys' fees.
 - (3) *Search or inspection warrant*. The city, through the city attorney, may obtain a search or inspection warrant to gain access to a facility for the purposes of inspection and monitoring if lawful entry, has been denied by the franchisee.
 - (4) *Referral to special magistrate*. The city may enforce any violation of any provision of this article, pursuant to and in the manner provided by chapter 26 of this code and the provisions of F.S. ch. 162.

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- (5) *Building permit revocation.* The removal and disposal of construction debris and materials or the removal and disposal of roofing or demolition debris in violation of this article, may result in the building official's revocation of building permits issued for the construction, demolition or remodeling of any structure.
- (6) *Municipal ordinance violation.* The city may prosecute a municipal ordinance violation punishable by a fine not exceeding \$500 or imprisonment for a definite term not exceeding 60 days, or both such fine and imprisonment. Each day any violation of any provision of this article shall continue shall constitute a separate offense.
- (7) *Injunctive and other relief.* The city, through the city attorney, may file a petition in the name of the city in the Circuit Court of Palm Beach County or such other courts as may have jurisdiction, seeking the issuance of an injunction, an award of damages, or other appropriate relief to enforce the provisions of this article.

SECTION 4: Specific authority is hereby granted to codify the Code text set forth in Section 3 of this Ordinance.

SECTION 5: All existing commercial collection franchises shall terminate as of September 30, 2025.

SECTION 6: In the event of a conflict between the provisions of this Ordinance and Ordinance No 3944-06 and any other ordinance, resolution or policy of the City, the provisions of this Ordinance shall control.

SECTION 7: Should any section or provision of this Ordinance, or any portion thereof, any paragraph, sentence or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or any part thereof other than the part declared to be invalid.

SECTION 8: This Ordinance shall take effect as provided by law. The implementation of the changes to the commercial collection franchise requirements and fee shall be implemented as of October 1, 2025.

[SIGNATURE ON FOLLOWING PAGE]

FIRST READING THIS 12TH DAY OF MAY, 2025.
SECOND READING AND PASSAGE THIS 27TH DAY OF MAY, 2025.



ATTEST:

X *Shaquita Edwards*

CITY CLERK
Signed by: Shaquita Lashae Edwards

**CITY OF WEST PALM BEACH BY
ITS CITY COMMISSION:**

X *Keith A. James*

PRESIDING OFFICER
Signed by: Keith A. James

**APPROVED AS TO FORM AND
LEGALITY:**

5/22/2025

X *Nancy Urcheck*

CITY ATTORNEY
Signed by: Nancy DeSimone Urcheck