

**ORDINANCE NO. 2004-19**

**AN ORDINANCE OF THE CITY OF DORAL, FLORIDA, PROVIDING FOR THE ISSUANCE OF SOLID WASTE COLLECTION FRANCHISES; REQUIRING FRANCHISE FOR SOLID WASTE COLLECTIONS; IMPOSING FRANCHISE FEE FOR SOLID WASTE COLLECTION ACTIVITIES; AWARDED FRANCHISES TO CERTAIN PERMITTED PRIVATE HAULERS; PROVIDING FOR SEVERABILITY; INCLUSION IN THE CODE; PROVIDING FOR PENALTY; PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the City of Doral (the "City") has the authority to require persons and entities engaging in the business of the collection of solid waste in the City to obtain a franchise from the City and to pay solid waste collection franchise fees imposed by the City; and

WHEREAS, the City Council desires to issue such franchises and to impose such franchise fees, as a percentage of gross receipts, as set forth in this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:

Section 1. That the City of Doral Solid Waste Franchise Ordinance is hereby created to read as follows:

Section 1-1. Definitions.

The following words and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this section.

- (A) **Commercial Establishment:** Any structure used or constructed for use for business operations. For purposes of this Ordinance, hotels and motels are commercial establishments. The term "commercial establishment" shall not include any residential unit or multi-family residential establishment.
- (B) **Customer:** A person who uses the solid waste or recycling services of a Private Hauler.
- (C) **Multi-family Residential Establishment:** Any structure other than a residential unit which is used, or constructed for use, as a multiple dwelling facility. Multi-family residential establishments shall include, without limitation, rooming house, tourist court, trailer park, apartment

building with rental or cooperative apartments, or multiple story condominiums with common means of ingress and egress.

- (D) Franchisee: The named person who obtains a franchise from the City pursuant to this Ordinance.
- (E) Person: Any natural person, individual, public or private corporation, firm, partnership, association, joint venture, municipality, or any combination of such, jointly or severally.
- (F) Private Solid Waster Hauler (Collector); Private Hauler; Hauler: Any person, entity, corporation or partnership that removes, collects and transports for disposal for hire any solid waste over the streets or public rights-of-way within the incorporated area of the City.
- (G) Residential Unit: Any single family residence.
- (H) Solid Waste: Garbage, trash, litter, yard trash, hazardous waste, construction and demolition debris, industrial waste, or other discarded material, including solid or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural or governmental operations.
- (I) Solid Waste Disposal: Disposition of solid waste by means of combustion, land filling or other final method of discard.

Section 1-2. Franchise Required by the City for Solid Waste Collection

- (A) It shall be unlawful for any Person to remove, collect and transport for disposal from any Commercial Establishment and/or Multi-family Residential Establishment in the City, Solid Waste or recyclable material over the streets or public right-of-way within the incorporated area of the City without first applying for an receiving the appropriate Solid Waste Franchise from the City to carry on such business.
- (B) The Franchise required by this section shall be in addition to any other permits, registration or occupational license which may be required by federal, state or local law.

Section 1-3. Application for Franchise

Applications for a Franchise shall be made to the City upon such form and in such manner as shall be prescribed by the City Manager, said form to elicit the following information and to be accompanied by supporting documents and such other information as may be required by the City Manager from time to time:

- (A) Name of applicant. If the applicant is a partnership or corporation, the name(s) and business address(es) of the principal officers and stockholders and other persons having any financial or controlling interest of five percent or greater in the partnership or corporation. Provided, however, that if the corporation is a publicly owned corporation having more than twenty-five (25) shareholders, then only the names and business addresses of the local managing officers shall be required.
  
- (B) Character of applicant. The applicant for a permit under this section, if an individual or in the case of a firm, corporation, partnership, association or organization, any person having any financial, controlling or managerial interest of five percent or greater therein, shall be of good moral character. In making such determination, the following information, which shall be submitted by applicant, shall be considered:
  - (1) Penal history. If the applicant is an individual, a record of all conviction and the reasons therefore shall be provided by the applicant. If the applicant is other than an individual, then the record of all convictions and the reason therefore of the principal controlling officers of applicant shall be provided. Provided, however, that in the case of a publicly held corporation having twenty-five (25) or more shareholders, then only the aforementioned information applicable to its local managing officers shall be required.
  
  - (2) Business history. Whether such applicant has operated a solid waste collection-removal business in this or another state 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 therefore.

- (3) Existence of business entity. If applicant is a corporation, applicant shall submit proof of incorporation in good standing in the state of incorporation and, if a foreign corporation, applicant shall provide information certifying that applicant is qualified to do business in the State of Florida. If applicant is other than a corporation and is operating under a fictitious name, applicant shall be required to submit information that such fictitious name is registered and held by applicant.
- (C) Equipment and method of operation. The applicant for a Franchise shall possess equipment capable of providing safe and efficient service. In making such a determination and approving the method of operation for each applicant, the City Manager shall require the following information:
- (1) The type, number and complete description of all equipment to be used by the applicant for providing service pursuant to this chapter.
  - (2) A statement that the applicant will use Dade County approved facilities for disposing of all solid waste which the applicant collects and removes, or those facilities not owned by the County which have been approved by the State Department of Environmental Regulation.
  - (3) The names of customers and addresses of each location served.
- (D) Insurance requirements. The applicant for a Franchise shall maintain insurance as specified herein and shall furnish a public liability policy to the City and also file with the City a certificate of insurance for all policies written in the applicant's name. This certificate shall name the City as an additional insured if required by the City Manager and shall provide that the policies contain an endorsement requiring that the City shall be furnished with ten (10) days written notice by registered mail prior to cancellation or material changes in the policies.
- (1) Comprehensive general liability. The applicant shall carry in his own name a policy acceptable to the City Manager covering their operations in an

amount not less than three hundred thousand dollars (\$300,000.00) per occurrence for bodily injury and Two hundred thousand dollars (\$200,000.00) per occurrence for property damage liability.

- (2) Vehicle liability insurance. Applicants for a permit shall maintain vehicle liability insurance covering each vehicle utilized in the business of solid waste collection and disposal in an amount not less than one million dollars (\$1,000,000.00) combined single limit per occurrence.
  - (3) Liability of the City. The above insurance requirements shall not be construed as imposing upon the City or any official or employee thereof any liability or responsibility for injury to any person or property by the insured, his agents or employees.
- (E) Customer List. The applicant for or (applicant for renewal of) a Franchise shall provide a list of existing customers in the City and service levels.
  - (F) Proof of County and/or State Permits and Licenses. The applicant for a Franchise shall provide proof of county and/or state permits and licenses.
  - (G) The completed application shall be submitted to the City. Upon receipt of a completed application, the City Manager or his designated representative shall review said application and, if satisfactory in all respects, and after payment of required application fee of One Thousand (\$1,000.00) Dollars, shall issue the Franchise.

Section 1-4. Denial of Franchise.

Should the City Manager deny an application for a Franchise, he shall notify the applicant of such denial by certified mail not later than fourteen (14) days after taking such action. The notice of denial shall contain a statement of the reasons why the application was denied.

Section 1-5. Appeal from City Manager's denial of Franchise; appeal from revocation of Franchise under Section 1-11.

The denial or revocation of a Franchise by the City Manager may be appealed to the City Council. The notice of appeal shall be filed in writing with the City Manager no later than fourteen (14) days after the receipt of the certified letter advising applicant of the denial or revocation.

The City Manager shall fix the date and time for hearing the appeal. Said hearing shall be held not less than fourteen (14) nor more than sixty (60) days after receipt of the notice of appeal. The City Council shall either affirm the decision of the City Manager or direct the City Manager to issue or reinstate the Franchise.

Section 1-6. Term of Franchise.

Franchises awarded pursuant to the provisions of this Ordinance shall expire one (1) year from the date of issuance.

Section 1-7. Renewal of Franchise.

A Franchise may be renewed from year to year by the City Manager. Any such renewal may be subject to the same terms and conditions applicable to the issuance of the original Franchise.

Section 1-8. Transfer of Franchise prohibited.

No Franchise for the collection of solid waste issued under the provisions of this ordinance may be assigned or transferred. In the event of any change in ownership and/or name of the corporation or partnership, formal notification shall be given to the City Manager within thirty (30) days thereof. That upon any sale, a new Franchise license must be applied for and shall be obtained from the City.

Section 1-9. Information required of Franchisee.

At least annually, but not more frequently than quarterly as determined by the City Manager, each Franchisee shall supply the following information on a form and in the manner prescribed by the City Manager.

- (A) A listing, which is organized as prescribed by the City Manager, as of the reporting date, of the names and addresses of Customers, and the addresses of each location

served. For each customer on the list, the Private Hauler will indicate the following:

- (1) whether the Customer served is a Multi-family Residential or Commercial Establishment; and
  - (2) whether the service provided is solid waste collection, recycling, or a combination of both; and
  - (3) a listing of those materials being recycled at each Customer location; and
  - (4) the name of a Customer contact person who can provide additional information regarding the recycling program.
- (B) A summary of the number of cubic yards of solid waste collected quarterly based on scheduled service, as of the reporting date.
- (C) A summary of the number of tons and/or cubic yards of recyclable material collected and marketed quarterly, on a schedule and format prescribed by the City Manager.

Section 1-10. Disposal required at County-approved facilities.

Any and all Solid Waste collected by a Franchisee within the City shall be disposed of only at the solid waste disposal facilities provided, operated and designated or approved by the Dade County Department of Solid Waste Management and at no other location or facility except those which have heretofore been approved by the Department of Environmental Regulation so long as it is required by the Code of Miami Dade County.

Section 1-11. Revocation of Franchise.

- (A) The following shall constitute cause for revocation of a solid waste Franchise by the City Manager:
- (1) the violation of any of the provisions of the Ordinance of the City or the Code of Metropolitan Dade County which violation endangers the public health, safety or welfare; or

- (2) the violation of any of terms or conditions of the Franchise; or
  - (3) the failure to promptly pay the Franchise fee provided for in this Ordinance.
- (B) The City Manager may revoke a Franchise for a violation or violations. Upon a determination by the City Manager that a Franchise shall be revoked, the affected person shall be provided with written notice of such revocation and the reasons therefore. Upon receipt of such notice, the affected person may appeal said revocation to the City Manager and the appeal and hearing thereon shall be conducted in accordance with the procedures set forth in Section 1-5.

Section 1-12. Solid Waste Collection Franchise Fee Payable to City.

It shall be unlawful for any Private Hauler operating in the City to either collect, remove, or transport from properties in the City solid waste for disposal without payment of a solid waste Franchise fee to the City.

Commencing upon the effective date of this Ordinance, and continuing monthly thereafter on the 15<sup>th</sup> day of each and every month, each Private Hauler operating in the City shall:

- (A) File a report with the City Manager. The report shall designate the names and addresses of each account located in the City that was provided Solid Waste collection and disposal service by the Private Hauler for the preceding month. The report shall include the gross monthly solid waste collection and disposal service fee collected receipts of all such accounts, which report shall be subject to audit by the City; and
- (B) Simultaneously with the filing of such report, each Private Hauler shall pay to the City a Franchise fee equal to ten (10%) percent of the total gross monthly solid waste collection and disposal service fee collected receipts of all of its accounts which are located in the City, as reflected on each monthly report.

An additional monthly surcharge, equal to one (1) percent of total gross monthly service fee collected receipts for the preceding month per month, as reported to the City



Manager, shall be payable to the City if the ten (10%) percent Franchise fee is not paid by the 15<sup>th</sup> of the month by the Private Hauler for each month the payment is delinquent.

Section 1-13. Recordkeeping.

Each Private Hauler is hereby required to establish and maintain appropriate records, showing in such detail as the City Manager may prescribe, the amount of monthly solid waste collection and disposal service fee collected receipts of each account provided solid waste collection and disposal service fee collected receipts of each account provided solid waste collection and disposal services which is located in the City. All such records shall be open to inspection by the City Manager or his duly authorized agent at all reasonable times. The City Manager is hereby authorized and empowered to promulgate from time to time such rules and regulations with respect to the establishment and maintenance of such records as he or she may deem necessary to carry into effect the purpose and intent of the provisions hereof.

Section 1-14. Franchise Granted, County Permit Holders, Others.

- (A) Each Private Hauler who has held a permit in good standing from Metropolitan Dade County on or immediately prior to March 12, 1996 (date of incorporation of the City) pursuant to County Code 15-17 shall be allowed to continue to provide service in the City for a ninety (90) day period until a Franchise application has been approved or denied by the City, so long as the Private Hauler meets all of the requirements of this Ordinance.
- (B) Each Franchise awarded pursuant to this Ordinance is subject to compliance with all of the terms and conditions hereof except that the Franchisee eligible under Section 1-14(A) may supplement the documentary materials and information which was provided by Franchisee to secure a permit from Metropolitan Dade County to meet the application requirements of this Ordinance, as determined by the City Manager. This shall not waive the fee required by Section 1-3(G).
- (C) The Franchise granted shall confer to Franchisee the right to operate upon the public streets of the City to provide the

Solid Waste collection services in accordance with the terms hereof.

Section 1-15. Restoration.

The Franchisee agrees to repair all property, public or private, altered or damaged by it, its agents or employees in the performance of its services herein in as good or better condition as it was before being damaged or altered.

Section 1-16. Compliance with Laws.

Franchisee shall conduct operations under this Ordinance in compliance with all applicable laws.

Section 1-17. Services Provided.

Services provided by Franchisee shall comply with the City's Ordinance governing the time and frequency of Solid Waste collection and removal.

Section 1-18. Office and Collection Hours.

- (A) The Franchisee's office shall remain open Monday through Friday from 8:30 a.m. to 5:00 p.m. for the purpose of handling complaints; and for that purpose, there shall be maintained an adequate number of telephones and a responsible person in charge during the hours specified above. These requirements do not apply on legal holidays.
- (B) Collections shall normally be no earlier than 7 a.m. and no later than 7 p.m. (or as otherwise prescribed by the City) with no service on Sunday, except in time of emergency or to maintain schedules due to Holidays. Changes to these hours must be approved by the City Manager.

Section 1-19. Collection Equipment.

The Franchisee shall have on hand at all times sufficient equipment in good working order to permit Franchisee to perform its duties hereunder fully, adequately, and efficiently. Equipment shall be purchased or manufactured from nationally known and recognized manufacturers of garbage collection and disposal equipment. Garbage collection equipment shall be kept clean, sanitary, neat in appearance and in good repair at all times. The Franchisee shall at

all times have available to it, reserve equipment which can be put into service and operation within two (2) hours of any breakdown. Such reserve equipment shall substantially correspond, in size and capability, to the equipment normally used by the Franchisee to perform its duties hereunder.

Section 1-20. Spillage and Litter.

The Franchise shall not litter premises in the process of making collection, but shall not be required to collect any waste material that has not been placed in approved containers or in a manner herein provided. During hauling, all solid waste shall be contained, tied or enclosed so that leaking, spilling or blowing are prevented. In the event of spillage by the Franchisee, the Franchisee shall promptly clean up the litter.

Section 1-21. Storms and Other Emergencies.

In case of an unusually severe storm or disruption caused by other severe emergencies not caused by Franchisee, City Manager may grant Franchisee reasonable variance from regular schedules. As soon as practicable after such storm or other emergency, Franchisee shall inform the City of the estimated time required before regular schedules and routes can be resumed and, upon request of the City Manager, Franchisee shall provide notice to residential premises in the service area. In event of a storm or emergency requiring mass cleanup operations, Franchisee, shall, upon direction of City, participate in said cleanup to the extent directed by the City. Where it is necessary for the Franchisee and the City to acquire additional equipment and to hire extra crews to clean the City of debris and refuse resulting from the storm or disaster, the Franchisee shall work with the City in all ways possible for efficient and rapid cleanup.

Section 1-22. Nondiscrimination Provision.

The Franchisee agrees that it has adopted and will maintain and enforce a policy of nondiscrimination on the basis of race, color, religion, sex, age, handicap, disability or national origin. Said nondiscrimination policy shall apply to employment practices of the Franchisee and the provisions of services.

Section 1-23. Complaints.

All complaints pertaining to pickup of waste shall be responded to and resolved within twenty-four (24) hours. All other service complaints shall be investigated and responded to within twenty-four (24) hours. Franchisee shall supply the City Manager with copies of all Customer complaints on a monthly basis and indicate disposition of each. Such records shall be available for inspection by City at all times during business hours specified herein. The form shall indicate the day and hours on which the complaint was received and the day and hour on which it was resolved. When a complaint is received on the day preceding a holiday or on a Saturday, it shall be serviced on the next working day. The Franchisee shall establish procedures acceptable to the City to insure that all Customers are notified as to the complaint procedure.

Section 1-24. Franchise Non-Exclusive.

- (A) Any Franchise granted by this Ordinance is non-exclusive, and the City reserves the right to award additional Franchises or utilize other Solid Waste collection programs.
- (B) Nothing herein shall authorize collection of Solid Waste in areas of the City serviced by Dade County prior to March 12, 1996 without specific approval of the City.

Section 1-25. Rights Reserved.

The City reserves the right to adopt ordinances regulating the services provider hereunder.

Section 1-26. Surrender of Rights.

As a further consideration for the granting of the rights, privileges and franchises granted hereby, the Company surrenders all rights, privileges and franchises heretofore granted by Dade County in the newly-incorporated City of Doral franchise area for any of the purposes stated in this Ordinance and now enjoyed by the Franchisee in the franchise area; provided, however, that such surrender shall not be effective unless and until this Ordinance shall be finally adopted and in effect and the rights, privileges and franchises granted hereby shall be validly in force and effect.

Section 1-27. City's Right to Regulate Use of Streets not Abrogated.

Nothing in this Ordinance shall be construed as a surrender by the City of its right or power to pass ordinances regulating the use of its streets in accordance with City's police powers or property rights.

Section 1-28. Effective Date.

This ordinance shall take effect immediately upon its final passage and adoption. Each Franchise granted pursuant to this Ordinance shall become effective when the Franchise application is granted and Franchisee files with the City its written acceptance thereof in a form approved by the City Attorney.

Section 2. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 3. Inclusion in the Code. It is the intention of the City Council, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the City of Doral Code; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 4. Penalty. Any person who violates any provisions of this ordinance shall, upon conviction, be punished by a fine not to exceed \$500 or imprisonment in the County jail not to exceed sixty (60) days or both such fine and imprisonment. Each day that a violation continues shall be deemed a separate violation. This ordinance shall be subject to enforcement under the Local Government Code Enforcement Act, Chapter 162, F.S., as amended. Enforcement may also be by suit for declaratory, injunctive or other appropriate relief in a court of competent jurisdiction.

Section 5. Effective Date. This Ordinance shall be effective upon adoption on second reading.

The foregoing Ordinance was offered by Vice Mayor Cabrera, who moved its adoption.

The motion was seconded by Councilman DiPietro and upon being put to a vote, the vote

was as follows:

Mayor Juan Carlos Bermudez	yes
Vice Mayor Peter Cabrera	yes
Councilman Michael DiPietro	yes
Councilwoman Sandra Ruiz	no
Councilman Robert Van Name	yes

PASSED AND ADOPTED on first reading this 13<sup>th</sup> day of October, 2004.

PASSED AND ADOPTED on second reading this 10<sup>th</sup> day of November, 2004.

  
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Juan Carlos Bermudez, Mayor

ATTEST:

  
\_\_\_\_\_  
Sheila Paul, CMC, City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
John J. Hearn, City Attorney