

ORDINANCE NO. 31-08

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 51, "GARBAGE AND TRASH" OF THE CODE OF ORDINANCES BY AMENDING SECTION 51.01, "DEFINITIONS", SECTION 51.15, "REFUSE COLLECTION RESERVED EXCLUSIVELY IN CITY OR ITS CONTRACTORS", SECTION 51.16, "EXCEPTIONS IN CERTAIN AREAS AND FOR CERTAIN TYPES OF COLLECTION SERVICES", SECTION 51.19, "INDUSTRIAL AND HAZARDOUS WASTE DISPOSAL", SECTION 51.20, "BUILDING MATERIALS", SECTION 51.35, "CONTAINERS REQUIRED FOR RESIDENTIAL AND COMMERCIAL SITES", SECTION 51.37, "USE OF OTHER UNITS AND CONTAINERS", TO CLARIFY CERTAIN DEFINITIONS AND TERMS REGARDING RECYCLING AND ROLL-OFF CONTAINERS TO PROVIDE THAT THEY ARE CONSISTENT WITH STATE LAW AND THE CITY'S FRANCHISE AGREEMENT; AMENDING SECTION 51.45, "CONSTRUCTION AND DEMOLITION SITES", TO PROVIDE FOR THE NON-EXCLUSIVE COLLECTION OF CONSTRUCTION AND DEMOLITION DEBRIS AND TO PROVIDE FOR REGULATIONS GOVERNING SUCH COLLECTION; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City has an exclusive franchise agreement with Waste Management for the collection of solid waste in the City; and

WHEREAS, the City desires to amend certain sections of the City's ordinances in order to provide for consistency with the franchise agreement; and

WHEREAS, the City grants non-exclusive franchises for the collection, by roll-off containers, of construction and demolition debris; and

WHEREAS, the City desires to include definitions, and to establish requirements for, and provisions for granting, non-exclusive franchises for construction and demolition debris roll-off container service; and

WHEREAS, the City desires to provide regulations for pre-collection, collection and disposition of construction and demolition debris in roll-off containers and to establish rates and fees for such service, and to provide for enforcement of such provisions.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. That Chapter 51, "Garbage and Trash", is amended by amending subsection 51.01, "Definitions", to read as follows:

Sec. 51.01. DEFINITIONS.

To the extent the definitions contained herein conflict with similar definitions contained in any Federal, State or local law, the definition herein shall prevail.

Biohazardous or biomedical wastes shall mean any solid waste or liquid waste which may cause disease or reasonably be suspected of harboring pathogenic organisms, included [including], but not limited to, waste resulting from the operation of medical clinics, hospitals, and other facilities producing wastes which may consist of, but are not limited to, diseased human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, contaminated clothing and surgical gloves.

Biological waste. Solid waste that causes or has the capability of causing disease or infection and includes, but is not limited to, biohazardous waste, diseased or dead animals, and other waste capable of transmitting pathogens to humans or animals.

Bulk trash. Any nonvegetative item which cannot be containerized, bagged or bundled including, but not limited to, inoperative and discarded refrigerators, ranges, toilets, pool heaters, water softeners, pianos, washers, dryers, bath tubs, water heaters, sinks, bicycles, and other similar appliances, household goods, furniture, large boxes, barrels and crates, and shall not be commingled with vegetative waste or any other type of refuse.

C&D Debris Service Provider. Shall mean a licensed company authorized by the City to remove construction and demolition debris.

City. The City of Delray Beach, Florida, or the City's authorized agents or contractors.

City Manager. The City Manager of the City of Delray Beach or his/her designee.

Collection: The process whereby solid waste, garbage, trash, bulk trash, vegetative waste or recyclable material is removed and transported to a designated facility.

Commercial trash. Any and all accumulations of paper, rags, excelsior or other packing materials, wood, paper or cardboard boxes or containers, sweepings, and any other accumulation not included under the definition of garbage, generated by the operation of stores, offices, and other business places. Commercial trash shall include furniture if properly containerized. Commercial trash shall not include special waste.

Construction and demolition debris. Materials generally considered to be not water soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, roofing material, pipe, gypsum wallboard, and lumber from the construction or destruction of a structure ~~as part of a construction or demolition project.~~ Mixing of a de minimis amount of waste other than C&D debris from a construction site will not exclude such mixed solid waste from classification as C&D debris under this definition.

Contract Administrator. Shall mean the person designated by the City who shall act as the City's representative under this ordinance.

Contractor or vendor. ~~Browning-Ferris Industries of Florida, Inc.~~ Waste Management Inc. of Florida.

Department. The Florida Department of Environmental Protection.

Designated facility. A disposal processing, recovery, recycling or transfer facility designated by the Solid Waste Authority or the City Manager.

Disposal costs. The "tipping fees" or landfill costs charged to the Contractor by others for disposal of the waste collected by the Contractor.

Dwelling unit. One or more rooms connected together, designated to be occupied by one family, constituting a separate, independent housekeeping establishment and physically separated from any other dwelling unit which may be in the same structure and which contains independent sanitation, living, cooking and sleeping facilities.

Garbage. All putrescible waste which generally includes but is not limited to kitchen and table food waste, animal, vegetative, food or any organic waste that is attendant with or results from the storage, preparation, cooking or handling of food materials whether attributed to residential or commercial activities. Garbage shall not include any material that falls within the definition of special waste.

Garbage receptacle. Any commonly available light-gauge steel, plastic or galvanized receptacle of a nonabsorbent material, closed at one end and open at the other, furnished with a closely fitted top or lid and handle(s). A receptacle also includes a heavy duty, securely tied, plastic bag designed for use as a garbage receptacle. Garbage receptacles or waste materials shall not exceed fifty (50) gallons in capacity or fifty (50) pounds in weight. Rollout containers provided by the City may be thirty-two (32), sixty-eight (68), or ninety-five-gallon-size containers.

Hazardous waste. Solid waste as defined by the State of Florida Department of Environmental Regulation [Protection] as a hazardous waste in the State of Florida Administrative Code, or by any future legislative action or by Federal, State or local law.

~~*Industrial wastes.* Any and all debris and waste products generated by manufacturing, food processing (except in restaurants and homes), land clearing, and commercial shrubbery or tree cuttings, building construction or alteration (except residential do-it-yourself projects) and public works type construction projects whether performed by a government unit or by contract.~~

Litter. See Chapter 98 of the Code of Ordinances of the City of Delray Beach.

Loading and unloading area. Any loading or unloading space or area used by any moving vehicle for the purpose of receiving, shipping, and transporting goods, wares, commodities, and persons.

Loose refuse. Any refuse, either garbage or household trash, stored in and collected from any type of container other than a mechanical container or garbage receptacle related to multiple-family dwellings or the designated facility. Refuse that is collected from the ground is considered loose refuse.

Mechanical container. Any detachable metal or plastic container designed or intended to be mechanically dumped into a loader-packer type of garbage truck used by the contractor and includes any motorized or electrical compactor of ten (10) yards capacity or less. Mechanical containers may be constructed of plastic. Further, all mechanical containers must be uniform in color, have closeable lids, and be free of any advertising or other information other than an eight and one-half (8 1/2) by eleven-inch sticker with the name, address and telephone number of the Contractor.

Multiple dwelling units. Any building containing five (5) or more permanent living units, not including motels and hotels.

Parking lots. Commercial and public lots designed for the parking of any vehicles with the exception of residential parking.

Person. Any natural person, owner, agent, corporation, partnership, association, firm, receiver, guardian, trustee, executor, administrator, fiduciary, occupant, lessee, tenant, or representative or group of individuals or entities of any kind.

Premises. Lots, sidewalks, alleys, rights-of-way, grass strips, and curbs up to the edge of the pavement of any public thoroughfare.

Private property. Property owned by any person as defined in this Section, including, but not limited to, yards, grounds, driveways, entrance or passageways, parking areas, storage areas, vacant land, or body of water. For the purpose of this Chapter, "private property" owners are required to maintain rights-of-way up to the edge of the pavement of any public thoroughfare.

Public property. Any area that is used or held out to be used by the public, whether owned or operated by a public interest, including, but not limited to, highways, streets, alleys, parks, recreation areas, sidewalks, grass strips, medians, curbs, or rights-of-way up to the edge of the pavement of any public thoroughfare or body of water.

Recyclable materials. ~~Newspapers (including inserts), magazines and catalogs, aluminum containers, aluminum foil and pie plates, plastic containers, glass bottles and jars, corrugated cardboard, brown paper bags, mixed paper, drink boxes, milk and juice cartons and other solid waste materials added upon agreement between the Solid Waste Authority and the Contractor, when such materials have been either diverted from the remaining solid waste stream or removed prior to their entry into the remaining solid waste stream.~~ Shall be the same as defined in Chapter 403 of the Florida Statutes.

Recycling. ~~Any process by which solid waste, or materials which otherwise become solid waste, are collected, separated or processed and reused or returned to use in the form of raw materials or products.~~ Shall be the same as defined in Chapter 403 of the Florida Statutes.

Refuse. Commercial trash, household trash and garbage or a combination of mixture of commercial trash, household trash and garbage, including paper, glass, metal and other discarded matter, excluding commercial recyclable materials.

Residential do-it-yourself projects. Minor residential repairs done exclusively by the homeowner.

Residential service. The refuse, recycling and vegetative waste collection service provided to persons occupying residential dwelling units within the City who are not receiving commercial or multifamily services. This would include single-family homes, duplexes, triplexes, quadplexes and mobile homes.

Roll-off collection service. ~~The collection of construction and demolition debris using open top roll-off containers within temporary locations in the City, limited to new construction sites and remodeling or refurbishment sites.~~ Roll-off collection service shall also mean the collection of horticultural or agricultural wastes at horticultural or agricultural nurseries, but only when the customer chooses to use open top roll-off containers for horticultural or agricultural waste, and horticultural and agricultural waste shall not include any other type of waste, including, but not limited to, special waste, garbage or recyclable materials.

Roll-out carts. Carts that are either a thirty-two (32), sixty-eight (68), or ninety-five-gallon (approximate) wheeled container of a type approved by the City Manager or his designee, and shall be equipped with wheels and a lid.

Sludge. 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 and solids pumped from septic tanks, grease traps, privies, or similar waste disposal appurtenances.

Special waste. Solid or liquid wastes that require special handling and management, which are not accepted at a landfill or other disposal facility or which are accepted at a landfill or other disposal facility at higher rates than is charged for refuse, including, but not limited to, asbestos, whole tires, automobiles, boats internal combustion engines, nonautomobile tires, sludge, dead animals, septic tank waste, hazardous waste, used oil, lead-acid batteries, and biohazardous or biomedical wastes.

Trash. All refuse, accumulation of paper, excelsior, rags, wooden or paper boxes and containers, sweepings, broken toys, tools, utensils, and all other accumulations of a similar nature other than garbage, which are usual to housekeeping and to the operation of stores, offices and other business places, but shall not include vegetative waste.

Vegetative waste. Any vegetative matter resulting from yard and landscaping maintenance and shall include materials such as tree and shrub materials, grass clippings, palm fronds, Christmas trees, tree branches and similar other matter usually produced as refuse in the care of lawns, landscaping and yards. All grass clippings, leaves, pine needles, and similar small loose items must be bagged or containerized. Vegetative waste, except palm fronds, must be no more than six (6) feet in length and no single item shall weigh more than fifty (50) pounds. Natural Christmas trees shall be considered vegetative waste and will be collected if they are not more than eight (8) feet in length and weight less than fifty (50) pounds. Vegetative waste does not include any form of matter or debris resulting from land clearing or land development.

Section 2. That Chapter 51, "Garbage and Trash", is amended by amending subsection 51.15, "Refuse Collection Reserved Exclusively in City or its Contractors", to read as follows:

Sec. 51.15. REFUSE COLLECTION RESERVED EXCLUSIVELY IN CITY OR ITS CONTRACTORS.

The governmental function of collection, removal and disposition of all roll-off containers, excluding roll-off containers used for construction and demolition debris, and refuse within the municipal limits of the City is exclusively vested in the municipal government of the City or its contractors, and all other individuals, persons, firms or corporations are specifically and expressly prohibited from engaging in that practice or business within the corporate limits of the City and from utilizing the publicly dedicated streets, alleys and other thoroughfares for those purposes

Section 3. That Chapter 51, "Garbage and Trash", is amended by deleting subsection 51.16, "Exceptions in Certain Areas and for Certain Types of Collection Services":

~~Sec. 51.16. EXCEPTIONS IN CERTAIN AREAS AND FOR CERTAIN TYPES OF COLLECTION SERVICES.~~

~~Upon the express written approval of the City Manager, an exception to City garbage and trash services as required in Section 51.15 may be granted to commercial or industrial establishments or to developments or homeowners/condominium associations of over one hundred (100) units, located within clearly defined boundaries, for the collection, removal, and disposition of all garbage and trash where that garbage and trash is to be placed in roll off stationary compactor units and compactor containers or like construction bulk containers. The exception shall only be granted where sufficient proof is presented to the City Manager that the development or homeowners/condominium association is of a sufficient size; is within sufficient, clearly defined boundaries (so as to not interfere with City garbage and trash collection services) and that the development or homeowners/condominium association has, pursuant to any applicable internal bylaws or covenants and restrictions, properly contracted with an independent contractor to provide garbage and trash collection, removal, and disposition services at their own expense, and that the contract is made expressly subject to the granting of the exception by the City Manager. The decision to grant an exception shall be solely that of the City Manager at his discretion.~~

Section 4. That Chapter 51, "Garbage and Trash", is amended by amending subsection 51.19, "Industrial and Hazardous Waste Disposal", to read as follows:

Sec. 51.19. INDUSTRIAL AND HAZARDOUS WASTE DISPOSAL.

(A) Any persons, businesses or other entities generating industrial and hazardous wastes shall not be served in the normal manner set forth in this Chapter. All industrial and hazardous wastes may be collected by the City or its contractor if both the owner and the City agree only upon specific approval and at additional costs set forth by the City or its contractor. However, this shall not preclude another qualified industrial or hazardous waste disposal company from collecting the industrial or hazardous waste.

~~(B) Unless collected as specified under subsection (A), industrial waste shall be collected, removed and disposed of solely by the operator of the factory, plant or enterprise creating or causing same.~~

Section 5. That Chapter 51, "Garbage and Trash", is amended by amending subsection 51.20, "Building Materials", to read as follows:

Sec. 51.20. BUILDING MATERIALS.

(A) Building materials originating prior to, during, or subsequent to the construction of new buildings, alterations or additions to existing buildings of whatsoever type or from demolition of existing structures will not be collected under the City's residential service. Removal of these building materials is the responsibility of the building contractor or installer and if a roll-off container is used it must be obtained in accordance with Section 51.45 of the Code of Ordinances.

(B) Building materials resulting from minor homeowner repairs (residential do-it-yourself projects) which meet the requirements for trash collection must be bundled, bagged or boxed and will be collected at curbside. Discarded lumber pieces must be no longer than four (4) feet without nails. Larger materials may be picked up by special request at an additional charge from the contractor.

Section 6. That Chapter 51, "Garbage and Trash", is amended by amending subsection 51.35, "Containers Required for Residential and Commercial Sites", to read as follows:

Sec. 51.35. CONTAINERS REQUIRED FOR RESIDENTIAL AND COMMERCIAL SITES.

Except as otherwise provided for herein or due to the type of garbage and trash service designated by the City for the subject property, the owner of any real property in or from which litter is accumulated or produced must provide suitable receptacles and containers. These containers must be kept in an accessible location for collection and must be capable of holding all waste materials which would ordinarily accumulate between the times of successive collections. All containers and receptacles as required shall be of safe construction and design and shall be maintained in good serviceable condition at all times. Any receptacles or containers which do not conform to the provisions of this Chapter, or which have ragged or sharp edges or any other defects likely to hamper or injure the person collecting the contents thereof or the public generally, shall be promptly replaced upon notice. The City Manager, or his/her designee, shall determine the quantity and location of receptacles and determine whether the receptacles and containers are serviceable.

Section 7. That Chapter 51, "Garbage and Trash", is amended by deleting subsection 51.37, "Use of Other Units and Containers":

Sec. 51.37. USE OF OTHER UNITS AND CONTAINERS.

~~Customers who, upon the express and sole approval of the City, elect to use roll off containers or stationary roll off compactor units of ten (10) yards capacity or more or similar construction bulk containers or compactor equipment may be excluded from regular collection by the City or its contractor, subject to the provisions of Section 51.16. However, roll off compactors or roll off containers, regardless of the size or capacity, that service residential or multifamily units for garbage and trash collection, shall be collected by the City or its contractor.~~

Section 8. That Chapter 51, "Garbage and Trash", is amended by amending subsection 51.45, "Construction and Demolition Sites", to read as follows:

Sec. 51.45. CONSTRUCTION AND DEMOLITION SITES AND COLLECTION OF CONSTRUCTION AND DEMOLITION DEBRIS.

(A) It shall be unlawful for any construction or demolition contractor to fail to provide onsite suitable receptacles, bulk containers or detachable containers for loose debris, paper, building material waste, scrap building material and other trash produced by those working on the site. All material shall be containerized by the end of each day, and the site shall be kept in a reasonably clean and litter-free condition. The number of receptacles, bulk containers or detachable containers shall be determined by the City Manager or his/her designee. Construction sites shall be kept reasonably clean and orderly at all times. When roll-off containers are used it shall be in accordance with Subsection (B) of this Section. ~~they shall be obtained from the City's Contractor. In the event a person or entity has entered into an agreement for the use of a roll off container with another waste collection company prior to the effective date of this ordinance, the other company shall be allowed to provide roll off collection service until the expiration of the agreement.~~

(B) Engaging in business of Construction and Demolition (C&D) debris collection and disposal; issuance of non-exclusive franchise agreement to C&D Debris Service Providers.

(1) No person, firm or corporation shall place and/or service roll-off containers for the collection and transport of C&D debris in the City without first applying for and receiving a non-exclusive franchise from the City to carry on such a business. The nonexclusive franchise required by this section shall be in addition to any business tax and other license(s) which otherwise may be required by law.

(2) It shall be unlawful for any C&D Debris Service Provider to provide roll off container service to any property located within the corporate limits of the City except between the hours of 6:00 a.m. to 6:00 p.m. Monday – Friday, and 7:00 a.m. to 6:00 p.m. on Saturday.

(3) No franchise granted pursuant to this section shall be deemed the property of the holder thereof.

(4) The City reserves the power to revoke all franchises granted pursuant to this section, to change or limit the rights granted or to otherwise modify such franchises, in its sole discretion, by ordinance duly enacted by it. Such action shall not be deemed a taking of a property, or an impairment of contract or right of any franchisee. It is the express intention of this section to reserve unto the City the power, in its sole discretion, to alter the methods of C&D debris collection and disposal employed in the City, and the manner in which C&D debris services may be provided within the City.

(5) The franchise(s) shall be granted only after the applicant for the franchise has filed with the Community Improvement Department an application and such other documentation as may reasonably be required to establish that the applicant meets all of the requirements delineated in this section.

(6) Franchise period. No franchise shall be issued for more than 1 year, and all franchises shall expire on September 30 of each year. Application for renewal is required on or before September 30.

(7) Franchise fees. For each franchise granted on or between October 1 and March 31 of any year, the full franchise fee as specified herein, for one year shall be paid. For each franchise granted on or between April 1 and June 30, one-half of the full fee for one year shall be paid. For each franchise granted on or between July 1 and September 30, one-fourth of the full amount for one year shall be paid. Upon payment of the applicable fee and approval of the application for a franchise (or renewal), the City will enter into a franchise agreement, in a form acceptable to the City, which franchise shall expire at the end of the period for which such franchise is granted as hereinabove specified. It shall be no defense of nonpayment of the franchise fee that a franchisee has not received any bill or notice from the City. The franchise fees are as follows:

Annual Permit Fee - \$3000.00

Application Fee - \$1000.00

Franchise Activity Fee – 10% of gross revenue from C&D collection (to be paid monthly)

(8) Applications for a non-exclusive franchise (or renewal) shall be made to the City upon such form and in such manner as shall be prescribed by the Community Improvement Director to elicit the following information and to be accompanied by supporting documents and such other information as may be required by the City:

a. Name of applicant. If the applicant is a legal entity, the names and business addresses of the principal officers and stockholders and other persons having any financial or controlling interest in the partnership or corporation; 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 shall be required.

b. Qualifications of applicant. The applicant for a franchise under this section, if an individual, or in the case of a legal entity, any person having any financial, controlling or managerial interest therein, shall provide the following information, which shall be the submitted by the applicant:

i. Performance history. The names and telephone numbers of the contact persons in other communities or agencies who can provide information about the applicant's past performance.

ii. Business history. Whether such applicant has operated a C&D debris roll off container service business under a franchise, permit or license, and if so, where, when, and whether such franchise, permit or license has ever been revoked or suspended and the reasons therefor.

iii. Existence of business entity. If the applicant is a legal entity, applicant shall submit proof of good standing in the state of organization and, if a foreign legal entity, applicant shall provide information certifying that applicant is qualified to do business in the State of Florida. If applicant 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 shall require the following information:

i. The type, description, and estimated number of all equipment to be used by the applicant for providing service.

ii. The number of employees to be used in providing services.

iii. A sworn and notarized statement that the applicant will use only disposal sites approved by the appropriate County/State/Federal regulatory agencies for disposing of all C&D debris.

d. Insurance and bonding requirements.

i. The applicant for a franchise shall be required to maintain at all times, and provide appropriate certificates of insurance to the City for, a commercial general liability insurance policy to cover liability for damages because of bodily injury to any person or persons, and to cover liability damage of property of any person arising from of in connection with C&D debris roll-off container service within the City in the amounts as follows:

Worker's Compensation Insurance: Worker's Compensation coverage must be maintained in accordance with statutory requirements as well as Employer's Liability Coverage in an amount not less than \$100,000.00 per each accident, \$100,000.00 by disease and \$500,000.00 aggregate by disease.

Liability Insurance: The applicant shall, during the term of this Agreement, and any extensions hereof maintain in full force and effect commercial general liability insurance policy and automobile liability insurance policy, which specifically covers all exposures incident to the applicant's operations under this contract. Such insurance shall be with a company acceptable to the City and each policy shall be in an amount of not less than \$1,000,000.00 Combined Single Limit for personal bodily injury, including death, and property damage liability and the general liability shall include but not be limited to coverage for Premises/Operations, Products/Completed Operations, Contractual, to support the applicant's agreement or indemnity and Fire Legal Liability. In addition to the above liability limits, the applicant shall maintain a \$5,000,000.00 umbrella and/or excess liability coverage. Policy(ies) shall be endorsed to show the City, a municipal corporation in the State of Florida, as an additional insured as its interests may appear: and shall also provide that insurance shall not be canceled, limited or non-renewed until after thirty (30) days' written notice has been given to the City. Current certificates of insurance evidencing required coverage must be on file with the City at all times.

ii. Cash or a letter of credit in an amount of \$15,000.00 for the first year of the franchise issuance. In subsequent years the amount shall be equal to the applicant's previous 12-month franchise fee(s) paid to the City or \$15,000.00, whichever is greater, as security for any fee(s) due to the City under the franchise agreement(s) conditioned upon the compliance of the terms of this section in such form as acceptable to the City Attorney.

e. Application form. Each application for a franchise (or renewal) shall be made on a standard form promulgated by the Community Improvement Department and shall include an affirmation that the applicant shall comply with the requirements of this section and any agreements entered into between the City and the applicant.

(9) Review and issuance. The completed application along with the appropriate fee(s) shall be submitted to the City. Upon receipt of a completed application and fee(s), the Community Improvement Director shall provide for the review of said application and the City shall either grant or deny the application (or renewal).

(10) Denial of application. The City shall have the discretion to deny any application for a non-exclusive franchise (or renewal) under any of the following circumstances:

a. Failure to comply with any of the requirements of this section and/or any agreements thereto;

b. Evidence that the applicant's franchise with the City was previously terminated within 5 years prior to the date of the application;

c. Evidence that the applicant previously operated a C&D debris roll off container service in the City without holding a valid franchise after the effective date of this section; or

d. A finding that the applicant lacks sufficient experience, equipment, staff, or disposal plan to safely comply with the requirements of this section and/or the franchise agreement.

In the event the Community Improvement Director denies an application for a franchise, the applicant shall be notified, by certified mail, of the denial and the reasons for the denial.

(11) Appeal from the Community Improvement Director of the denial of a franchise (or renewal).

a. The denial of a franchise (or renewal) by the Community Improvement Director may be appealed to the City Manager. The applicant shall pay the appeal fee of five hundred (\$500.00) dollars and the appeal shall be filed in writing with the City Manager no later than 14 days after the mailing of the certified letter advising the applicant of the denial.

b. The City Manager shall either affirm the decision of the Community Improvement Director or issue the franchise (or renewal). A decision of the City Manager to affirm the decision of the Community Improvement Director shall be final.

(12) Identification of equipment. All equipment utilized to collect and transport C&D debris in the City must be conspicuously marked on both sides of the automotive unit with the name of the franchisee, and roll-off containers shall be conspicuously marked with the name of the franchisee, tare weight and cubic yard capacity. All markings must be in letters and numerals at least two inches in height. All containers shall display the City's franchise sticker provided by the City at the issuance of a franchise. This sticker shall be in a position to be seen from the abutting street at all times.

(13) Placement and maintenance of containers. Roll off containers may only be placed, or allowed to remain, on a property for which a building permit has been issued, has not expired, and otherwise remains in full force and effect. Roll off containers shall not be placed in the public right-of-way. Equipment and other franchisee property shall be maintained, and all operations shall be conducted, in compliance with Chapter 51 of the Code of Ordinances. The City, in its discretion, may require a change in the location of, or replacement of, a container if it becomes an unsightly nuisance, causes a code violation to occur, poses a threat to the

surrounding environment, threatens the health and/or safety of the City's population, or becomes unsanitary and/or inoperable.

(14) Information required of franchisees.

a. Monthly filings. Within ten days from the first day of each month, franchisees shall deliver to the City a true and correct monthly report of gross receipts generated during the previous month from accounts within the City. This detailed monthly report shall include the customer names, service addresses, account numbers and the actual amount billed to each customer.

b. Annual filings. Franchisees shall, on or before November 1 of every year, upon request, deliver to the City a statement reflecting annual gross receipts generated from accounts within the corporate limits of the City, compiled by an independent certified public accountant, for the preceding October 1 through September 30. This report shall include the customer names service addresses, account numbers and the actual amount billed to each customer.

c. Audit of records. By acceptance of a franchise and in consideration of the receipt thereof, the franchisee shall make available, within three business days after notice, all records of the franchisee which pertain to any container placed within the City, including but not limited to contracts, trip tickets, invoices, state and federal tax returns, and any documents supporting the information compiled within the supplemental filings required by subsections (a) and (b) above, for inspection and auditing by the City. This information shall include, but not be limited to, copies of the following: billing rates, billing amounts, and accounts receivable. Additionally, the City's auditors may communicate directly with customers of the franchisee for the purpose of confirming compliance with this section. In the event any audit reveals that a franchisee has failed to pay the full franchise fee, the franchisee shall pay a franchise fee of three (3) times the original amount due. Additionally, the franchisee shall reimburse the City for all expenses incurred by the City pursuant to this paragraph, including audit costs, court costs, and reasonable attorneys' fees.

d. Change in required information. Each franchisee shall file any change in information which is required to be submitted to the City by filing the changed information with the Community Improvement Director.

(15) Any and all solid waste material collected by a franchisee within the City shall be disposed of only at disposal sites approved by the appropriate County/State/Federal regulatory agencies. Recycling of such solid waste material is encouraged by the City.

(16) All franchisees shall comply with the provisions of this section. The City may use the reports required in this section and other information available to determine compliance of franchisees.

(17) All franchises shall pay a monthly non-exclusive franchise activity fee as specified by this section based on a percentage of the franchisee's total gross revenue for the preceding month for all charges for service, including charges for furnishing containers, disposal costs and charges for transport of containers.

(18) Revocation and suspension of non-exclusive franchise. The Community Improvement Director may, in his/her discretion, revoke or suspend a non-exclusive franchise pursuant to the following:

a. The Community Improvement Director shall provide the franchisee with written notice reasonably specifying the reason(s) for the proposed revocation or suspension of the franchise, and the franchisee shall be afforded five business days to cure the violation stated in such notice.

b. The violation of any of the provisions of this section and/or of any agreement between the City and franchisee shall be cause for revocation or suspension of a franchise.

c. In the event the franchisee fails to cure the violation within five business days, the Community Improvement Director may revoke or suspend a franchise and may immediately declare such franchise null and void, and upon such revocation or suspension, franchisee shall immediately cease all operations, and shall be considered to have forfeited said franchise and any rights acquired thereunder. The franchisee shall remove all C&D debris roll-off containers within ten business days after the mailing of notice of revocation or suspension. In the event all C&D debris roll-off containers are not removed within ten business days after the mailing of notice of revocation or suspension, (i) the cash or letter of credit funds posted pursuant to this section shall be forfeited; and (ii) the City shall order the property owner or general contractor to remove same within 5 business days. In the event the property owner or the general contractor fails to remove same within 5 business days, such failure shall constitute a violation of this section.

(19) Appeal from the Community Improvement Director of the revocation or suspension of franchise.

a. The revocation or suspension of a franchise by the Community Improvement Director may be appealed to the City Manager. The applicant shall pay an appeal fee of five hundred (\$500.00) dollars and the appeal shall be filed in writing with the City Manager no later than 14 days after the mailing of the certified letter advising the applicant of the revocation or suspension.

b. The City Manager shall either affirm the decision of the Community Improvement Director or direct the Community Improvement Director to reinstate the franchise. The decision of the City Manager shall be final. (20) No Assignment or Transfer. No applicant shall be allowed to assign or transfer a non-exclusive franchise permit to collect C&D in the City without first obtaining the City's written consent.

(21) Violation.

a. Persons with an interest in property. It shall be a violation for any person to permit collection of C&D debris by any non-franchised C&D debris service providers from any parcel of land owned or leased by, or in the control of, such person .

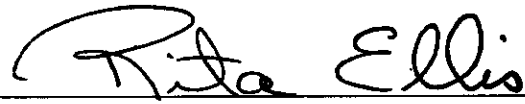
b. General contractors. It shall be a violation for any general contractor to permit collection of C&D debris by any non-franchised C&D debris service providers from any parcel of land which the general contractor holds a building permit.

Section 9. That 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 part thereof other than the part declared to be invalid.

Section 10. That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 11. That this ordinance shall become effective on October 1, 2008.

PASSED AND ADOPTED in regular session on second and final reading on this the 5th day of August, 2008.



MAYOR

ATTEST:


City Clerk

First Reading 7/15/08

Second Reading 8/5/08



MEMORANDUM

TO: Mayor and City Commissioners

FROM: Lula Butler, Director, Community Improvement

THROUGH: David Harden, City Manager

DATE: July 11, 2008

SUBJECT: **AGENDA ITEM 12.B. - REGULAR COMMISSION MEETING OF JULY 15, 2008**
ORDINANCE 31-08

ITEM BEFORE COMMISSION

City Commission consideration of Ordinance No. 31-08 amending Chapter 51, "Garbage and Trash" of the Code of Ordinances, to include definitions and to establish requirements and provisions for granting non-exclusive franchises for construction and demolition debris roll-off container service.

BACKGROUND

At the regular meeting of July 1, 2008, the City Commission approved Amendment #3, which extended the franchise agreement between the City and Waste Management to provide for the collection of garbage, trash and recycling services, with a provision for a non-exclusive collection of construction and demolition (C&D) debris. The amendment extends the agreement another five (5) years effective October 1, 2008 through September 30, 2013. The amendments proposed for Chapter 51 provide for consistency with the revised franchise agreement. Staff has summarized, in this transmittal memorandum, the amendments under Section 51.45, which provide for the non-exclusive collections of C&D, performance standards governing such collections, the application process, the rates and fees for such service and the enforcement of these provisions. A summary of the non-exclusive collection procedures are as follows:

- Provides for an application and requirements for approval, performance standards and the requirement to enter into a franchise agreement with the City.
- Established the franchise period as one (1) year, expiring on September 30th of each year. Application for renewal is due on or before September 30th of each year.
- Establishes franchise fees as:
 - \$3,000 – Annual Franchise Fee – (may be pro-rated based on the date of the approved franchise agreement as described within the ordinance)
 - \$1,000 – Application Fee
 - 10% of gross revenue from C&D collection to be paid monthly
 - Cash or Letter of Credit in the amount of \$15,000 for the first year of the franchise issuance

- \$500 – Appeal Fee for the denial of an application or renewal franchise agreement
- Monthly and Annual filing requirements
- Audit Requirements

RECOMMENDATION

Staff is recommending City Commission approval of Ordinance 31-08 on first reading.

ORDINANCE NO. 31-08

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 51, "GARBAGE AND TRASH" OF THE CODE OF ORDINANCES BY AMENDING SECTION 51.01, "DEFINITIONS", SECTION 51.15, "REFUSE COLLECTION RESERVED EXCLUSIVELY IN CITY OR ITS CONTRACTORS", SECTION 51.16, "EXCEPTIONS IN CERTAIN AREAS AND FOR CERTAIN TYPES OF COLLECTION SERVICES", SECTION 51.19, "INDUSTRIAL AND HAZARDOUS WASTE DISPOSAL", SECTION 51.20, "BUILDING MATERIALS", SECTION 51.35, "CONTAINERS REQUIRED FOR RESIDENTIAL AND COMMERCIAL SITES", SECTION 51.37, "USE OF OTHER UNITS AND CONTAINERS", TO CLARIFY CERTAIN DEFINITIONS AND TERMS REGARDING RECYCLING AND ROLL-OFF CONTAINERS TO PROVIDE THAT THEY ARE CONSISTENT WITH STATE LAW AND THE CITY'S FRANCHISE AGREEMENT; AMENDING SECTION 51.45, "CONSTRUCTION AND DEMOLITION SITES", TO PROVIDE FOR THE NON-EXCLUSIVE COLLECTION OF CONSTRUCTION AND DEMOLITION DEBRIS AND TO PROVIDE FOR REGULATIONS GOVERNING SUCH COLLECTION; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City has an exclusive franchise agreement with Waste Management for the collection of solid waste in the City; and

WHEREAS, the City desires to amend certain sections of the City's ordinances in order to provide for consistency with the franchise agreement; and

WHEREAS, the City grants non-exclusive franchises for the collection, by roll-off containers, of construction and demolition debris; and

WHEREAS, the City desires to include definitions, and to establish requirements for, and provisions for granting, non-exclusive franchises for construction and demolition debris roll-off container service; and

WHEREAS, the City desires to provide regulations for pre-collection, collection and disposition of construction and demolition debris in roll-off containers and to establish rates and fees for such service, and to provide for enforcement of such provisions.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. That Chapter 51, "Garbage and Trash", is amended by

amending subsection 51.01, "Definitions", to read as follows:

Sec. 51.01. DEFINITIONS.

To the extent the definitions contained herein conflict with similar definitions contained in any Federal, State or local law, the definition herein shall prevail.

Biohazardous or biomedical wastes shall mean any solid waste or liquid waste which may cause disease or reasonably be suspected of harboring pathogenic organisms, included [including], but not limited to, waste resulting from the operation of medical clinics, hospitals, and other facilities producing wastes which may consist of, but are not limited to, diseased human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, contaminated clothing and surgical gloves.

Biological waste. Solid waste that causes or has the capability of causing disease or infection and includes, but is not limited to, biohazardous waste, diseased or dead animals, and other waste capable of transmitting pathogens to humans or animals.

Bulk trash. Any nonvegetative item which cannot be containerized, bagged or bundled including, but not limited to, inoperative and discarded refrigerators, ranges, toilets, pool heaters, water softeners, pianos, washers, dryers, bath tubs, water heaters, sinks, bicycles, and other similar appliances, household goods, furniture, large boxes, barrels and crates, and shall not be commingled with vegetative waste or any other type of refuse.

C&D Debris Service Provider. Shall mean a licensed company authorized by the City to remove construction and demolition debris.

City. The City of Delray Beach, Florida, or the City's authorized agents or contractors.

City Manager. The City Manager of the City of Delray Beach or his/her designee.

Collection: The process whereby solid waste, garbage, trash, bulk trash, vegetative waste or recyclable material is removed and transported to a designated facility.

Commercial trash. Any and all accumulations of paper, rags, excelsior or other packing materials, wood, paper or cardboard boxes or containers, sweepings, and any other accumulation not included under the definition of garbage, generated by the operation of stores, offices, and other business places. Commercial trash shall include furniture if properly containerized. Commercial trash shall not include special waste.

Construction and demolition debris. Materials generally considered to be not water soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, roofing material, pipe, gypsum wallboard, and lumber from the construction or destruction of a structure ~~as part of a construction or demolition project.~~ Mixing of a de minimis amount of waste other than C&D debris from a construction site will not exclude such mixed solid waste from classification as C&D debris under this definition.

Contract Administrator. Shall mean the person designated by the City who shall act as the City's representative under this ordinance.

Contractor or vendor. ~~Browning Ferris Industries of Florida, Inc.~~ Waste Management Inc. of Florida

Department. The Florida Department of Environmental Protection.

Designated facility. A disposal processing, recovery, recycling or transfer facility designated by the Solid Waste Authority or the City Manager.

Disposal costs. The "tipping fees" or landfill costs charged to the Contractor by others for disposal of the waste collected by the Contractor.

Dwelling unit. One or more rooms connected together, designated to be occupied by one family, constituting a separate, independent housekeeping establishment and physically separated from any other dwelling unit which may be in the same structure and which contains independent sanitation, living, cooking and sleeping facilities.

Garbage. All putrescible waste which generally includes but is not limited to kitchen and table food waste, animal, vegetative, food or any organic waste that is attendant with or results from the storage, preparation, cooking or handling of food materials whether attributed to residential or commercial activities. Garbage shall not include any material that falls within the definition of special waste.

Garbage receptacle. Any commonly available light-gauge steel, plastic or galvanized receptacle of a nonabsorbent material, closed at one end and open at the other, furnished with a closely fitted top or lid and handle(s). A receptacle also includes a heavy duty, securely tied, plastic bag designed for use as a garbage receptacle. Garbage receptacles or waste materials shall not exceed fifty (50) gallons in capacity or fifty (50) pounds in weight. Rollout containers provided by the City may be thirty-two (32), sixty-eight (68), or ninety-five-gallon-size containers.

Hazardous waste. Solid waste as defined by the State of Florida Department of Environmental Regulation [Protection] as a hazardous waste in the State of Florida Administrative Code, or by any future legislative action or by Federal, State or local law.

~~Industrial wastes. Any and all debris and waste products generated by manufacturing, food processing (except in restaurants and homes), land clearing, and commercial shrubbery or tree cuttings, building construction or alteration (except residential do-it-yourself projects) and public works type construction projects whether performed by a government unit or by contract.~~

Litter. See Chapter 98 of the Code of Ordinances of the City of Delray Beach.

Loading and unloading area. Any loading or unloading space or area used by any moving vehicle for the purpose of receiving, shipping, and transporting goods, wares, commodities, and persons.

Loose refuse. Any refuse, either garbage or household trash, stored in and collected from any type of container other than a mechanical container or garbage receptacle related to multiple-family dwellings or the designated facility. Refuse that is collected from the ground is considered loose refuse.

Mechanical container. Any detachable metal or plastic container designed or intended to be mechanically dumped into a loader-packer type of garbage truck used by the contractor and includes any motorized or electrical compactor of ten (10) yards capacity or less. Mechanical containers may be constructed of plastic. Further, all mechanical containers must be uniform in color, have closeable lids, and be free of any advertising or other information other than an eight and one-half (8 1/2) by eleven-inch sticker with the name, address and telephone number of the Contractor.

Multiple dwelling units. Any building containing five (5) or more permanent living units, not including motels and hotels.

Parking lots. Commercial and public lots designed for the parking of any vehicles with the exception of residential parking.

Person. Any natural person, owner, agent, corporation, partnership, association, firm, receiver, guardian, trustee, executor, administrator, fiduciary, occupant, lessee, tenant, or representative or group of individuals or entities of any kind.

Premises. Lots, sidewalks, alleys, rights-of-way, grass strips, and curbs up to the edge of the pavement of any public thoroughfare.

Private property. Property owned by any person as defined in this Section, including, but not limited to, yards, grounds, driveways, entrance or passageways, parking areas, storage areas, vacant land, or body of water. For the purpose of this Chapter, "private property" owners are required to maintain rights-of-way up to the edge of the pavement of any public thoroughfare.

Public property. Any area that is used or held out to be used by the public, whether owned or operated by a public interest, including, but not limited to, highways, streets, alleys, parks, recreation areas, sidewalks, grass strips, medians, curbs, or rights-of-way up to the edge of the pavement of any public thoroughfare or body of water.

Recyclable materials. ~~Newspapers (including inserts), magazines and catalogs, aluminum containers, aluminum foil and pie plates, plastic containers, glass bottles and jars, corrugated cardboard, brown paper bags, mixed paper, drink boxes, milk and juice cartons and other solid waste materials added upon agreement between the Solid Waste Authority and the Contractor, when such materials have been either diverted from the~~

~~remaining solid waste stream or removed prior to their entry into the remaining solid waste stream.~~ Shall be the same as defined in Chapter 403 of the Florida Statutes.

~~Recycling. Any process by which solid waste, or materials which otherwise become solid waste, are collected, separated or processed and reused or returned to use in the form of raw materials or products.~~ Shall be the same as defined in Chapter 403 of the Florida Statutes.

Refuse. Commercial trash, household trash and garbage or a combination of mixture of commercial trash, household trash and garbage, including paper, glass, metal and other discarded matter, excluding commercial recyclable materials.

Residential do-it-yourself projects. Minor residential repairs done exclusively by the homeowner.

Residential service. The refuse, recycling and vegetative waste collection service provided to persons occupying residential dwelling units within the City who are not receiving commercial or multifamily services. This would include single-family homes, duplexes, triplexes, quadplexes and mobile homes.

~~Roll-off collection service. The collection of construction and demolition debris using open top roll-off containers within temporary locations in the City, limited to new construction sites and remodeling or refurbishment sites.~~ Roll-off collection service shall also mean the collection of horticultural or agricultural wastes at horticultural or agricultural nurseries, but only when the customer chooses to use open top roll-off containers for horticultural or agricultural waste, and horticultural and agricultural waste shall not include any other type of waste, including, but not limited to, special waste, garbage or recyclable materials.

Roll-out carts. Carts that are either a thirty-two (32), sixty-eight (68), or ninety-five-gallon (approximate) wheeled container of a type approved by the City Manager or his designee, and shall be equipped with wheels and a lid.

Sludge. 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 and solids pumped from septic tanks, grease traps, privies, or similar waste disposal appurtenances.

Special waste. Solid or liquid wastes that require special handling and management, which are not accepted at a landfill or other disposal facility or which are accepted at a landfill or other disposal facility at higher rates than is charged for refuse, including, but not limited to, asbestos, whole tires, automobiles, boats internal combustion engines, nonautomobile tires, sludge, dead animals, septic tank waste, hazardous waste, used oil, lead-acid batteries, and biohazardous or biomedical wastes.

Trash. All refuse, accumulation of paper, excelsior, rags, wooden or paper boxes and containers, sweepings, broken toys, tools, utensils, and all other accumulations of a similar nature other than garbage, which are usual to housekeeping and to the operation of stores, offices and other business places, but shall not include vegetative waste.

Vegetative waste. Any vegetative matter resulting from yard and landscaping maintenance and shall include materials such as tree and shrub materials, grass clippings, palm fronds, Christmas trees, tree branches and similar other matter usually produced as refuse in the care of lawns, landscaping and yards. All grass clippings, leaves, pine needles, and similar small loose items must be bagged or containerized. Vegetative waste, except palm fronds, must be no more than six (6) feet in length and no single item shall weigh more than fifty (50) pounds. Natural Christmas trees shall be considered vegetative waste and will be collected if they are not more than eight (8) feet in length and weight less than fifty (50) pounds. Vegetative waste does not include any form of matter or debris resulting from land clearing or land development.

Section 2. That Chapter 51, "Garbage and Trash", is amended by amending subsection 51.15, "Refuse Collection Reserved Exclusively in City or its Contractors", to read as follows:

Sec. 51.15. REFUSE COLLECTION RESERVED EXCLUSIVELY IN CITY OR ITS CONTRACTORS.

The governmental function of collection, removal and disposition of all roll-off containers, excluding roll-off containers used for construction and demolition debris, and refuse within the municipal limits of the City is exclusively vested in the municipal government of the City or its contractors, and all other individuals, persons, firms or corporations are specifically and expressly prohibited from engaging in that practice or business within the corporate limits of the City and from utilizing the publicly dedicated streets, alleys and other thoroughfares for those purposes

Section 3. That Chapter 51, "Garbage and Trash", is amended by deleting subsection 51.16, "Exceptions in Certain Areas and for Certain Types of Collection Services":

~~Sec. 51.16. EXCEPTIONS IN CERTAIN AREAS AND FOR CERTAIN TYPES OF COLLECTION SERVICES.~~

~~Upon the express written approval of the City Manager, an exception to City garbage and trash services as required in Section 51.15 may be granted to commercial or industrial establishments or to developments or homeowners/condominium associations of over one hundred (100) units, located within clearly defined boundaries, for the collection, removal, and disposition of all garbage and trash where that garbage and trash is to be placed in roll off stationary compactor units and compactor containers or like construction bulk containers. The exception shall only be granted where sufficient proof is presented to the City Manager that the development or homeowners/condominium association is of a sufficient size; is within sufficient, clearly defined boundaries (so as to~~

~~not interfere with City garbage and trash collection services) and that the development or homeowners/condominium association has, pursuant to any applicable internal bylaws or covenants and restrictions, properly contracted with an independent contractor to provide garbage and trash collection, removal, and disposition services at their own expense, and that the contract is made expressly subject to the granting of the exception by the City Manager. The decision to grant an exception shall be solely that of the City Manager at his discretion.~~

Section 4. That Chapter 51, "Garbage and Trash", is amended by amending subsection 51.19, "Industrial and Hazardous Waste Disposal", to read as follows:

Sec. 51.19. INDUSTRIAL AND HAZARDOUS WASTE DISPOSAL.

(A) Any persons, businesses or other entities generating ~~industrial and~~ hazardous wastes shall not be served in the normal manner set forth in this Chapter. All ~~industrial and~~ hazardous wastes may be collected by the City or its contractor if both the owner and the City agree only upon specific approval and at additional costs set forth by the City or its contractor. However, this shall not preclude another qualified ~~industrial or~~ hazardous waste disposal company from collecting the ~~industrial or~~ hazardous waste.

~~(B) Unless collected as specified under subsection (A), industrial waste shall be collected, removed and disposed of solely by the operator of the factory, plant or enterprise creating or causing same.~~

Section 5. That Chapter 51, "Garbage and Trash", is amended by amending subsection 51.20, "Building Materials", to read as follows:

Sec. 51.20. BUILDING MATERIALS.

(A) Building materials originating prior to, during, or subsequent to the construction of new buildings, alterations or additions to existing buildings of whatsoever type or from demolition of existing structures will not be collected under the City's residential service. Removal of these building materials is the responsibility of the building contractor or installer and if a roll-off container is used it must be obtained in accordance with Section 51.45 of the Code of Ordinances.

(B) Building materials resulting from minor homeowner repairs (residential do-it-yourself projects) which meet the requirements for trash collection must be bundled, bagged or boxed and will be collected at curbside. Discarded lumber pieces must be no longer than four (4) feet without nails. Larger materials may be picked up by special request at an additional charge from the contractor.

Section 6. That Chapter 51, "Garbage and Trash", is amended by amending subsection 51.35, "Containers Required for Residential and Commercial Sites", to read as follows:

Sec. 51.35. CONTAINERS REQUIRED FOR RESIDENTIAL AND COMMERCIAL SITES.

Except as otherwise provided for herein or due to the type of garbage and trash service designated by the City for the subject property, the owner of any real property in or from which litter is accumulated or produced must provide suitable receptacles and containers. These containers must be kept in an accessible location for collection and must be capable of holding all waste materials which would ordinarily accumulate between the times of successive collections. All containers and receptacles as required shall be of safe construction and design and shall be maintained in good serviceable condition at all times. Any receptacles or containers which do not conform to the provisions of this Chapter, or which have ragged or sharp edges or any other defects likely to hamper or injure the person collecting the contents thereof or the public generally, shall be promptly replaced upon notice. The City Manager, or his/her designee, shall determine the quantity and location of receptacles and determine whether the receptacles and containers are serviceable.

Section 7. That Chapter 51, "Garbage and Trash", is amended by deleting subsection 51.37, "Use of Other Units and Containers":

Sec. 51.37. USE OF OTHER UNITS AND CONTAINERS.

~~Customers who, upon the express and sole approval of the City, elect to use roll-off containers or stationary roll off compactor units of ten (10) yards capacity or more or similar construction bulk containers or compactor equipment may be excluded from regular collection by the City or its contractor, subject to the provisions of Section 51.16. However, roll off compactors or roll off containers, regardless of the size or capacity, that service residential or multifamily units for garbage and trash collection, shall be collected by the City or its contractor.~~

Section 8. That Chapter 51, "Garbage and Trash", is amended by amending subsection 51.45, "Construction and Demolition Sites", to read as follows:

Sec. 51.45. CONSTRUCTION AND DEMOLITION SITES AND COLLECTION OF CONSTRUCTION AND DEMOLITION DEBRIS.

(A) It shall be unlawful for any construction or demolition contractor to fail to provide onsite suitable receptacles, bulk containers or detachable containers for loose debris, paper, building material waste, scrap building material and other trash produced by those working on the site. All material shall be containerized by the end of each day, and the site shall be kept in a reasonably clean and litter-free condition. The number of receptacles, bulk containers or detachable containers shall be determined by the City Manager or his/her designee. Construction sites shall be kept reasonably clean and orderly at all times. When roll-off containers are used it shall be in accordance with Subsection (B) of this Section. ~~they shall be obtained from the City's Contractor. In the event a person or entity has entered into an agreement for the use of a roll-off container with another waste collection company prior to the effective date of this ordinance, the other company shall be allowed to provide roll-off collection service until the expiration of the agreement.~~

(B) Engaging in business of Construction and Demolition (C&D) debris collection and disposal; issuance of non-exclusive franchise agreement to C&D Debris Service Providers.

(1) No person, firm or corporation shall place and/or service roll-off containers for the collection and transport of C&D debris in the City without first applying for and receiving a non-exclusive franchise from the City to carry on such a business. The non-exclusive franchise required by this section shall be in addition to any business tax and other license(s) which otherwise may be required by law.

(2) It shall be unlawful for any C&D Debris Service Provider to provide roll off container service to any property located within the corporate limits of the City except between the hours of 6:00 a.m. to 6:00 p.m. Monday – Friday, and 7:00 a.m. to 6:00 p.m. on Saturday.

(3) No franchise granted pursuant to this section shall be deemed the property of the holder thereof.

(4) The City reserves the power to revoke all franchises granted pursuant to this section, to change or limit the rights granted or to otherwise modify such franchises, in its sole discretion, by ordinance duly enacted by it. Such action shall not be deemed a taking of a property, or an impairment of contract or right of any franchisee. It is the express intention of this section to reserve unto the City the power, in its sole discretion, to alter the methods of C&D debris collection and disposal employed in the City, and the manner in which C&D debris services may be provided within the City.

(5) The franchise(s) shall be granted only after the applicant for the franchise has filed with the Community Improvement Department an application and such other documentation as may reasonably be required to establish that the applicant meets all of the requirements delineated in this section.

(6) Franchise period. No franchise shall be issued for more than 1 year, and all franchises shall expire on September 30 of each year. Application for renewal is required on or before September 30.

(7) Franchise fees. For each franchise granted on or between October 1 and March 31 of any year, the full franchise fee as specified herein, for one year shall be paid. For each franchise granted on or between April 1 and June 30, one-half of the full fee for one year shall be paid. For each franchise granted on or between July 1 and September 30, one-fourth of the full amount for one year shall be paid. Upon payment of the applicable fee and approval of the application for a franchise (or renewal), the City will enter into a franchise agreement, in a form acceptable to the City, which franchise shall expire at the end of the period for which such franchise is granted as hereinabove specified. It shall be no defense of nonpayment of the franchise fee that a franchisee has not received any bill or notice from the City. The franchise fees are as follows:

Annual Permit Fee - \$3000.00

Application Fee - \$1000.00

Franchise Activity Fee – 10% of gross revenue from C&D collection (to be paid monthly)

(8) Applications for a non-exclusive franchise (or renewal) shall be made to the City upon such form and in such manner as shall be prescribed by the Community Improvement Director to elicit the following information and to be accompanied by supporting documents and such other information as may be required by the City:

a. Name of applicant. If the applicant is a legal entity, the names and business addresses of the principal officers and stockholders and other persons having any financial or controlling interest in the partnership or corporation; 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 shall be required.

b. Qualifications of applicant. The applicant for a franchise under this section, if an individual, or in the case of a legal entity, any person having any financial, controlling or managerial interest therein, shall provide the following information, which shall be the submitted by the applicant:

i. Performance history. The names and telephone numbers of the contact persons in other communities or agencies who can provide information about the applicant's past performance.

ii. Business history. Whether such applicant has operated a C&D debris roll off container service business under a franchise, permit or license, and if so, where, when, and whether such franchise, permit or license has ever been revoked or suspended and the reasons therefor.

iii. Existence of business entity. If the applicant is a legal entity, applicant shall submit proof of good standing in the state of organization and, if a foreign legal entity, applicant shall provide information certifying that applicant is qualified to do business in the State of Florida. If applicant 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 shall require the following information:

i. The type, description, and estimated number of all equipment to be used by the applicant for providing service.

ii. The number of employees to be used in providing services.

iii. A sworn and notarized statement that the applicant will use only disposal sites approved by the appropriate County/State/Federal regulatory agencies for disposing of all C&D debris.

d. Insurance and bonding requirements.

i. The applicant for a franchise shall be required to maintain at all times, and provide appropriate certificates of insurance to the City for, a commercial general liability insurance policy to cover liability for damages because of bodily injury to any person or persons, and to cover liability damage of property of any person arising from of

in connection with C&D debris roll-off container service within the City in the amounts as follows:

Worker's Compensation Insurance: Worker's Compensation coverage must be maintained in accordance with statutory requirements as well as Employer's Liability Coverage in an amount not less than \$100,000.00 per each accident, \$100,000.00 by disease and \$500,000.00 aggregate by disease.

Liability Insurance: The applicant shall, during the term of this Agreement, and any extensions hereof maintain in full force and effect commercial general liability insurance policy and automobile liability insurance policy, which specifically covers all exposures incident to the applicant's operations under this contract. Such insurance shall be with a company acceptable to the City and each policy shall be in an amount of not less than \$1,000,000.00 Combined Single Limit for personal bodily injury, including death, and property damage liability and the general liability shall include but not be limited to coverage for Premises/Operations, Products/Completed Operations, Contractual, to support the applicant's agreement or indemnity and Fire Legal Liability. In addition to the above liability limits, the applicant shall maintain a \$5,000,000.00 umbrella and/or excess liability coverage. Policy(ies) shall be endorsed to show the City, a municipal corporation in the State of Florida, as an additional insured as its interests may appear; and shall also provide that insurance shall not be canceled, limited or non-renewed until after thirty (30) days' written notice has been given to the City. Current certificates of insurance evidencing required coverage must be on file with the City at all times.

ii. Cash or a letter of credit in an amount of \$15,000.00 for the first year of the franchise issuance. In subsequent years the amount shall be equal to the applicant's previous 12-month franchise fee(s) paid to the City or \$15,000.00, whichever is greater, as security for any fee(s) due to the City under the franchise agreement(s) conditioned upon the compliance of the terms of this section in such form as acceptable to the City Attorney.

e. Application form. Each application for a franchise (or renewal) shall be made on a standard form promulgated by the Community Improvement Department and shall include an affirmation that the applicant shall comply with the requirements of this section and any agreements entered into between the City and the applicant.

(9) Review and issuance. The completed application along with the appropriate fee(s) shall be submitted to the City. Upon receipt of a completed application and fee(s), the Community Improvement Director shall provide for the review of said application and the City shall either grant or deny the application (or renewal).

(10) Denial of application. The City shall have the discretion to deny any application for a non-exclusive franchise (or renewal) under any of the following circumstances:

- a. Failure to comply with any of the requirements of this section and/or any agreements thereto;
- b. Evidence that the applicant's franchise with the City was previously

terminated within 5 years prior to the date of the application;

c. Evidence that the applicant previously operated a C&D debris roll off container service in the City without holding a valid franchise after the effective date of this section; or

d. A finding that the applicant lacks sufficient experience, equipment, staff, or disposal plan to safely comply with the requirements of this section and/or the franchise agreement.

In the event the Community Improvement Director denies an application for a franchise, the applicant shall be notified, by certified mail, of the denial and the reasons for the denial.

(11) Appeal from the Community Improvement Director of the denial of a franchise (or renewal).

a. The denial of a franchise (or renewal) by the Community Improvement Director may be appealed to the City Manager. The applicant shall pay the appeal fee of five hundred (\$500.00) dollars and the appeal shall be filed in writing with the City Manager no later than 14 days after the mailing of the certified letter advising the applicant of the denial.

b. The City Manager shall either affirm the decision of the Community Improvement Director or issue the franchise (or renewal). A decision of the City Manager to affirm the decision of the Community Improvement Director shall be final.

(12) Identification of equipment. All equipment utilized to collect and transport C&D debris in the City must be conspicuously marked on both sides of the automotive unit with the name of the franchisee, and roll-off containers shall be conspicuously marked with the name of the franchisee, tare weight and cubic yard capacity. All markings must be in letters and numerals at least two inches in height. All containers shall display the City's franchise sticker provided by the City at the issuance of a franchise. This sticker shall be in a position to be seen from the abutting street at all times.

(13) Placement and maintenance of containers. Roll off containers may only be placed, or allowed to remain, on a property for which a building permit has been issued, has not expired, and otherwise remains in full force and effect. Roll off containers shall not be placed in the public right-of-way. Equipment and other franchisee property shall be maintained, and all operations shall be conducted, in compliance with Chapter 51 of the Code of Ordinances. The City, in its discretion, may require a change in the location of, or replacement of, a container if it becomes an unsightly nuisance, causes a code violation to occur, poses a threat to the surrounding environment, threatens the health and/or safety of the City's population, or becomes unsanitary and/or inoperable.

(14) Information required of franchisees.

a. Monthly filings. Within ten days from the first day of each month, franchisees shall deliver to the City a true and correct monthly report of gross receipts generated during the previous month from accounts within the City. This detailed monthly report shall include the customer names, service addresses, account numbers and the actual amount billed to each customer.

b. Annual filings. Franchisees shall, on or before November 1 of every year, upon request, deliver to the City a statement reflecting annual gross receipts generated from accounts within the corporate limits of the City, compiled by an independent certified public accountant, for the preceding October 1 through September 30. This report shall include the customer names service addresses, account numbers and the actual amount billed to each customer.

c. Audit of records. By acceptance of a franchise and in consideration of the receipt thereof, the franchisee shall make available, within three business days after notice, all records of the franchisee which pertain to any container placed within the City, including but not limited to contracts, trip tickets, invoices, state and federal tax returns, and any documents supporting the information compiled within the supplemental filings required by subsections (a) and (b) above, for inspection and auditing by the City. This information shall include, but not be limited to, copies of the following: billing rates, billing amounts, and accounts receivable. Additionally, the City's auditors may communicate directly with customers of the franchisee for the purpose of confirming compliance with this section. In the event any audit reveals that a franchisee has failed to pay the full franchise fee, the franchisee shall pay a franchise fee of three (3) times the original amount due. Additionally, the franchisee shall reimburse the City for all expenses incurred by the City pursuant to this paragraph, including audit costs, court costs, and reasonable attorneys' fees.

d. Change in required information. Each franchisee shall file any change in information which is required to be submitted to the City by filing the changed information with the Community Improvement Director.

(15) Any and all solid waste material collected by a franchisee within the City shall be disposed of only at disposal sites approved by the appropriate County/State/Federal regulatory agencies. Recycling of such solid waste material is encouraged by the City.

(16) All franchisees shall comply with the provisions of this section. The City may use the reports required in this section and other information available to determine compliance of franchisees.

(17) All franchises shall pay a monthly non-exclusive franchise activity fee as specified by this section based on a percentage of the franchisee's total gross revenue for the preceding month for all charges for service, including charges for furnishing containers, disposal costs and charges for transport of containers.

(18) Revocation and suspension of non-exclusive franchise. The Community Improvement Director may, in his/her discretion, revoke or suspend a non-exclusive franchise pursuant to the following:

a. The Community Improvement Director shall provide the franchisee with written notice reasonably specifying the reason(s) for the proposed revocation or suspension of the franchise, and the franchisee shall be afforded five business days to cure the violation stated in such notice.

b. The violation of any of the provisions of this section and/or of any agreement between the City and franchisee shall be cause for revocation or suspension of

a franchise.

c. In the event the franchisee fails to cure the violation within five business days, the Community Improvement Director may revoke or suspend a franchise and may immediately declare such franchise null and void, and upon such revocation or suspension, franchisee shall immediately cease all operations, and shall be considered to have forfeited said franchise and any rights acquired thereunder. The franchisee shall remove all C&D debris roll-off containers within ten business days after the mailing of notice of revocation or suspension. In the event all C&D debris roll-off containers are not removed within ten business days after the mailing of notice of revocation or suspension, (i) the cash or letter of credit funds posted pursuant to this section shall be forfeited; and (ii) the City shall order the property owner or general contractor to remove same within 5 business days. In the event the property owner or the general contractor fails to remove same within 5 business days, such failure shall constitute a violation of this section.

(19) Appeal from the Community Improvement Director of the revocation or suspension of franchise.

a. The revocation or suspension of a franchise by the Community Improvement Director may be appealed to the City Manager. The applicant shall pay an appeal fee of five hundred (\$500.00) dollars and the appeal shall be filed in writing with the City Manager no later than 14 days after the mailing of the certified letter advising the applicant of the revocation or suspension.

b. The City Manager shall either affirm the decision of the Community Improvement Director or direct the Community Improvement Director to reinstate the franchise. The decision of the City Manager shall be final.

(20) No Assignment or Transfer. No applicant shall be allowed to assign or transfer a non-exclusive franchise permit to collect C&D in the City without first obtaining the City's written consent.

(21) Violation.

a. Persons with an interest in property. It shall be a violation for any person to permit collection of C&D debris by any non-franchised C&D debris service providers from any parcel of land owned or leased by, or in the control of, such person.

b. General contractors. It shall be a violation for any general contractor to permit collection of C&D debris by any non-franchised C&D debris service providers from any parcel of land which the general contractor holds a building permit.

Section 9. That 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 part thereof other than the part declared to be invalid.

Section 10. That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 11. That this ordinance shall become effective on October 1, 2008.

PASSED AND ADOPTED in regular session on second and final reading on this the ____ day of _____, 200__.

ATTEST: _____ MAYOR

City Clerk

First Reading _____

Second Reading _____



100 ANNOUNCEMENTS

101 Legal Notices

CITY OF DELRAY BEACH, FLORIDA
NOTICE OF PUBLIC HEARING

A PUBLIC HEARING will be held on the following proposed ordinances at 7:00 p.m. on TUESDAY, AUGUST 5, 2008 (or at any continuation of such meeting which is set by the Commission), in the City Commission Chambers, 100 N.W. 1st Avenue, Delray Beach, Florida, at which time the City Commission will consider their adoption. The proposed ordinances may be inspected at the Office of the City Clerk at City Hall, 100 N.W. 1st Avenue, Delray Beach, Florida, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except holidays. All interested parties are invited to attend and be heard with respect to the proposed ordinances.

ORDINANCE NO. 28-08

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES, BY AMENDING SECTION 2.2.5(D), "DUTIES, POWERS, AND RESPONSIBILITIES"; SECTION 4.5.1(J), "HISTORIC PRESERVATION BOARD TO ACT ON VARIANCE REQUESTS"; TO PROVIDE THAT APPEALS OF DECISIONS OF THE HISTORIC PRESERVATION BOARD REGARDING VARIANCES SHALL BE TO THE CITY COMMISSION; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

ORDINANCE NO. 31-08

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 51, "GARBAGE AND TRASH" OF THE CODE OF ORDINANCES BY AMENDING SECTION 51.01, "DEFINITIONS"; SECTION 51.15, "REFUSE COLLECTION RESERVED EXCLUSIVELY IN CITY OR ITS CONTRACTORS"; SECTION 51.16, "EXCEPTIONS IN CERTAIN AREAS AND FOR CERTAIN TYPES OF COLLECTION SERVICES"; SECTION 51.19, "INDUSTRIAL AND HAZARDOUS WASTE DISPOSAL"; SECTION 51.20, "BUILDING MATERIALS"; SECTION 51.25, "CONTAINERS REQUIRED FOR RESIDENTIAL AND COMMERCIAL SITES"; SECTION 51.37, "USE OF OTHER UNITS AND CONTAINERS"; TO CLARIFY CERTAIN DEFINITIONS AND TERMS REGARDING RECYCLING AND ROLL-OFF CONTAINERS TO PROVIDE THAT THEY ARE CONSISTENT WITH STATE LAW AND THE CITY'S FRANCHISE AGREEMENT; AMENDING SECTION 51.45, "CONSTRUCTION AND DEMOLITION SITES"; TO PROVIDE FOR THE NON-EXCLUSIVE COLLECTION OF CONSTRUCTION AND DEMOLITION DEBRIS AND TO PROVIDE FOR REGULATIONS GOVERNING SUCH COLLECTION; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

ORDINANCE NO. 33-08

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 35, "EMPLOYEES POLICIES AND BENEFITS", SUBHEADING "RETIREMENT PLAN", OF THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH, FLORIDA, BY AMENDING SECTION 35.097, "RETIREMENT INCOME; BASIS, AMOUNT AND PAYMENT"; PROVIDING UP TO ONE ADDITIONAL YEAR OF CREDITED SERVICE FOR CERTAIN EMPLOYEES WHO ELECT TO TERMINATE CITY EMPLOYMENT AND RETIRE WITHIN A 90 DAY PERIOD SET BY THE CITY COMMISSION; PROVIDING A GENERAL REPEALER CLAUSE, A VALIDITY CLAUSE, AND AN EFFECTIVE DATE.

Please be advised that if a person decides to appeal any decision made by the City Commission with respect to any matter considered at these hearings, such person may need to ensure that a verbatim record includes the testimony and evidence upon which the appeal is to be based. The City does not provide nor prepare such record pursuant to F.S. 286.0105.

CITY OF DELRAY BEACH
Cynthia D. Huber, CMC
City Clerk

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