03-O-1113

AN ORDINANCE
BY COUNCILMEMBER CLAIR MULLER

AN ORDINANCE TO AMEND SECTION 130-43 OF THE CODE OF ORDINANCES OF THE CITY OF ATLANTA TO CREATE A FRANCHISE SYSTEM FOR PRIVATE COMPANIES CONTRACTED FOR THE COLLECTION AND TRANSPORTATION OF NON-RESIDENTIAL SOLID WASTE IN THE CITY OF ATLANTA; AND FOR OTHER PURPOSES.

WHEREAS, it is the stated policy of the City of Atlanta to protect the health, safety, and welfare of its residents; and

WHEREAS, proper solid waste management is essential to protecting the health, safety, and welfare within the City; and

WHEREAS, ensuring the proper collection, removal and disposal of all residential and non-residential solid waste from the corporate limits of the City of Atlanta is a major component of the responsibility of the City to protect the health, safety, and welfare of its residents; and

WHEREAS, non-residential solid waste generated within the City is currently collected by private solid waste haulers; and

WHEREAS, to ensure the proper collection, removal and disposal of all non-residential solid waste, the City of Atlanta must maintain a necessary level of regulation and oversight; and

WHEREAS, the 2003 Solid Waste Rate Study identifies the need for regulation and oversight of private solid waste haulers; and

WHEREAS, the 2003 Solid Waste Rate Study also promotes a fee that would allow for an oversight mechanism to be established with no net cost to the ratepayers; and

WHEREAS, a franchising system for non-residential solid waste contractors would provide the framework and the revenue necessary to maintain a proper level of oversight and regulation over private solid waste haulers within the City of Atlanta.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATLANTA, as follows:

SECTION 1: That Section 130-43 shall be deleted in its entirety, and replaced with the following, so that the new Section 130-43 shall read as follows:

Section 130-43. Collection and transportation of commercial and non-residential solid waste.

Section 130-43.1. Part designation.

This section shall be known and may hereafter be referred to as the "City of Atlanta Non-Residential Solid Waste Collection and Transportation Franchising Ordinance."

Section 130.43.2. Declaration of policy.

It is the policy of the City of Atlanta to ensure the health, safety and welfare of its residents and their environment. To fully achieve this policy, the City must ensure the safety and integrity of all non-residential solid waste collection throughout the City as an element of the solid waste recovery and disposal system of the City of Atlanta. Because of the overriding public health, safety and welfare concerns associated with providing this service, it is necessary to regulate the collection and transportation of certain non-residential solid waste through franchising those services. In addition, it is necessary to ensure that the service is efficient and responds to public concerns, and that the public convenience and the public investment in public right-of-way property are protected. Therefore, it is the purpose of this section to provide the regulation necessary to achieve these policy objectives.

Section 130-43.3. Definitions.

The definitions in Section 130-1 of this Chapter apply to this section unless otherwise indicated. Additionally, the following terms and phrases, where used in this division, shall have the meanings ascribed to them in this section, unless different meanings are clearly indicated by the context. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural.

Application means a request for a franchise, or for transfer of an existing franchise.

City means the City of Atlanta.

Department means the Bureau of Solid Waste Services.

Commercial establishments means all commercial establishments, including, but not being limited to, motels, hotels, apartments and trailer parks, stores, office buildings, restaurants, service stations and garages, laundries and cleaning establishments, schools, churches and synagogues, and all other places not classed as residential premises which produce or accumulate solid waste, including adjacent unimproved property.

Contract hauler means any person who provides non-residential solid waste collection and transportation services and is party to a valid, current and unrevoked contract for non-residential solid waste collection and disposal services.

Customer means a person provided or to be provided any type of solid waste collection service under a franchise.

EPD means the Environmental Protection Division of the State of Georgia or any successor agency performing a like function.

Department means the Bureau of Solid Waste Services.

Designated place of business means the business office address of each franchisee, which shall be in operation during normal hours of business and available by telephone for the processing of complaints, payments for services and normal inquiries, and shall be located within the boundaries of the City.

Director means the director of the Bureau of Solid Waste Services.

Franchise means the non-exclusive right of a franchisee, granted pursuant to this part, to collect and transport non-residential solid waste within the City.

Franchise fee has the meaning given in subsection 130-43.9(b) hereof.

Franchisee means a private waste hauler who signs a franchise agreement with the City pursuant to this part for the collection of non-residential solid waste and who pays a franchise fee, as provided in a franchise agreement.

Gross receipts means the entire amount of the fees (including the fair market value of bartered services) collected by the franchisee, for non-residential solid waste collection, removal and disposal except for the following:

(1) fees collected by the franchisee for the collection, transportation, sale or other disposition of exempt waste;
(2) income from equipment sales, maintenance and repair; and
(3) sales taxes collected by the State of Georgia and the franchise fee itself.

Industrial establishments means businesses whose primary activities include manufacturing, processing or assembly.

Institutional establishments means establishments operated by governmental entities, nonprofit organizations, tax-exempt hospitals, and public, charitable, philanthropic or religious institutions conducted for the benefit of the public or a recognized section of the public.

Non-residential premises means all commercial establishments, industrial establishments, institutional establishments, and all mining, agricultural and all other and premises in the City, except both multi-family and single-family residential premises, and all other

premises served by City curbside collection service, or contract haulers performing service in conjunction with City curbside collection service.

Non-residential solid waste means solid waste generated at any non-residential premises, and all residue produced within the City from solid waste generated within or outside the City.

Owner means any person occupying, exercising control over, or owning property, who shall accumulate, or cause to accumulate non-residential solid waste, or cause to be placed non-residential solid waste for collection.

Payment bond means each of the forms of security approved by the department and furnished by a franchisee as a guarantee that it will pay its obligations in accordance with the terms of the franchise and will pay all lawful claims.

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

Recycling and recycled means any process by which solid waste, or materials which would otherwise become solid waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or products, and eligible for credit towards the recycling goals of the City as established by the State of Georgia.

Residue means any material remaining from the act of recycling processing, by any means and to any extent, of solid waste, irrespective of whether such processing occurs within or outside the City.

Self-hauler means any person not engaged in waste haulage except to collect and haul residential solid waste generated from activities conducted solely by such person in their place of residence.

Section 130-43.4. General authority and power to grant franchises.

(a) To protect and promote the health, safety and general welfare of the citizens of the City and to preserve and enhance the environment of the City by providing a comprehensive non-residential solid waste collection and transportation system, on and after the date one hundred twenty (120) days after the effective date of this part, no person shall use the public streets, roads, alleys, ways or places of the City for the purpose of collecting, transporting or providing container service for non-residential solid waste generated in the City of Atlanta without a valid and existing franchise therefore, unless exempted by subsection (c) of this section.

(b) The City Council is authorized and hereby empowered to grant by ordinance to any person a nonexclusive franchise, and to prescribe substantially uniform terms and conditions of such grants, in accordance with the procedures set forth in this part. Every franchise granted is conditioned upon the franchisee's obligation to pay the franchise fee, in full, when due. The Bureau of Solid Waste Services may suspend, and the Mayor may revoke, a franchise for the failure of the franchisee to pay the fee prescribed.

(c) Section 130-43.4 (a) shall not apply to:

(1) Any self-hauler;
(2) The curbside collection service of the City of Atlanta;
(3) Any business collecting, transporting and providing container service for recovered materials and other exempt waste; or
(4) Any business collecting, transporting, and providing container service for solid waste from military installations where such solid waste is not co-mingled with solid waste collected from other sources.

(d) Any materials separated from or otherwise derived from non-residential solid waste which are held in storage and asserted by the possessor thereof to constitute recovered materials awaiting sale or distribution to the secondary materials markets shall constitute non-residential solid waste if, when and to the extent that the following occur:

(1) The Bureau of Solid Waste Services determines that the storage or diversion thereof constitutes an attempt to evade the requirements of this part; or
(2) The storage or diversion thereof does not comply with generally recognized, accepted and prevailing practice in the Georgia materials recovery and recycling industry conducted in accordance with federal, state and local laws.

(e) Any franchise granted by the City shall be non-exclusive and shall authorize the operation of the franchisee throughout the City of Atlanta. All franchises shall be issued upon substantially uniform conditions and limitations, all at the sole discretion of the City Council as it finds in the interests of the public convenience, welfare and necessity in fulfilling its traditional and statutory duty to provide for the safe and sanitary collection and transportation of solid waste in the City.

(f) No vehicle shall be used in the collection of non-residential solid waste within the City by or on behalf of any person required to have a valid and existing franchise under this part unless it carries a valid and unrevoked tag or decal issued by the Bureau of Solid Waste Services.

(g) The Bureau of Solid Waste Services and City Auditors shall have the right, during normal business hours, to enter a franchisee's business property, upon prior notice not less than three (3) days, to inspect the operations and facilities of a franchisee to determine compliance with the franchise, this part and any rules adopted by the

Bureau of Solid Waste Services pursuant hereto. Refusal to permit inspection shall be cause for suspension or revocation of the franchise. The franchise shall state the franchisee's designated place of business.

(h) The grant and acceptance of a franchise shall not relieve, limit or alter a franchisee's obligations to obtain and maintain any license or permit required by the Code of Ordinances or other applicable State or Federal law to transact and carry on a business or to provide non-residential solid waste collection, transportation, container or disposal services within the City.

Section 130-43.5. Procedure for granting franchises.

(a) Application submission.

(1) No franchise shall be granted hereunder prior to the submittal of an application therefore on a form supplied by the Bureau of Solid Waste Services.

a. Applications for an initial franchise must be submitted to the Bureau of Solid Waste Services within thirty (30) days after the effective date of this part.
b. Following the first quarter of the franchise program, initial applications for franchises will be accepted by the Bureau of Solid Waste Services on a quarterly basis each year.

1. Initial applications submitted to the Director in the first quarter for consideration must be submitted by March 31 of each year.
2. Initial applications submitted to the Director in the second quarter for consideration must be submitted by June 30 of each year.
3. Initial applications submitted to the Director in the third quarter for consideration must be submitted by September 30 of each year.
4. Initial applications submitted to the Director in the fourth quarter for consideration must be submitted by December 31 of each year.

(2) Such application shall be in writing and shall include, but not be limited to, the following information:

a. The full name and address of the applicant.
b. The type of the organization, that is, whether a corporation, limited liability company, association, joint stock association, individual proprietorship firm or partnership.
c. The date the business was legally organized and, if now in business, the date of commencement of service to customers within the City of Atlanta.
d. If the applicant is:

1. An individual, firm, association or partnership the full name and home address, social security number and date of birth of all parties owning an interest in the applicant.

2. A partnership, a copy of the partnership agreement and all amendments thereto.
3. A publicly-owned corporation on a nationally recognized stock exchange, the corporation's most recent annual and quarterly Securities and Exchange Commission 10K Report. For all other corporations, the applicant shall provide, the names and addresses of all the stockholders of the corporation and the percentage of the total stock held by each stockholder.

e. If the applicant is a partly or wholly-owned subsidiary of another business entity, the parent entity's full name, business address and state of incorporation or organization, and the extent of the entity's ownership of the applicant.

   1. As to the parent entity, the full name, date of birth, home address and social security number of the owner if a proprietorship; of each partner if a partnership; or of each officer, director and person owning five percent or more of the common or preferred stock if a corporation, shall be provided.
   2. In addition, if the parent entity of the applicant is a corporation, the full name, address, date of birth and social security number of each officer and director and of all stockholders holding five (5%) percent or more of the outstanding shares of the corporation shall be provided.

f. A statement of the applicant's experience and capability in the collection and/or transportation of solid waste.
g. Evidence that applicant has the potential for a significant amount of business within the City.
h. An insurance certificate or a binder meeting the requirements of this chapter.
i. Certification that applicant has never been adjudicated in default on any government contracts or bids.
j. The description (type and quantity) of the equipment to be used in such removal, transportation and disposal, and description of the method of disposal, including the location of all disposal facilities, vehicles, and equipment to be used.
k. Evidence that any disposal facility to be used by the applicant is licensed or approved by the proper federal and state authorities and those of the county and municipality where such facility is located.
l. Certification that there are no unsatisfied final money judgments against the applicant.
m. Certification that the applicant has the financial resources to perform its duties and obligations as a franchisee under this part.
n. Evidence of the safety, reliability and sanitation of the applicant's proposed collection and transportation service, including containers to be placed at customer's service location, if such are to be provided by the applicant.

1. No franchisee under this section shall materially diminish or change the quantity or type of the equipment used or the methodology for collection, transportation or disposal of non-residential solid waste nor the location of disposal facilities described in its application, without reporting such changes to the Bureau of Solid Waste Services.
2. In the case of changes in the location of disposal facilities, the report shall include evidence that the disposal facility is properly licensed by the appropriate regulatory authorities.
3. Operational changes shall be reported in the first monthly report submitted after the change occurs. Disposal facility changes shall be reported at least thirty days before the franchisee begins using the facility.

(3) In determining whether to grant or deny a franchise, the following criteria for consideration shall include but shall not be limited to the following:

a. The applicant's solid waste collection experience.
b. The adequacy of the applicant's equipment and facilities in relation to the service to be rendered.
c. Whether the applicant presently provides waste collection services within or outside the City.
d. The applicant's compliance with Chapter 2, Article X, Division 13 of this code.
e. The applicant's ability to comply with the terms of this chapter.
f. The applicant's financial resources.
g. The sanitation, safety and reliability of the applicant's collection equipment.
h. Compliance by the applicant with applicable laws and rules of the City of Atlanta and the State of Georgia.
i. The proper licensure and enforcement history of the facility identified by the applicant as for disposal or treatment of the solid waste to be collected.
j. Other considerations as the City Council deems relevant.

(4) Each application must be accompanied by a cashier's check payable to the City in the amount of $1,500.00. Any application fee received shall be non-refundable and shall be deposited into the Solid Waste Enterprise Fund of the City. The Bureau of Solid Waste Services will notify an applicant of any deficiencies in its application; and, the applicant will have fifteen (15) days within which to provide supplemental information. If the applicant fails to provide the requested information within the time prescribed the application will be deemed insufficient and denied without further action of the City Council.

(5) Within forty-five (45) days after the closing date for filing applications, the Commissioner of Public Works will forward complete applications to the Municipal Clerk, with recommendations on whether to grant or deny the applicant a franchise.

(6) Within ninety (90) days after the closing date for filing applications, the City Council shall adopt a resolution granting or denying such franchises as the council determines to be in the best interests of the City. The Director of Solid Waste

Services is authorized and empowered to approve the form of franchise agreements, which shall be on substantially uniform terms, and execute the agreements with successful applicants. The franchise agreement shall constitute the grant of the privileges by the City contained therein and shall expire at such time as stated therein. The successful applicant shall signify acceptance of the terms and conditions of the franchise by the execution thereof. Upon due execution, the franchise agreement shall serve as evidence of the City's grant and the franchisee's acceptance of the franchise.

Section 130-43.6. Public hearing.

(a) Upon receiving an application for a franchise under the provisions of this division, the Director shall deliver a copy to the Mayor and the City Council.

(b) Upon receipt of the copy of the application, the City Council shall set a date and time for a public hearing on the application for a solid waste collection franchise.

(c) The Municipal Clerk shall cause notice of the application and of the time and place of any hearing on the application to be published at least once in a newspaper of general circulation in the City at least two (2) days prior to the date set for the hearing.

(d) At the hearing on an application for a franchise, all persons desiring to be heard shall be provided a reasonable opportunity to present evidence or otherwise be heard in favor of or in opposition to the granting of a franchise to the applicant. At such hearing, the City Council may demand from the applicant such additional information as the City Council may deem relevant and necessary.

Section 130-43.7. Franchise term and conditions.

(a) *Term.* Each franchise shall be granted subject to annual registration by the franchisee. Such annual registration shall include that information required by the Bureau of Solid Waste Services. Franchisees shall be subject to the annual registration, suspension and revocation provisions of this part. Ninety (90) days before the anniversary date of the franchise agreement, the franchisee shall submit to the Bureau of Solid Waste Services, on a form prescribed by it, the annual registration along with the registration fee of $1500.00. If a franchisee fails to submit a complete and accurate annual registration or fails to pay the registration fee, the franchise up for renewal shall be deemed suspended, precluding the registrant from performing under the franchise until the noncompliance is corrected.

(b) *Conditions.* Each franchise shall be conditioned upon the faithful performance of all duties and requirements imposed by existing law, this part, and rules established by the Bureau of Solid Waste Services. Every franchisee granted a franchise by the City pursuant to this part shall comply with the terms and conditions of this chapter. Franchises granted franchisees pursuant to this section shall not be assigned, nor shall such franchises remain valid if the controlling stock, ownership or voting rights of any corporate franchisee are transferred or assigned, except with the express approval

of the City Council, which approval shall not be unreasonably withheld; provided, however, that the foregoing restrictions on stock transfer shall not apply to corporations whose common stock is traded on a nationally recognized stock exchange or is wholly owned, directly or indirectly by such entity, or that are institutional lenders. In the event of assignment, the assignee shall execute an agreement of acceptance, subject to the approval of the City, evidencing that such assignee accepts the assignment subject to any or all of the provisions of this chapter and of the applicable franchise agreement, between the City and the franchisee and which acceptance shall include an affirmative statement evidencing such assignee's intent to fulfill the obligations imposed thereunder.

(c) *Bankruptcy or insolvency.* If the franchisee becomes insolvent or if it files a petition of voluntary or involuntary bankruptcy, its franchise shall terminate no later than the date of filing of the bankruptcy petition.

(d) *Termination for alternative collection service.* All non-exclusive franchises shall be subject to the right of the City Council to terminate the non-exclusive franchise system and franchises granted under this part. One hundred twenty (120) days before proposing the termination of the franchise program established by this part, the Bureau of Solid Waste Services shall notify all franchisees of the forthcoming legislative proposal.

Section 130-43.8. Rates and charges.

A franchisee shall be permitted to negotiate rates for service between the franchisee and customers serviced by the franchisee. Any customer shall have the right to select from among authorized franchisees the particular franchisee from whom to receive such service and to negotiate from time to time the rates and charges to be paid for such service, and other terms and conditions of service not inconsistent with this part and generally applicable law, which rates, charges, frequency of service and other terms and conditions of service may be established by a service agreement between the customer and franchisee.

Section 130-43.9. Franchise obligations.

(a) *Considerations for franchise.* In consideration of the grant of a franchise by the City, including, the right of the franchisee to collect and receive rates and charges from customers and to use the public streets, roads, alleyways and places of the City to conduct a private business providing an essential public service, each franchisee shall comply with the obligations, duties and responsibilities set forth in this section.

(b) *Franchise fee.*

(1) *Amount.* An applicant applying for a franchise within thirty (30) days after the effective date of this part shall, in addition to the application fee, pay the City a

franchise fee (at the rate provided in this subsection) on its non-residential solid waste collection, transportation and container services in the City.

a. The fee is imposed on revenue earned from the first day of the first month forty-five (45) days after the effective date of this part and continues until either the application is withdrawn, or the franchise is denied, or the applicant signs a franchise agreement with the City, whichever occurs first.
b. For a period of one (1) year after the signing of a franchise agreement with the City, each franchisee shall pay to the City a franchise fee of two (2%) percent of the franchisee's monthly gross receipts.
c. Thereafter, the City shall have the option of raising the franchise fee once yearly, so long as such raises shall not exceed one (1%) percent of the franchisee's total monthly gross receipts yearly and shall be imposed only by resolution of the City Council after a public hearing and thirty (30) days prior notice to all franchisees.
d. Payments of the fee shall be made by delivering to the Bureau of Solid Waste Services a check payable to the City each month on or before the last day of each month, on gross receipts of the previous month.

(2) *Franchise audits.* To ensure assessment of the proper franchise fee, the franchisee shall submit the following:

a. *Monthly reports.* The franchisee shall deliver to the Bureau of Solid Waste Services a true and correct monthly report which will contain the following:

1. Gross receipts generated during the previous month from accounts within the City on or before the last day of each month;
2. The quantities of non-residential solid waste collected, transported and/or disposed of within the City during the previous month;
3. The number of customers in the City served by the franchisee during the previous month;
4. The number and size of any container serviced for each customer in the City; and
5. The frequency of collection performed for each customer in the City.

b. *Annual reports.* The franchisee shall, on or before ninety (90) days following the close of its fiscal year, deliver to the Bureau of Solid Waste Services a statement of its annual gross receipts generated from accounts within the City reflecting gross receipts within the City for the preceding fiscal year. The statement shall present the amounts due to the City based on the provisions of section 130-43.9 (b)(1) of the code for the preceding fiscal year, with a comparison as to the actual amounts paid and a computation as to any overpayments or underpayments made during the preceding fiscal year. The statement shall be audited by an independent certified public accountant licensed to do business in the state, and shall be accompanied by the certified

public accountant's opinion of its accuracy without qualifications or reservations.

c. If the monthly report required under subsection a. is not filed by the due date specified in the franchise agreement, the report shall be deemed delinquent.

d. If the report remains delinquent for more than fifteen (15) days, the franchisee shall pay the City a delinquent report charge in the amount of $75.00. If the report remains delinquent for more than forty-five (45) days, the franchisee shall pay to the City a delinquent report charge in the amount of $150.00. Such delinquent report charge shall be in addition to any franchise fees or other charges payable by the grantee for the same period of time.

e. *Audit or inspection of franchisee's books and records.*

1. The franchisee shall allow the City auditors, at any reasonable time after reasonable notice, to audit, inspect and examine the franchisee's fiscal books and records and state and federal tax returns, insofar as they relate to this chapter, to confirm the franchisee's compliance with this section. This information shall include, but not be limited to, the following:

   i. billing rates;
   ii. billing amounts;
   iii. accounts receivable; and
   iv. list of accounts.

2. Additionally, the City's auditors may communicate directly with customers of the franchisee for the purpose of confirming compliance with this section. To the extent authorized by the laws of the State of Georgia or other applicable law, this information shall remain confidential.

(3) *Failure to pay franchise fee.* In the event the franchisee fails to timely pay the full franchise fee as set forth in subsection (b)(1) of this section, the Bureau of Solid Waste Services may suspend the franchise until payment is made, and the Mayor may revoke the franchise. Additionally, the franchisee shall pay any and all expenses incurred by the City for the collection of any franchise fee, including, but not limited to, court costs and reasonable attorney fees. In the event the franchisee fails to pay the full franchise fee on or before the last day of each month, interest shall accrue on the amount due at the highest lawful rate of interest.

(4) *Evidence of payment.* Any person, which includes, without limitation, a firm or corporation seeking to renew its annual state and municipal occupational license pursuant to the provisions of Chapter 30 of this code and, in addition to the requirements contained therein, shall provide to the Bureau of Solid Waste Services and the Chief Financial Officer evidence of payment of all outstanding non-residential solid waste collection franchise fees before the business tax

division may reissue or renew the franchisee's business solid waste-related licenses.

(5) *Payment procedures.* The Bureau of Solid Waste Services is hereby authorized and empowered to establish by rule a system of advance payments of the franchise fee or of other forms of financial security to ensure payment of the franchise fee if, in its determination, such a system is necessary to ensure the timely payment of the franchise fee by a particular franchisee or by franchisees in general. The obligation of a franchisee to pay the Bureau of Solid Waste Services the franchise fee shall arise immediately at the time the franchisee receives payment from a customer, notwithstanding the provisions hereof for payment in arrears of accrued amount due. A franchisee's failure to timely pay the established fee is grounds for suspension of its franchise by the Bureau of Solid Waste Services, and revocation of the franchise by the Mayor.

(c) *Vehicles and equipment.* Vehicles and equipment used by any franchisee for solid waste collection and disposal within the City of Atlanta shall be maintained to prevent a sanitary nuisance or safety hazard according to the following provisions:

(1) Vehicles and equipment shall be frequently washed thoroughly with suitable disinfectant and deodorant, and all vehicles shall be washed on the outside weekly.
(2) Waste collection vehicles used by a franchisee shall not be allowed to stand unattended on a public or private street. The franchisee's equipment shall be operated so as to minimize interference with vehicular or pedestrian traffic.
(3) Collection shall be made and the equipment operated and maintained by a franchisee in a manner as to prevent the dropping or scattering of solid or liquid wastes anywhere except in a lawful solid waste management or disposal site.

a. All waste spilled or scattered from vehicles shall be immediately picked up by the franchisee.
b. Collection vehicles shall consist of trucks with leak-resistant packer or enclosed bodies and dumpsters shall be covered and leak-resistant, all in good repair.

(4) All vehicles used for non-residential solid waste collection by a franchisee shall be operated and maintained in such condition that the vehicle does not exceed a noise level, during stationary compaction, where it is plainly audible at a distance of two-hundred (200) or more feet from the vehicle, according to the provisions of Section 74-137 (b)(4) of this code.
(5) All vehicles used for non-residential solid waste collection shall be prominently marked with the name of the franchisee and vehicle number on driver and passenger sides. The vehicle number shall also be marked on the front and rear of the vehicle.
(6) Except as otherwise provided in this part, each vehicle shall contain a current, unrevoked tag or decal issued by the Bureau of Solid Waste Services, as evidence

of the hauler's franchise rights. The Bureau of Solid Waste Services is hereby authorized and empowered to issue such tag or decal and is further authorized and empowered to deny or revoke the tag or decal of any vehicle that fails to meet requirements of this section or rules Bureau of Solid Waste Services. Such vehicle shall not be used for the collection or transportation of nonresidential solid waste until its tag or decal has been reinstated by the Bureau of Solid Waste Services.

(d) *Collection times.* Collection of non-residential solid waste shall be scheduled by agreement between the franchisee and the customer, subject to any rules of the Bureau of Solid Waste Services, any terms of the franchise, and section 74-137 (b)(4) of the City of Atlanta code of ordinances.

(e) *Provision of service.* Every franchisee may provide collection services to any customer who requests the franchisee's services and agrees to the terms and conditions of the service agreement between the franchisee and the customer.

(1) Any private contractor may refuse service to any customer for failure to pay a just bill or for any substantial refusal to comply with any rules of the Bureau of Solid Waste Services applicable to the customer.
(2) Any private contractor refusing service to any customer shall remove any solid waste and solid waste container no more than seven (7) days following the cancellation, interruption, or refusal of service.

(f) *Payment bond.* The franchisee shall furnish the Bureau of Solid Waste Services, on an annual basis, a payment bond in an amount equal to the greater of either $25,000.00 or the estimated franchise fee for two (2) month's operations under the franchise, as determined by the Bureau of Solid Waste Services to ensure continuity of collection and transportation services and payment of the franchise fee.

(1) The bond may be issued by surety licensed by the state and acceptable to the Bureau of Solid Waste Services, or may be in the form of a letter of credit or a deposit account irrevocably assigned to the City of Atlanta, or in any other form which the Bureau of Solid Waste Services may approve.
(2) The bond shall be conditioned upon performance of the franchise obligations, and it shall be considered a violation of the franchise and the bond conditions if the franchisee shall:

a. Fail to cure a violation under section 130-43.7 (b) thereof after having been given thirty (30) days' notice of failure to comply.
b. Take the benefit of any present or future insolvency statutes, or make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement, reorganization or readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or any state thereof, or consent to the appointment of a receiver, trustee, or liquidator of all, or substantially all, of its property.

c. By an order or judgment by a court of competent jurisdiction be adjudged bankrupt; provided, however, that if such judgment or order is vacated within sixty days after the entry thereof, any notice of forfeiture of franchise resulting there from shall be null, void, and of no effect.
d. Fail to comply with any other term or condition that may be specified in the franchise.

(g) *Insurance.*

(1) Each franchisee must maintain throughout the entire period during which its franchise is in effect, in full force and effect, the following levels of insurance coverage, which for subsections a. and b. hereof shall be classified by user group according to Schedule 1 below. Each user group classification shall be based on the number of vehicles utilized in connection with a franchise as determined by the number of franchise decals issued to each franchisee. The user groups are:

Schedule 1: Solid Waste Franchisee User Groups

Classification	*Number of vehicles*
User Group One	1 to 10 vehicles
User Group Two	11 to 20 vehicles
User Group Three	more than 20 vehicles

a. *Commercial general liability coverage.* Commercial general liability coverage in the following amounts per occurrence/aggregate for bodily injury and property damage shall be maintained by each franchisee in each User Group as follows:

User Group	*Amount of Coverage*
User Group One	$1,000,000.00
User Group Two	$3,000,000.00
User Group Three	$5,000,000.00

All commercial general liability coverage shall include coverage for contractual liability. The City shall be named as an additional insured on the commercial general liability coverage policy.

b. *Automobile liability coverage.* Automobile liability coverage in the following amounts shall be maintained by each franchisee for each User Group as follows:

User Group	*Amount of Coverage*
User Group One	$1,000,000.00 combined single limit and $1,000,000.00 excess liability
User Group Two	$3,000,000.00 combined single limit or

	$1,000,000.00 combined single limit and $2,000,000.00 excess liability
User Group Three	$5,000,000.00 combined single limit or $1,000,000.00 combined single limit and $4,000,000.00 excess liability

Automobile liability coverage shall be for bodily injury and property damage, covering all vehicles owned, leased or used by the franchisee in connection with performance of the franchise agreement. The City shall be named as an additional insured on the automobile liability coverage policy.

c. *Workers' compensation and employer's liability.* Workers' compensation and employer's liability insurance shall be maintained as required by the State of Georgia.

(2) All companies providing insurance shall be authorized to do business in the State of Georgia and rated A- or better by Best's Key Rating Guide, latest edition.

(3) No change or cancellation of this insurance shall be made without thirty (30) days written notice to the City's risk manager.

(4) It is understood and agreed that all policies of insurance provided by the contractor are primary coverage to any insurance or self-insurance the City of Atlanta possesses that may apply to a loss resulting from the work performed by franchisee regarding the servicing of accounts located within the City.

(5) All policies issued to cover the insurance requirements herein shall provide full coverage from the first dollar of exposure. No deductibles will be allowed in any policies issued pursuant to this section unless specific safeguards have been established to assure an adequate fund for payment of deductibles by the insured and approved by the risk manager for the City of Atlanta.

(6) As evidence of the above coverage, the franchisee must provide original certificates of insurance to the risk manager for the City of Atlanta and these must be approved by the risk manager prior to the issuance of a franchise. The franchisee must submit a new certificate evidencing continuing or replacement coverage prior to the expiration date of such insurance policies and must submit annually certified copies of the liability policies required in subsections (g)(1) a and b of Section 130-43.9.

(7) Any deviation from these requirements must be approved by the risk manager of the City. The City reserves the right to increase the kinds and amounts of insurance coverage required, if the risk manager, in its sole discretion, deems such increase necessary to protect the City.

(8) Operation of activities by the franchisee without the required insurance shall be grounds for franchise revocation as specified herein.

(h) *Indemnification.* Each franchisee shall execute an indemnification agreement whereby the franchisee promises to indemnify, hold harmless and defend the City, its officers, agents and employees against, and assume all liability for, any and all claims, suits, actions, damages, liabilities, expenditures, or causes of actions of any kind arising

from waste collection transportation and disposal activities and/or the use of the public streets for the purposes authorized in this ordinance and resulting or accruing from any negligent act, omission or error of the franchisee, its agents or employees and/or arising from the failure of such franchisee, its agents or employees, to comply with each and every covenant of any applicable franchise agreement with the City or with any other local ordinance or state or federal law applicable to its activities resulting in, or relating to, bodily injury, loss of life or limb, damage to property or environmental liability sustained by any person, firm, corporation or other business entity. The franchisee shall save the City, its officers, agents, and its employees harmless from and against all judgments, orders, decrees, attorney's fees, costs, expenses and liabilities incurred in and about any such claim, investigation or defense thereof, which may be entered, incurred or assessed as a result of the foregoing. The franchisee shall defend, at its sole cost and expense, any legal action, claim or proceeding instituted by any person against the City, its officers, agents and employees as a result of any claim, suit or cause of action accruing from activities authorized by this part, for personal injuries, property damage or environmental claims, as set forth above.

Section 130-43.10. Franchise transfer.

(a) Any person desiring to transfer a franchise or the rights obtained under a franchise in whole or in part, or any franchisee desiring to transfer a controlling interest in such franchisee, shall petition the Bureau of Solid Waste Services and the Chief Financial Officer for authority to transfer the franchise or controlling interest in the franchisee.

(1) The petition shall be submitted with the transfer application fee paid by cashier's check payable to the City in the amount of $500.00. Any transfer application fee shall be non-refundable and shall be deposited into the Solid Waste Enterprise Fund of the City.
(2) The Bureau of Solid Waste Services shall report to the City Council a franchisee's request to transfer its franchise within thirty (30) days of the Department's receipt thereof, and recommend approval, approval with specified conditions, or denial. The City Council may disapprove any such transfer if the transfer would be contrary to Chapter 2, Article X, Division 13 of this code of ordinances, or it has reasonable grounds to believe that the transfer will result in a degradation of performance or service provided, such grounds to include, without implied limitation, issues relating to the moral character, commercial viability, credit worthiness or operational ability of the transferee or its principals.
(3) The Bureau of Solid Waste Services may defer reporting on the transfer request until all franchise fees owed by the franchisee to the City are paid. As used in this paragraph, the term "controlling interest" means twenty-five (25%) percent or more of the ownership or of the voting rights of the franchisee.
(4) Any change in ownership of a franchisee exceeding ten (10%) percent of the stockholder ownership, assets, or partnership interest shall be reported to the

Bureau of Solid Waste Services and the chief financial officer within thirty (30) days of the change.

(b) Prior to any transfer under this section, the transferee must submit to the City an application with the application fee.

(c) Any person to whom a franchise is transferred, whether for a valid consideration or not, shall be responsible for all fees owed to the City by the original franchisee even though the obligation is incurred prior to the transfer.

Section 130-43.11. Correction of violations.

The Director may issue an order to correct any violation of this part or any violation of the conditions of the franchise agreement within a reasonable period of time as provided by the Director. If the order is not obeyed, the director may suspend the franchise, seek judicial penalties, and/or request injunctive relief.

Section 130-43.12. Revocation or suspension of franchise.

(a) The Mayor may, after notice and a public hearing, revoke a franchise issued under this part for repeated or continual violations of the requirements of this section or the conditions of the franchise agreement, including the failure to pay the full franchise fee pursuant to subsection 130-43.9(b) hereof or franchisee's failure to correct violations as directed pursuant to section 130-43.11.

(1) The license review board is delegated the authority to conduct the hearings as provided in subsection (a) and report its findings and recommendations to the Mayor or her designee.
(2) Revocation of a franchise under this part automatically results in the termination of any franchise agreement.

(b) The Director of Solid Waste Services is delegated the authority to suspend any franchise issued according to the provisions of this section, for due cause or in any emergency situation.

(1) Any suspension of a franchise resulting from any emergency situation may be made effective immediately and remain in force until the next regular or called meeting of the license review board.
(2) Any other suspension of a franchise not resulting from any emergency situation may be appealed to the license review board, and operation of collection and transportation service may continue during the period of the initial appeal.

(c) Operation of collection and transportation service following the revocation of a holder's franchise shall be a violation of this part.

(d) In the event a franchisee appeals issues related to a suspension or revocation to a court of law and the City prevails, the City shall be entitled to recovery of reasonable attorney's fees and costs.

Section 130-43.13. Violations and penalties.

It is unlawful for any person to violate any provision of this part or an order of the Director entered pursuant to this part.

(1) A person who willingly, willfully, or with culpable negligence violates any provision of this section or an order of the Director entered pursuant to this part shall be subject to the following penalties:

a. A fine of not more than $1,000.00 per offense and a probationary period not to exceed one (1) year with a minimum period of confinement in the City jail not to exceed six (6) months.
b. In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this ordinance is a threat to public health, safety, welfare, and environment it may be declared and deemed a nuisance, and may be abated by injunctive or other equitable relief as provided by law.

(2) *Recovery of costs.* In addition to any other penalty, any franchisee who violates any provision of the division shall be liable to the City for the total amount of all costs and expenses incurred by the City in abating a violation or from any other action taken by the City of Atlanta resulting from any violation of this section.
(3) The Director may also request the City Attorney or her designee to institute proceedings for injunctive relief.
(4) Each day during any portion of which such violation occurs shall constitute a separate offense.
(5) *Remedies not exclusive.* The remedies listed in this section are not exclusive of any other remedies available under any applicable Federal, State or local law and the City of Atlanta may seek cumulative remedies.

Section 130-43.14. Severability.

If any section, paragraph, sentence, clause, phrase or portion of this part is for any reason held invalid or unconstitutional by any court of competent jurisdiction such holding shall not affect the validity of the remaining portions hereof, and to this end, the provisions of this part are declared severable.