

ORDINANCE NO. 09-05

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING THE TOWN'S SOLID WASTE FRANCHISE ORDINANCE (ORDINANCE 08-01); REVISING FEES FOR COMMERCIAL AND MULTI-FAMILY RESIDENTIAL SOLID WASTE COLLECTION FRANCHISEES; PROVIDING FOR AN EXEMPTION FOR TAX-EXEMPT ORGANIZATIONS FROM PAYING A FEE TO FRANCHISEES THAT ALLOWS THE FRANCHISEE TO RECOUP THE COST OF THE FRANCHISE FEE PAYABLE TO THE TOWN; REVISING FEES FOR COMMERCIAL AND MULTI-FAMILY RESIDENTIAL SOLID WASTE COLLECTION FRANCHISEES; PROVIDING FOR A DUMPSTER REGISTRATION FEE PAID BY THE FRANCHISEE FOR COMMERCIAL AND MULTI-FAMILY RESIDENTIAL SOLID WASTE COLLECTION ACTIVITIES; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

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

WHEREAS, the Town Council wishes to impose an annual fee upon solid waste companies that are awarded a franchise to work with the Town ("Franchisees") to cover the administrative costs associated with dumpsters within the Town; and

WHEREAS, the Town Council wishes to exempt non-profit organizations within the Town from certain franchise fees which solid waste franchisees typically recoup from their clients; and

WHEREAS, the Town Council finds that exempting non-profit organizations from being charged by franchisees to recoup the cost of the franchise fee, and imposing a fee to cover the costs of dumpster registration, will promote the health, safety and welfare of the Town and it is in the Town's best interest to amend the solid waste franchise ordinance in order to do so.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY AS FOLLOWS:

Section 1. Findings. The foregoing "Whereas" clauses are true and correct and are hereby incorporated as the legislative intent of this Ordinance.

Section 2. Amendment to Ordinance 08-01 of the Town Code. The Town Council of the Town of Cutler Bay hereby amends Section 2 and Section 8 of Ordinance 08-01 of the Town Code of Ordinances as follows:

Section 2. Definitions. The following words and phrases, when used in this Ordinance, shall have the meanings ascribed to them:

(a) *Biohazardous waste:* Any solid or liquid waste which may present a threat of infections to humans. The term includes, but is not limited to, non-liquid human tissue and body parts; laboratory and veterinary waste which contains human-disease causing agents; used disposable sharp medical equipment; human blood, blood products and body fluids; and other materials which in the opinion of the Department of Health and Rehabilitative Services represent a significant risk of infection to persons outside the generating facility.

(b) *Biological waste:* Any solid or liquid waste that causes or has the capability of causing disease or infection and includes, but is not limited to, biohazard wastes, diseased or dead animals, and other waste capable of transmitting pathogens to humans or animals.

(c) *Commercial establishment:* Any structure used or constructed for use as a business which is not also a residential unit. For purposes of this Ordinance, hotels and motels are commercial establishments.

(d) *Customer:* A person who uses the solid waste or recycling services of a private hauler.

(e) *Dumpster or large solid waste container:* a refuse container of one cubic yard or larger.

(f) *Franchise:* The named person who obtains a franchise from the Town of Cutler Bay pursuant to this Ordinance to provide private hauling services.

(g) *Garbage:* Every refuse accumulation of animal, fruit, vegetable, or organic matter that attends the preparation, use, cooking, and detailing in, or storage of, meat, fish, fowl, fruit, flowers, plants, or vegetables, and decay, putrefaction and the generation of noxious or offensive gases or odors, or, which, during or after decay, may serve as breeding or feeding material for flies or other germ carrying insects.

(h) *Garbage can or container:* Any container made of galvanized metal, durable plastic or other suitable material of a capacity not less than ten gallons and not to

exceed thirty gallons approved for use by the Town Manager or his designee. The container shall have two handles upon its sides, or a bail by which dirt may be lifted, and shall have a tight fitting solid top.

(i) *Gross receipts:* Gross receipts shall mean the entire amount of fees collected by a franchisee, exclusive of state sales taxes provided by law from any person within the Town for garbage, hazardous, industrial, biomedical, biological, or solid waste; construction and demolition, debris, trash, litter refuse, and/or rubbish collection, removal and disposal. The invoices resulting from the collection of solid waste from multi-family residential, commercial and residential construction customers within the Town, provided however that gross receipts shall not include fees collected by a franchisee from an entity that is exempt from taxation under §501 of the Internal Revenue Code due to its status as a nonprofit corporation or other private foundation, or from an entity that has been granted a tax exemption as a nonprofit corporation by the State of Florida Department of Revenue, so long as the Franchisee does not charge such entity any amount to recoup franchise fees. The Franchisee must also provide evidence of the entity's tax exempt status to the Town Clerk, including all supporting documents filed with the State of Florida or the Internal Revenue Service of the United States to obtain such tax exempt status, in order to qualify for the exclusion from the calculation of gross receipts.

(j) *Hazardous waste:* Any solid waste, or a combination of solid wastes, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitation reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed.

(k) *Industrial waste:* Any and all debris and waste products generated by manufacturing, food processing (except restaurant), land clearing, any commercial shrubbery or tree cutting, building construction or alteration (except do-it-yourself home projects) and public works type construction projects whether performed by a government unit or by contract.

(l) *Infectious waste:* Those wastes which may cause disease or may reasonably be suspected or harboring pathogenic organisms. Included are wastes 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.

(m) *Multi-family residential establishment:* Any structure other than a residential unit which is used, or constructed for use, as a multiple dwelling facility. Multi-family residential establishments shall include, without limitations, rooming houses, tourist courts, trailer parks, apartment buildings with rental or cooperative apartments, or multiple story condominiums with common means of ingress or egress.

(n) *Performance or Payment bond:* The form of security approved by the Town and furnished by the franchisee as required as a guarantee that the franchisee will execute the work in accordance the work in accordance with the terms of this chapter and will pay all franchise fee payments due to the Town.

(o) *Person:* Any natural person, individual, public or private corporation, firm, partnership, association, joint venture, municipality, or any combination of such, jointly or severally.

(p) *Private hauler:* Any person, entity, corporation or partnership for hire that removes, collects and transports for disposal any solid waste over the streets or public rights-of-way within the Town. The qualified and approved private hauler must have the following: a minimum two years of incorporation; operation facility in Miami-Dade County; proven experience servicing a municipal and governmental contract in Miami-Dade County; possess a Miami-Dade County Waste Haulers Permit, Miami-Dade County Occupational License.

(q) *Recyclable materials:* Those materials which are capable of being recycled and which would otherwise be processed or disposed of as a solid waste.

(r) *Residential construction:* Any construction or renovation requiring a permit from the Town.

(s) *Residential construction site:* A location where residential construction is taking place.

(t) *Residential unit:* Any structure which is used, or constructed for use, as a single-family dwelling, duplex, cluster house or townhouse, and which is located on a single lot, parcel or tract of land. For the purposes of this Ordinance, any condominium structure composed of privately-owned, single family housing units with separate means of ingress or egress and containing no more than two stories shall be considered a residential unit. The term "residential unit" shall not include any multi-family residential establishment, as identified at subsection (e), above.

(u) *Solid waste:* Garbage, trash, litter, yard trash, hazardous waste, construction and demolition debris, industrial waste, or other disregard materials, including solid or contained gaseous materials resulting from domestic, industrial, commercial, mining, agricultural or governmental operations. Solid waste includes, but is not limited to: biohazardous waste, biological waste, garbage, hazardous waste, industrial waste, infectious waste, and recyclable materials.

(v) *Solid waste disposal:* Disposition of solid waste by means of combustion, land filling or other final method of discard.

Section 8. Franchise Fee and Permit Fees.

(a) All private haulers operation in the Town shall pay the following franchise fees to the Town for the privilege of collection, removing or disposing of solid waste from commercial or multi-family residential establishments over the streets or public rights-of-way located within the Town:

- (1) The franchisee shall pay a franchisee fee to the Town equal to 17% percent of its monthly total gross receipts for all of its accounts which are located in the Town.
- (2) The franchise fee shall be in addition to any occupational license taxes levied by the Town upon the franchisee's business activities.
- (3) The franchise fee shall be paid to the Town by the private hauler on a monthly basis. The franchise fee is due on the 15th day of the month succeeding the month for which the franchise fee is being paid.
- (4) The franchise fee shall be accompanied by a report to the Town manager designation the names and addresses of each account of the private hauler located in the Town that was provided solid waste collection and disposal service for the preceding month. The report shall include the monthly total gross receipts of all such accounts. The report shall be in a format approved by the Town manager.

(b) If the franchise fee is not paid by the 15th of the month by the private hauler, an additional monthly surcharge, equal to 17% of monthly total gross receipts for the preceding month, shall be payable to the Town for each month the payment franchise fee is delinquent. Additionally, the franchisee shall pay all the Town's collection expenses, including court costs and reasonable attorney's fees.

(c) If any audit or examination discloses an underpayment to the Town greater than 17% of the required payment, in addition to payment of the underpayment, the franchisee shall pay for the expenses of the audit and a penalty equal to three times the underpayment.

(d) Each and every franchisee shall pay a permit per account fee annually of \$100.00 for each account with whom they contract for the provision of commercial solid waste services. The Town shall provide one color-coded sticker for each dumpster in each account to identify the dumpster. Franchise shall inform the Town as to the number of dumpsters associated with each account and shall ensure that a sticker is attached to each dumpster. The franchisee may only pass on an amount not to exceed \$48.00 of said permit per account fee to each contracted customers. Said permit per account fee shall not be transferable. The annual period will begin October 1st and end September 30th. Permit per account applications submitted before the 15th of the month will be charged

the full amount for the applicable month; those submitted after the 15th will be invoiced in the next month.

(e) Each franchisee utilizing large containers and/or roll-offs shall pay a temporary roll-off/container permit fee, per account, for each container/roll-off utilized to provide solid waste services requiring such containers. The \$50.00 fee shall be for a 90 day period and will be assessed each 90 days the container remains on site.

(f) Each franchisee shall be prohibited from collecting any amount to recoup the cost of franchise fees from any entity that is exempt from taxation under § 501 of the Internal Revenue Code due to its status as a nonprofit corporation or other private foundation, or from an entity that has been granted a tax exemption as a nonprofit corporation by the State of Florida Department of Revenue, it being the intent of this Ordinance that such not for profit entities shall be exempt from paying any franchise fee under this Ordinance, and franchisees shall not be required to pay such amounts to the Town.

Section 3. Severability. If any section, clause, sentence, or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

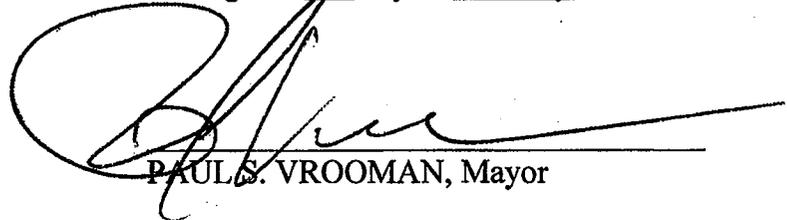
Section 4. Conflict. All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

Section 5. Inclusion in the Code. It is the intention of the Town Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the Town of Cutler Bay; that the sections of this Ordinance may be re-numbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this 21st day of January, 2009.

PASSED and ADOPTED on second reading this 19th day of February, 2009.


PAUL S. VROOMAN, Mayor

Attest:

Erika Santamaria
ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk



APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

W. Serota
WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved By: Councilmember Meerbott
Seconded By: Vice Mayor MacDougall

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman	<u>YES</u>
Vice Mayor Edward P. MacDougall	<u>YES</u>
Councilmember Peggy R. Bell	<u>YES</u>
Councilmember Timothy J. Meerbott	<u>YES</u>
Councilmember Ernest N. Sochin	<u>YES</u>