



**CITY OF BELLE ISLE, FLORIDA
CITY COUNCIL AGENDA ITEM COVER SHEET**

Meeting Date: January 21, 2020

To: Honorable Mayor and City Council Members

From: B. Francis, City Manager

Subject: Proposed Ordinance on Non-Exclusive Franchise for Waste Haulers

Background: Although JJ's Waste and Recycling has the exclusive franchise for hauling residential and commercial waste, the City does not have any agreements with waste haulers who provide large dumpsters or roll-offs for large projects. This proposed ordinance provides for provisions for other haulers to enter into an agreement with the City to provide this service and also adds a franchise fee for these large containers. Currently we don't charge a fee for commercial hauling with a large dumpster or roll-off. This ordinance allows fees to be charged.

Staff Recommendation: Read the proposed ordinance for the 1st time at the next available Council Meeting.

Suggested Motion: I move that we approve the staff recommendation.

Alternatives: Do not implement non-exclusive franchise and agreement

Fiscal Impact: TBD based on how many containers are rented.

Attachments: Proposed Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BELLE ISLE, FLORIDA, GRANTING A NON-EXCLUSIVE FRANCHISE TO FRANCHISEES QUALIFIED TO PROVIDE "ROLL-OFF" CONTAINER COLLECTION AND DISPOSAL OF WASTE IN THE CITY OF BELLE ISLE, FLORIDA, PURSUANT TO CITY OF BELLE ISLE CHARTER, ARTICLE III, SECTION 3-12; PROVIDING FOR THE TERM OF YEARS FOR THE FRANCHISE; PROVIDING FOR FRANCHISE FEE; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Article III, Section 3-12 of the Charter of the City of Belle Isle, Florida, provides for the granting of franchises; and

WHEREAS, Chapter 24, Article II of the City of Belle Isle Code of Ordinances provides for City requirements, outlining the collection and disposal of solid waste, providing the terms and conditions under which such franchise shall operate.

WHEREAS, Chapter 24, Article II, Section 24-41 enables the City Council of the City of Belle Isle, Florida, to enter into a contract with persons desiring a franchise to provide roll-off container collection and disposal of waste within the City of Belle Isle; and

WHEREAS, the City Council of the City of Belle Isle desires to promote equal opportunity for all solid waste haulers to provide roll-off container collection and disposal services under a non-exclusive franchise.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Belle Isle, Florida, that:

SECTION I.

Sec. 24-31. - Definitions.

Roll-Off Containers means either open-top or scow-type containers used only for nonputrescible materials, or enclosed containers such as the kind typically used with compaction devices, of ten cubic yards' capacity or larger.

Franchisee means the person proposing to provide the service under a franchise.

Service encompasses the use of roll-on/roll-off containers as used with mechanical pickup devices or compaction devices, or both

SECTION II.

Sec. 24-42. - Authority of franchisee; service contracts.

- (a) A franchisee under this article shall be empowered and authorized to provide roll-off service. The franchisee will either furnish all necessary trucks and other equipment to perform such services, or will contract with other persons duly licensed by the city for the furnishing of trucks and equipment; provided, however, that at all times the trucks and equipment shall comply with the requirements provided in this article for trucks and equipment owned and operated by the franchisee.
- (b) The franchisee may contract to provide services with any person within the city if such person has first requested the service. Such contracts must be approved by the department head or his designee prior to or within ten calendar days of the placement of the containers for service. For each container placed for service without a contract having been submitted to the department head by such date, an inspection and administration late fee of \$50.00 shall be paid by the franchisee to the city. The contract shall not exceed the term of the franchise. Further, all contracts must specify the container delivery date at the service site. The franchisee agrees to provide the solid waste division with the location of its containers, and the names and addresses of and numbers of pickups to be made for each of the persons contracting for service; and the franchisee also recognizes that any contract between the franchisee and such persons has no effect whatsoever upon the city's decision to grant the franchise or any renewal decision made thereafter. If the department head disapproves a contract and the subject container remains in service more than 48 hours after telephone or written notice by the city to the franchisee to remove the container, or if any container should remain in service at any location more than 48 hours after telephone or written notice from the city to the franchisee to remove the container, then, in either or both cases, the franchisee shall pay the city \$50.00 per day until the container is removed.
- (c) The franchisee shall provide the equipment and frequency of service as needed by the persons contracting for service and as approved by the department head.
- (d) The franchisee shall dispose of waste only at landfills approved by the appropriate local, state and federal governmental agencies.
- (e) All lease or purchase arrangements for compaction equipment and for maintenance or service charges for the containers agreed upon between the franchisee and the persons contracting for service shall be set forth in the contracts between the franchisee and such persons, and approved by the department head pursuant to this section. Further, the contracts between the franchisee and such persons shall not include a franchise or city fee. The franchisee shall give the city prior written notice of any material changes in the contracts between the franchisee and such persons, including, but not limited to, changes in the schedule of pickups, types of containers, contract terms and so forth.

SECTION III.

Sec. 42-43. - Franchise fees; billing; records and reports.

- (a) *Pickup fee.* A franchisee under this article shall pay the city a charge of \$25.00 for each container pickup. The charge shall be paid monthly, and shall be based upon the number of container pickups by the franchisee from the persons contracting for service during the preceding month, whether or not the franchisee bills such persons for the pull. It is hereby

understood that, for the privilege of doing business within the city limits, the city levies a fee of \$25.00 per pull on the franchisee, not on the persons contracting for service.

(b) Required records; annual report.

(1) The franchisee shall furnish the department head with an original and one copy of an annual report on or before the 45th day following the end of the franchisee's fiscal year. The report shall be submitted to the department head on the date of the franchisee's acceptance of the franchise, and the report shall be prepared by an independent certified public accountant in accordance with generally accepted auditing standards. The report shall reflect the accuracy of the franchisee's payments to the city as defined in this article, and shall include, but not be limited to, and shall ensure, the following:

a. That all city accounts are properly coded to reflect charges accrued to the city.

b. That the number of city-related container pickups is correctly reported to the city.

c. That all city payments are correctly computed and remitted to the city on a timely basis, or the interest payment provision of subsection (e) of this section shall apply.

(2) In addition to the annual report, the city auditors shall have the right to audit the franchisee's city franchise books and records, and, in the city's discretion, all other related books and records.

(3) During the term of the franchise or its renewal, the franchisee shall make its city franchise books and records, and, in the city's discretion, all other related books and records, including, but not limited to, dump tickets, customer invoices and customer transaction files, available to the city at all reasonable times. Failure to furnish the city with the report, or to maintain complete and accurate city franchise and all other related books and records, or to make such books and records available to the city, shall be considered a material breach of the franchise, and the city shall be entitled to terminate the franchise and to collect any damages resulting therefrom. The franchisee must keep all franchise and all other related books and records on file for not less than three years from the termination of the franchise by either party, or the termination of the two-year franchise term, whichever is later.

(c) Billing; right to discontinue service. The franchisee shall have the sole responsibility for the billing and collection of all charges described in this section. Billings shall be monthly, and payable on or before the 15th day of the succeeding month. If bills are not paid within this time, the franchisee shall have the right, provided that the franchisee may otherwise legally do so, to discontinue all services for non-payment, after giving the city 15 days' prior written notice that such services will be discontinued, and after receiving written approval from the department head to so discontinue the services.

(d) Dump tickets. The franchisee shall ensure that all dump tickets are completed at the landfill site and contain the following information:

(1) Customer name and service site location; or

(2) Customer account number.

(e) Administrative fee; monthly statement; late payment penalty.

(1) The franchisee shall pay the city a fee of \$80.00 per month for administrative and inspection costs and expenses incurred by the city in connection with the franchise. This fee shall be payable monthly from all franchisees to the city, beginning 30 days after the effective date of the franchise and continuing for the duration of the franchise. This fee shall be credited monthly against the franchise pickup fee.

(2) All statements of fees and charges by the franchisee for pulls during the month shall be submitted to the department head on or before the 25th day following the end of the franchisee's fiscal month. These statements shall specify the previous month's account activities as specified in this section, and shall include the account names, the account numbers, the number of container pickups during the month, and the names of all discontinued accounts. Failure to submit any of the fees and charges specified or referred to in this section on or before the 25th day of each month as required shall result in a penalty at the rate of ten percent of the monthly obligation outstanding. In addition to any monthly obligation outstanding and any penalty attached thereto, the franchisee shall pay interest of one percent per month (12 percent per year) on the total unpaid balance. Failure to submit any statements, addenda or fees and charges shall be considered a material breach of this article, and shall allow the city to terminate the franchise as further defined in Section 42-48.

SECTION IV.

Sec. 42-44. Term of franchise.

(a) The term of a franchise under this article shall be for three years. An acceptance of the provisions, conditions and stipulations of the franchise shall be in writing, contain the franchisee's local address, and be filed with the city clerk within 15 days of the adoption of the franchise. The city reserves the right to review, from time to time, each franchisee's agreement to ensure compliance.

(b) The term may be extended for an additional two years, at the sole option of the city, by written notice to the franchisee not less than 30 days prior to the expiration of the current term.

SECTION V.

Sec. 42-45. - Failure to provide adequate service.

(a) If a franchisee under this article fails to provide adequate services to the persons contracting for service by reason of any breach of contract or negligent failure to adequately perform the duties and obligations set out in this article, as determined solely by the city, the city may, at its sole option, after written notice, terminate the franchise.

(b) If other franchisees default or otherwise fail to provide adequate services, in the sole determination of the city, the city may, at the franchisee's request, or at the request of the city, grant permission to another franchisee to provide the services or temporary services, or both of these things, if the franchisee may reasonably do so given the franchisee's equipment and schedule, and provided that a reasonable price can be determined by the franchisee, the city and the persons contracting for services for the services' undertaking and completion.

(c) If the franchisee sells or transfers its business or substantially all of its assets, the franchisee shall give the city at least 15 days' prior written notice of such sale or transfer.

SECTION VI.

Sec. 42-46. - Liability of franchisee; indemnification of city; insurance.

(a) The privileges granted by this article are granted upon the express condition that the franchisee shall be liable for all damages or injury to persons or property caused by its neglect or mismanagement, or by the actions of any of its employees while engaged in the services, during the life of the franchise. Should the city be sued therefrom, the franchisee shall be notified of and have the duty to defend such suit; provided, however, that the city has the sole option to defend itself or to hire independent counsel and thereafter to tax all such defense costs and fees to the franchisee. The franchisee specifically agrees to pay any such judgment rendered against the city in any such case, and to reimburse the city, in full, for all costs and fees on appeal.

(b) The attorneys chosen by the franchisee to represent the city in any suit concerning matters included within this section shall be approved by the city, unless the city chooses to represent itself as provided in subsection (a) of this section. The franchisee shall indemnify and hold harmless the city and its agents, elected or appointed officials, officers and employees from any and all liability, claims, demands, damages, expenses, fees, penalties, suits, proceedings, actions and costs of actions, including costs and attorney fees, and costs and attorney fees on appeal, of any kind or nature, arising or growing out of or in any way connected with the franchisee's activities permitted under the franchise.

(c) The franchisee further agrees to purchase and maintain in good standing an insurance policy in the following type and amount:

(1) Comprehensive general liability:

a. Bodily injury coverage shall be for not less than \$1,000,000.00 for each occurrence and not less than \$1,000,000.00 aggregate. Property damage coverage shall be not less than \$500,000.00 for each occurrence and \$500,000.00 aggregate; or

b. Bodily injury and property damage coverage shall be in a combined single limit of not less than \$1,000,000.00 for each occurrence and \$1,000,000.00 aggregate.

(2) Business automobile liability coverage shall be for not less than \$500,000.00 per occurrence.

The city shall be named as an additional insured under the policy. The policy must provide that the city shall be given 30 days' written notice prior to cancellation or modification, and a copy of the policy, or a certificate of insurance, shall be filed with the city clerk's office on or before the effective date of the franchise and on or before the effective date of each policy renewal period.

SECTION VII.

Sec. 42-46. - Compliance with other regulations.

(a) A franchisee under this article shall, at its sole expense, procure from all local, state and federal governmental and agency authorities having jurisdiction over the operations of the franchisee all licenses, certificates, permits or other authorizations which may be necessary for the conduct of the franchisee's operations. The franchisee shall pay all taxes and license, certification, permit and examination fees, and all excises which may be assessed, levied, exacted or imposed upon its property, operations or gross receipts, or all or any combination of these things, upon the franchise and the rights and privileges

granted in this article, and shall make all applications, reports and returns required in connection therewith to all respective governmental and agency authorities.

(b) The franchisee and its employees shall observe and comply with all present and future federal, state and local laws, rules, regulations, requirements, ordinances, orders and mandatory guidelines which may pertain or apply to the services rendered under this article.

SECTION VIII.

Sec. 42-47. Transfer of franchise.

A franchise granted under this article shall not be assignable by the franchisee without the prior written consent of the city. If the franchisee attempts to assign, transfer or delegate its rights and duties in violation of this section without the city's consent, then the city may terminate the franchise, and any such assignment shall be null, void and of no legal effect whatsoever.

SECTION IX.

Sec. 42-48. - Termination of franchise.

(a) A franchise granted under this article may be terminated:

- (1) By the city, at its convenience, upon 30 days' prior written notice to the franchisee;
- (2) By the franchisee, following 30 days' prior written notice to the city; or
- (3) By the mutual agreement of the parties.

(b) If any of the privileges granted in this article are terminated pursuant to this section, any liability of the franchisee to the city accruing thereby, and any liability of the franchisee to the city arising out of any act or event occurring prior to the termination, shall immediately become due and payable to the city, without further notice.

~~Sec. 24-42. Section 24-49- Screening of commercial dumpsters and bulk refuse containers.~~

SECTION X. SEVERABILITY

SECTION XI. EFFECTIVE DATE