

ORDINANCE NO. 2021-081

AN ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, AMENDING CHAPTER 78 (ENTITLED "SOLID WASTE") OF THE CODE OF ORDINANCES; AMENDING SECTION 78-158 (ENTITLED "ABANDONED COLLECTION CONTAINERS; IMPOUNDMENT") TO CLARIFY THAT ROLL-OFF CONTAINERS DO NOT NEED TO HAVE A LID OR COVER; AMENDING SECTION 78-161 IN ARTICLE VI (ENTITLED "COLLECTION SERVICES BY PRIVATE COLLECTORS AUTHORIZED THROUGH NON-EXCLUSIVE FRANCHISES") TO CLARIFY A FRANCHISEE'S OBLIGATION TO ALLOW THE COPYING OF ITS FINANCIAL RECORDS DURING AN AUDIT BY THE CITY; AMENDING SECTION 78-164 IN ARTICLE VI TO CLARIFY THAT CERTAIN RESTRICTIONS ON THE DAYS AND HOURS OF WASTE COLLECTION ONLY APPLY WITHIN 300 FEET OF RESIDENTIAL PROPERTIES; AMENDING ARTICLE VII (ENTITLED "ROLL-OFF CONTAINER REGULATIONS") TO CLARIFY THE REQUIREMENTS APPLICABLE TO THE COLLECTION OF RECOVERED MATERIALS AND TO CONFORM WITH STATE LAW; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTIES FOR VIOLATIONS HEREOF; PROVIDING FOR INCLUSION IN CODE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, because of the overriding public health, safety and welfare considerations associated with the collection and disposal of solid waste, it is necessary that the City retains regulatory authority over the provision of such services; and

WHEREAS, the general purpose of this ordinance is to ensure that areas within the City that do not receive collection services from the City's contractor are adequately serviced by responsible providers with high-quality, efficient solid waste collection and disposal services; and

WHEREAS, the amendments set forth in this ordinance clarify the rights and obligations of franchisees with respect to (a) the City's audits of the franchisees' records, (b) the days and hours of waste collection service in areas that are not located within 300 feet of residential property, (c) the use of roll-off containers for the collection of recovered materials, and (d) the requirements for roll-off containers; and

WHEREAS, the amendments set forth in this ordinance apply to the provisions enacted through the adoption of Hialeah, Fla. Ordinance 2021-052 (May 25, 2021), which takes effect on October 1, 2021 and, accordingly, these amendments also will take effect on October 1, 2021; and

WHEREAS, this ordinance promotes and protects the health, safety and welfare of this community and its adoption is in the best interest of the public.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: Article VI in Chapter 78 (entitled "Solid Waste") of the Code of Ordinances of the City of Hialeah, Florida, is hereby amended to read as follows:

Chapter 78

SOLID WASTE

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**ARTICLE VI. COLLECTION SERVICES BY PRIVATE
COLLECTORS AUTHORIZED THROUGH NON-EXCLUSIVE
FRANCHISES.**

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Sec. 78-158. – Abandoned collection containers; impoundment.

The City may impound, remove, and empty any Collection Container that is abandoned. A Collection Container shall be deemed to be abandoned if: (1) the city determines the collection container and/or its contents present a danger or nuisance to the public; (2) the collection container is placed on public property, including but not limited to the city's right-of-way, without the city's prior written authorization; (3) the non-exclusive franchise authorizing the use of the collection container has been suspended or revoked; (4) the collection container has been placed or is being serviced or used in the city by a Person that does not have a currently valid franchise agreement or other written authorization from the city; or (5) the collection container is in disrepair, because it does not have a well-fitting lid or cover, or has holes, cracks, or tears in the bottom or sides, or otherwise materially fails to comply with the requirements in this Article VI. The requirement to have a well-fitting lid or cover does not apply to Roll-Off Containers. The city shall post a notice of violation on any abandoned collection container, advising any interested Person that the container shall be removed and impounded by the city within 24 hours from the posting of the notice unless the container is removed by a Person having authority to do so. If the owner's telephone number is readily visible on the container, the City shall call the owner's telephone number one time and thereby attempt to provide oral notice of the violation on the same day that the city posts notice on the container. Twenty-four hours after posting the notice of violation on the collection container, the city may remove the container, dispose of

its contents, and store the container until the owner pays the city for the removal, disposal, storage, and related costs the city incurred as a result of the owner's failure to comply with the requirements of the notice. The container owner shall also pay all associated fines for any violation of this chapter 78. If the owner of the container fails to pay such costs within 90 days after the container is impounded, the city may sell the container and use the sale proceeds to pay the costs and fines described above, as well as any additional costs incurred by the city in the sale or final disposal of the container.

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Sec. 78-161. – Non-Exclusive Franchise Fees.

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(c) Each franchisee shall allow city auditors, during regular business hours and after reasonable notice, to audit, inspect and examine the franchisee's financial records (as they relate to city revenue), including all books, ledgers and records, sales tax returns, bank statements, general ledger, contract(s)/agreement(s) between the franchisee and customer(s), and any other information deemed necessary, as well as the franchisee's list of customers and accounts in the city, in order to confirm the franchisee's compliance with the requirements in this Chapter 78. If a city audit reveals that a franchisee underreported its gross revenues or underreported the number of accounts serviced within the city, and the audit shows that the amount reported was at least two percent (2%) less than the correct amount, the franchisee shall be responsible for paying any amounts owed, plus applicable penalties, and the costs incurred by the city in the performance of the audit. At the city's request, the franchisee shall ~~deliver the original or a copy of its financial and other books and records to the city at no cost to the city~~ make its financial records (as described above) available for the city's inspection at the franchisee's office. If the city deems it necessary to copy and audit the franchisee's financial records, the city may do so at any location the city deems appropriate, at the city's expense.

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Sec. 78-164. – Supplemental Requirements for Collection Service from Commercial Property and Multi-Family Dwellings.

(a) Each commercial customer and multi-family dwelling shall have at least one collection container for garbage and trash, and one collection container for recyclable materials.

(b) Two or more commercial customers may share the use of one collection container, subject to the department's prior written approval.

(c) Private collectors shall provide collection services in the city only between the hours of 6:00 a.m. until 11:00 p.m. from Monday through Saturday. Private collectors shall not collect solid waste in the city between 11:00 p.m. and 6:00 a.m. or on Sundays. These limitations on the days and hours of collection only apply in the areas of the city that are located within three hundred (300) feet of residential property.

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Section 2: Article VII of Chapter 78 (entitled "Solid Waste") of the Code of Ordinances of the City of Hialeah, Florida, is hereby amended to read as follows:

Chapter 78

SOLID WASTE

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ARTICLE VII. ROLL-OFF CONTAINER REGULATIONS

Sec. 78-186. – Non-exclusive franchise required for Roll-Off Containers.

(a) No Person shall place, service, or collect roll-off containers within the city without first obtaining a non-exclusive franchise, as provided in this Chapter 78. Except for the requirements in Sections 78-188(a), (b), (e) and (f), the requirements in this Article VII do not apply to the collection of recovered materials in roll-off containers.

(b) A roll-off container can be utilized only to collect, remove, recycle, and dispose of construction and demolition waste, land clearing debris, or recovered materials.

Sec. 78-187. – Requirements for Non-Exclusive Franchises.

(a) Any Person that wishes to obtain a non-exclusive franchise for the use of Roll-Off containers in the city shall submit a properly completed application in compliance with Section 78-160, above.

(b) Any person that uses roll-off containers to collect solid waste ~~or recovered material~~ pursuant to this Article VII shall be subject to and shall comply with the applicable requirements in this Chapter 78, including but not limited to the requirements in Sections 78-158, 78-159, 78-160, 78-161, 78-163, 78-165, 78-166, and 78-167.

Sec. 78-188. - Supplemental requirements for roll-off containers.

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(e) The City may impound, remove, and empty any roll-off container that is abandoned, pursuant to Section 78-158. Roll-off containers used to collect recovered material shall be deemed to be abandoned pursuant to Sections 78-158(1), (2), and (5) only.

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Section 3: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict, effective October 1, 2021.

Section 4: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 5: Inclusion in Code.

The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Hialeah, as an addition or amendment thereto, and the sections of this ordinance shall be renumbered, as appropriate, to conform to the uniform numbering system of the Code.

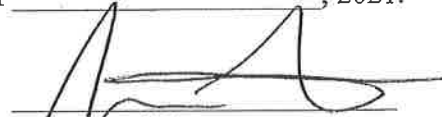
Section 6: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 7: Effective Date.

This ordinance shall become effective on October 1, 2021, provided this ordinance is passed by the City Council and signed by the Mayor, or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

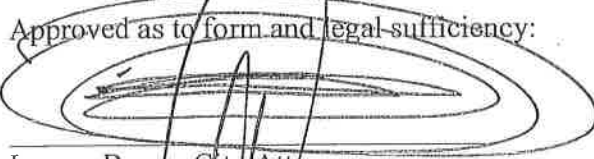
PASSED AND ADOPTED this 14 day of September, 2021.


Jesus Tundidor
Council President

Attest: Approved on this 21 day of September, 2021.


Marbelys Fatjo, City Clerk


Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

Lorena Bravo, City Attorney

Ordinance was adopted by 6-0-1 vote with Councilmembers, Cue-Fuente, Garcia-Roves, Hernandez, Perez, Tundidor, and Zogby voting "Yes" and Council Member De la Rosa away during the roll call for vote.

Strikethrough indicates deletion of existing text. Underline indicates addition of new text.