

**CITY OF DAPHNE**

**ORDINANCE NO. 2017-25**

**REPEALING AND REPLACING ORDINANCE 2017-08  
FOR COMMERCIAL SOLID WASTE  
COLLECTION SERVICES AND FRANCHISES**

**WHEREAS**, the City Council of the City of Daphne, Alabama desires to protect, preserve and promote the health, welfare and safety of the citizens of Daphne by providing for an adequate commercial solid waste collection service; and

**WHEREAS**, the City Council of the City of Daphne, Alabama desires to provide sufficient funding to meet the cost of maintaining and operating such services by ensuring the structural integrity of public streets and that the same are maintained in a state of good repair free from unnecessary encumbrances; and

**WHEREAS**, the City Council of the City of Daphne, Alabama finds that it is in the best interests of the citizens of Daphne to grant a franchise for commercial solid waste collection services within the City of Daphne, subject to the terms and conditions of franchise agreements and this Ordinance; and

**WHEREAS**, the City Council of the City of Daphne, Alabama, possessing authority to issue franchises, desires to establish the rules and regulations related to commercial solid waste collection services and franchises, to provide applicable definitions, to define prohibited acts, to provide penalties for the violation hereof, and to enact reasonable regulations in furtherance thereof.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA AS FOLLOWS:**

**SECTION I. DEFINITIONS**

For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context the words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the future, words in the plural number include the singular number and words in the singular number include the plural number. In the construction of this Ordinance, the word "shall" is mandatory and the word "may" is permissive. The word "shall" takes precedence over "may."

*Biomedical waste* means any solid waste or liquid waste which may present a threat of infection to humans. The term includes, but is not limited to, non-liquid human tissue and body parts; laboratory and veterinary waste which contain human disease causing agents; used disposable sharps; human blood, human blood products and body fluids; and other materials which in the opinion of the Alabama Department of Public Health represent a significant risk of infection to persons outside the generating facility.

*Biological waste* means solid waste that causes or has the capability of causing disease or infection and includes, but is not limited to, biomedical waste, diseased or dead animals, and other wastes capable of transmitting pathogens to humans or animals. The term does not include human remains that are disposed of by persons licensed under Alabama law to do so.

*City* means the City of Daphne. Depending on the context, the City means either (1) the City government, acting through its officers, agents and employees, or (2) the geographical area contained within the jurisdictional limits of the City.

*Code* means the City of Daphne Code of Ordinances.

*Code enforcement officer* means an employee or agent of the City that is authorized to enforce this Ordinance of the Code.

*Commercial establishments* means: (1) motels, hotels, stores, offices, restaurants, service stations, laundries, and other businesses; and (2) apartments, condominiums, trailer parks, and other residences that use a common, centralized container for the storage of the solid waste generated on their premises. However, commercial establishments do not include schools, religious organizations, and government buildings.

*Commercial solid waste* means garbage, rubbish, and other processible waste generated by commercial establishments in the City. However, notwithstanding anything else contained herein, commercial solid waste does not include: (1) biomedical waste; (2) biological waste; (3) hazardous waste; (4) industrial solid waste; (5) prohibited materials; (6) recovered materials; (7) sludge; (8) special waste; (9) white goods; and (10) yard trash.

*Commercial solid waste collection service* means collecting, transporting, receiving, storing, or separating any type of commercial solid waste within the City. Commercial solid waste collection service includes all attendant services, such as providing, selling, leasing, moving, cleaning, repairing, and maintaining containers for commercial establishments in the City.

*Construction and demolition debris* means discarded materials generally considered to be not water soluble and non-hazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt material, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project, or from the renovation of a structure, and includes rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing or land development operations for a construction project; including such debris from construction of structures at a site remote from the construction or demolition project site. Mixing of construction and demolition debris with other types of solid waste will cause it to be classified as other than construction and demolition debris.

The term also includes:

- 1) Clean cardboard, paper, plastic, wood, and metal scraps from a construction project;
- 2) Yard trash and unpainted, non-treated wood scraps and wood pallets from sources other than construction or demolition projects;
- 3) Scrap from manufacturing facilities that is the type of material generally used in construction projects that would meet the definition of construction and demolition debris if it were generated as part of a construction or demolition project. This includes debris from the construction of manufactured homes and scrap shingles, wall board, siding concrete, and similar materials from industrial or commercial facilities; and
- 4) De minimis amounts of other non-hazardous wastes that are generated at construction or demolition projects provided such amounts are consistent with the best management practices of the construction and demolition industries.

*Container* means a dumpster, roll-on/roll-off box, compactor, refuse bin, heavy duty waterproof plastic bag, garbage can, molded polyethylene barrel, roll cart, or other receptacle used to store commercial solid waste.

*Director* means the Director of the department and or his or her duly authorized designee, who shall be responsible for the management of the affairs of the department, and for the administration and enforcement of the provisions set forth in this Ordinance.

*ADEM* means the Alabama Department of Environmental Management.

*Franchise* means the City's grant of authority for a person to engage in the business of providing commercial solid waste collection services in the City, as evidenced by a franchise agreement between such person (i.e., the franchisee) and the City.

*Franchise agreement* means a "franchise agreement for commercial solid waste collection services" between the City and a franchisee.

*Franchisee* means a person who is authorized by the Director to provide commercial solid waste collection services within the City, subject to the requirements of this Ordinance and a franchise agreement.

*Garbage* means all kitchen and table food waste, and animal or vegetative waste that is attendant with or results from the storage, preparation, cooking or handling of food materials.

*Gross revenues* means all revenues the franchisee is entitled to collect from the franchisee's customers for providing commercial solid waste collection services in the City. Gross revenues are equal to the franchisee's billings for commercial solid waste collection services, with no deductions, except for bad debts written off in accordance with generally accepted accounting principles issued by the financial accounting standards board.

*Hazardous waste* means 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 incapacitating 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. The term does not include human remains that are disposed of by persons licensed under Alabama law. These materials include, but are not limited to, volatile, chemical, biological, explosive, flammable, radioactive and toxic materials.

*Industrial solid waste* means solid waste generated by manufacturing or industrial processes that is not a hazardous waste. Such waste may include but is not limited to, waste from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products or byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; non-ferrous metal manufacturing or foundries; organic chemicals; plastic and manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

*Mayor* shall mean the Mayor of the City of Daphne or the Mayor's designee.

*Notice of violation (NOV)* means a written notice issued by a code enforcement officer informing a person that a violation of this Ordinance has occurred.

*Person* means any and all persons, natural or artificial, including any individual, firm, or association; any municipal or private corporation organized or existing under the laws of this state or any other state; any county of this state; and any governmental agency of this state or the federal government.

*Processable waste* means any combustible solid waste that can be processed lawfully, including but not limited to, garbage, rubbish, cardboard, paper products, plastics, and food containers.

*Prohibited materials* means those materials, items or matter which are not permitted under the Code to be placed into containers, or placed out for collection, or brought to any City solid waste management facility (except with the prior approval of the Director), including, but not limited to: hazardous and biomedical wastes; asbestos; liquid paint; sludge; vehicular batteries; explosives; ammunition; pressurized gas cylinders that are five (5) gallons or greater; welding cylinders; ignitable and flammable wastes; cesspool wastes; human remains; animal carcasses or parts; PCBs; radioactive materials; closed cartridge filters from dry-cleaning establishments; ashes; foundry sand; motor vehicles, including major parts such as transmissions, rear ends, springs and fenders; large machinery and equipment; motor oil; materials exceeding the size, weight and quantity limitations established by the Director; and any other waste that poses a threat to the health, safety, or welfare of the vehicles, equipment, or personnel of the City or its contractors.

*Public Works Department* means the department responsible for all matters relating to the collection, transportation, recycling, reclamation, conversion, and disposal of solid waste in the City.

*Public Works Director* means the Director of the Public Works Department and/or his or her duly authorized designee, who shall be responsible for the management of the affairs of the department, and for the administration and enforcement of the provisions set forth in this Ordinance.

*Revenue Department* means the department responsible for all matters relating to the collection of revenues, taxes, fees and other debts due the City.

*Revenue Officer* means the Officer of the Revenue Department and/or his or her duly authorized designee, who shall be responsible for all matters relating to the collection of revenues, taxes, fees and other debts due to the City.

*Recovered materials* means metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted or source separated 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 not does not include materials destined for any use that constitutes disposal. Recovered materials as defined herein are not solid waste.

*Recycling* means any process by which solid waste or materials that would otherwise become solid waste are collected, separated or processed and reused or returned to use in the form of raw materials or products.

*Regulation* means the requirements in this Ordinance and the requirements established by the Director relating to the storage, collection, transportation, disposal, and recycling of solid waste.

*Rubbish* means an accumulation of discarded paper, trash, rags, cans, bottles, boxes, or other waste material resulting from normal housekeeping activities and operations in commercial establishments.

*Sludge* includes the accumulated solids, residues, and precipitates generated as a result of waste treatment or processing, including wastewater treatment, water supply treatment, or operation of an air pollution control facility, and mixed liquids or solids pumped from septic tanks, grease traps, privies, portable toilets, or similar waste disposal appurtenances. Sludge may be a solid, liquid, or semi-solid waste, but does not include the treated effluent from a wastewater treatment plant facility.

*Solid waste* means sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.

*Solid waste management facility* means any solid waste disposal area, volume reduction plant, transfer station, materials recovery facility, or other facility, the purpose of which is resource recovery or the disposal, recycling, processing, or storage of solid waste.

*Special waste* means solid waste that can require special handling and management, including, but not limited to, white goods, waste tires, used oil, mattresses, furniture, lead-acid batteries, construction and demolition debris, ash residue, yard trash, and biological wastes.

*Transfer station* means a site, the primary purpose of which is to store or hold solid waste for transport to a processing or disposal facility.

*White goods* means inoperative and discarded air conditioners, heaters, refrigerators, ranges, washers, water heaters, freezers, and other similar domestic and commercial large appliances.

*Yard trash* means vegetative matter resulting from landscaping maintenance and land clearing operations and includes associated rocks and soils.

## **SECTION II. AUTHORITY**

- a. The provisions of this Ordinance shall be administered and enforced by the Public Works Director and Revenue Officer where applicable and in accordance with the Code of the City of Daphne.

- b. Pursuant to the Code of the City of Daphne, City Code Enforcement Officers shall have full authority to enforce this Ordinance.

**SECTION III.           APPLICABILITY REQUIREMENT FOR FRANCHISE TERM OF FRANCHISE**

- a. This Ordinance shall apply to any person engaged in the business of providing commercial solid waste collection services in the City on or after the effective date of this Ordinance.
- b. This Ordinance applies to the collection of commercial solid waste. This Ordinance does not apply if a person only collects biomedical waste, biological waste, hazardous waste, industrial solid waste, prohibited materials, recovered materials, sludge, special waste, white goods, yard trash, or other materials that are not commercial solid waste.
- c. The requirements in this Ordinance shall supplement the requirements for obtaining a franchise under the Code of the City of Daphne. However, a franchisee does not need to obtain a permit, for the collection of commercial solid waste from the commercial establishments that are approved in the franchisee's franchise agreement.
- d. After April 1, 2017 no person shall engage in the business of providing commercial solid waste collection services in the City unless they have obtained a franchise from the City to provide such services.
- e. No person shall obtain a franchise from the City until they have completed the following steps:
  - 1. Submitted a complete application and sworn affidavit to the City Revenue Department for a franchise.
  - 2. Paid an application fee in the amount established by this Ordinance.
  - 3. Paid the appropriate occupational license tax.
  - 4. Posted a bond and obtained the insurance required herein.
  - 5. Executed a franchise agreement with the City for commercial solid waste collection services.
  - 6. Has been approved by the Mayor or his/her designee for a franchise.
- f. A franchise shall not be granted until the franchise agreement has been duly executed by the applicant and the City.
- g. Each franchise agreement shall take effect on October 1, unless the applicant request and the City approve a different effective date. Each franchise agreement that takes effect prior to October 1, 2017, shall expire on September 30, 2018, unless the franchise agreement is terminated sooner, as provided herein. Each franchise agreement that takes effect on or after October 1, 2018, shall expire on September 30 following the date of its issuance, unless the franchise agreement is terminated sooner, as provided herein.

**SECTION IV. GENERAL PROVISIONS**

- a. It is unlawful for any person to commence or engage in the business of providing commercial solid waste collection service within the City without first obtaining a franchise and entering into a franchise agreement with the City in accordance with this Ordinance.
- b. No franchise shall be awarded to any person unless the Mayor or his/her designee determines that the person is capable of complying with the requirements of this Ordinance.
- c. Each franchisee shall comply with all federal and state laws, this Ordinance, and all other City of Daphne code provisions, administrative rules, regulations, and orders of regulatory bodies, applicable to the commercial solid waste collection services provided by the franchisee. Each franchise shall obtain and maintain all licenses and permits required by federal, state and local laws, rules, regulations, and orders of regulatory bodies that are applicable to the franchisee's collection of commercial solid waste in the City.
- d. A franchisee shall not be relieved of its obligation to comply with all requirements of this ordinance and the franchise agreement by failure of the City to enforce compliance with such requirements.
- e. The City reserves its right to grant franchises and similar rights to more than one (1) person. The City also reserves its right to provide its services, including but not limited to commercial solid waste collection services, to any person.
- f. If a franchisee fails to collect commercial solid waste in compliance with its contract with a customer for longer than two (2) weeks or otherwise acts in a manner that threatens public health or safety, the Public Works Department may provide commercial solid waste collection services to the customer by using the City's own vehicles, equipment and personnel. Under such circumstances, the Public Works Department shall be entitled to receive payment from the customer for the work that was performed by the City.
- g. If a franchisee receives a complaint before 12:00 p.m. (noon) on a business day, the franchisee shall respond to and, if feasible, resolve the complaint by 5:00 p.m. on the same day. If a franchisee receives a complaint after 12:00 p.m. (noon) on a business day, the franchisee shall respond to and, if feasible, resolve the complaint before 12:00 p.m. (noon) on the next business day.
- h. Each franchisee shall have an answering service, answering machine, or other method of receiving and immediately responding to emergency calls and complaints that are made by the franchisee's customers after the franchisee's normal business hours. Each franchisee shall provide an emergency telephone number and other contact information to the Public Works Director.
- i. Each franchisee shall handle its customers' containers with reasonable care and return

them to the approximate location from which they were collected.

- j. Each franchisee shall totally enclose or securely cover any solid waste that the franchisee is transporting within the City. Each franchisee shall immediately clean up any solid waste or liquid that the franchisee spills on public or private property in the City.
- k. A franchisee providing commercial solid waste collection services shall not be deemed to be an agent or employee of the City. A franchisee shall be solely responsible for any losses or damages of any kind arising from its performance or non-performance under its franchise. A franchisee shall indemnify, defend, and hold the City harmless against any and all claims and suits brought against the City resulting from the franchisee's performance or non-performance under the franchise.
- l. All of the commercial solid waste collected by franchises in the City shall be delivered to a permitted Baldwin County Reclamation Center or a landfill for recycling or disposal, unless delivery to a different permitted solid waste management facility is authorized in writing by the Public Works Director.
- m. The execution of the franchise agreement and the issuance of a franchise by the Mayor or his/her designee or renewal thereof, shall not be construed as creating any vested rights. Each franchise is revocable in accordance with the terms of this Ordinance.
- n. A franchise may not be assigned or transferred to another person.
- o. A franchise authorizes a franchisee to provide commercial solid waste collection services, but only to the commercial establishments that are explicitly identified in the franchisee's application and approved by the City. A franchisee cannot provide commercial solid waste collection service to other commercial establishments until the franchisee amends its application and receives written approval from the City to provide service to such establishments.

#### **SECTION V. APPLICATION REQUIREMENTS FOR A FRANCHISE**

- a. Any person wishing to obtain a franchise to engage in the business of providing commercial solid waste collection services within the City shall submit an application to the City's Revenue Department.
- b. An application for a franchise shall provide the City with satisfactory evidence demonstrating that:
  1. The applicant has the experience, personnel, equipment, and other resources necessary to provide commercial solid waste collection services in compliance with the requirements in this Ordinance.
  2. The applicant has the capacity and willingness to comply with all applicable local, state and federal laws.
  3. The award of a franchise to the applicant will be in the public interest.

- c. Applicants for a new franchise and applicants for the renewal of an existing franchise shall provide the information requested by the Public Works Director and any other relevant information. The application and supporting information shall be submitted under oath and on forms supplied by the Revenue Department. At a minimum, the application shall include the following information:
1. The name and mailing address of the applicant, contact information for the applicant's designated representative, the name of the person to be granted the franchise, if the applicant is a corporation, the names of the corporation's principal officers, the names of the local operating managers who will be responsible for performing collection services for the applicant, together with the business address and telephone number of each manager.
  2. If the applicant is a corporation, proof that the corporation is in good standing in the State of Alabama and, if the applicant is not an Alabama corporation, proof that the applicant is authorized to do business in the State of Alabama. If the applicant is operating under a fictitious name, the applicant shall be required to submit information that such fictitious name is registered and held by the applicant.
  3. A statement of whether the applicant operates or has operated a solid waste collection business in Alabama or any other state or territory. If the applicant has provided or is providing solid waste collection services, the applicant shall describe all cases where and when it provided such services (but not more than ten (10) communities), and whether any of the applicant's permits, approvals, or licenses to provide such services have ever been revoked or suspended within the last five (5) years.
  4. A complete record of all felony and misdemeanor convictions within the last five (5) years, involving the applicant's collection, receiving, storing, separating, transportation, or disposal of solid waste. If the applicant is not an individual, the applicant also shall provide the complete record of such convictions for any person that is an officer, majority shareholder, or partner in the applicant, and any person having a controlling interest in the applicant.
  5. A complete record of all civil penalties and liquidate damages in excess of \$5,000.00 assessed against the applicant by local, state, and federal governmental entities within the last five (5) years involving the collection, transportation or disposal of solid waste.
  6. The name and address of each customer that will be provided commercial solid waste collection services under the franchise requested by the applicant.
  7. The types of materials to be collected, transported or disposed of by the applicant under the franchise.
  8. A list of the vehicles, equipment and containers that will be used by the applicant to provide commercial solid waste collection services. The list shall be provided

on a form prescribed by the department. At a minimum, the list shall identify the make, model, and year of each vehicle and piece of collection equipment, as well as the size and type of each container that will be used by the applicant. The Public Works Director may inspect all of the vehicles, equipment, and containers identified by the applicant and thereby determine whether the applicant possesses vehicles, equipment, and containers that are capable of provided safe and efficient commercial solid waste collection services in compliance with this Ordinance.

- d. Each applicant shall submit the required application fee to the City's Revenue Department. The application fee is due and payable when the application is submitted. The application fee is not refundable, even if the application for a franchise is denied.
- e. New applications must be submitted to the City's Revenue Department at least sixty (60) days before the applicant plans to begin providing commercial solid waste collection services. The application fee is non-refundable even if the application for a franchise is denied.
- f. New applications must be submitted to the City's Revenue Department at least sixty (60) days before the applicant plans to begin providing commercial solid waste collection services. Renewal applications must be submitted to the City's Revenue Department at least thirty (30) days before the applicant's existing franchise expires.

#### **SECTION VI. BASIS FOR AWARD OR FRANCHISE**

- a. A franchise for commercial solid waste collection services may be granted to a person when the Mayor or his/her designee concludes that (1) the applicant has satisfied the requirements in this Ordinance; and (2) it is not safe, practicable or cost-effective for the commercial solid waste to be collected, transported or disposed of by the department.
- b. If the Mayor or his/her designee approves an application for a franchise, the Public Works Director shall prepare a list identifying all of the commercial establishments that are approved to receive commercial solid waste collection services from the applicant. The list of commercial establishments shall be attached to and made a part of the franchise agreement executed by the applicant and the City.

#### **SECTION VII. DENIAL OF FRANCHISE APPLICATION**

- a. The Mayor or his/her designee may deny an application for a franchise for commercial solid waste collection services when the Mayor or his/her designee concludes that (1) the applicant failed to satisfy one or more of the requirements of this Ordinance and the Code; or (2) it is safe, practicable, and cost-effective for the department to provide the commercial solid waste collection service proposed by the applicant.
- b. The Mayor or his/her designee may deny an application if the Mayor or his/her designee concludes that the City is willing and able to collect, transport, and dispose of the commercial solid waste generated at one or more commercial establishments where the applicant proposes to provide commercial solid waste collection services. The Mayor or his/her designee may deny the application with regard to such commercial

establishments, but grant the application with regard to other commercial establishments where the City is not willing and able to provide commercial solid waste collection services.

- c. Subject to the provision of this paragraph, the Mayor or his/her designee may deny an application if the Mayor or his/her designee concludes that the City is willing and able to provide commercial solid waste collection services to a commercial establishment (i.e., the selected establishment) that previously received such services from the applicant. In such cases: (1) the Mayor or his/her designee shall provide the applicant with written notice of the Mayor's or his/her designee's decision to deny the application with regard to the selected establishment; and (2) the Mayor or his/her designee may grant the application with regard to other commercial establishments if the applicant satisfied the requirements in this Ordinance; and (3) if a franchise is granted to the applicant for other commercial establishments, the Mayor or his/her designee may allow the applicant to continue to provide commercial solid waste collection services to the selected establishment, subject to the provisions in the franchise, for 180 days after the date when the Mayor or his/her designee sent written notice to the applicant. No later than the conclusion of the 180 day period, the applicant shall remove its containers from the selected establishment.
- d. The Mayor or his/her designee may deny an application for any reasons that would justify the suspension or revocation of franchise, as described below.
- e. The Mayor or his/her designee shall deny an application for a franchise for the following reasons:
  1. The applicant has not submitted a complete application with all of the required supporting documents, paid the application fee, paid the occupational license tax, provided an appropriate bond and insurance, and executed a franchise agreement, as required by this Ordinance.
  2. The applicant has submitted false or materially misleading statements in the application.
  3. The applicant or a partner, director, or officer of the applicant has been convicted of a felony within the past five (5) years, or has been convicted of a misdemeanor within the past three (3) years, involving the collection, transportation, or disposal of solid waste.

#### **SECTION VIII.      SUSPENSION OR REVOCATION OF FRANCHISE**

- a. The Mayor or his/her designee may suspend or revoke a franchise and the corresponding franchise agreement if the Mayor or his/her designee concludes that:
  1. The franchise was issued by mistake of law or fact.
  2. The franchise was issued based upon a false statement or misrepresentation by the applicant.

3. The franchisee has violated an applicable provision of the City Code, a City regulation, or a federal or state law.
  4. A necessary permit, approval, or license of the franchisee has become invalid.
  5. The commercial solid waste collection service authorized by the franchise is not being performed by the franchisee.
  6. The commercial solid waste collection services and other activities authorized under the franchise are not being performed in accordance with the requirements of this Ordinance, the franchise agreement, or the application for a franchise.
  7. Timely and full payment of the franchise fee has not been accomplished by the franchisee in compliance with Section X of this Ordinance.
  8. The franchisee or one of its principals has been convicted under a local, state or federal law for a crime involving the collection, transportation, or management of solid waste.
  9. The franchisee failed to provide, pay for and maintain the required bond and insurance coverage in accordance with the requirements of this Ordinance.
  10. The franchisee violated a requirement of this ordinance or the franchise agreement.
  11. The franchisee failed to comply with a lawful order of the Public Works Director or the City, given in compliance with the requirements of the Code.
  12. The franchisee's actions or inactions demonstrate that the franchisee is not competent or fit to provide commercial solid waste collection services to the public.
- b. Before the Mayor or his/her designee suspends or revokes a franchise, the Mayor or his/her designee shall provide notice to the franchisee and an opportunity to be heard in the manner set forth in Section IX of this Ordinance.
  - c. A franchise that has been suspended or revoked under this Ordinance shall not be reinstated or reissued unless, at a minimum, the franchisee has complied with all of the requirements of this Ordinance, submitted a complete application, paid the application fee, executed a franchise agreement, and been approved by the Mayor or his/her designee.
  - d. The revocation of a franchise shall automatically terminate the corresponding franchise agreement.

**SECTION IX. RIGHT TO APPEAL THE DENIAL, SUSPENSION OR REVOCATION OF A FRANCHISE**

- a. Prior to the denial of an application or the suspension or revocation of a franchise, the applicant or franchisee (as the case may be) shall be given reasonable notice of the Mayor's or his/her designee's proposed action and shall be given an opportunity to present evidence to the Mayor or his/her designee explaining why the franchise should not be denied, suspended or revoked. The Mayor or his/her designee shall fairly consider any evidence presented by the applicant or franchisee before the Mayor or his/her designee issues a final decision. Notice of the Mayor or his/her designee proposed action, and notice of the Mayor's final decision, shall be served upon the applicant or franchisee by certified mail.
- b. Should any person be aggrieved by the decision of the Mayor or his/her designee, such person may appeal by filing written notice with the Public Works Department within fifteen (15) days from the date of such decision. The Public Works Department shall send a copy of the appeal and all relevant documentation, within fifteen (15) days to the City Clerk to be considered by the City Council at a public hearing.
- c. The hearing shall be conducted at a reasonable time and place, following notice of the hearing to the appellant. The hearing shall be information and strict rules of evidence shall not be applicable, but the minimal requirements of due process shall be observed. The objective of the hearing shall be to determine whether the denial, suspension, or revocation of the franchise complies with the requirements of the City of Daphne's Code. At the hearing, the Public Works Department and the appellant may introduce testimony and other evidence in support of their respective positions. The decision of the reviewing official shall be final and the appellant shall be deemed to have exhausted all administrative remedies.

**SECTION X. REQUIREMENT TO EXECUTE A FRANCHISE AGREEMENT WITH THE CITY AND PAYMENT OF FRANCHISE FEES**

- a. Each applicant shall execute a franchise agreement, including all required attachments, in the form that has been approved by the Mayor or his/her designee and furnished to the applicant by the Revenue Department. Upon execution of the franchise agreement by the applicant and the Mayor or his/her designee, the applicant shall comply at all times with all requirements set forth in this Ordinance and the franchise agreement.
- b. Each franchisee shall submit franchise fees and appropriate documentation to the City Revenue Department in the manner provided herein.
- c. Each franchisee shall pay franchise fees to the City as compensation for the rights and benefits granted hereunder, including but not limited to, the right to collect commercial solid waste in the City. The franchise fee shall be equal to three percent (3%) of the franchisee's gross revenues from the commercial solid waste collection services provided by the franchisee within the City.
- d. Franchise fee payments for commercial solid waste collection service shall be made quarterly on or before the last day of the month succeeding the end of the quarterly period

in which the fee is due. Thus, franchisee fee payments will be due on the first day of the months of April, July, October and January. Each payment shall be accompanied by a statement of the franchisee's gross revenues, which shall be submitted on a form prescribed by the City Revenue Department. The franchise fees shall be paid directly to the City Revenue Department. Statements and payments shall be accepted as timely if postmarked within twenty (20) days after last day of the month succeeding the end of the quarterly period in which the fee is due; if the twentieth day falls on a Saturday, Sunday, or federal or state holiday, statements and payments shall be accepted as timely if postmarked on the next succeeding workday. Payments not received by the due date shall be assessed (1) an administrative fee to reimburse the City for the reasonable administrative costs associated with collecting such monies and (2) interest for each day of delinquency at the rate of eighteen percent (18%) per annum or the maximum allowed by law, whichever is less, for each day of delinquency until the total unpaid amount due and owing is paid in full. The administrative fee shall be equal to six percent (6%) of the amount owed by the franchisee to the City or \$15.00, whichever is greater.

- e. All amounts paid by the franchisee shall be subject to confirmation and re-computation by the City. An acceptance of payment shall not be construed as an accord that the amount paid is the correct amount, nor shall acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable.
- f. Billing methods that have the effect of reducing or avoiding the payment of franchise fees are prohibited and will be cause for termination of the franchise. Any person who uses false, misleading, or fraudulent billing methods for the purpose of reducing or avoiding the payment of franchise fees may be subject to the penalties provided by this Ordinance.
- g. Payment of the franchise fee shall not exempt the franchisee from the payment of any other fee, tax or charge on the business, occupation, property or income of the franchisee that may be imposed by the City, or any county, state or federal government agency.
- h. A franchisee's failure to remit the franchise fees and documentation required by this Ordinance shall be grounds for the suspension or revocation of the franchise.
- i. The City may seek judicial relief to recover all fees, costs, and interest due and owing by the franchisee. The franchisee shall pay the City's court costs, reasonable attorney fees, accounting and auditing costs, and other collection costs incurred by the City as a result of franchisee's failure to remit the franchise fees and documentation required by this ordinance and the franchise agreement.
- j. Franchise fee payments for commercial solid waste collection service shall be utilized for ensuring the structural integrity of public streets and that the same are maintained in a state of good repair free from unnecessary encumbrances.

## **SECTION XI. BOND REQUIREMENT**

Each applicant for a franchise shall provide the City with a bond in the amount of \$20,000.00. The form of the bond shall be subject to the approval of the City Attorney. The bond shall be issued by a surety licensed to do business in the State of Alabama. The bond shall

be used to ensure the franchisee's performance under this Ordinance and the franchise agreement. Among other things, the bond shall be used to ensure the franchisee's payment of franchise fees and other sums that are due and owing to the City. The bond also shall be used to indemnify the City from any damages that may be suffered by the City in any manner as a result of the City's award of a franchise to the applicant, including but not limited to damages resulting from the applicant's performance or non-performance of the conditions and requirements of the franchise agreement, the applicant's use of the City's streets, the failure of the applicant to conform with applicable laws, and any negligent, reckless or intentional wrongful act or omission of the applicant or the applicant's employees, agents, officers, or representatives. The bond shall be kept in full force at all times during the term of the franchise. The bond shall be released by the City if the application is denied, or the franchise agreement expires or is terminated.

## **SECTION XII. INSURANCE REQUIREMENTS**

- a. Each franchisee shall maintain in effect at all times and shall furnish to the City a certificate evidencing the following types of insurance coverage and specified limits of coverage, issued by an insurance company licensed to do business in the State of Alabama, acceptable to the City and as required and set forth in greater specificity in the franchise agreement.
  1. Comprehensive general liability insurance with a limit of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) general aggregate. This policy must include the following coverages: premises and operations liability, independent contractors, products and completed operations, personal injury, contractual liability and fire damage.
  2. Automotive liability insurance coverage providing a combined single limit of not less than One Million Dollars (\$1,000,000.00) per occurrence. This policy must include the following coverages: bodily injury and property damage including premises and operations.
  3. Workers' Compensation insurance shall be provided for all of the franchisee's employees as required under Alabama law.
  4. Employers liability insurance providing a single limit of not less than One Million Dollars (\$1,000,000.00), bodily injury be each accident and providing a single limit of not less than One Million Dollars (\$1,000,000.00), bodily injury disease per each employee, and providing a single limit of not less than One Million Dollars (\$1,000,000.00) bodily injury by disease policy limit.
- b. When an applicant submits an application for a franchise, and when a franchisee submits an application for the renewal of its franchise, the applicant/franchisee shall furnish the City a certificate evidencing this insurance coverage is in effect for the same term as the franchise agreement, and naming the City as an additional insured (except with regard to the workers compensation and employers liability insurances). The franchisee shall notify the City in writing by registered or certified mail thirty (30) days in advance of any cancellation, intent not to renew, or any other changes in the insurance coverage. Upon the cancellation or lapse of any policy of insurance required by this Ordinance or the

franchise agreement, the franchisee's license to operate as a franchisee in the City under its franchise agreement shall be immediately revoked unless, before the expiration date of the policy of insurance, another policy of insurance containing all the requirements of the original policy of insurance is obtained and a new certificate is provided to the department.

### **SECTION XIII. BOOKS, RECORDS AND REPORTING REQUIREMENTS**

- a. Each franchisee shall prepare, keep and maintain current, accurate records demonstrating its compliance with the requirements in this Ordinance and the franchise agreement.
- b. The City shall have the right to inspect and review a franchisee's records concerning its franchise. The City shall provide fifteen (15) days advance written notice of any such inspection. The City also may copy and audit the franchisee's records at the City's expense. The franchisee's records shall be maintained at a location within the City or Baldwin County during the term of the franchise and for at least three (3) years thereafter. The records shall be readily accessible for review by the City.
- c. The franchisee shall notify the Public Works Department in writing before the franchisee begins to provide commercial solid waste collection services to any commercial establishment that was not explicitly identified in the franchisee's application and approved by the City. The franchisee shall not provide service to any such establishment until the franchisee receives the written approval of the Mayor or his/her designee.
- d. Each franchisee providing commercial solid waste collection services shall file a report with the City's Revenue Officer annually with the same being due within forty-five (45) days after the end of the franchisee's fiscal year during the term of the franchise. Each report shall contain an accurate and current list of all customers receiving or show received commercial solid waste collection service from the franchisee during the fiscal year. The annual reports shall be submitted electronically to the City's Revenue Department in a format that is approved by the Revenue Officer. At a minimum, the report shall include the following information for each customer:
  1. The customer's name;
  2. The street address or location of the customer's commercial establishment;
  3. The size (capacity) of each container used by the customer;
  4. The container type;
  5. The frequency of collection of reach container;
  6. All fees and charges billed by the franchisee during the month for the franchisee's commercial solid waste collection services, including but not limited to container rental fees, container maintenance fees, waste collection and hauling fees, and waste disposal fees.

- e. Each franchisee providing commercial solid waste collection services shall file an annual report concerning the franchisee's total gross revenues for the year. This annual report shall be examined by an independent certified public account ("auditor"), who shall confirm that the franchisee's computations concerning gross revenues and franchise fees were performed in accordance with the requirements of this Ordinance. The auditor's report shall state that its examination of the franchisee's records was performed in accordance with professional standards established by the American Institute of Certified Public Accountants or successor organization. The auditor's report shall be filed with the Revenue Director within 120 days after the end of the franchisee's fiscal year. The auditor's services shall be contracted and paid by the franchisee.

#### SECTION XIV. METHODS OF SOLID WASTE COLLECTION

- a. Each franchisee shall collect commercial solid waste in the manner required by this Ordinance and the franchise agreement. At a minimum each franchisee shall comply with the following requirements:
  1. Hours of collection. Hours of commercial solid waste collections services within the City shall be governed by the rules and regulations established by the department for all commercial solid waste haulers operating within the City and as set forth in the franchise agreement.
  2. Equipment. All vehicles, equipment and containers used to provide commercial solid waste collection services shall be maintained at all times in a clean, sanitary, and neat condition and in good repair. All of the franchisee's collection vehicles, equipment and containers shall bear the franchisee's name and current telephone number in letters that are at least two inches (2") tall.
  3. Maximum weight of loaded vehicles. The total gross weight of any loaded vehicle used by the franchisee on a City road shall not exceed the maximum gross weight allowed per vehicle under any applicable federal, state or City law.
  4. Prohibited material. A franchisee shall take all reasonable measures to prevent prohibited materials from being collected, transported, or disposed of in a manner that poses a threat to human health, public safety, or the environment. A franchisee shall not collect such materials in the City and shall not deliver them to the City's solid waste management facilities without the City's prior written approval.
  5. Receipts from designated solid waste management facility. A franchisee, upon request of the department, shall produce receipts or other documents demonstrating that all of the commercial solid waste collected by the franchisee in the City was delivered to a permitted Baldwin County Reclamation Center or landfill for recycling or disposal, unless delivery to a different permitted solid waste management facility is authorized in writing by the Public Works Director.

**SECTION XV. INSPECTIONS**

All of the franchisee's equipment, vehicles and containers shall be subject at all times to inspection by the City. The Public Works Director may require the franchisee to clean, repair, refurbish, or replace any equipment, vehicle, or container that fails to comply with the requirements in this Ordinance or the franchise agreement.

**SECTION XVI. ENFORCEMENT PROCEDURES AND LEGAL REMEDIES**

- a. It shall be unlawful for any person to engage in the business of collecting, removing, transporting, or disposing of any commercial solid waste, or to provide commercial solid waste collection services in the City without complying with all applicable provisions of this Order.
- b. It shall be unlawful for any person to violate any of the terms, provisions, or directions of this Ordinance.
- c. Remedies. The remedies provided in this ordinance are not mutually exclusive. The City may pursue any remedy authorized by law or equity when enforcing the City's rights under this Ordinance. Among other things, the Mayor or his/her designee may take any, all, or any combination of the following actions against a non-compliant person:
  1. Enforcement. The Public Works Director may enforce any violation of the provision of this Ordinance against any person pursuant to and in the manner provided in this Ordinance.
  2. Injunctive and other relief. The Mayor, through the City Attorney, may file a petition in the name of the City in the Circuit Court of Baldwin County or such other courts as may have jurisdiction, seeking the issuance of an injunction, an award of damages, or other appropriate relief to enforce the provisions of this Ordinance.
  3. Recovery of monies owed or other damages. The Revenue Officer shall invoice the franchisee or any other person who owes money to the City under the requirements of this Ordinance of the franchise agreement. If the invoice is not paid the Revenue Officer shall notify the City Attorney to take such actions as shall be appropriate to obtain reimbursement.

**SECTION XVII. PENALTIES FOR VIOLATIONS**

The requirements of this Ordinance shall be subject to penalties including, if convicted, a municipal ordinance violation in accordance with City of Daphne Code, Section XX, which carries a maximum of a \$500.00 fine and/or sixty (60) days in jail.

**SECTION XVIII. SEVERABILITY**

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion hereof.

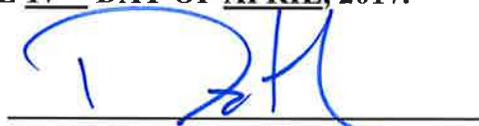
**SECTION XIX. REPEALER**

Any ordinance or part of an ordinance conflicting with the provisions of this Ordinance are hereby repealed insofar as they conflict.

**SECTION XX. EFFECTIVE DATE**

This Ordinance shall take effect and be in force commencing July 1, 2017 and following publication as required by law.

**ADOPTED AND APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, ON THIS THE 17<sup>TH</sup> DAY OF APRIL, 2017.**

  
\_\_\_\_\_  
**DANE HAYGOOD,  
MAYOR**

**ATTEST:**  
  
\_\_\_\_\_  
**REBECCA A. HAYES,  
CITY CLERK**

**APRIL 18, 2017**

**CITY OF DAPHNE            )**  
**STATE OF ALABAMA        )**  
**COUNTY OF BALDWIN      )**

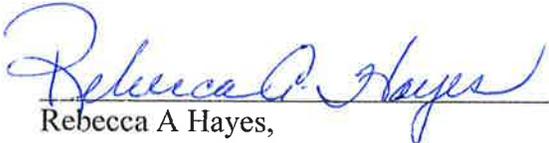
I, Rebecca A. Hayes, City Clerk for the City of Daphne, Alabama, do hereby certify that Ordinance No. 2017-25 was published in accordance with Section 11-45-8, Code of Alabama (1975) by posting for at least thirty (30) days in the following places:

- The Mayor's Office at City Hall
- The Daphne Public Library
- Daphne Utilities

A copy of the ordinance will also be posted on the City's website, [www.daphneal.com](http://www.daphneal.com), for thirty (30) days.

Pursuant to Section 11-45-8, Code of Alabama (1975), this Ordinance became effective on April 24, 2017.

**ATTEST:**



Rebecca A Hayes,  
City Clerk  
City of Daphne, AL

**GULF COAST MEDIA**

A DIVISION OF OPC NEWS, LLC  
PO BOX 1677 • SUMTER, SC 29150

FOLEY 251.943.2151  
The Courier – The Islander  
The Onlooker  
The Baldwin Times

RECEIVED

MAY 01 2017  
LEGAL REP -  
251-345-6805

**PROOF OF PUBLICATION  
STATE OF ALABAMA • BALDWIN COUNTY**

Before me, the undersigned authority in and for said County, in said State, personally appeared April M. Wallace who, by me duly sworn, deposes and says that: she is the Legal Representative of the following newspaper listed below, a newspaper of GENERAL CIRCULATION, PUBLISHED and PRINTED in Baldwin County, Alabama, and that there was published in The Courier, The Islander, The Onlooker, & or The Baldwin Times in the issue/s of:

04/26/2017

a legal notice, a copy of which is hereto attached. The sum charged by the Newspaper for said publication does not exceed the lowest classified rate paid by commercial customers for an advertisement of similar size and frequency in the same newspaper(s) in which the public notice appeared.

There are no agreements between the Newspaper and the officer or attorney charged with the duty of placing the attached legal advertising notices whereby any advantage, gain or profit accrued to said officer or attorney.

x April M. Wallace  
April M. Wallace, Legal Ad Representative

x Amber Kimbler  
Amber Kimbler, Notary Public  
Baldwin County, Alabama  
My commission expires April 10, 2018

**Public Notice**  
Notice is hereby given that the City Council of the City of Daphne, AL adopted Ordinance 2017-25 at the April 17, 2017 council meeting / Repealing and Replacing Ordinance 2017-08 for Commercial Waste Collection Services and Franchises. The ordinance has been posted at Daphne Utilities, Daphne Library and Daphne Recreation Department for viewing.  
**Rebecca A. Hayes, City Clerk**  
April 26, 2017

 **AMBER KIMBLER**  
My Commission Expires  
APRIL 10, 2018

Sworn and subscribed to on 04/26/2017.

CITY OF DAPHNE, LEGAL ACCOUNT

Acct#: 983508

Ad#: 268189

Commercial Waste Collection Services and Franchises

Amount of Ad: \$16.12

Legal File# Commercial Wast