

**CITY OF DAPHNE
ORDINANCE NO. 2017-79**

**ORDINANCE 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 non-exclusive franchises 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. The word "shall" is always mandatory and not merely directive, and the word "may" is permissive.

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.

Bulk refuse means (1) trash generated by lot or land clearing or major land cleanup operations; (2) refuse and debris resulting from construction, renovation, or repair work to buildings or other structures; and (3) an appliance or item of furniture discarded on nonresidential property or on the premises of a rental cottage or apartment complex or an

appliance or item of furniture weighing more than three hundred (300) pounds discarded on any property.

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 the code enforcement officer of the City of Daphne or a duly authorized representative of the city appointed by the mayor to oversee enforcement of the terms of this division.

Commercial establishments means all places within the City not classified as residential which produce or accumulate trash.

Commercial solid waste means all garbage, trash, junk, and rubbish that is collected for disposal and includes but is not limited to metal, scrap metal, white goods (e.g., stoves, refrigerators, washers, dryers, sinks), and all non-recyclable waste streams generated by commercial establishments in the City. However, notwithstanding anything else contained herein, commercial solid waste does not include: hazardous, radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, bio-hazardous, toxic, or any other waste that is classified as hazardous by applicable law.

Commercial solid waste collection service means collecting, transporting, receiving, storing, or separating any type of commercial solid waste within 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.

Franchise means the City's grant of authority for a person or entity to engage in the business of providing commercial solid waste collection services in the City, as evidenced by a franchise agreement between such person or entity (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 or entity authorized by the Mayor to provide commercial solid waste collection services within the City, subject to the requirements of this Ordinance and a franchise agreement.

Garbage means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food, including wastes from markets, storage facilities, handling and sale of produce and other food products, and excepting such materials that may be serviced by garbage grinders and handled as household sewage.

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. "Gross revenues" do not include the franchisee's sales tax collections, Fuel Recovery Fees or Environmental Recovery Fees.

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.

Junk means any vehicle or vehicle parts, rubber tires, automotive batteries, paint or paint containers, oil, gasoline, items containing hazardous or flammable material, chemicals, asphalt, cement or concrete, machinery, equipment, building or construction material, or other items which are either in a wholly or partially rusted, wrecked, junked, dismantled, or inoperative condition.

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

Person means any and all persons, natural or artificial, including any individual, firm, or association; any public 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.

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 Public Works 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; 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 Public Works 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.

The following prohibited materials are further defined as follows:

- 1) *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.

- 2) *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.
- 3) *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.

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.

Rubbish means an accumulation of discarded clothing, appliances, furniture, bicycles, lawn mowers, barbecue grills and similar discarded personal and household items, excluding junk as herein defined and excluding recyclable materials.

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.

Trash means rubbish, shrubbery, trimmings, sidewalk sweepings, leaves, pine straw, grass, weeds, hedge trimmings, small tree trimmings (limbs less than five (5) feet in length and eight (8) inches in diameter), firewood or other refuse originating in yards, on sidewalks, or neutral grounds adjacent to the business of the person receiving trash service, excluding the following: junk as herein defined, recyclable materials, trees that have been cut down by contractors or by individuals who have been paid to remove or cut trees.

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 or entity 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 or entity only collects biomedical waste, biological waste, hazardous waste, industrial solid waste, prohibited materials, recovered materials, sludge, or other materials that are not commercial solid waste.
- (c) After January 1, 2018, no person or entity 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.
- (d) No person or entity shall obtain a franchise from the City until they have completed the following steps:
 - (1) Submitted a complete application to the City Revenue Department for a franchise.
 - (2) Paid an application fee in the amount of twenty dollars (\$20).

- (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) Obtain approval from the Mayor for a franchise.
- (e) A franchise shall not be granted until the franchise agreement has been duly executed by the applicant and the City.
- (f) Each franchise agreement shall take effect on October 1, unless the applicant requests and the City approves a different effective date. Each franchise agreement that takes effect prior to October 1, 2018, shall expire on October 1, 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 30th 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 or entity 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 or entity unless the Mayor determines that the applicant 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 franchisee 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 or entity. The City also reserves its right to provide its services, including but not limited to commercial solid waste collection services, to any person or entity.
- (f) Each franchisee shall handle its customers' containers with reasonable care and return them to the approximate location from which they were collected.

- (g) 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.
- (h) 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.
- (i) The execution of the franchise agreement and the issuance of a franchise by the Mayor or renewal thereof shall not be construed as creating any vested rights. Each franchise is revocable in accordance with the terms of this Ordinance.
- (j) A franchise may not be assigned or transferred to another person or entity.

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

- (a) Any person or entity 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 or, 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 proof that such fictitious name is registered and held by the applicant.
 - (3) A complete record of all civil penalties and liquidated 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.
 - (4) The types of materials to be collected, transported, or disposed of by the applicant under the franchise.
 - (5) The franchisee's typical hours of commercial solid waste collection.
- (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. 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 franchise for commercial solid waste collection services may only be granted to a person or entity if the Mayor, or his or her designee, concludes that the applicant has satisfied the requirements in this Ordinance.

SECTION VII. DENIAL OF FRANCHISE APPLICATION

- (a) The Mayor may deny an application for a franchise for commercial solid waste collection services if the Mayor, or his or her designee, concludes that the applicant failed to satisfy one or more of the requirements of this Ordinance and the Code.
- (b) The Mayor 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 may suspend or revoke a franchise and the corresponding franchise agreement if the Mayor 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 suspends or revokes a franchise, the Mayor 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.
- (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 proposed action and shall be given an opportunity to present evidence to the Mayor explaining why the franchise should not be denied, suspended, or revoked. The Mayor shall fairly consider any evidence presented by the applicant or franchisee before the Mayor issues a final decision. Notice of the Mayor's 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, 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 during a regular or specially-called public meeting of the Daphne City Council, following notice of the hearing to the appellant. The hearing shall be informal 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 City Council 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 and furnished to the applicant by the Revenue Department. Upon execution of the franchise agreement by the applicant and the Mayor, 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 twentieth (20th) 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 the first 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 or Sunday, a federal or state holiday, or Mardi Gras Day ("Fat Tuesday"), 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 and the City of Daphne Code, Section 14-1 ("Adoption of state offenses law").
- (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 a 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 if 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 one hundred (100) miles of the City 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.

**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. The Director may restrict the hours of collection for any particular location, after providing notice, if the Director concludes that the Franchisee's operations are causing a nuisance.
 - (2) Routes of travel. To the greatest extent practicable, all of the Franchisee's collection vehicles shall travel on major thoroughfares, without using side streets, when collecting and transporting solid waste. The Franchisee shall comply with the applicable provisions of the City's ordinances concerning the use of designated truck routes by regulated trucks.
 - (3) 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.

- (4) 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.
- (5) Prohibited materials. 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. The franchisee shall promptly notify the City if a Person places prohibited materials out for collection by the franchisee. The requirements and prohibitions in this paragraph apply to cases where the franchisee knew, or reasonably should have known, that the franchisee was collecting, transporting, delivering, or disposing of prohibited materials.
- (6) Produce receipts from approved facilities. The 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 permitted Baldwin County Reclamation Center or a landfill or another solid waste management facility that was approved in advance by the Director.
- (7) Disposal at a permitted Baldwin County Reclamation Center or landfill. If the franchisee collects, receives, transports, stores or separates Commercial Solid Waste that was generated within the City, the franchisee shall deliver such waste, even if it is mixed with materials that are not Commercial Waste, to a permitted Baldwin County Reclamation Center or landfill, unless the Franchisee received the Director's advance written authorization to deliver the waste to a different solid waste management facility.

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

- (a) It shall be unlawful for any person or entity 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 or entity 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 City 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 XVI.
PENALTIES FOR VIOLATIONS**

Any person or entity violating any provision of this Ordinance shall, upon conviction, be punished by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00).

**SECTION XVII.
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 XVIII.
REPEALER**

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

**SECTION XIX.
EFFECTIVE DATE**

This Ordinance shall take effect and be in force commencing January 1, 2018, 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 2ND DAY OF OCTOBER, 2017.**



DANE HAYGOOD
MAYOR

ATTEST:



CANDACE G. ANTINARELLA
CITY CLERK