

## Chapter 50

### SOLID WASTE

#### ARTICLE I. IN GENERAL

- Sec. 50-1. Definitions.  
Secs. 50-2 thru 50-30. Reserved.

#### ARTICLE II. COLLECTION

- Sec. 50-31. Mandatory collection requirement; penalties.  
Sec. 50-32. Points of collection.  
Sec. 50-33. Residential containers; placement.  
Sec. 50-34. Commercial containers.  
Sec. 50-35. Public litter barrels.  
Sec. 50-36. Recyclable materials.  
Sec. 50-37. Service; hours.  
Secs. 50-38 thru 50-60. Reserved.

#### ARTICLE III. FRANCHISE AGREEMENT

##### Division 1. Generally

- Sec. 50-61. Grant of exclusive franchise.  
Sec. 50-62. Vehicles, operators.  
Sec. 50-63. Performance requirements.  
Sec. 50-64. Resolution of conflicts, questions.  
Sec. 50-65. Rights of city to enforce performance.  
Sec. 50-66. State law to govern.  
Sec. 50-67. Compliance with applicable laws.  
Sec. 50-68. Severability of provisions.  
Sec. 50-69. Complaints.  
Sec. 50-70. Routes and schedules.  
Sec. 50-71. Contractor's personnel.  
Sec. 50-72. Bankruptcy.  
Sec. 50-73. Permits and licenses.  
Sec. 50-74. Performance bond.  
Sec. 50-75. Worker's compensation insurance.  
Sec. 50-76. Liability insurance.  
Sec. 50-77. Liquidated damages.  
Sec. 50-78. Indemnity.  
Sec. 50-79. Assignment and subletting.  
Sec. 50-80. Books and records.  
Sec. 50-81. Point of contact.  
Sec. 50-82. Service of notice.  
Sec. 50-83. Acceptance and effective date.  
Sec. 50-84. Term.  
Sec. 50-85. Option to renew.

- Sec. 50-86. Modification.
- Sec. 50-87. Default of contract.
- Sec. 50-88. Payment to city.
- Sec. 50-89. Attorney's fees.
- Sec. 50-90. Garden trash collection.
- Secs. 50-91 thru 50-110. Reserved.

**Division 2. Street Sweeping Services**

- Sec. 50-111. Scope of work.
- Sec. 50-112. Obligations of contractor.
- Sec. 50-113. Equipment specifications.
- Sec. 50-114. City to provide adequate hydrants.
- Sec. 50-115. Charges.
- Sec. 50-116. City's right of evaluation.
- Secs. 50-117 thru 50-135. Reserved.

**ARTICLE IV. CHARGES, RATES, FEES AND BILLING PROCEDURE**

- Sec. 50-136. Rates.
- Sec. 50-137. Special haul service.
- Sec. 50-138. Deposits.
- Sec. 50-139. Delinquent accounts.
- Sec. 50-140. Charges for recycling services.
- Sec. 50-141. Billing.
- Sec. 50-142. Adjustments to rates.
- Sec. 50-143. Excessive debris generated by storm, natural disaster, other calamity.

## ARTICLE I. IN GENERAL

### Sec. 50-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Commercial container* means any garbage or rubbish container designed for mechanical pickup.

*Commercial property* means any hotel, motel, roominghouse, tourist court and any other business or establishment of any nature or kind whatsoever, other than a residential unit.

*Contractor* means the company required to collect and transport solid waste material, for disposal, as granted under the provisions of this chapter and the franchise agreement.

*Garbage* means every refuse accumulation of animal, fruit or vegetable matter which attends preparation, use, cooking and dealing in or storage of edibles and any other matter of any nature whatsoever, which is subject to decay, putrefaction and the generation of noxious or offensive gases or odors or which, during or after decay, will or may serve as breeding or feeding material for flies or other germ-carrying insects.

*Garbage cart* means a heavy plastic receptacle with a rated capacity of 64 gallons and not more than 96 gallons, having a hinged tight-fitting lid and wheels, which is designed or intended to be used for automated or semi-automated collection.

*Garbage receptacle* means a container of not greater than 30-gallon capacity or less than ten-gallon capacity, which shall be free of jagged or sharp edges and shall be of impervious material, provided with a tightfitting cover suitable to protect the contents from flies, insects, rats and other animals, fitted with two handles or a bail by which it may be lifted and which shall not have any inside structures such as inside bands or reinforcing angles or anything within that would prevent the free discharge of the contents. Such receptacle may include a waterproof bag liner which can be safely and securely closed, and which is of a type approved by the contractor and the city.

*Garden trash* means all accumulation of leaves, grass, or shrubbery cuttings and other refuse attending the care of lawns, shrubbery, vines and trees and other types of vegetation.

*Garden trash--Bulk* means tree limbs exceeding three inches in diameter and comprising a volume of more than one cubic yard or greater than 20 Queen or Royal Palm branches.

*Gross revenues* means the gross amount of regular monthly or quarterly fees charged by the contractor for services rendered under this franchise and actually received by the contractor from its customers within the city, less the actual amount paid by the contractor to the county for disposal of solid waste material from roll-off container services provided within the city.

*Hazardous waste* shall have the same meaning as "hazardous" under the Resource Conservation and Recovery Act, 42 USC 1002, as amended, or regulated as toxic under the Toxic Substances Control Act, 15 USC 2601, as amended, or under regulations promulgated thereunder or defined as hazardous under the Florida Administrative Code, chapter 17-30, or any other applicable state or local law or regulation.

*Household junk* means any unused or abandoned tangible item such as furniture, stoves, hot water heaters, refrigerators or similar appliances not having a useful purpose to the owner. For the purposes of this chapter, the term "household junk" shall not include abandoned or junk automobiles and parts thereof;

materials that accumulate as a result of building or building alterations such as brick, block, stone, sand, siding or roofing; or that trash generated as a result of clearing vacant lots.

*Parkway* means that portion of the street right-of-way paralleling any public thoroughfare between the curbline and abutting property line. If ditching bisects the property and thoroughfare, the term "parkway" includes the roadside of the ditch.

*Recyclable material* means material which can be removed from the solid waste stream and reused in manufacturing, agriculture, power production or other processes and which for the purposes of this chapter is defined as:

- (1) Newspapers (daily newspapers, including inserts).
- (2) Glass (all unbroken, clear, brown, and green glass containers). Blue and flat glass, window glass, dishes, crockery and other types of ceramics are expressly excluded from this definition.
- (3) Metal cans (both aluminum and bimetal).
- (4) Plastic (polyethylene terephthalate [PET] and high density polyethylene [HDPE] containers used solely for packaging soda, milk and certain juice products).

*Recycling container* means a plastic color-coded 11-gallon capacity container used for the storage and collection of recyclable material, or any other container identified and approved by the city manager for recyclable materials, storage and collection.

*Residential unit* means any structure or shelter, or any part thereof, used or constructed for use as a residence for one family.

*Rubbish* means accumulation of paper, excelsior, rags or wooden or paper boxes or containers, sweepings and all other accumulations of a nature other than garbage, which are usual to housekeeping and to the operation of stores, offices and other business places; and any bottles, cans or other containers which, due to their ability to retain water, will or may serve as breeding places for mosquitoes or other waterbreeding insects.

*Solid waste* includes the specific terms garbage, trash, rubbish and household junk as defined in this section, but shall not include hazardous waste as defined in this section.

(Code 1976, §9-3; Ord. 680, §1, 6-4-97; Ord. 928, §1, 2-15-06)

**Secs. 50-2 thru 50-30. Reserved.**

## ARTICLE II. COLLECTION

### **Sec. 50-31. Mandatory collection requirement; penalties.**

(a) All owners and tenants of residential units within the city and all owners and operators of commercial property within the city shall subscribe to and pay for the solid waste collection services provided for in this article. The provisions of this chapter applicable to collection of recyclable materials shall apply to the following types of occupancies:

- (1) Residential units.
- (2) Multifamily residential units which do not have pickup for individual units at curbside.

(b) In addition to any other penalty provided in this chapter, any person violating subsection (a) of this section shall, upon conviction for such violation, be punished as provided in section 1-13.

(c) In addition to all other remedies set forth in this chapter, the city shall have the right to file a civil action for injunctions or other equitable remedies to enforce compliance with the provisions of subsection (a) of this section.

(Code 1976, §9-2)

**Sec. 50-32. Points of collection.**

(a) *Residential units.* All solid wastes shall be collected from an area in or adjacent to the parkway.

(b) *Commercial property.* Solid wastes shall be collected from containers in locations as mutually agreed between the contractor and the operator of the commercial property involved. All such collection areas shall be readily accessible to the contractor's vehicles.

(c) *Failure to place waste in proper area.* The contractor shall not be responsible for collection of any solid wastes placed outside the areas designated in sections 50-33 and 50-34.

(Code 1976, §9-5)

**Sec. 50-33. Residential containers; placement.**

(a) Garbage and rubbish shall be placed only in garbage carts at a single collection point within six feet of the parkway. All solid waste, both residential and commercial, shall be placed at a location prior to scheduled collection that is readily accessible to contractor's personnel and equipment. Garden trash shall be segregated from garbage and rubbish, which shall be placed in a separate garbage cart.

(b) All garden trash not included in the definition of "garden trash-bulk" shall be placed only in a garbage cart. All leaves and pine needles, ornamental shrubs, clippings and tree trimmings with branches less than three inches in diameter and comprising not more than one cubic yard shall be placed in a garbage cart. Up to 20 branches from Queen and Royal Palms shall be collected provided that same are cut appropriately and placed in a garbage cart.

(c) Household junk that does not fit in a garbage cart shall be placed at a single collection point within six feet of the parkway. The residential customer shall call the contractor to advise of the set out of such material. Contractor will collect such material within 72 hours of the receipt of such call.

(Code 1976, §9-6(a); Ord. 928, §2, 2-15-06)

**Sec. 50-34. Commercial containers.**

Commercial containers shall be kept on the premises, readily accessible to the collection vehicle. Noncontainerized business shall have refuse in approved receptacles which shall be placed at a single collection point, readily accessible to the collection crew and vehicle.

(Code 1976, §9-6(b))

**Sec. 50-35. Public litter barrels.**

The contractor shall, at no charge, collect and dispose of all solid wastes from city public litter barrels which the city may establish and maintain on regular routes of the contractor. The city shall notify the contractor of the location of all such barrels.

(Code 1976, §9-7)

**Sec. 50-36. Recyclable materials.**

(a) *Pre-collection requirements.* All household trash consisting of recyclable materials shall be drained of all liquids prior to deposit in a recycling container. Recyclable glass food containers shall be rinsed prior to placement in a recycling container. Metal cans need not be flattened and labels need not be removed from cans or glass. Newspapers shall be free of food or other contaminants when placed in a recycling container. All remaining household trash may be combined with garbage and yard trash as provided in this article.

(b) *Containers.* The recycling containers shall be furnished to the residents by the contractor. The containers shall be the property of the city. No resident shall remove any recycling container from the premises.

(c) *Preparation for collection.* Recyclable material shall be sorted by city residents and placed in the proper recycling container designated for such material by the collector. Recycling containers shall be placed at curbside separate and apart from any other containers on the collection day specified for recyclable materials.

(d) *Abuse of containers.* The abuse or use of recycling containers for purposes other than those provided in this article shall be prohibited.

(e) *Ownership of recyclable materials.* Material placed at curbside in recycling containers for collection shall become the property of the city. It shall be a violation of this article for any person other than those authorized by the city to collect or pick up or cause to be picked up any recyclable material so placed for collection.

(f) *Quantity collected.* The contractor shall accurately account for the quantity (in pounds) for each type of recyclable material collected within the city pursuant to this article. Quantities (in pounds) for each type of recyclable material collected shall be made available to the city on a quarterly basis and upon request when needed for grant applications or auditing purposes.

(Code 1976, §9-6(c))

**Sec. 50-37. Service; hours.**

(a) *Regular schedule.* The regular schedule for collection of solid waste shall be as follows:

*Recycling--Every Monday*

*Garden trash--Every Monday*

*Garbage--Every Tuesday and Friday*

The foregoing schedule shall not be changed unless approved by the city council by resolution. If any change in the foregoing schedule is approved by the city council, the contractor shall notify all customers of the new collection date(s) at least ten days prior to the effective date(s) of any approved changes.

(b) *Hours of collection.*

(1) *Residential.* Collections shall be made in residential areas between the hours of 7:00 a.m. and 9:00 p.m., with no service on Sunday, except in the time of emergency or to maintain schedules due to holidays.

(2) *Commercial.* Collections shall be made between the hours of 7:00 a.m. and 9:00 p.m., with the exception of shopping centers, and business and industrial centers where collections at night or early morning hours do not disturb the immediate residential area.

(c) *Notice of schedule changes.* The contractor shall notify all customers of their respective collection days, and in the event of any schedule change, shall notify the customer at least ten days prior to such change. The city shall be notified of the makeup day for a holiday by the 15th of the month preceding the month in which the holiday occurs.

(d) *Emergency schedule changes.* If, for any reason beyond the control of the contractor, including an act of God, solid waste collection cannot be made according to the established regular schedule, the contractor shall make such collection as soon as possible after the regular schedule date. The contractor shall notify the city immediately of the necessity for such emergency schedule changes and the temporary schedule which will be followed.

(e) *Recyclable material.* Recyclable material shall be collected at curbside once per week from residences. The contractor agrees to develop practical procedures and a collection schedule for the inclusion in the recycling program for residences in the city who do not have curbside pickup.  
(Code 1976, §9-8; Ord. 928, §3, 2-15-06)

**Secs. 50-38 thru 50-60. Reserved.**

### ARTICLE III. FRANCHISE AGREEMENT

#### Division 1. Generally

##### **Sec. 50-61. Grant of exclusive franchise.**

(a) Harris Sanitation, Inc., referred to in this article as the contractor, is granted the exclusive right, privilege and/or franchise to operate upon, over and across the streets, alleys, bridges and other public thoroughfares of the city, for the purpose of collecting, removing and disposing of solid waste material from the businesses and residences of the city, subject to the terms, conditions and exceptions in this article.

(b) This exclusive franchise shall include commercial, industrial, residential and roll-off container services.  
(Code 1976, §9-1)

##### **Sec. 50-62. Vehicles, operators.**

All vehicles used by the contractor to transport solid waste materials shall be of the enclosed type and of leak proof construction and shall meet the requirements for such vehicles established by the respective health authorities of the state and the county. All vehicles operated by the contractor within the city shall be operated by persons duly licensed under the laws of the state to operate such vehicles.  
(Code 1976, §9-4; Ord. 928, §4, 2-15-06)

##### **Sec. 50-63. Performance requirements.**

(a) The contractor shall establish and maintain an office within the City of West Melbourne where such service may be applied for and complaints can be made. It shall be equipped with sufficient telephones, shall have a responsible person in charge during collection hours and shall be open during normal business hours of 8:00 a.m. to 5:00 p.m.

(b) The contractor shall not be required to pick up refuse when the county sanitary landfill is closed.

(c) Following collection of solid waste, all containers shall be placed in an upright position off the parkway, in an approximate location as required in sections 50-33 and 50-34.

(d) Employees of the contractor shall not be required to collect solid waste if the customer has a vicious dog or other animal on the premises that is not properly leashed or otherwise restrained.

(e) All solid waste for disposal shall be hauled to a site or facility legally empowered to accept it for treatment or disposal as approved by the county and the state governing agencies. The contractor shall have vested title to all solid waste materials placed for collection within the corporate limits of the city.

(f) The contractor shall not litter premises in the process of making collections, but he shall not be required to collect any waste material that has not been placed in approved containers, or in a manner provided in this article. During hauling, all solid waste shall be contained, tied or enclosed so that leaking, spilling or blowing are prevented. In the event of spillage by the contractor, the contractor shall promptly clean up the litter.

(g) The contractor is prohibited from landfilling any materials collected for recycling, except that under extraordinary conditions the contractor may petition the city for permission to landfill materials under the recycling program.

(h) The contractor shall obtain and distribute at its cost two 96-gallon garbage carts to each residential unit pursuant to a schedule mutually determined by the city and the contractor. The contractor shall maintain at all times a sufficient number of garbage carts to ensure that extra or replacement garbage carts can be provided to any customer within two business days after notification to the contractor from the city or the customer. The contractor shall distribute fully assembled garbage carts to new residential units that are constructed during the term of this franchise. Customers may purchase additional garbage carts from the contractor for a charge of \$70.00. In the event a customer desires a smaller garbage cart, any customer may obtain a 64-gallon garbage cart within 90 days of the initial start date of the cart program at no charge to the customer. In the event a customer desires to obtain a different size garbage cart after 90 days from the initial start date of the cart program, the customer shall pay a \$25.00 delivery charge for each change.

(i) The contractor shall obtain and distribute at its cost one 96-gallon garbage cart to each non-residential unit that is not required by the city to use a commercial container pursuant to a schedule mutually determined by the city and the contractor. Non-residential customers shall purchase from the contractor sufficient garbage carts to accommodate their solid waste. The contractor shall maintain at all times a sufficient number of garbage carts to ensure that extra or replacement garbage carts can be provided to any non-residential customer covered by this provision within two business days after notification to the contractor from the city or the customer. The contractor shall distribute fully assembled garbage carts to new non-residential units that are constructed during the term of this franchise. The charge for additional or replacement garbage carts to non-residential customers is \$70.00.

(j) Replacement and repair of garbage carts shall be provided by the contractor to any customer at no charge to the customer, unless such repair or replacement is occasioned by the abuse or negligence of the customer. In the event of such abuse or negligence, the cost of any such repair or replacement shall be borne by the customer. If a dispute arises between the contractor and a customer regarding who is responsible for bearing the cost of repair or replacement of any garbage cart, the city manager shall make a determination regarding such dispute. The decision of the city manager determining who is responsible for the cost of such repair or replacement shall be final and binding upon both the contractor and the affected customer.  
(Code 1976, §9-9; Ord. 928, §5, 2-15-06)

#### **Sec. 50-64. Resolution of conflicts, questions.**

In an effort to prevent misunderstanding and litigation, the parties agree that the city manager or his designee shall decide any and all questions which may arise concerning the quality and acceptability of the work and services performed, the sufficiency of performance, the interpretation of the chapter provisions and the acceptable fulfillment of the chapter on the part of the contractor, and the city manager will determine whether or

not the amount, quantity, character and quality of the work performed is satisfactory, which determination shall be final, conclusive and binding upon both the city and the contractor. The city manager shall make such explanation as may be necessary to complete, explain or make definite the provisions of this article, and his findings and conclusions shall be final and binding on both parties unless the city manager's decision is appealed to the city council within 15 days.

*(Code 1976, §9-19)*

**Sec. 50-65. Rights of city to enforce performance.**

The failure of the city at any time to require performance by the contractor of any provisions of this article shall in no way affect the right of the city thereafter to enforce this article. Further, the waiver by the city of any breach of any provisions of this article shall not be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

*(Code 1976, §9-20)*

**Sec. 50-66. State law to govern.**

This article shall be governed by the laws of the state both as to interpretation and performance.

*(Code 1976, §9-21)*

**Sec. 50-67. Compliance with applicable laws.**

The contractor shall conduct operations under this article in compliance with all applicable laws.

*(Code 1976, §9-22)*

**Sec. 50-68. Severability of provisions.**

If any provision of this article shall be declared illegal, void or unenforceable, the other provisions shall not be affected but shall remain in full force and effect.

*(Code 1976, §9-23)*

**Sec. 50-69. Complaints.**

(a) All complaints shall be resolved within 24 hours. The contractor shall prepare a form or maintain a register in the West Melbourne office on all complaints, on a form approved by the city and indicate the disposition of each. Such records shall be available for city inspection at all times during business hours. The form shall indicate the day and the hour on which the complaint was received and the day and the hour on which it was resolved. When a complaint is received on the day preceding a holiday or on a Saturday, it shall be serviced on the next working day.

(b) The contractor and city shall agree who will notify customers regarding complaint procedures, rates, regulations and days of collection.

*(Code 1976, §§ 9-13, 9-14)*

**Sec. 50-70. Routes and schedules.**

The contractor shall periodically provide the city with schedules of residential collection routes and keep such information current at all times. In the event of changes in routes or schedules that will alter the day of pickup, the contractor shall so notify the city manager prior to the 15th of the month of the month preceding the change.

*(Code 1976, §9-15)*

**Sec. 50-71. Contractor's personnel.**

(a) The contractor shall assign a qualified person to be in charge of its operations in the city and shall give the name to the city. Information regarding experience shall also be furnished.

(b) The city has the right to require that the contractor's collection employees wear a clean uniform or shirt bearing the company's name.

(c) Each vehicle operator shall at all times carry a valid driver's license for the type of vehicle he is driving.

(d) The city may request that the contractor prohibit an employee from working for the contractor within the city, if the employee violates any provision hereof, or who is wanton, negligent or discourteous in the performance of his duties.

(e) The contractor shall provide operating and safety training for all personnel.

(f) Wages of all employees of the contractor shall equal or exceed the minimum hourly wages established by local, state or federal governments.

(g) No person shall be denied employment by the contractor for reasons of race, color, religion, sex or national origin.

*(Code 1976, §9-16)*

**Sec. 50-72. Bankruptcy.**

It is agreed that if the contractor is adjudged bankrupt, either voluntarily or involuntarily, then the franchise shall terminate effective on the day and at the time the bankruptcy petition is filed.

*(Code 1976, §9-18)*

**Sec. 50-73. Permits and licenses.**

The contractor shall obtain at his own expense all permits and licenses required by law or ordinance and maintain same in full force and effect.

*(Code 1976, §9-24)*

**Sec. 50-74. Performance bond.**

The contractor shall furnish to the city a performance bond for the faithful performance of the franchise and all obligations arising under it in the amount of \$10,000.00. It shall be executed by a surety company licensed to do business in the state.

*(Code 1976, §9-25)*

**Sec. 50-75. Worker's compensation insurance.**

The contractor shall provide and maintain, during the life of the franchise, worker's compensation insurance, in accordance with the laws of the state, for all of its employees. A certificate shall be filed with the city by the insurance carrier showing such insurance to be in force at all times. The policy shall contain a clause that the insurer will not cancel or decrease the insurance coverage without first giving the city 30 days' notice in writing. A copy of the insurance policy shall be provided to the city.

*(Code 1976, §9-26)*

**Sec. 50-76. Liability insurance.**

The contractor shall provide and maintain, during the life of the franchise, public liability and property damage insurance and umbrella coverage in the following amounts:

- (1) Public liability--\$300,000.00 per person, \$500,000.00 per accident;
- (2) Property damage--\$300,000.00 per any one claim;
- (3) Umbrella liability--\$1,000,000.00 with a \$25,000.00 deductible and/or base insurance;
- (4) Vehicle liability--\$500,000.00 per occurrence;

to protect himself, his agents and his employees from claims for damages for personal injury, including wrongful and accidental death and property damage which may arise from operations under the franchise, whether such operations be performed by himself or his employees. The policy or policies shall name the city as additional insured and shall contain a clause that the insurer will not cancel or decrease the insurance coverage without first giving the city 30 days' notice in writing. A copy of the insurance policy shall be provided to the city.

*(Code 1976, §9-27)*

**Sec. 50-77. Liquidated damages.**

If the contractor fails to perform in accordance with the provisions of this article and/or refuses to pay liquidated damages upon receipt of invoice from the city, the city shall, in addition to the amounts provided in other provisions of this article, be entitled to claim against the performance bond of the contractor as provided in section 50-74 the following amounts:

- (1) Legitimate complaints, section 50-69 (over ten per month), \$ 10.00 each case
- (2) Failure to clean up spillage from vehicles or after having emptied containers, whether on private or public streets, alleys, etc., \$ 25.00 each case
- (3) Failure to keep vehicles closed or covered, \$ 25.00 each vehicle
- (4) Failure to maintain established collection schedules, section 50-37(a), \$250.00 per violation
- (5) Failure to observe hours of collection as provided in section 50-37(b), \$250.00 per violation

Both the city and contractor acknowledge that the damage that accrues as a result of the breaches is uncertain and that the sum of \$50.00 or the above sums are a reasonable sum for liquidated damages and the sum is not a penalty.

*(Code 1976, §9-28)*

**Sec. 50-78. Indemnity.**

The contractor will defend, indemnify, save harmless and exempt the city, its officers, agents, servants and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorney's fees resulting from injury to persons or damage to property arising out of work done in the performance of the franchise except to the extent that such injury or damage is due to the negligence of the city. The city reserves the right to retain counsel of its choice at its own expense, or, in the alternative, approve counsel obtained by the contractor.

*(Code 1976, §9-29)*

**Sec. 50-79. Assignment and subletting.**

No assignment of the franchise or any right accruing under the franchise shall be made in whole or part by the contractor without the express written consent of the city council. In the event of any assignment, the assignee shall assume the liability of the contractor and shall be bound by the terms of this article.

*(Code 1976, §9-30)*

**Sec. 50-80. Books and records.**

The contractor shall keep records of wastes collected and charges therefor, and the city shall have the right to review those records which in any way pertain to the payments due him.

*(Code 1976, §9-31)*

**Sec. 50-81. Point of contact.**

All dealings, contacts, notices, etc., between the contractor and the city shall be directed by the contractor to the city manager or his delegated authority, at the City of Satellite Beach, Florida and by the city to the manager of Harris Sanitation, Inc., 7382 Talona Drive, Melbourne, Florida.

*(Code 1976, §9-32)*

**Sec. 50-82. Service of notice.**

A letter addressed and sent by certified United States mail, return receipt requested, to either party at its business address shown in section 50-81 shall be sufficient notice whenever required for any purpose in this article.

*(Code 1976, §9-33)*

**Sec. 50-83. Acceptance and effective date.**

The contractor shall file with the city clerk its acceptance of this article within 15 days from the date of its final passage and the contractor shall begin collection of solid wastes as covered in this article beginning April 1, 1989.

*(Code 1976, §9-34)*

**Sec. 50-84. Term.**

The term of the franchise granted by the city to the contractor shall be through July 31, 2009.

*(Code 1976, §9-35; Ord. 680, §2, 6-4-97; Ord. 886, §1, 7-21-04)*

**Sec. 50-85. Option to renew.**

The franchise may be extended for successive five-year extensions upon mutually agreeable terms. The city shall provide written notice to extend at least 120 days prior to the end of the term or the expiration date.

*(Code 1976, §9-36; Ord. 680, §3, 6-4-97)*

**Sec. 50-86. Modification.**

This article constitutes the entire franchise and understanding between the parties to the franchise, and it shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the contractor and the city.

*(Code 1976, §9-37)*

**Sec. 50-87. Default of contract.**

(a) If the contractor abandons, delays unnecessarily in the performance of, or in any manner refuses or fails to comply with any of the terms of this article, or neglects or refuses to comply with the instructions of the city manager or his designee relative thereto, the city manager shall notify the contractor, in writing, of such abandonment, delay, refusal, failure or neglect and direct it to comply with all provisions of the article. A copy of such written notice shall be mailed to the surety on the performance bond. The city manager shall hear the matter at open session within ten days of the date of the written notice and shall, not less than five days prior to the date of such hearing, notify the contractor and the surety on the performance bond of the date and place thereof. The contractor agrees to be present at such hearing and show cause why he has abandoned, delayed, refused, failed or neglected to comply with the terms of this article.

(b) If the contractor fails to appear or fails to show cause why it has abandoned, delayed, refused, failed or neglected to comply with the terms of the contract to the satisfaction of the city manager, the city manager may, with the consent of the city council by resolution, declare a default of the franchise and notify the contractor and the surety on the performance bond of such declaration of default.

(c) Upon such declaration of default, all payments due the contractor shall be retained by the city and applied to the completion of the franchise and to damages suffered and expense incurred by the city by reason of the default, unless the surety on the performance bond shall assume the franchise, in which event all payments remaining due the contractor at the time of default, less amounts due the city from the contractor and less all sums due the city for damages suffered and expense incurred by reason of the default, shall be due and payable to the surety. Thereafter, the surety shall receive monthly payments equal to those that would have been paid the contractor had the contractor continued to perform the franchise. If the city is required to bring any type of action to enforce the terms and conditions of this article, the contractor agrees to pay, in addition to any damages awarded, all costs and reasonable attorney's fees incurred by the city.  
(Code 1976, §9-38)

**Sec. 50-88. Payment to city.**

In return for the privilege of collecting and disposing of solid waste within the city, the contractor shall pay the city an amount equal to ten percent of gross revenues generated from any services rendered under this franchise agreement within the city. All recyclable materials shall be sold through commercial markets, which markets shall be developed jointly by the city and the contractor. The city, as owner of the recyclable materials, shall cooperate with the contractor in the sale of these materials. The contractor shall pay to the city all proceeds of sale of recycled materials. Payments shall be made on a quarterly basis.  
(Code 1976, §9-39; Ord. 680, §4, 6-4-97)

**Sec. 50-89. Attorney's fees.**

If any litigation arises out of the franchise agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs, including attorney's fees, for any appeal.  
(Code 1976, §9-40)

**Sec. 50-90. Garden trash collection.**

(a) *Commencement.* The contractor shall have a separate collection of garden trash as described in this section. The contractor shall pick up all properly prepared garden trash placed at the curb or at the designated collection point from each single-family residence, individual multiple-family residence and bulk multifamily residence, not less than one time per week. The contractor shall notify the customers of the applicable schedule of garden trash collection at least ten days prior to an alteration of the schedule.

(b) *Standards of collection and operation.* The contractor shall only remove garden trash placed at the curb from all residences that receive regular residential solid waste collection service. Garden trash shall be prepared as follows: All garden trash that can fit in a garbage cart shall be so placed. All leaves and pine needles, ornamental shrubs, clippings and tree trimmings with branches less than three inches in diameter and comprising not more than one cubic yard shall be placed in the cart. Up to 20 branches from Queen and Royal Palms shall be collected in a garbage cart provided that same are cut appropriately and placed in the cart separate from all solid waste. Tree limbs exceeding three inches in diameter and comprising more than one cubic yard or Queen or Royal Palms exceeding 20 branches shall be collected as garden trash--Bulk. Tree branches or Queen or Royal Palm branches that do not fit in a garbage cart shall be cut into lengths not exceeding four feet, 12 inches in diameter, 50 pounds per item, and separated from other solid waste. Plastic bags shall not be used for garden trash disposal.

(c) *Garden trash public awareness campaign.*

(1) The contractor shall assist the city in conducting a public awareness campaign to promote the city's garden trash program.

(2) The contractor shall provide, at its expense, an article detailing the requirements and procedures of the garden trash collection program to the city by June 8, 1992, for inclusion in the June Beachcaster.

(d) *Compensation for garden trash collection service.*

(1) For providing garden trash collection service as specified in this section, for each single-family residence, the contractor shall be compensated at the rate of \$0.85 per month, per unit serviced.

(2) For providing garden trash collection service as specified in this section, for each residential condominium unit or townhome unit, the contractor shall be compensated at the rate of \$0.64 per month, per unit serviced.

(Code 1976, §9-41; Ord. 928, §6, 2-15-06)

**Secs. 50-91 thru 50-110. Reserved.**

## **Division 2. Street Sweeping Services**

**Sec. 50-111. Scope of work.**

(a) The contractor will clean all streets owned and maintained by the city as designated on the map which is on file in the city clerk's office on a quarterly basis consisting of four sweepings per year. A sweeping schedule shall be provided to the public works director. Any change in the schedule shall be reported to the public works director by the 15th of the month preceding the month the schedule changes.

(b) The contractor will maintain the schedule according to the map on file in the city clerk's office except in the case of inclement weather, such as heavy rain, and holidays. Holidays will be New Year's, Memorial Day, Fourth of July, Labor Day and Christmas.

(c) Sweeping will be done between the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday, and 9:00 a.m. to 7:00 p.m. on Saturday.

(d) The contractor will supply all equipment necessary to maintain the required schedule, including backup equipment.

(e) The contractor will be responsible for disposal of all debris. Disposal shall be in conformance with law.

(f) The contractor will provide sufficient sweepers to completely sweep the city within a one-week period of time.

(g) The contractor shall sweep, free of charge, the following city parking lots: Civic Center, Pelican Beach Park, DeSoto Recreation Complex, City Hall/Police Department Complex and Fire Station (South Patrick Drive).

(h) Private streets in the city, where the contractor collects solid waste, shall be swept if the appropriate homeowners association or property owners request the contractor to provide the service.  
(Code 1976, §9-17(a))

**Sec. 50-112. Obligations of contractor.**

(a) The contractor must have a supervisor or foreman available at all times to direct street sweeping operations. This supervisor or foreman will report to the director of public works or his designee any problems, and give progress reports.

(b) The contractor will maintain the frequency of sweeping as agreed upon as closely as possible subject to adverse weather conditions, such as heavy rain. The contractor will not be required to do any hand sweeping nor will the contractor be required to return to an area blocked by parked vehicles which inhibit sweeping.

(c) The contractor agrees not to sublet or assign the street sweeping contract in whole or in part without the approval or the authorization of the city.  
(Code 1976, §9-17(b))

**Sec. 50-113. Equipment specifications.**

(a) Sweeping shall be done with an air sweeper or like equipment approved by the public works director.

(b) Sweepers must be equipped with two gutter brooms and capable of sweeping a minimum of an eight-foot path.

(c) Machines must be capable of dumping directly into containers provided by the contractor or transporting debris to disposal locations selected by the contractor.

(d) Machines must be equipped with an efficient water spray system for dust control.

(e) The contractor shall be required to maintain insurance pursuant to section 50-76.

(f) Sweepers must be in good working condition throughout the life of the contract.

(g) A sufficient supply of spare brooms and parts must be kept on hand to ensure continuous operation.  
(Code 1976, §9-17(c))

**Sec. 50-114. City to provide adequate hydrants.**

The city will provide adequate hydrants throughout the city for filling water spray systems.  
(Code 1976, §9-17(d))

**Sec. 50-115. Charges.**

(a) The charges for the street sweeping services and disposal of debris are as follows:

- (1) Residential--\$0.22 per month per residential unit.
- (2) Commercial--\$0.20 per cubic yard per month.

(b) These rates are in addition to rates charged for monthly solid waste disposal service. Street sweeping charges are not subject to franchise fees.

*(Code 1976, §9-17(e))*

**Sec. 50-116. City's right of evaluation.**

The city will evaluate the sweeping proposal for a period of six months and the city retains the right to cancel this service after the six-month evaluation period.

*(Code 1976, §9-17(f))*

**Secs. 50-117 thru 50-135. Reserved.**

**ARTICLE IV. CHARGES, RATES, FEES AND BILLING PROCEDURE**

**Sec. 50-136. Rates.**

For any services required to be performed under this chapter, the charges shall not exceed the rates as fixed or provided by the contract. For solid wastes collected in the manner provided below, the rates shall not exceed the following:

(1) *Regularly-scheduled garbage collection twice each week, parkway (curbside):*

Residential      \$5.98 per dwelling unit/per month

(2) *Non-containerized commercial accounts:*

Businesses      \$0.70 per can, per pickup  
                     \$4.21 loose cu. yd. per pickup  
                     \$10.19 per month minimum

(3) *Containerized accounts, service rate exclusive of container rental or purchase:*

Multiple dwellings and businesses:      \$3.30 per cu. yd., per pickup

(4) *Container monthly rental rates:*

- a.      2 yard . . . . . \$20.03
- b.      3 yard . . . . . \$24.14
- c.      4 yard . . . . . \$26.71
- d.      6 yard . . . . . \$29.37
- e.      8 yard . . . . . \$37.38

*(Code 1976, §9-10(a) thru (e); Ord. 886, §2, 7-21-04)*

**Sec. 50-137. Special haul service.**

For items requiring disposal which are not covered under the definition of "solid waste" contained in this chapter, the charges are to be negotiated between contractor and generator prior to collection. If agreement cannot be reached, the matter may be submitted to the city, and the city's decision shall be binding. The contractor shall collect all items requiring special haul services no later than the third regular pickup day after the items are placed for collection.

(Code 1976, §9-10(f))

**Sec. 50-138. Deposits.**

A deposit shall be paid to the contractor on all new or reinstated delinquent commercial accounts in an amount equivalent to one month's collection fee. The deposit may be applied to any account not paid within 30 days; or, upon request of a user terminating service, the deposit may be applied to the customer's final billing.

(Code 1976, §9-10(g))

**Sec. 50-139. Delinquent accounts.**

(a) *Termination of service.* If any account is not fully paid within 50 days from the billing date, the account shall be deemed delinquent. The customer shall be sent a written notice of such delinquency. If any delinquent account is not paid in full within ten days after the billing of such notice, collection service shall cease and the city shall be notified by the collector that enforcement of this article is required.

(b) *Delinquent charge.* A delinquent charge of five percent may be charged on the balance of any account remaining unpaid after 60 days from the billing date.

(c) *Reinstatement of delinquent accounts.* Any delinquent account may be reinstated upon payment of the past due balance, any delinquent fee and the necessary deposit. Service to such reinstated accounts shall resume upon the next scheduled collection day after the reinstatement.

(Code 1976, §9-10(h))

**Sec. 50-140. Charges for recycling services.**

Charges for recycling shall initially be established at the rate of \$1.89 per month for each residential unit. All other charges for recycling services shall be established by resolution of the city council.

(Code 1976, §9-10(j))

**Sec. 50-141. Billing.**

Billing of service charges, deposits and delinquent amounts shall be accomplished as follows:

- (1) *Residential.* Residential accounts shall be billed monthly by the City of Melbourne acting as billing agent for the City of Satellite Beach and the contractor. The City of Melbourne shall remit payment monthly based on cash receipts directly to the contractor. If the billing relationship and/or fees change within the term of the contract, the contractor may seek adjustments to the contract under section 50-142(b).
- (2) *Commercial.* Commercial accounts shall be billed monthly in advance by the contractor.
- (3) *Roll-off.* Roll-off accounts shall be billed bimonthly by the contractor.

- (4) *Contractor to provide information.* The contractor shall be responsible for providing information to the City of Melbourne regarding charges and billing rates in accordance with the franchise.

*(Code 1976, §9-10(i))*

**Sec. 50-142. Adjustments to rates.**

(a) Beginning August 1, 2004, and for subsequent years of the term of the franchise agreement with the exception of the year beginning August 1, 2004, the monthly rate charged to the customer by the contractor shall be adjusted upward or downward to reflect changes in the cost of doing business as measured by fluctuations in the Consumer Price Index (CPI Urban Consumers all items U.S.), published by the U. S. Department of Labor, Bureau of Labor Statistics. The monthly rate shall be adjusted annually, based on the net CPI change for the preceding 12-month period provided that the net increase shall not exceed five percent; provided, however, that there will be no rate increase effective August 1, 2004. The rate in effect as of August 2, 2003, will remain in effect through July 31, 2005, for all collection services rendered under the agreement. Any decrease in the CPI would not be subject to the agreement. Any decrease in the CPI would not be subject to the five percent limitation, but would be negotiable between the customer and the contractor.

(b) The contractor may petition the city for rate adjustments at reasonable times on the basis of unusual and extraordinary changes in his cost of doing business, such as revised laws, ordinances or regulations; changes in locations of county disposal sites or changes in disposal charges.

*(Code 1976, §9-12; Ord. 680, §5, 6-4-97; Ord. 886, §3, 7-21-04)*

**Sec. 50-143. Excessive debris generated by storm, natural disaster, other calamity.**

In the event excessive amounts of debris or refuse has accumulated by reason of any storm, freeze, natural disaster, severe disturbance, riot, or other calamity (collectively, a "disaster event"), the contractor shall submit to the city a certified estimate of additional payroll cost, equipment and disposal costs to remove and dispose of debris or refuse generated by the event. The contractor shall submit such estimate for review and approval prior to performing additional work. The city council shall determine the validity of the contractor's estimate and, if approved, the city shall furnish written approval to the contractor before any bill may be submitted to the city for payment. The contractor shall not be responsible, or have an obligation, to collect, transport or dispose of debris or other waste material from a disaster event unless the city enters into a written agreement with contractor specifying the terms and compensation for such services. Notwithstanding the foregoing, the city reserves and retains all rights to undertake any actions it deems necessary or appropriate following any disaster event to provide collection of excess debris. This specifically includes, but is not limited to, the city performing, or causing to be performed, the removal of an excessive debris; invoking any interlocal or other agreements to which it is a party; and obtaining any other federal, state or other assistance.

*(Code 1976, §9-11; Ord. 928, §7, 2-15-06)*

END CHAPTER 50