



**CITY OF OVIEDO FLORIDA
400 ALEXANDRIA BLVD, OVIEDO, FL 32765
COUNCIL AGENDA REGULAR SESSION
MONDAY, APRIL 7, 2025
CITY HALL 6:30 PM**

20. Code of Ordinances Section 38-99 Rates Subject to Review

Pursuant to Section 286.0105, Florida Statutes, any person desiring to appeal any decision made by the City Council, with respect to any matter considered at any meeting or hearing, will need a record of the proceedings and may need to ensure that a verbatim record of the processing is made which includes the testimony and evidence upon which the appeal is to be based. This record is not provided by the City of Oviedo.

All services, programs and activities of the City of Oviedo are offered and solicited without regard to race, color, national origin, age sex, religion, disability or family status. For information regarding the City's Title VI nondiscrimination policy, plan and procedures please visit www.cityofoviedo.net.

In accordance with the Americans with Disabilities Act, persons with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk at 407-971-5500 at least 48 hours in advance of the meeting.

Agenda Memorandum

To: Honorable Mayor and City Council Members
Prepared By: Bobby Wyatt, Public Works Director
From: Bryan Cobb, City Manager
Date: April 7, 2025
Subject: **Code of Ordinances Section 38-99 Rates Subject to Review**

Procedure: Discussion

Introduction: This is a request for City Council to provide direction regarding whether or not Code of Ordinances Section 38-99 should be deleted and Section 16 should be removed from the City's Commercial Solid Waste Franchise Agreement (Agreement).

Discussion: At its March 3, 2025 meeting, City Council approved the renewal of Commercial Solid Waste Franchise Agreements with the adoption of Resolution 4575-25. There were nine (9) franchisees renewed. Since that time, staff has learned that one (1) franchisee, Container Rental, was non-responsive in returning the necessary documentation and Agreement. Six (6) franchisees have provided all of the requirements and renewed, and two (2) Franchisees, Waste Management and Waste Pro, have not complied with the Agreement requirements due to concerns with Agreement Section 16, Charges and Rates. Agreement Section 16 reads:

“All charges and rates for commercial garbage collection shall be subject to potential review and approval by the City. The Franchisee shall annually submit to the City a proposed schedule of rates using the Rate Schedules Form in Exhibit D-5. “

Agreement Section 16 is included in the Commercial Solid Waste Franchise Agreement because of Code of Ordinances Section 38-99. Section 38-99 reads:

“The rates of collection charges by private waste collectors shall be subject to review and approval by the city council.”

Staff received a letter from Waste Management, Inc. stating that their rates are a “trade secret” and constitute confidential and proprietary information that Waste Management, Inc. cannot disclose. A copy of Waste Management, Inc.’s letter is provided in Attachment 1.

The question of requiring the rate submittals was brought to the attention of the Assistant City Attorney prior to preparing the Agreements for renewal. The Assistant City Attorney opined that the City has the right to require submission by a prospective franchisee of its rate schedule as part of any application submitted pursuant to Code of Ordinances Article IV, Private Waste Collectors. A copy of the Assistant City Attorney’s legal opinion is provided in Attachment 2.

Budget Impact: There is no budget impact associated with a discussion of whether or not Code of Ordinances Section 38-99 should be deleted and Section 16 should be removed from the City's Commercial Solid Waste Franchise Agreement.

Strategic Impact: A discussion of whether or not Code of Ordinances Section 38-99 should be deleted and Section 16 should be removed from the City's Commercial Solid Waste Franchise Agreement (Agreement) Requirements is consistent with the goal, objectives and strategies of the Resilient Infrastructure and Natural Environment Strategic Focus Area.

Recommendation: It is recommended that City Council provide direction on whether or not Code of Ordinances Section 38-99 should be deleted and Section 16 should be removed from the City's Commercial Solid Waste Franchise Agreement (Agreement) Requirements.

- Attachment(s):
1. Waste Management Letter
 2. Assistant City Attorney Legal Opinion

ATTACHMENT 1



March 11, 2025

Mr. Bobby Wyatt, P.E.
Public Works Director
City of Oviedo
400 Alexandria Blvd.
Oviedo, FL. 32765

RE: Non-Exclusive Franchise for the Collection of Commercial Solid Waste

Dear Mr. Wyatt:

Please have this letter serve as Waste Management Inc. of Florida's (WMIF) response to the City of Oviedo, related to the City's request for rate information in connection with the Non-Exclusive Franchise for the Collection of Commercial Solid Waste.

A compilation of the fees that WMIF charges for its commercial customers in the city constitutes protected pricing information used by WMIF. WMIF maintains the secrecy of the pricing compilation and does not disclose it outside of WMIF. Moreover, WMIF derives value from the compilation not being generally known, and such information would be detrimental in the hands of a competitor. As a result, the compilation of fees requested by the City is a trade secret belonging to WMIF and constitutes confidential information and proprietary information that WMIF must protect and cannot disclose.

We request a meeting with your staff to discuss other financial information that WMIF may share for audit purposes to meet the needs of the City under the Non-Exclusive Franchise.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Jose Boscan

Jose Boscan, Government Affairs Manager
WASTE MANAGEMENT INC. OF FLORIDA

Cc: Mayor Megan Sladek
Amanda Kortus
Lisa Silva, WM
Bryan Wing, WM
Delina Jefferson, WM

ATTACHMENT 2

From: [David W. Hall](#)
To: [Cobb, Bryan](#)
Cc: [Cobb, Bryan](#); [Kortus, Amanda](#)
Subject: Oviedo Commercial Waste Franchise Agreement
Date: Monday, February 3, 2025 12:21:39 PM

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Bobby,

You requested my opinion on the City's practice of requiring the submission of a rate chart when a prospective franchisee applies for a non-exclusive franchise agreement with the City to provide solid waste removal services within the City limits.

In my opinion, the City does absolutely have the right to require the submission by a prospective franchisee of its rate schedule as a part of any application submitted pursuant to Article IV – Private Waste Collectors - of the City's Code of Ordinances.

Sec. 38.99 – Rates Subject to Review - provides as follows: “The rates of collection charges by private waste collectors shall be subject to review and approval by the City Council.”

If a prospective franchisee is not required to submit its rate chart, then the requirement of Sec. 38-99 regarding review and approval by City Council cannot be accomplished and the Code of Ordinances is thus violated.

Franchisees are required to make payments to the City each month and along with each such payment, a detailed report is required to be submitted detailing the services provided by the franchisee, to whom they were provided and the amount charged for such service(s) based on the rate for such service(s) which is listed in the report. Without the City requiring the submission of the rate chart by each franchisee, the City has no way of determining that the franchisee's monthly payment to the City is correct. I realize that the City has audit rights regarding the franchisee payments, but without having the franchisee rate schedule to compare to each payment, monthly audits would be required, which would be very costly and grossly inefficient for the City.

It is my understanding that at least one prospective franchisee has objected to providing its rate schedule to the City. The objecting prospective franchisee contends that its rate schedule is confidential, and requiring that it be submitted to the City constitutes rate fixing thus causing it to be at an unfair advantage. I disagree with such an assertion as all functions of the City are to be carried out “in the sunshine” and to maintain that rate schedules are confidential when dealing with a public entity is not sustainable or defensible. I can find no exemptions in the Sunshine Law that would prevent such a submittal from becoming a public record. Thus, upon submission the rate chart does, in fact, become a public record subject to disclosure pursuant to a public records request as the City has no alternative but to adhere to this requirement of the Sunshine Laws. However, the objecting prospective franchisee would also have the ability to request information regarding rates charged by other franchisees in the City thus eliminating any perceived disadvantage the objecting prospective may have.

It is also my understanding that the several other prospective franchisees have not raised any objection to submitting their rate schedules and have submitted them as part of their respective applications. Thus, to allow this objecting prospective franchisee to refrain from submitting its rate schedule would result in an unfair advantage to it and would run afoul of state procurement requirements.

Likewise, it is my understanding that the same objecting prospective franchisee believes the practice of the City to require prospective franchisees to submit their rate schedule is anti-competitive and may result in price-fixing. Quite the opposite would be true, as the City does not fix the price for services provided by each franchisee and, since the rate schedules submitted do become public records subject to inspection, the practice would, in fact, foster or promote competition.

I was unable to locate any case law on point, but I was able to locate several cities and counties that follow the same practice as the City of requiring the submission of rate schedules by franchisees – Sebastian, Lee County, Palm Beach County, Hallandale and North Miami Beach.

The City's intent and purpose for enforcement of the submission of a rate chart by prospective franchisees is clearly set forth in the Franchise Agreement used by the City: "WHEREAS, the City desires to promote transparency, consistency, and equity in fees charged by Franchisees and allow customers of commercial solid waste services to have the freedom to readily compare pricing and services among franchisees; "

As provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law. Also, Sec. 166.021 (4), Florida Statutes, provides that : "The provisions of this section shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution. It is the further intent of the Legislature to extend to municipalities the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited by the constitution, general or special law, or county charter and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited."

As, previously stated, it is my opinion that the City, pursuant to the Florida Constitution and the Florida Statutes, has the power and authority to require that prospective franchisees for solid waste hauling services within the City submit a rate schedule for the services such prospective franchisee will provide within the City, and that such a requirement does not violate any Federal, State, or local laws or ordinances.

If you need any additional information or have any further questions, please don't hesitate to let me know.

You have my best regards.

David Hall

Assistant City Attorney

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