

**NORTH CAROLINA
ALLEGHANY COUNTY**

SOLID WASTE COLLECTION FRANCHISE ORDINANCE

**AN ORDINANCE GRANTING A SOLID WASTE COLLECTION
FRANCHISE TO ALLEGHANY GARBAGE SERVICE, INC.
(Pursuant to North Carolina General Statute 153A-136)**

**BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE
COUNTY OF ALLEGHANY:**

Section 1. SHORT TITLE:

This ordinance shall be known and may be cited as the “Alleghany County Solid Waste Franchise Ordinance.”

Section 2. DEFINITIONS:

For the purposes of this ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not consistent with the context, 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 plural number. The word “shall” is always mandatory and not merely directory.

- (1) “Business Records” means all documents, papers, letters, plats, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts or other documentary material, regardless of physical form or characteristics made or received by the Company.
- (2) “County” means Alleghany County, North Carolina.
- (3) “Company” means Alleghany Garage Service, Inc.
- (4) "Solid waste" means any solid waste resulting from the operation of residential, commercial, industrial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. Solid waste does not include hazardous waste, sludge, industrial waste managed in a solid waste management facility owned and operated by the generator of the industrial waste for management of that waste, or solid waste from mining or agricultural operations.

Section 3. RESIDENTIAL AND COMMERCIAL RATE:

Residential and Commercial rates shall be initially as set forth on the attached Exhibit “A”, as those rates are varied in accordance with action by the Board of County Commissioners. The fee schedule may be varied by an affirmative vote of a majority vote of the Board of Commissioners. The current fee schedule shall be maintained by the County Manager and shall be available for review upon request.

Section 4. PRICE INCREASES:

During the term of this Franchise and any renewal of the same, the Company shall maintain the stated rates until a rate change is approved by the Board of County Commissioners. Any request for a change in rates must be accompanied by a written request from Company with supporting justification for an increase or decrease. The

Board may consider justification for a change in rates, to include, but not be limited to (1) increase in the cost of living index; (2) increase in fuel costs; (3) increase in insurance costs; (4) an increase in landfill charges.

Section 5. TERM OF FRANCHISE:

The term of this franchise is ten (10) years and shall continue in full force and effect during this period of time unless terminated as permitted below.

Section 6. ADDITIONAL RATES:

For specific types of pickups other than those stated above, there shall be charges allowed as per individual contract, so long as such contracted charges shall be reasonably in accord with the above rate, as amended.

Section 7. EXCLUSIVE GRANT:

This franchise is exclusive. The County may not grant the same or similar rights and privileges to other persons while the franchise is in effect. However, this ordinance shall not apply to industrial or commercial business that requires equipment or capabilities beyond those available to Franchisee. Further, this ordinance does not require any citizen, resident or commercial entity to use the services provided by the Franchisee holder.

Section 8. TERRITORY:

This Franchise is granted for all unincorporated territory within Alleghany County. The Franchisee must service any and all residents and commercial properties within Alleghany County that apply to the Company for pickup at a bona fide residence, industrial or commercial facility so long as Company has facilities and equipment to accommodate the pickup requirement. Failure to provide service at a bona fide residence, industrial or commercial facility due to the Company's lack of facilities and equipment (other than as noted in Section 7 above) may be cause for the forfeiture of this franchise and all rights here under. No person or commercial enterprise is entitled to service unless current in payment for previously provided services.

Section 9. DISPLAY OF NAME:

The Company must prominently display its name and phone number on each vehicle used to collect solid waste.

Section 10. LAWS AND ORDINANCES:

The Company shall, at all times during the term of this franchise, be subject to and in compliance with the provisions of the present Charter of the County, the current ordinances, resolutions, rules and regulations of the County, and the laws of the State of North Carolina, and the United States Government so far as they may be applicable, especially with regard to environmental regulation.

Section 11. FORFEITURE:

Any violation by the Company of the provisions of this franchise or the failure by the Company to promptly perform any of the provisions herein shall be cause for the forfeiture of this franchise and all rights hereunder. The County may revoke and terminate this franchise following a thirty (30) day written notice to the Company that a

violation of the ordinance has occurred and Company fails to cure the breach or nonconforming activity.

Section 12. COMPANY TO SAVE COUNTY HARMLESS:

- (1) The Company shall hold harmless the County and the County's officers, agents and employees from every loss, cost, expense, claim, judgment, execution, suit or demand resulting or in any manner arising from the action or inaction of the Company in operating its solid waste collection service.
- (2) If the County or any officer, agent or employee of the County is sued in any court by any person or account of the action or inaction of the Company in operating its solid waste collection service or exercising or failing to exercise any right or privilege granted by this franchise, the Company shall defend all such suits and pay the final judgment resulting therefrom, and shall, at the option of the County or any officer, agent or employee of the County who is a defendant in such suit, be made a party to the suit.

Section 13. COUNTY TAKING PART IN LITIGATION:

The Company shall not object to County's taking part, by intervention or otherwise, at its option, in any suit, action or proceeding instituted by or against the Company in which any judgment or decree or act can be rendered foreclosing any lien on any of the Company's property, or affecting the right, powers or duties of the Company to do or not to do anything which by this franchise it is obligated or may be require to do or not to do, and also to taking such steps in any such proceeding as may be deemed essential by the County to protect the interest of the public or the County.

Section 14. ACCESS TO BUSINESS RECORDS:

The County shall have access to business records of the Company at all reasonable times. The Company shall provide to the County a copy of any business record requested by the County, at the Company's expense. This section does not apply to any business record made private by any state or federal law or regulation, to personnel records of the Company, to proprietary or trade secret information contained in business records or to information which is privileged under the attorney-client relationship.

Section 15. BANKRUPTCY OR RECEIVERSHIP:

Should the Company go into bankruptcy or into the hands of a receiver or other court officer, either voluntarily or involuntarily, or reorganize or merge or consolidate under provisions of law, or should the properties and business of the Company be foreclosed or sold to satisfy any lien or indebtedness or obligation of the Company, the interest, rights and remedies of the County in respect to said properties and operations shall not be affected or prejudiced, and any receiver, assignee, trustee, purchaser, or successor, whether by operation of law or otherwise, so succeeding to or representing the interest or position of the Company in respect to the property shall be bound by this ordinance and the terms and provisions hereof, and shall be bound to carry out and perform the obligations and duties imposed upon the Company by this ordinance.

Section 16. ACCEPTANCE:

This franchise and its terms and provisions shall be accepted by the Company in writing, executed and acknowledged by it in such way as may be necessary to meet the approval of the County Attorney, and filed with the County Manager, who shall record the same in the Book of Ordinances.

Section 17. EFFECTIVE DATE

This ordinance is effective from and after the date of its adoption.

This Ordinance shall take effect and be enforced on the 19th day of January, 2005.

Adopted this the 19th day of January, 2005.

ATTEST:

(sig: Karen Evans)
Karen Evans
Clerk to the Board

(County Seal)

ALLEGHANY BOARD OF COMMISSIONERS:

(sig: Eldon Edwards)
Eldon Edwards, Chair

(sig: Warren Taylor)
Warren Taylor, Vice-Chair

Absent
Graylen Blevins, Member

(sig: Sandy Carter Herndon)
Sandy Carter Herndon, Member

(sig: Ken Richardson)
Ken Richardson, Member

FILED
ALLEGHANY COUNTY
LIZABETH REEVES ROUPE
REGISTER OF DEEDS

FILED	Jan 21, 2005
AT	08:18:39 am
BOOK	00278
START PAGE	0269
END PAGE	0273
INSTRUMENT #	28239

Alleghany County, NC
Lizabeth Reeves Roupe
Register of Deeds
Filed for registration January 21, 2005, At 8:18:39 am
Ordinance Book 1 Page 220

Exhibit "A" to Ordinance

RESIDENTIAL RATE:

As of the date of the passage of this ordinance the residential rate is as follows: Residential curb collection, once per week, is \$14.00 per month.

COMMERCIAL RATE:

As of the date of the passage of this ordinance the commercial rates are as follows: The rate varies from Fifty (\$50) Dollars per month to One Hundred (\$100)

Dollars per month depending on the size of the dumpster used by the customer as

follows:

2 cubic yards container	\$50;
3 cubic yards container	\$55;
4 cubic yards container	\$65; and
6 cubic yards container	\$100