




MEMORANDUM

TO: Honorable Vice Mayor & Members of the City Council
FROM: James Stokes, City Attorney 
COPY TO: Russ Blackburn, City Manager
Carmen Capezzuto, Director, Neighborhood Services
Mike Lubeck, Assistant Director, Neighborhood Services
SUBJECT: Solid Waste Issues
DATE: July 12, 2021

Neighborhood Services Department is proposing adjustments to the solid waste operations to improve services to our residents and business owners. The Legal Department has met with NSD and reviewed the areas of proposed change. After a thorough review of the existing Solid Waste Agreement, it appears that many of the proposed changes are already consistent with the Agreement and, therefore, can be codified. Inclusion in the Code of Ordinances will enable enforcement of those provisions through Code Enforcement or other legal process. There are a few items, however, that will require an amendment or addendum to the existing Solid Waste Agreement before they can be included in an ordinance. This is because an ordinance cannot change the terms of a lawful contract.

Both the state and federal constitutions prohibit the impairment of contract. [See Art. I, § 10, *U.S. Constitution*; Art. I, §10, *Fla. Constitution*]. It is a hallmark in Florida law that contracts are protected from impairment, and the Florida Supreme Court has unequivocally stated that “[t]he right to contract is one of the most sacrosanct rights guaranteed by our fundamental law. It is expressly guaranteed by Article I, Section 10 of the Florida Constitution.” *Chiles v. United Faculty of Fla.*, 615 So. 2d 671, 673 (Fla. 1993); see also *In re Advisory Opinion to the Governor*, 509 So. 2d 292, 314 (Fla. 1987) (“It is ... indisputable ... that rights existing under a valid contract enjoy protection under the Florida Constitution.”). The Florida Supreme Court has ruled that a law “impairs a contract” when it has the effect of rewriting terms in a manner that changes the rights, obligations, or privileges contained in a preexisting contract. *Searcy, Denney, Scarola, Barnhart & Shipley, etc. v. State*, 209 So. 3d 1181, 1191 (Fla. 2017).

So, while an ordinance cannot change any current term in the Solid Waste Agreement, the City and Waste Pro control the language of this Agreement. Should the City and Waste Pro choose to make amendments to the Agreement, those new terms can subsequently be included in a city ordinance in order to ensure compliance and enforceability.

The changes proposed by Neighborhood Services include provisions which currently conform to the language of the Solid Waste Agreement and therefore require no amendment to the contract. This include the following:

- ✓ Definitions: Biomedical waste, bulk waste, contractor, collection container, commercial property, construction and demolition waste, contractor, director, disaster debris, etc.
- ✓ Specifying the types of waste generated in the city that requires mandatory collection by the contractor.
- ✓ Specifying the exempt waste from pickup: land clearing debris, construction and demolition waste exceeding 2 cubic yards per service, roofing materials, excavated fill and earthen material, sludge, etc.
- ✓ General set out provisions for collection of garbage and recyclable material for residential and multi-family dwellings.
- ✓ Setting schedule for residential collection of garbage rubbish yard waste, bulk waste, and recyclable materials.
- ✓ Specifying requirements for collection containers (garbage cans, recycling carts and mechanical containers)
- ✓ Dispute resolution process for questions and controversies arising from the quality and sufficiency of the contractor's services.
- ✓ Defining prohibited acts: setting out solid waste on properties where the waste was not generated, hazardous and radioactive waste, etc.
- ✓ Violations and penalties: requiring property owners, occupants, tenants to be responsible for complying with the regulations specified in the code.

The following items would require a negotiation and amendment to the current Solid Waste Agreement, which could be contained in an addendum to the Agreement:

- ✓ Prohibiting setting out trash for collection in plastic bags. Currently, the Agreement allows customers to deposit trash in either trash containers or plastic bags.
- ✓ Limiting curbside piles to 6 cubic yards per collection day. Currently, the Agreement allows for curbside piles of bulk items without size limitation.
- ✓ Limiting yard waste piles to 4 cubic yards. Currently, the Agreement does not limit the amount of yard waste set curbside for collection.
- ✓ Special handling of move-out and/or eviction piles. The Agreement does not define a "move-out" or "eviction" pile and, therefore, such waste is included in the basic "bulk waste" provisions, which provide no limitation on the size of the curbside pile.