



**AN ORDINANCE GRANTING AN EXCLUSIVE FRANCHISE TO
TIDEWATER FIBRE CORP., d/b/a TFC RECYCLING
FOR THE COLLECTION AND PROCESSING OF RECYCLING MATERIALS
FROM RESIDENTIAL UNITS IN THE TOWN OF NAGS HEAD**

WHEREAS, the Town of Nags Head (NAGS HEAD), North Carolina has the responsibility to provide for the health and welfare of its citizens; and

WHEREAS, the Town Board of Commissioners recognizes the responsibility Nags Head has to safeguard our naturally unique Outer Banks environment; and

WHEREAS, recycling has proven effective in the reduction of solid waste placed in landfills; and

WHEREAS, NAGS HEAD has offered recycling services for many years to our citizens and visitors from which certain recyclables are collected for reuse; and

WHEREAS, in response to requests from citizens to maintain a residential curbside recycling program, the Board of Commissioners has determined that it is in the best interest of the Town, its citizens, and visitors to grant an exclusive franchise to TIDEWATER FIBRE CORP., d/b/a TFC RECYCLING to provide for the satisfactory and efficient collection, removal, processing, and recovery of solid waste recyclable materials in a manner that encourages use by all.

NOW, THEREFORE BE IT ORDAINED by the Board of Commissioners of Nags Head, North Carolina that Chapter 30 of the Code of Ordinances be amended by replacing Article II. FRANCHISES with the following:

Article II. FRANCHISES

Section 30-20. Intent and Purpose

- (a) NAGS HEAD, pursuant to applicable State Law, is authorized to grant an exclusive franchise for the operation of a public enterprise including solid waste collection and disposal systems, which includes the collection and disposal of recyclable materials.
- (b) The Board of Commissioners finds that NAGS HEAD has the responsibility to provide for the health and welfare of its citizens and recognizes the responsibility of the Town to safeguard the naturally unique Outer Banks environment; that recycling has proven effective in the reduction of solid waste placed in landfills, and the Town has received requests from citizens to establish a curbside recycling program.
- (c) The Board further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers for a curbside recycling program that are vested in the Town or the persons the Town designates.
- (d) It is the intent of this Chapter to ensure that the local franchise operator for the collection of recyclable materials from residential units provides the best possible service to the residents of the Town and any franchise issued pursuant to this Chapter shall be deemed to include these findings as an integral part thereof.

Section 30-21. Short Title

- (a) This Article shall be known and may be cited as *Article II Franchises* and shall become a part of the Ordinances of the Town.
- (b) This chapter shall take effect and be enforced from and after its adoption.
- (c) All Ordinances or parts of the Town of Nags Head Code that conflict with the provisions of this Chapter are hereby repealed.

Section 30-22. Conditions of Curb Side Recycling Franchise

- (a) The franchise granted by the adoption of this Ordinance shall be subject to the following rights of the Town, but this enumeration shall not be exclusive or impair the right of the Board of Commissioners to insert in such franchise any provision within the power of the Town:
- (1) To repeal the same for misuse, non-use or failure to comply with the provisions thereof;
 - (2) To require proper and adequate service and maintenance thereof at the highest practicable standard of efficiency;
 - (3) To establish reasonable standards of service, quality of products and prevent unjust discrimination in service or rates;
 - (4) To require continual and uninterrupted service to the public in accordance with the terms of the franchise throughout the entire period thereof;
 - (5) To use, control and regulate the use of its streets, alleys, bridges and public places and the space above and beneath them;
 - (6) To impose such other regulations as may be determined by the Board of Commissioners to be conducive to the safety, welfare and accommodation of the public.

Section 30-23. Definitions

- (a) For the purpose of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.
- (b) When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

Effective Date. The date the franchise becomes effective in accordance with the franchise ordinance and the rules and procedures of the Town.

Franchise Ordinance. The document which grants a franchise pursuant to this Ordinance.

Franchise Agreement. The document executed by the Town and the Granted pursuant to the authority of the Franchise Ordinance.

Franchise Area.

- (1) The geographic area for which a franchise is granted under the authority of this Chapter.
- (2) If not otherwise specifically stated in the franchise ordinance, the franchise area shall be the entire geographic area within the Town as it is now, or may in the future, be constituted.

Grantee. A person who is granted a franchise or that person's lawful successors, transferees or assigns.

Grantor. The Town of Nags Head.

Person. Any corporation, partnership, proprietorship, individual, organization, company, governmental entity or any natural person.

Reasonable Notice.

- (1) Written notice addressed to the Town or grantee at the location as the parties have designated in the franchise agreement as the address to which notice shall be transmitted to it, which notice shall be sent by certified mail and postmarked not less than seven (7) business days prior to that date on

which the party giving the notice shall commence any action which requires the giving of notice.

- (2) In computing the seven (7) days, holidays recognized by the Town shall be excluded.

Resident. Any person residing in the Town.

Right-of-Way. Each of the following of which have been, are hereafter dedicated to the public and maintained by any public authority or by others and located within the Town, including without limitation, the surface and space within, above and below any real property in which the Town has an interest in law or equity, whether held in fee, or other estate or interest, or as trustee for the public, including, but not limited to, any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, swell, river, tunnel, viaduct, bridge, park, or any place, area, easements, rights-of-way in similar public property and areas, or real property owned by or under the control of the Town.

Subscriber. Any person who or which elects to subscribe to the curbside recycling service provided by a grantee.

Town. The Town of Nags Head, North Carolina as it is now, or may in the future be, constituted.

Town Administrator. A person designated by the Town Manager to represent the Town in all business with the grantee.

Curbside Collection Site. A space within four feet of the paved portion of Nags Head streets.

Eligible Dwelling Units. All single family, two family and multiple family dwelling units serviced by roll-off carts and presently being served by the Town's residential solid waste collection service and all future such units which may be constructed in Nags Head.

Participating Customers. All single family, two family and multi-family residential customers presently being served by Nags Head Public Works Department and Solid Waste Division who contract with grantee/franchisee for the subscription type voluntary curbside recycling program outlined in the franchise.

Recyclable Materials Cart. A 90 to 98 gallon roll-out type container, including a lid and wheels, with a standard recycling logo, and be of a color approved by the Town of Nags Head.

Schedule of Collection. A schedule for the collection of recyclables approved by the Town Administrator.

Section 30-24. Unlawful to Operate Without Franchise.

It shall be unlawful for any person to operate a residential curbside recycling service in the Town without a franchise.

Section 30-25. Exclusive Franchise.

The franchise granted pursuant to this Ordinance is exclusive.

Section 30-26. Scope of Services

The selected franchisee will provide personnel, equipment, materials, and other appurtenances, as may be required, to:

- A. Provide residential curbside collection, on a weekly basis, to include commingled recyclable materials within Nags Head's corporate limits. Collection will occur on Mondays utilizing the existing 96-gallon blue recycling carts. Recyclable materials may include, but not be limited to, old newsprint, clear and colored glass, aluminum beverage containers, tin cans, steel cans, bi-metal cans, plastic bottles, tubs, jugs, and jars, magazines, phonebooks, corrugated cardboard, pressboard, paperboard, and mail from the contractual customers. This list will be subject to change based upon the market for recyclable materials.
- B. Transport collected recyclable materials to a materials recovery facility or any recyclable materials handling and disposition facility other than an incinerator or a landfill.

- C. Make monthly reports to Nags Head detailing weight and constituents of materials collected, methods of processing and/or final disposal, and participation rates of subscribers.
- D. Notify the town Public Works department each service day whenever there is an issue servicing carts or when there are recycling cart capacity issues (i.e., overflow of recycling containers).
- E. Perform account management of subscribers including service billing and collecting (accounts payable/accounts receivable) from participating customers, and keeping and maintaining other financial records, including independent audits. The franchisee shall collect all recyclable materials. The parties may agree to add other items as the market for recyclable materials allows. The franchisee will be responsible for preparing and distributing information to participating customers describing the change and how to comply therewith.

Section 30-27. Additional Required Services.

- A. The franchisee will be responsible for all recyclables collected in accordance with this franchise including any recycling processing costs or disposal charges for contamination, defined as items not included in the list of recyclable materials. Excluding contamination, no more than 10% by weight of all recyclable materials are to be landfilled and/or incinerated without the express written permission of the Town Manager.
- B. The franchisee shall coordinate with the town when subscribers need carts. The town will handle the sale and distribution of recycling carts.
- C. The franchisee is responsible for picking up and removing any materials that have blown out or dropped from trucks or the collection container due to any reason, even if a return trip is required.
- D. All trucks used for collection will be properly marked with recycling signage for identification purposes.
- E. The franchisee shall require each employee to be courteous at all times, to work quietly and shall not allow the use of loud or profane language. The franchisee shall require each employee to work in a diligent manner. The franchisee shall immediately investigate any notice of employee misbehavior and take prompt and appropriate action. Any official or employee of franchisee who is under the influence of alcohol or drugs or demands pay from the residents of a dwelling unit for services rendered, or verbally or physically abuses any resident of a dwelling unit, shall be immediately removed from work, and shall provide no other service to the Town of Nags Head.
- F. The Town of Nags Head Public Works Department shall be notified each service day when recycling collection is complete.
- G. From May 1 to September 30, routes shall begin no earlier than 3 am and finish no later than 12 noon unless authorized by the town. From October 1 to April 30, routes shall begin no earlier than 5 am and finish no later than 1 pm unless authorized by the town. The franchisee shall provide to the town a complete list and map of subscribers.
- H. Leaks and spills shall be handled quickly and appropriately based on the type and amount and according to State and Federal spill response guidelines. Equipment shall be well maintained so as not to allow liquid or solid waste to leak or blow out of the collection equipment.
- I. Holiday collections will be coordinated with the town.
- J. Collection Impediments:
 - 1. Private Streets
The collection routes include private streets, which do not meet town standards and thus may be too narrow for a side loading vehicle to collect and empty recycling carts. In addition, the available turning radius may not accommodate standard collection vehicles. The town requires these streets to be included in the franchisee's proposal for residential curbside recycling services. The franchisee will be responsible for

determining an acceptable method of collection for these private streets and arranging for any special accommodations that maybe necessary to collect recyclables in these areas.

2. Residences Served by Dumpsters

The collection routes also include residences that currently receive garbage collection services via dumpster due to neighborhood configuration. These residences, too, shall be included in the franchisee's proposal for residential curbside recycling services. The franchisee will be responsible for determining an acceptable method of collection and arranging for any special accommodations that may be necessary to collect recyclables in these areas.

Section 30-28. Miscellaneous Provisions.

- A. The franchisee shall furnish all labor, equipment, and supervision necessary to accomplish its full and satisfactory performance of the service. The franchisee shall use only personnel qualified to perform the work assigned and shall see that all work is performed in an efficient and workmanlike manner and in compliance with Federal and State OSHA standards.
- B. EEO. Franchisee shall not discriminate against any employee or applicant for employment because of sex, race, religion, color, creed, handicap, national origin, or ancestry. Franchisee shall post conspicuously a notice of its Equal Employment Opportunity Policy.
- C. Franchisee as Independent Contractor. Nothing in this franchise ordinance may be construed to create the relationship of employer and employee between the franchisee or provider's employees or agents and the town. The franchisee and any sub-contractor employed by the franchisee with the town's consent shall comply with all minimum wage standards, worker's compensation, unemployment compensation and all other federal, state, and local laws pertinent to its employees. The franchisee and any sub-contractor employed by the franchisee with the town's consent shall abide by all applicable local, state, and federal laws and regulations pertaining to the activities carried on under this contract and to its employees and equipment used to fulfill the terms of the service. The franchisee shall take all actions necessary to ensure that any approved sub-contractor complies with all the requirements of this paragraph.
- D. Franchisee's Equipment. The franchisee shall maintain all trucks and equipment used in the performance of this contract in a reasonable clean condition.
- E. Designated Contact Person. The franchisee agrees to assign qualified personnel to oversee the service provided and agrees to provide the names of the personnel to the town.
- F. Continuous Service Required. The franchisee agrees that in the event of equipment breakdown, strike, or other occurrence which would delay or prevent timely performance of its obligations, it shall immediately take action necessary, including, but not limited to, replacement of equipment and personnel in order to assure prompt restoration of regular services and in any case before the next regular collection date.
- G. Excuse of Performance. The performance of any obligation related to the service may be temporarily suspended in the event that performance is prevented by a cause or causes beyond the control of the franchisee and shall be resumed as soon as possible. Such causes shall include, but not be limited to; acts of God, acts of war, riot, fire, explosion, accident, hurricane, and flood.
- H. In the event of flood or hurricane or other natural disaster which interrupts the town's business, the town reserves the right, at no cost to the town, to notify the franchisee to suspend collections until the emergency condition has ended.
- I. Inspection. All services performed by the franchisee shall be subject to the inspection and approval of the town. When the town determines that franchisee's performance is unsatisfactory, the franchisee shall immediately commence action necessary to remedy the problem.

- J. Franchisee to Supply All Licenses. The franchisee shall, at its own expense, purchase and keep in force all business licenses and other licenses and permits required by federal, state, or local law, ordinances, and regulations pertinent to the franchisee's service.
- K. Environmental Considerations. Any costs associated with violations of the law including, but not limited to, remediation, clean-up costs, fines, administrative or civil penalties or charges, and third party claims imposed by any regulatory agency or by any third party as a result of the noncompliance with federal, state or local environmental laws and regulations or nuisance statutes by the franchisee or by sub-contractors, consultants, sub-consultants, or any other persons, corporations or legal entities retained by the franchisee for this service, shall be paid by the franchisee.

Section 30-29. Length of Franchise

It is intended that the franchise be for a term of three years, beginning on or around May 1, 2021 and ending three years from the date of agreement execution. At the end of the initial term, the town may renew the contract for an additional period of time to be agreed upon by the parties.

Section 30-30. Insurance Requirements

During the term of any future agreement between the town and the franchisee, the franchisee shall maintain in full force and effect the following insurance, naming the town as an additional insured. Certificates of insurance shall be submitted to the town within 10 days of the enactment of any future agreement and prior to commencing operation under any future agreement.

Coverage	Liability Limits
Worker's Compensation	Statutory
Employer's Liability	\$500,000
Bodily Injury Liability Except Automobile	\$1,000,000 each occurrence \$1,000,000 aggregate
Property Damage Liability Except Automobile	\$1,000,000 each occurrence \$1,000,000 aggregate
Automobile Bodily Injury	\$1,000,000 each person
Automobile Property Damage Liability	\$1,000,000 each occurrence
Excess Umbrella Liability	\$1,000,000 each occurrence

Section 30-31. Payment for Services.

- (a) As compensation for performing the services required under this Ordinance, the franchisee shall be authorized to collect from subscribers reasonable fees set by Nags Head and collected from subscribers in accordance with the duly adopted fee schedule for the Town. The initial fee schedule shall be in the amount of \$14 for the first cart per month at each participating location, exclusive of any subsidies offered by the town. Participants may subscribe for additional carts to be serviced at a cost of \$8 per cart per month.
- (b) All revenues received by the franchisee from the sale of recyclable materials collected by the franchisee and all fees received by the franchisee from subscribers for services provided hereunder shall become the property of the franchisee.
- (c) Nags Head shall not be responsible for the payment of any federal, state or local taxes due as a result of compensation received by the franchisee pursuant to this franchise and the franchise agreement.

Section 30-32. Rate Review and Adjustment.

- (a) A request for rate adjustment may be made at each anniversary date of the initial three-year term executed by both parties. The rate increase will be based on the percentage change in the most recently available data from the Bureau of Labor Statistics, Garbage and Trash Index, prior to the request. The rate shall not increase more than 5% in any contract year and no more 10% over the life of the initial term. Rate adjustment applications shall be filed by the franchisee ninety (90) days prior to the end of the term to provide adequate time for consideration by the Board of Commissioners. Rate adjustments may be sought for all reasonable grounds. If approved by Nags Head Board of Commissioners in an open meeting, a rate adjustment shall not be effective until at least 60 days from date of approval in order for the franchisee to give all clients a minimum 60 day notice of the approved rate adjustment.
- (b) If a rate adjustment is sought pursuant to this Ordinance, the Town Administrator or Commissioners may require the franchisee to provide a financial audit for the previous year of operations. The audit shall be completed according to generally accepted accounting principles and shall be at no cost to the Town. The auditor shall be chosen by Nags Head with the concurrence of the franchisee. The franchisee shall be entitled to recover the reasonable costs of the audit through the franchisee's rates.

Section 30-33. Termination of Franchise.

Violation by the franchisee of any local, state or federal law or any term or provision of this franchise agreement or filing bankruptcy or failing to maintain insurance required by this ordinance, may result in immediate termination of the franchise without notice by Nags Head, except that either party may terminate the franchise agreement upon 120 days written notice to the other and to all subscribers.

Section 30-34. General Indemnity.

The franchisee shall hold harmless and indemnify Nags Head, its employees, attorneys and agents from any claims, damages, losses and liabilities resulting from the work performed under the provisions of this franchise ordinance and agreement.

Section 30-35. Authority to Execute Franchise Agreement.


Upon the enactment of this ordinance, the Nags Head Town Manager is authorized to enter into a Franchise Agreement with TFC Recycling, Inc, containing the terms as set out in this Ordinance.

This ordinance, entitled:

AN ORDINANCE GRANTING AN EXCLUSIVE FRANCHISE TO TIDEWATER FIBRE CORP.,
d/b/a TFC RECYCLING FOR THE COLLECTION AND PROCESSING OF RECYCLING MATERIALS FROM
RESIDENTIAL UNITS IN THE TOWN OF NAGS HEAD

This ordinance shall be in full force and effect from and after the 3rd day of March 2021.

Adopted and approved by the Board of Commissioners of the Town of Nags Head at their regular meeting held on the **3rd** day of **March 2021**, by a vote of **5** in favor, **0** opposed.


Benjamin Cahoon, Mayor
Town of Nags Head

ATTEST:


Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:

John Leidy, Town Attorney

