

ORDINANCE NO. 2012-1291

AN ORDINANCE OF THE CITY OF POLK CITY, FLORIDA; REPEALING CHAPTER 58, ARTICLE II, CODE OF ORDINANCES, CITY OF POLK CITY, FLORIDA; CREATING A NEW CHAPTER 58, CODE OF ORDINANCES, "THE POLK CITY SOLID WASTE MANAGEMENT ORDINANCE"; PROVIDING FOR CITY CONTROL AND REGULATION OF COLLECTION AND HAULING OF ALL SOLID WASTE IN THE CITY; SETTING FORTH CONDITIONS FOR GRANTING SOLID WASTE HAULING FRANCHISES WITHIN THE CITY OF POLK CITY; ESTABLISHING A TITLE; SETTING FORTH FINDINGS; ESTABLISHING A FRANCHISE APPLICATION AND APPROVAL PROCESS; PROVIDING FOR DISQUALIFICATION OF FRANCHISEE AND NON-RENEWAL OF FRANCHISE; RESERVATION OF CITY RIGHTS; PROVIDING FRANCHISE TERM LIMITS; PROVIDING GENERAL CONDITIONS TO PLACEMENT OF FRANCHISEE'S FACILITIES IN CITY RIGHTS-OF-WAY; PROVIDING FOR COMPLIANCE WITH CODES AND STANDARDS; MAINTENANCE OF FACILITIES; PROVIDING FOR FRANCHISE FEES AND PAYMENT; PROVIDING FOR RATE REGULATION; PROVIDING FOR PERFORMANCE SECURITY; PROVIDING FOR INSURANCE; PROVIDING FOR INDEMNIFICATION; PROVIDING FOR HANDLING OF HAZARDOUS MATERIALS; PROVIDING FOR FRANCHISE TERM AND TERMINATION CRITERIA; PROVIDING FOR CITY RIGHTS AFTER TERMINATION; PRECLUDING ASSIGNMENTS; PROVIDING FOR CITY RIGHTS RELATIVE TO PRE-EXISTING FRANCHISES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR ENFORCEMENT; PROVIDING FOR CONFLICTS; LIMITING APPLICABILITY TO EXISTING RFP; PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF POLK CITY, FLORIDA:

SECTION 1. SHORT TITLE. This Ordinance shall be known as the "Polk City Solid Waste Management Ordinance," and shall be codified in Chapter 58, Code of Ordinances of the City of Polk City, Florida.

SECTION 2. REPEAL OF ARTICLE II, CHAPTER 58, CODE OF ORDINANCES. The City hereby repeals Sections 58-31, 58-32, 58-33, and 58-34 contained in Article II, Chapter 58, Code of Ordinances of the City of Polk City, Florida.

SECTION 3. CITY COUNCIL FINDINGS AND LEGISLATIVE INTENT. The City Council of the City of Polk City hereby makes the following findings and declares its legislative intent as follows:

(1) Chapter 166, Florida Statutes, empowers the City Council of the City of Polk City, Florida, to render municipal services in a manner designed to promote and protect the general health, safety, and welfare of the public.

(2) Section 403.706(14), Florida Statutes, authorizes a municipality to provide by ordinances for solid waste management requirements which are stricter or more extensive than those imposed by the state solid waste management program and rules, regulations, and orders issued thereunder.

(3) Section 403.706(22), Florida Statutes, does not limit the authority of any local government to regulate the collection, transportation, processing, or handling of recovered materials or solid waste in order to protect the public health, safety, and welfare.

(4) The City Council of the City of Polk City hereby determines that in order to serve the needs of the community and protect the public health, safety, and welfare, it is necessary to initiate certain regulations set forth below.

(5) The City of Polk City (the "City") has historically granted franchises for various activities within the City utilizing City rights-of-way.

(6) There is an immediate and continuing need to protect the public health, safety and welfare by assuring that any holder of a franchise within the City carries out the franchised activity in a manner that is beneficial the City residents, does not violate applicable laws and provides protection to the City and its residents from the activities of the franchisees.

(7) Section 166.021(1), Florida Statutes, provides municipalities broad authority, including the governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services. Pursuant to this broad home rule authority, the City may regulate certain activities within the City limits and carry out certain City services by means franchises.

(8) In addition to the broad authority granted to the City under Chapter 166, Florida Statutes, Sections 180.02(1) and 180.06(5), Florida Statutes grant the City the right to provide for the collection and disposal of solid waste within its City limits. Section 180.14, Florida Statutes allows the City to do so by franchising private companies for such term of years and upon such conditions and limitations as may be deemed expedient and for the best interest of the municipality.

(9) Chapter 403, Florida Statutes, recognizes the authority of local governments to provide solid waste hauling services. Sections 403.70605(1)(c) and 403.70605(3), Florida Statutes, recognize the authority of the local government to displace private solid waste haulers by providing for such service itself or pursuant to an exclusive franchise.

(10) The City has determined it is in the best interest of the citizens of the City of Polk City that the City provide for solid waste collection within the City, either with its own employees or through a one or more licensed franchisees acting on the City's behalf, rather than permitting competing private haulers to do so and set their own rates and standards.

(11) Towards that end, the City has determined to adopt ordinances requiring all residential and commercial customers to dispose of wastes via collection and disposal by the City or its duly authorized franchisee.

(12) The City holds the public rights-of-way within its boundaries in trust on behalf of its citizens and has a duty to utilize or permit others to utilize rights-of-way in an appropriate manner while insuring that the City properly manages its resources to the maximum reasonable economic benefit of its citizens.

(13) The City is the sole authority empowered to own, operate and maintain the City streets, easements and rights-of-way within the City and structures located thereon and to grant the use of such streets, easements and rights-of-ways to others.

(14) The City has a continuing duty to regulate the use of its rights-of-ways within the City's jurisdiction in order to protect the health, safety and welfare of the citizens living and working in the City.

(15) The City's powers, both governmental and proprietary, in regard to its rights-of-way have not been preempted by the Florida Legislature.

(16) The Florida appellate decision known as City of Oviedo v. Alafaya Utilities, Inc., 704 So. 2d 206 (Fla. 5th DCA 1998) has construed Section 337.401(1), Florida Statutes, to allow cities to grant the use of their rights-of-way subject to such reasonable rules and regulations governing such use as any such city deems necessary or appropriate.

(17) In order to insure that any franchise fee to be assessed against or negotiated with any franchisee which is granted the authority to use and occupy the City's right-of-way hereunder is appropriate and reasonable, the City declares that it may consider the testimony and advice of experts as to what constitutes an appropriate, reasonable and market-rate franchise fee and will negotiate and determine franchise fees based on such testimony and advice and other relevant considerations.

(18) The City's police powers in regard to its rights-of-way and public lands have not been preempted by the State of Florida. See Florida Power Corporation v. City of Winter Park, Florida, 887 So.2d 1237 (Fla. 2004).

(19) It being within the City's authority to do so, the City hereby establishes the reasonable conditions set forth below which shall be the minimum conditions under which any future solid waste franchises within the City shall be granted by the City.

(20) The City hereby adopts this Ordinance pursuant to the power and authority granted to the City by Article VIII, Section 2, Florida Constitution, Chapters 166, 180 and 403, Florida Statutes.

SECTION 4. MUNICIPAL RESPONSIBILITY. The city is responsible for collection and transportation of solid waste from the city to a solid waste facility operated by a county or operated under a contract with a county pursuant to F.S. 403.706, "Local Government Solid Waste Responsibilities."

SECTION 5. USE OF PRIVATE SERVICES IN SOLID WASTE MANAGEMENT. The city shall use the most cost-effective means for provision of solid waste services. The city may contract with private persons for any or all services or programs in order to assure that such services are provided on the most cost-effective basis pursuant to F.S. 403.706(3). These contracts for private services for collection and disposal of solid waste will be on file with the city clerk's office for public records review.

SECTION 6. SOLID WASTE COLLECTION REQUIREMENTS. The city will provide for solid waste collection and disposal requirements which may be stricter or more extensive than those imposed by state solid waste management programs, rules, regulations and orders pursuant to F.S. 403.706(14), "Local Government Solid Waste Responsibilities."

SECTION 7. DEFINITIONS. The words, terms and phrases, when used in this chapter shall have the meanings ascribed to them in this section, except where context clearly indicates a different meaning:

Accumulations means the collection, piling, heaping and storage of waste, garbage, trash or other material that may create a nuisance affecting the health, safety and welfare of the community.

Biological waste means solid waste that causes or has the capability of causing disease or infection and includes, but not limited to, biomedical waste, diseased or dead animals, and other wastes capable of transmitting pathogens to humans or animals. The term does not include human remains that are disposed of by persons licensed under F.S. ch. 470, "Funeral Directing, Embalming and Direct Disposition."

Bulk trash means any non-vegetative item which cannot be containerized, bagged, or bundled; including, but not limited to, inoperative and discarded white goods, furniture, and similar domestic goods.

City means the City of Polk City

Clean debris means any solid waste which is virtually inert and which is not a

pollution threat to ground water or surface waters and is not a fire hazard and which is likely to retain its physical and chemical structure under expected conditions of disposal or use. The term includes uncontaminated concrete, including embedded pipe or steel, brick, glass, ceramic and other wastes designated by the state department of environmental protection.

Collection specifications means those items which are outlined in the normal and uniform level of service of the solid waste contract or as noted in this article. Commercial service means the service provided to business establishments, churches, schools, office buildings, hotels and other nonresidential establishments using either mechanical containers or other approved containers.

Commercial waste means any and all accumulations of paper, rags, excelsior or other packing materials, wood, paper, cardboard boxes or containers, sweepings and other accumulation not included under the definition of garbage, generated by the operation of stores, offices and other business places. Commercial trash will include furniture, appliances and all other accumulations not included within the definition of garbage, and shall be included in the uniform level of service if properly prepared, consistent with the contract for solid waste collection and this article.

Compactor means any container which has compaction mechanism(s), whether stationary or mobile, all inclusive.

Construction and demolition debris means materials generally considered to be not water soluble and nonhazardous in nature, including but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum, wall board and lumber from the construction or demolition project, and including rocks, soils, tree remains, trees and other vegetative matter which normally results from land clearing or land development operations for a structure at a site remote from the construction or demolition project site, Mixing of construction and demolition debris with other types of solid waste, including material from a construction or demolition site, which is not from actual construction or destruction of a structure, will cause it to be classified as other than construction and demolition debris.

Container means a thing that contains and holds solid waste or recovered materials for collection such as carts, dumpsters, bins, boxes, crates and cans or a cart or dumpster designed or intended to be mechanically dumped or loaded. Contractor means the contractor for the city who has a current solid waste, recycling and yard waste collection franchise or service agreement with the city. Curbside means the designated physical location for the placement of solid waste accumulations and containers intended for residential service collection and disposal. This designated location shall be as near as possible to the traveled streets or alley within five feet of the curb right-of-way.

Disposal means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or upon any land or water so that such solid waste or hazardous waste or any constituent thereof may enter other lands or be emitted into the air or discharged into any waters, including ground water or otherwise enter the environment.

Dumpster means a detachable container used for commercial service and

designed or intended to be mechanically dumped into a loader/packer type truck used by the compactor. Dumpster sizes shall range from two cubic yards to eight cubic yards.

Garbage means all putrescible waste which generally includes but is not limited to kitchen and table food waste, or any organic waste that is attendant with or results from the storage, preparation, cooking, or handling of food materials whether attributed to residential or commercial activities. All garbage shall be containerized and not commingled with yard waste. Garbage shall not include any material that falls within the definition of special waste.

Generation means the act or process of producing solid or hazardous waste.

Hauler or franchisee means any person collecting recyclable or other solid waste materials within the incorporated areas of the city or transporting solid waste materials collected within the incorporated areas of the city.

Hazardous substance means any substance which is defined as a hazardous substance in the United States Comprehensive Environmental Response, Compensation and Liability Act of 1980, 94 stat. 2767.

Household trash means accumulations of paper, magazines, packaging, containers, sweepings and all other accumulations of a nature, other than garbage or yard waste, which are usual to housekeeping and to the operations of stores, offices and other business places.

Land disposal means any placement of any solid or hazardous waste in or on the land and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt bed formation, salt dome formation, or underground mine or cave or placement in a concrete vault, or bunker intended for disposal purposes.

Mechanical container means any detachable metal container or other container designed or intended to be mechanically dumped into a loader or packer type solid waste collection vehicle.

Person means any and all persons, natural or artificial, including any individual, firm, or association, any municipal or private corporations organized or existing under the laws of the State of Florida or any other state, any county of the State of Florida; and any governmental agency of the State of Florida or the United States Government.

Recovered material means metals, paper, glass, plastic, textile or rubber material that have known recycling potential, which can be feasibly recycled and have been diverted and source separated or have been removed from the solid waste stream for sale, use or reuse as raw materials, whether or not the materials require subsequent processing or separating from each other; but does not include materials destined for any use that constitutes disposal. Recovered materials as described above are not solid waste.

Recyclable material means those materials which are capable of being

recycled and which would otherwise be processed or disposed of as solid waste.

Refuse means both garbage and trash or a combination or mixture of garbage and trash, excluding recyclable materials.

Residential service means and includes service to single-family residences, duplexes, triplexes, apartments, mobile home units, multi units and condominiums; which shall be charged per living unit the designated per collection fee for residential services.

Sludge includes the accumulated solids, residues, and precipitates generated as a result of waste treatment or processing, including waste water treatment, water supply treatment, or operation of an air pollution control facility and mixed Liquids and solids pumped from septic tanks, grease traps, privies or similar waste disposal appurtenances.

Solid waste means sludge unregulated under the Federal Clean Water Act or Clean Air Act, sludge from waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial mining, agricultural or governmental operations. Recovered materials as defined in this section are not solid waste.

Solid waste disposal facility means any solid waste management facility which is the final resting place for solid waste, including landfill and incineration facilities that produce ash from the process of incinerating municipal solid waste.

Solid waste management means the process by which solid waste is collected, transported, stored, separated, processed or disposed of in any other way, according to an orderly, purposeful and planned program which includes closure and long-term maintenance.

Source separated means the recovered materials are separated from solid waste where the recovered materials and solid waste are generated. The term does not require that various types of recovered materials be separated from each other and recognizes that minimis solid waste, in accordance with industry standards and practices, may be included in recovered materials.

Special wastes means solid wastes that can require special handling and management, including but not limited to, white goods, waste tires, used oil, lead acid batteries, construction and demolition debris, ash residue, yard trash and biological waste.

Trash means all accumulation of paper, glass, metal, excelsior, rags, wooden or paper boxes and containers, sweepings, broken toys, tools, utensils, and all other accumulations of a similar nature other than garbage, which are usual to residential housekeeping and to the operation of stores, offices and other business places, but shall not include yard waste. Trash shall be containerized.

Uniform level of service means any and all collection of garbage and trash, whether commercial or residential, which conforms to the preparation and storage requirements set by the city or its contractors' service agreement.

White goods includes inoperative and discarded refrigerators, ranges, water heaters, freezers and other similar domestic and commercial large appliances. Yard waste means horticultural matter resulting from site specific landscape maintenance, including accumulation of lawn grass, shrubbery cuttings, or clippings and leaf rakings, palm fronds, tree branches which shall not exceed five feet in length and not weigh more than 50 pounds, or other matter usually created in the care of lawns and yards.

SECTION 8. COLLECTION BY CITY. All solid waste, recovered materials and recyclable materials accumulated and generated in the city and placed out for collection, shall be collected, conveyed and disposed of by the city or its designated agents, franchisees, licensees, employees or contract representatives. No other person or entity shall collect, convey over any of the streets or alleys of the city, or dispose of any refuse accumulated in the city.

(1) Collections by other than the city or its authorized agents or contractors is a violation of this code. The first offense will result in a written warning. The second violation shall result in a \$250.00 fine for each incident and each day. The third and any subsequent violation shall constitute a penalty of \$500.00 for each violation. Each incident and/or each day shall constitute a separate and new violation.

(2) Collections by other than the city is unauthorized; exemptions:

a. This chapter shall not be interpreted to prohibit collectors of trash and garbage from outside the city, from hauling such refuse over the city streets, provided such collectors comply with the provisions of this chapter and with any other governing laws or ordinances of the city, Polk County or the state.

b. This chapter shall not be interpreted to prevent businesses or individuals to properly dispose of recyclable or recovered materials generated by them for sale or disposal. Licensed and permitted vendors may pickup recyclable or recovered materials from businesses or individuals where generated.

c. Special wastes not collected by the city to be handled by properly equipped, licensed and permitted haulers and handlers.

SECTION 9. COLLECTION. Collection shall be supervised by the city manager or his/her designated representative or agent. All solid waste and recovered materials accumulated in the city for collection, conveyance and disposal shall be under the supervision of the city manager or his/her designated agent, who shall have the authority to make regulations concerning the days or collections, type and location of waste containers and such other matters pertaining to the collection, conveyance and disposal as necessary or as may be required by contract approved by the City Council within the provisions of this chapter and pursuant to F.S. 403.706, "Local Government Solid Waste

Responsibilities.

SECTION 10. POINTS OF COLLECTION.

(a) Residential service. Trash and garbage will be collected at curbside, in front of property being serviced. Trash shall be within a distance of five feet from curbside.

(b) Commercial service. Businesses, establishments, entities, and persons receiving commercial service from the city shall have commercial waste picked up at locations designated by the city. Mechanical containers shall not be placed in a location different than that designated by city or approved site development plans. Mechanical containers shall not be in an area that would create a nuisance or in an area creating a pedestrian or vehicular traffic safety hazard.

(c) Collection at illegal location.

(1) Residential trash and garbage placed out for collection at locations other than on the property from which it is generated, is declared a violation of this article and considered illegal dumping.

(2) Community trash piles and accumulations are prohibited.

(3) Placing residential trash on vacant lots, city properties, public land, streets, sidewalks, right-of-ways, easements or property owned by other persons is prohibited.

(4) Residential trash or garbage illegally deposited, placed or dumped shall result in a special pickup in accordance with section 20-103, "Special pickup procedure."

(5) Residential trash shall not be placed within six feet of any water meter, utility measuring device, fire hydrant, or storm water drain.

(6) Residential trash shall not be placed under any utility overhead wires or next to any fence, structure or vehicle which would prohibit collection equipment from safely operating, in the collection of trash.

(7) Residential trash shall not be placed in the roadway or traveled portion of any street, road or right-of-way creating a traffic safety hazard or restricting vehicular or pedestrian traffic in any way.

(8) All commercial waste shall be placed in provided commercial containers for collection. All other commercial collection shall be by special pickups. Any commercial waste placed at illegal locations shall be governed pursuant to F.S. ch. 403, "Florida Litter Law."

SECTION 11. FREQUENCY OF COLLECTION. Unless otherwise specified in a

currently valid agreement delegating collection responsibilities to a third party hauler, frequency of collection shall be as follows:

(a) Residential collection.

(1) Residential garbage will be collected once a week.

(2) Bulk trash and yard waste will be collected once a week.

(b) Commercial collection. Commercial service will be a minimum of once a week with the option for more scheduled pickups as agreed on contracted service and service fee schedule.

(c) Roll off and other special service containers shall be removed and emptied immediately after the container is full.

(d) Food service establishments and other businesses generating garbage or other perishable refuse or material shall have a minimum of twice a week collection, for health and sanitation.

(e) The city shall have the authority to require and schedule the number and frequency of all solid waste material or substance collection and disposal within the corporate limits of the city, in order to maintain health and sanitation standards in the city pursuant to F.S. 403.706, "Local Government Solid Waste Responsibilities."

SECTION 12. RESPONSIBILITY OF PROPERTY OWNERS AND PERSONS IN POSSESSION OF REAL ESTATE.

(a) The owner(s) and Occupants of the property being serviced shall be jointly and severally responsible for payment of fees, fines, charges and penalties incident to the collection of residential and garbage from such property and compliance with provisions of this article.

(b) Each head of household, lessee, owner, manager occupant or agent of any dwelling unit, apartment, house, boarding house, motel, warehouse, factory, store, other building or premises shall:

(1) Provide for on-site management of trash and garbage to comply with the requirement of this chapter. Noncompliance of this subsection will generate the special pickup process and penalty, after notice.

(2) Not place any trash out earlier than 12 hours prior to 6:00 a.m. of the day for the designated, and scheduled collection of each location in the city.

(3) Place all garbage containers for residential service, including carts and recycling bins, out no earlier than 12 hours prior to 6:00 a.m. of the scheduled day of collection, The containers shall be removed from curbside and returned to a point at the side yard, except where a side yard abutts a

right-of-way, or rear of the residence, not later than 12:01 a.m. (midnight) of the day of collection. Any container not removed will be tagged by the city with a 24-hour warning. Failure to remove container after 24 hours will result in a \$25.00 charge being placed on • the customers utility bill for each violation. Each incident and 24-hour period that the container is not removed or out of schedule shall be considered a separate incident and offense which shall result in an additional \$25.00 per offense, the charge being placed on the utility bill.

- (4) Separate trash as required by laws and regulations.
 - a. Yard waste not mixed with other trash, with clippings being bagged.
 - b. Place recyclables as designated in provided bins and containers.
 - c. Like bulk items placed in same stacks with separation of white goods from other bulk items.
 - d. Loose small items such as, leaves, lawn clippings and other litter shall be bagged and shall not be mixed with bulk trash.
 - e. Garbage shall not be mixed with bulk trash and shall be containerized for twice a week collection.
 - f. Exemptions. Commercial accounts do not have bulk trash collection and shall place all solid waste in mechanical containers for collection.

- (5) Follow the preparation of commercial waste and garbage as follows:
 - a. All garbage shall be bagged prior to placing in designated containers by commercial users.
 - b. All liquids will be drained from bottles, cans or cartons.
 - c. Tree trimmings, hedge clippings or similar material shall not exceed five feet in length nor be greater than 50 pounds per piece.

- (6) Provide for container use and care as follows:
 - a. Keep containers clean and sanitary.
 - b. Property owner responsible for each issued container or bin.

- c. Report theft of any container or bin to city police within 24 hours of loss.
- d. Report any damaged containers to city or its contractor.

SECTION 13. ACCUMULATIONS.

(a) It shall be unlawful for any person to permit or allow any solid waste material such as debris, trash, rubbish, materials, items or substances to accumulate or remain upon any property located in the city, when the accumulations are deemed a nuisance by the city, constituting a hazard to the health, safety and welfare of the inhabitants of the city.

(1) Storage of any solid waste or recyclable accumulations must be under cover and out of view of public. Yard trash need not be covered.

(2) Commercial storage of solid waste is permitted only in accordance with zoning regulations.

(3) Commercial establishments may store recyclables used in the conduct of their businesses provided the items are screened from public view and comply with fire safety codes. Storage of such accumulations shall not result in ground pollution.

(b) It is the property owner's responsibility to clean the swale area in front of their property, as well as the sidewalk. The property owner is also responsible for cleaning one-half of any city easement, alley way, or right-of-way adjoining and next to the boundaries of their property.

SECTION 14. BURIAL OF TRASH, GARBAGE PROHIBITED; ACCUMULATIONS AND STORAGE. No person shall deposit on or bury in, cause to be deposited on or buried in any land, public square, street, alley, vacant lot, unoccupied property or dump in the waters of lakes or any creek, canal or water course any noxious, filthy, malodorous or offensive liquid or solid material, garbage or trash. No person shall place or keep such materials, garbage or trash anywhere within the city in any vessel, vehicle or receptacle other than in standard, approved garbage or trash container from which regular collections are to be made. All containers used for storage and collection of trash and garbage shall be approved by the city manager or the city's designated agent or contractor.

SECTION 15. JOINT ACCUMULATIONS.

(a) The independent or unconnected combining of residential trash and garbage from living units or other sources for the purpose of circumventing provisions of this chapter shall be prohibited. Neighbors shall not combine trash to avoid payment of the service charges.

(b) Commercial containers are for the collection of solid waste from the site where located. Placing waste in dumpsters from locations other than, where the waste is generated is prohibited. Any person found to have placed waste in another person's container is subject to a fine of \$100.00 for the first offense and up to \$500.00 for each offense thereafter. Each incident being a separate and new offense.

SECTION 16. SPECIAL WASTES COLLECTION AND DISPOSAL: NOT INCLUDED IN UNIFORM LEVEL OF SERVICE.

(a) The following list of special waste requires special handling and management and shall not be placed out for regular collection:

- (1) Biomedical waste
- (2) Biological waste
- (3) Hazardous waste
- (4) Construction and demolition debris
- (5) Flammable or explosive refuse
- (6) Used oil, lead acid batteries, ash
- (7) Automobile or vehicle parts

(b) It shall be the joint responsibility of owner, occupant and agent to legally dispose of special waste as provided in F.S. Ch. 403 by contracting the services of special state registered and licensed contractors for transporting and disposing special waste from site where generated or from property where located.

SECTION 17. COMMERCIAL CONTRACTORS, BUILDING CONTRACTORS, DEMOLITION CONTRACTORS, TREE TRIMMERS, LANDSCAPE MAINTENANCE AND GARDENERS RESPONSIBILITY AND REQUIREMENTS.

(a) Landscapers and yard maintenance service. It shall be unlawful for any person to disturb or to scatter or spread about or cause to be distributed any amount of matter such as lawn clippings, leaves, debris and trash resulting from ordinary trimming care and upkeep of lawns, yards, tree shrub and hedges.

(b) Any construction, demolition, or remodeling permit will require obtaining the service of a roll off container and/or special pickup from the city or its contractor. The removal and disposal of construction or demolition debris and materials shall be the condition of any permit for construction, demolition or remodeling as set forth by the building official. Demolition contractors may haul their debris directly to a legal dump site, approved by the state after obtaining a permit from the city.

(c) Land clearing debris will be disposed of separate from the uniform level

service requiring contractor removal or special pickup and handling.

(d) Each apartment, boarding house, single-family, duplex or triplex is limited to one major house clearing of household trash and furniture twice each year. Putting out whole housing quantities of furniture is limited to two each year under uniform level of service.

(e) Tree trimmers and professional yard maintenance responsibility. Professional tree trimmers shall be responsible for removal of the debris generated from their jobs and may not leave any piles of yard waste to be collected by the city's uniform level of service. Any landscaping company, yard maintenance company or tree trimming service will be charged a special pickup fee plus administrative fee for the removal of any waste left for city pickup at any location in the city. This does not prevent any property owner from contracting lawn service and placing vegetation out for that property at the designated time. (f) It is prohibited to place, scatter, spread, blow or cause to be deposited any litter, leaves, clippings or vegetation of any kind on city streets and right-of-ways.

SECTION 18. RECOVERED MATERIALS OR RECYCLING.

(a) Any recovered material dealer desiring to operate in the city shall register and obtain written approval to operate in the city prior to conducting any business.

(b) Recovered materials dealers shall be licensed and approved for each location in the city. Each collection container Location shall be a licensed location requiring an occupational license fee for first location and an additional license fee for the second and subsequent location of collection pursuant to chapter 12, "Licenses."

(c) Any recovered materials dealer operating in the city without prior approval and licensing shall pay a fine of \$250.00 for first violation and \$500.00 fine for subsequent violations.

(d) Any containers illegally placed in the city to collect recovered material or solid waste will be moved to a place of storage. After written warning, the owner shall pay any storage, transportation, disposal and handling fees to recover the moved container.

SECTION 19. TRASH FIRES.

(a) It shall be unlawful for any person to kindle or maintain any bonfire or outdoor rubbish fire or burn refuse, waste, trash or yard waste without obtaining a permit from:

- (1) Fire department; and
- (2) Department of Environmental Protection, if applicable.

SECTION 20. ENFORCEMENT OF CHAPTER; FLORIDA LITTER LAW.

(a) Law enforcement officers shall enforce the provision of this article and the Florida Litter Law pursuant to F.S. 403.413(6)(1).

(b) Code enforcement inspectors shall enforce the provisions of this article and the Florida Litter Law pursuant to F.S. 403.413(7) "Enforcement by municipal employees." This section does not provide inspectors with the right to bear arms or make arrests.

SECTION 21. DELINQUENT ACCOUNTS.

(a) All accounts become due and payable by 2:00 p.m. on the 25th of each month. All payments received after 2:00 p.m. will be credited the next business day. If bills are not paid by 2:00 p.m. on the 25th will be subject to the delinquent charge; a delinquency fee will be charged in the same amount as other city utility rate payment fees, and service may be discontinued without notice.

(b) If a delinquent account shall not be paid for any residence or commercial establishment using city water If the payment due on the 25th has not been received by the 5th of the next month, then the city water supply as well as garbage service to such residence or commercial establishment may be discontinued until such delinquent fee is paid, including penalties and the expense for reconnecting water service.

(c) If a delinquent account shall remain unpaid, the fee for collection and disposal of refuse shall be billed to the title holder of record of such premises and all penalties herein provided shall begin to run against such record owner thereof and the city shall have the right to impose a lien against the title to such real property for the amount of such bill, interest and penalties, as provided by city Ordinance, except as prohibited by Section 180-135(1)(a), Florida Statutes.

(d) The stoppage of services authorized in this section for nonpayment of collection charges shall be in addition to the right of the city to proceed for the collection of such unpaid charges in the manner provided by law for the collection of a municipal claim.

(e) The above conditions and requirements are applicable to the city's services whether the billing is direct from city, its agent or contractor.

SECTION 22. BILLING AND COLLECTION FOR SOLID WASTE SERVICES; PROPERTIES THAT ARE COMMERCIAL, VACANT AND WITHOUT WATER UTILITY ACCOUNTS OR SOLID WASTE SERVICE.

(a) All solid waste and refuse in the city shall be collected, conveyed and disposed of by the city, or its contractor.

(b) Any business, commercial account, vacant residential property or vacant lots shall be required to pay for services received by special trash pickup if the location does not have a current or nondelinquent account.

(c) Any account on stop service shall receive special pickup service to

remove any solid waste prior to removal of a container or after the container is removed.

(d) Removal of container from any commercial location because of stop service shall require the business to cease its operation and suspension of occupational license until commercial collection service is resumed.

(e) Residential accounts without water, sewer, or trash service shall require occupants to vacate premises due to health and sanitation requirement for minimum housing standards after 30 days from stop service of utilities.

(f) All fees for residential or commercial waste removal service shall be a part of any contract for such services provided by the city and may be reviewed at the city clerk's office from the files.

SECTION 23. APPEALS.

(a) Any person aggrieved by enforcement of provisions of this article shall have the right to appeal to the city's code enforcement board. The aggrieved shall file a request for hearing ten days prior to the next scheduled code enforcement board hearing. The code enforcement board shall have the authority to confirm, modify or revoke any action after a finding of fact relative to the appeal with the powers pursuant to F.S. 162.08, "Power of Enforcement Boards."

(b) Any code enforcement citation issued pursuant to F.S. 162.21(3)(a), "Supplemental Code Procedure" shall be contested in the county court.

(c) Whenever this chapter is enforced under the general penalty pursuant to the city's code by notice to appear or by arrest, the county court will hear the case.

SECTION 24. FRANCHISE APPLICATION AND APPROVAL PROCESS.

The City may utilize its own equipment and personnel to provide solid waste hauling and disposal for all or a portion of the City or its solid waste service needs and/or may grant a solid waste hauling and disposal franchise to any one franchisee or multiple solid waste collection service franchisees (each a "Franchisee") which the City finds capable of meeting the requirements of this Ordinance a franchise to operate its business within the rights-of-way in the City. Any such franchise for all or a portion of the City or solid waste service needs shall be provided by the City by means of a specific franchise ordinance which shall be negotiated at arms length with the intended Franchisee, and which shall at minimum, incorporate the terms and conditions contained herein and shall also contain additional terms and conditions consistent with the City's authority under Florida law which the City and Franchisee may negotiate (the "Service Franchise"). Applicants for a Service Franchise shall submit to the City written application on forms to be provided by the City. All such franchise applications when filed shall be available for public inspection at places designated by the City. A decision shall be made by the City at the conclusion of any public hearings. The applicant shall assume the cost of publication of any ordinance to grant a franchise, as such publication is required by law, and such is payable prior to final consideration of the request by the City Council.

SECTION 25. DISQUALIFICATION OF FRANCHISEE AND NON-RENEWAL OF FRANCHISE.

In addition to the failure to meet any other criteria or qualifications the City may establish for a particular franchise, no individual or entity shall be eligible for a new franchise or the renewal of an existing franchise without the unanimous vote of the City Council and approval by the majority of qualified electors of the City where any of the following have occurred within the 5 year period preceding such individual's or entity's franchise application:

(1) the potential Franchisee shall have been in default of the franchise terms provisions or this Ordinance under a prior Service franchise granted by the City;

(2) the City shall have received excessive complaints from the citizens of the City regarding the potential Franchisee's performance under a prior franchise granted by the City;

(3) the potential Franchisee shall have been charged with or convicted of a criminal offense involving corruption, fraud, embezzlement or other crime involving dishonesty in its business practices; or

(4) the potential Franchisee shall have been in violation of any City code or ordinance provisions.

SECTION 26. RESERVATION OF CITY RIGHTS. Nothing in this Ordinance or in any Service Franchise shall be construed to prevent the City from exercising, and the City specifically reserves, the following rights to:

(1) Exercise its governmental powers, now or hereafter, to the full extent that such powers may be vested in or granted to the City.

(2) Adopt, in addition to the provisions contained herein, in the Service Franchise and in any existing ordinances, such additional reasonable regulations as it shall find necessary and appropriate in the exercise of its police powers. Nothing herein shall be construed as a waiver of the Franchisee's legal rights to timely contest the exercise or the validity of the exercise of the City's police powers.

(3) Renegotiate in good faith any Service Franchise granted pursuant to this Ordinance should any material provision of this Ordinance or the Service Franchise be declared unenforceable, illegal or invalid.

(4) The City specifically reserves the right to grant, at any time, as many Service Franchises as it deems appropriate; provided, however, that no such additional grant shall operate to materially modify, revoke or terminate any rights previously granted to any Franchisee.

(5) No provision of this Ordinance shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provisions of this

Ordinance, a Service Franchise or any rule, regulation, requirement or directive promulgated under this Ordinance, whether administratively, judicially or both. Neither the existence of other remedies identified in this Ordinance nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover fines, penalties or monetary damages for such violation by Franchisee or judicial enforcement of Franchisee's obligations by means of specific performance, injunctive relief or mandate or any other administrative remedy or judicial remedy at law or in equity.

SECTION 27. FRANCHISE TERM LIMIT. Any Service Franchise shall have a fixed term which shall not exceed ten (10) years, commencing on the Effective Date thereof and ending on the agreed anniversary date thereafter ("Franchise Term"), unless terminated sooner in accordance with the provisions of this Ordinance or the terms contained therein.

SECTION 28. GENERAL CONDITIONS APPLICABLE TO PLACEMENT AND USE OF FRANCHISEE'S FACILITIES WITH CITY RIGHTS-OF-WAY. The following shall constitute general conditions applicable to the placement of any Franchisee facilities within the City's streets, rights-of-way or property:

(1) Prior to the installation, placement or removal of any conduits, facilities, cables or pole lines, or the start of any other type of construction on the public rights-of-way, Franchisee shall, pursuant to the requirements of existing or subsequently enacted City ordinances, obtain all permits from, and pay all applicable fees to, the City's Department of Public Works. Such permits shall set out the place, date and time where the cables or pole lines, or other form of construction, are to be installed, or removed or where the construction is to be conducted. All permit applications submitted by Franchisee shall contain plans showing known utility facilities and specifications, and the proposed location of its conduits, cables, poles, lines and other associated facilities. No such permit shall create a vested property right in the Franchisee. Further, issuance of a permit by the City shall not be construed by Franchisee as a warranty that the placement by Franchisee of its Franchisee facilities is in compliance with any applicable rules, regulations or laws.

(2) Any type of construction by Franchisee shall be performed with the least possible interference with the use of the public rights-of-way and to adjoining property owners and in compliance with the rules and regulations of the State Department of Transportation and any other applicable governmental authority having jurisdiction.

(3) Any addition or improvement to Franchisee facilities placed without first having obtained all applicable City permits shall be removed within thirty (30) days' written notice by the City to remove the same and, in default of compliance with such notice, the conduits, cables, poles or other facilities may be removed by order of the Department of Public Works of the City and the cost of removal shall be borne and paid by Franchisee, or in the event the City approves the placement of same after the fact,

Franchisee shall obtain all requisite permits therefor and pay all applicable penalties and fees.

(4) Franchisee shall not in any way displace, damage or destroy any City facilities or facilities of any third party who placed such facilities therein by express authority of the City, without the consent of the City, and Franchisee shall be liable to the City or to the third party owner, as the case may be, for the cost of any repairs made necessary by any such displacement, damage or destruction and shall pay such costs within thirty (30) days of Franchisee's receipt of an invoice for same.

(5) Franchisee shall, at its own cost and expense, replace and repair without delay any sidewalk, public way, alley, highway, waterway, bridge or any other public place that has been excavated, broken, removed, displaced, or disarranged by Franchisee during the construction, maintenance and operation of any portion of Franchisee facilities, or as a result of the deterioration of any portion of the Franchisee facilities, and restore the same to as good a condition as it existed prior to Franchisee commencing its work. Upon failure of Franchisee to do so after thirty (30) days' written notice by the Director of Public Works of the City, the City may make such repairs and replacements as it deems reasonably necessary, and Franchisee shall pay the City upon demand all costs of such repairs and replacements. Franchisee shall, to the satisfaction of the Public Works Director, warrant any repairs it makes pursuant to this section against defects in materials and workmanship for a period of one year following the date of such repair.

(6) Franchisee shall use all proper and reasonable care in connection with any work which it may do pursuant to a Service Franchise in seeking to prevent harm, damage or injury to persons or property therefrom.

(7) Franchisee shall also keep all rights-of-way occupied by the Franchisee facilities free of excess debris.

SECTION 29. COMPLIANCE WITH CODES AND STANDARDS; MAINTENANCE OF FACILITIES. The Franchisee facilities shall meet or exceed applicable laws of the State of Florida and of the United States as well as all applicable codes, standards and permit requirements and must also comply with the following: (a) the equipment used in the Franchisee facilities must be capable of operating in a safe and reliable manner and (b) the Franchisee facilities must be constructed in a way which does not obstruct or otherwise make unusable any of the City streets or rights-of-way. Franchisee or its designee shall during the Franchise Term, keep the Franchisee facilities in good operating condition and make any such repairs, alterations, or modifications necessary to keep the Franchisee facilities in good working order and capable of operating in accordance with applicable laws and permits. Franchisee shall make any such repairs, alterations or modifications in a timely manner.

SECTION 30. FRANCHISE FEES AND PAYMENT.

(1) **Fee Calculation.** As a consideration for the grant of any Service Franchise, Franchisee shall pay to the City a franchise fee ("Franchise Fee") in the amount to be negotiated by Franchisee and the City based upon a mutually agreeable methodology. The Franchise Fee provided for herein shall constitute the exclusive payment by Franchisee to the City for Franchisee's use and occupancy of the rights-of-way within the City's boundaries.

(2) **Time of Payment.** Unless a different payment schedule is negotiated and specifically provided for by the City and the Franchisee in the applicable franchise ordinance, then within thirty (30) calendar days after the close of each month, the Franchisee shall pay the franchise fee as provided in subsection (1) of this section.

(3) **Supporting Documentation.** Accompanying each Franchise Fee payment, Franchisee shall prepare and provide all reasonable calculations and documentation necessary to support the Franchise Fee payment calculations. In the event the City disputes the amount of any Franchise Fee payment made, the City shall be entitled to perform or cause to be performed an independent audit of Franchisee's accounts with respect to Franchise fee calculations and supporting information. The City shall provide Franchisee with thirty (30) days prior written notice of its intent to perform any such audit. Upon receipt of such notice, Franchisee shall make available the applicable documentation and records necessary to allow the City to perform the audit.

(4) **Audit.** The City may require an audit of Franchisee's books not more frequently than once each calendar year. Franchisee will reimburse City's audit costs if the audit identifies errors in the Franchisee's franchise revenues of five percent (5%) or more for the period audited that results in Franchisee having underpaid the Franchise Fee. Errors identified during the audit process shall be projected retrospectively for any additional time periods not covered during the audit if there is a reasonable probability these errors occurred during the unaudited period, but not for more than five (5) years. If an underpayment of the Franchise Fee has occurred, interest will be computed at a rate of ten percent (10%) per annum from the date such underpayment was originally due. Both the underpayment and interest shall be paid within thirty (30) days after receipt of demand therefor from City.

(5) **Other Taxes.** The sums of money to be paid by the Franchisee to the City under this section are compensation and consideration for the use by the Franchisee of the City's public ways for the construction, maintenance and operation of the Franchisee facilities and are not taxes as allowed by the Florida Constitution, the general or special laws of the state, or any other ordinances of the City. The Franchisee shall at all times continue to be subject to public service taxes (F.S. §166.231), ad valorem taxes (F.S. §166.211) and such other taxes, charges or fees as may be lawfully authorized by the Florida Constitution, the general or special laws of the state, the provisions of the Municipal Home Rule Powers Act (F.S. ch. 166) or the ordinances of the City.

SECTION 31. RATE SETTING AND ADMINISTRATIVE CHARGES.

(1) **General.** A monthly garbage, rubbish, trash, and solid waste service fee is hereby imposed upon all person, owners, occupants, tenants, lessees, firms and corporations occupying, owing or using land and buildings, or having utility services within the city for the collection of garbage, rubbish, trash, and solid waste, by the city or its licensees, franchisees, or other designated franchisee or other designated agents, as a separate item on each light, water, garbage or other utility service monthly billing, and which fee shall be assessed against the person, firm or corporation in whose name such light, water, garbage or other utility service bill is listed. Such rate shall be established from time to time by the City Council consistent with the terms of any Pre-Existing Franchise. Currently, this fee is established as the now current base fee.

(2) **Administrative Fee.** There shall be added to the base fee or any subsequent monthly rate a collection fee and administrative fee, which shall be for the services of city officers and employees in administering the provision of garbage services and the billing and collecting procedures connected with such garbage services. The City hereby sets and establishes an administrative fee at 25 % of what the City pays its franchise collector/hauler.

(3) **Increases in Charges.** From time to time, the City shall have the ability to set rates, fees, and charges for garbage/solid waste services in accordance with general law. Under the currently existing agreement with its existing residential collection and hauling contractor, the City hereby determines to automatically increase its base fee if the contractor raises the actual charge for collection of garbage to certain types of households or across the board, dollar for dollar, and these increases shall be passed on to the persons receiving such services as an increase in the base fee and any administrative surcharges shall apply to the base fee as increased thereby. Should the contractor institute any type of fuel surcharge based on increases in the cost of fuel, such increases will be treated the same as an increase in the actual charge to the customer. Any such increase shall be included in the base fee and all administrative surcharges applied thereto. Any time there is an increase in the base fee for collection of garbage, the City shall send a notice explaining the reason for such increase, which notice shall accompany the bill for garbage to the customer.

SECTION 32. PERFORMANCE SECURITY. Franchisee shall not exercise any of the rights granted by permit, franchise or this Ordinance until evidence of compliance with the following bonding requirements has been filed with the City. Should the Franchisee fail to comply with said requirements, it shall acquire no rights, privileges or authority under the permit, franchise or ordinance whatsoever.

(1) **Bond.** As a condition to the issuance of any franchise, the Franchisee shall provide a bond or other security reasonably acceptable to the City which complies with the following:

a. There shall be recoverable by the City jointly and severally from the principal and surety any and all fines and penalties due to the City and any and

all damages, losses, costs and expenses suffered or incurred by the City resulting from the failure of the Franchisee to: faithfully comply with the provisions of the Franchise or this Ordinance; comply with all lawful orders or permits issued by any City agency or body having jurisdiction over Franchisee's acts or defaults; pay fees due to the City; pay any claims due the City as resulting from judicial action; pay any claims, liens or taxes due the City which arise by reason of the construction, operation, maintenance or repair of the Franchisee facilities.

b. In the event the Franchisee abandons the Franchisee facilities at any time during the term of the Franchise or any extension thereto, the bond shall be forfeited in favor of the City in an amount necessary to compensate the City of any damage, loss, expense, attorneys' fees and costs it has suffered as a result of such abandonment.

c. At any time the Franchisee facilities is upgrading or rebuilding, all or any portion of the Franchisee facilities, the Franchisee shall provide a performance bond in the amount of 110% of the estimated cost of public improvements in the right-of-way until all construction is completed.

d. The Franchisee shall also maintain, at all times, during the time of the Franchise, an annual performance bond in the amount of Two Hundred Thousand Dollars (\$200,000.00) to guarantee the payment of all sums which may become due to the City and also guarantee the repair, removal and/or relocation works required under this Ordinance or the Franchise. A copy of the annual bond shall be provided to the City together with each right-of-way permit application. The face dollar amount of the bond shall be adjusted annually as of the end of each fiscal year in accordance with changes in the cost-of-living index as published by the federal government.

e. The requirements provided in subsections (c) and (d) above may be waived where Franchisee certifies and demonstrates a net worth acceptable to the City to back up Franchisee's obligations.

(2) Notice. The performance bonds required herein shall be in a form satisfactory to the City and shall require thirty (30) days' prior written notice to the City and the Franchisee of any intention of non-renewal, alteration or cancellation. The Franchisee shall, in the event of any such intended cancellation notice, obtain, pay all premiums for, and file replacement bonds or policies within thirty (30) days following receipt by the City or the Franchisee of any notice of intended cancellation.

SECTION 33. INSURANCE. Franchisee shall not exercise any of the rights granted by permit, franchise or this Ordinance until evidence of compliance with the following insurance requirements has been filed with the City. Should the Franchisee fail to comply with said requirements, it shall acquire no rights, privileges or authority under the permit, franchise or ordinance whatsoever. All insurance shall be from responsible companies, duly authorized to do business in the State of Florida having a rating in

Best's Insurance Guide of A or better, unless Franchisee is authorized as a self-insurer by the Department of Insurance under the laws of the State of Florida. All liability policies shall provide that the City is an additional insured as to the operations under any franchisee issued under this Ordinance. The required coverages must be evidenced by properly executed certificates of insurance forms. The certificates must be signed by the authorized representative of the insurance company and shall be filed and maintained with the City annually during the Franchise Term. Thirty (30) days advance written notice by registered or certified mail must be given to the City of any cancellation, intent not to renew or reduction in the policy coverages. All insurance policies shall be subject to the review and approval of the City as to form, content and insurance carrier, copies of which shall be provided to the City prior to the effective date and as a condition of the Service Franchise. The limits of coverage of insurance required shall be not less than the following:

- a. Worker's Compensation and Employer's Liability Insurance
Worker's Compensation - Florida Statutory Requirements
Employer's Liability - \$500,000 limit each accident
\$500,000 limit per accident
\$500,000 limit per each employee
- b. Comprehensive General Liability
Bodily injury and property damage - \$5,000,000 combined single limit each occurrence.
- c. Automobile Liability
Bodily injury and property damage - \$5,000,000 combined single limit each accident.

SECTION 34. INDEMNITY. Franchisee shall defend, indemnify and hold harmless the City, its employees, board members, agents, officers and assigns, their respective employees, agents, officers, partners and directors and any one else acting for or on behalf of them and any of their respective assigns, from and against all liabilities, claims, damages, losses and expenses (including reasonable attorneys' fees and court costs) for injury to or death of persons, including employees of the City, and for loss or damage to property which directly or indirectly arise out of or results from (a) the installation, operation or maintenance of the Franchisee facilities or (b) any willful misconduct or negligent, reckless or tortious act or omission (including strict liability) of Franchisee or any person employed by Franchisee, or anyone for whose acts Franchisee may be liable in connection with the activities under this Ordinance. The City shall give prompt notice to Franchisee of any claim or suit and shall cooperate at no cost to the City in the defense of any such claim or suit.

SECTION 35. HANDLING OF HAZARDOUS MATERIALS. Franchisee shall comply with all rules, regulations, ordinances and statutes concerning the handling, storage, and disposal of hazardous materials ("Hazardous Materials") used or in the construction, operation or maintenance of the Franchisee facilities. Franchisee shall be

responsible for the proper collection, removal and disposal of any Hazardous Materials furnished, used, applied or stored on any rights-of-way or emanating from the Franchisee facilities as a result of activities performed pursuant to a Service Franchise. Franchisee shall indemnify and defend and hold the City and its agents, employees, and representatives harmless from and against any claim, suit, loss, cost, liability, fine, or damage (including reasonable attorneys' fees), including, but not limited to, liability or cost incurred or assessed against the City pursuant to 42 USC 9601, et. seq., "Comprehensive Environmental Response, Compensation and Liability Act of 1980" and Amendments thereto, 15 USC 2601, et. seq., "The Toxic Substances Control Act" and Amendments thereto, 42 USC 6901, et. seq., "The Resource Conservation and Recovery Act of 1976" and Amendments thereto, or other applicable laws and regulations which have been asserted by any person, including governmental entities, based on or related to complaints or allegations, whether or not supported by fact, that soils, leachate, effluent, or other residue located on, or emanating from or arising from the soils, subsurface of the Franchisee facilities located on any rights-of-way contain Hazardous Materials.

SECTION 36. TERM AND TERMINATION.

(1) **Term.** Any Service Franchise shall remain in effect until the earlier of the following to occur: (a) the Service Franchise reaches the end of its Franchise Term; (b) the City terminates the Service Franchise pursuant to Subsection (2) below; (c) Franchisee abandons the Franchisee facilities; or (d) the City and Franchisee enter into a superseding Service Franchise.

(2) **Franchisee Default.** Each of the following shall constitute a default by Franchisee under the terms of a Service Franchise:

- (a) Franchisee abandons the Franchisee facilities; or,
- (b) Franchisee fails to comply with this Ordinance, the Service Franchise, applicable laws or regulations governing its activities with respect to the Franchisee facilities;
- (c) Franchisee fails to perform its material obligations under this Ordinance or the Service Franchise; or,
- (d) The City receives excess complaints about the Franchisee's performance under the Service Franchise.

(3) **Termination for Franchisee Default.** Upon the occurrence of any of the above events of default by Franchisee, the City shall provide written notice detailing the event of default. Unless a different cure period is agreed by the City and Franchisee under the terms of a specific franchise, the Franchisee shall within thirty (30) days of the date of written notice from the City substantially undertake and promptly correct such default and certify same to the City. If Franchisee fails to commence

correction of the default within thirty (30) days after written notice by the City, the City may terminate and revoke the Service Franchise. Such termination and revocation shall be by ordinance duly adopted, and shall in no way affect any of the City's rights and remedies under the Service Franchise, this Ordinance or any provision of law. In the event that such termination and revocation depends upon a finding of fact, such finding of fact as made by the City shall be conclusive; provided, however, that before on Service Franchise, may be terminated and revoked under this section, Franchisee must be provided with an opportunity to be heard before the City Council.

(4) The City's Rights in the Event of Termination. In the event that the City terminates and revokes a Service Franchise under the provisions of Subsections (2)(a), (2)(b), (2)(c) or 2(d) above, Franchisee shall at City's sole option do one of the following:

(a) within an reasonable period after notice from the City to do so, remove any of the Franchisee facilities within the rights-of-way and the rights-of-way shall be restored to the condition they were prior to the start of the construction of the Franchisee facilities; or,

(b) sell to the City the Franchisee facilities or portions thereof at the then current book value as agreed by the City and Franchisee. If such value cannot be agreed by the parties, the book value shall be established by binding arbitration.

In the event the City terminates and revokes a Service Franchise because the Franchisee abandons the System, then the Franchisee facilities shall be forfeited to the City.

SECTION 37. NO ASSIGNMENT OR TRANSFER BY FRANCHISEE.

Franchisee may not sell or transfer the rights under a Service Franchise without the consent and approval of the City Council of the City of Polk City.

SECTION 38. CITY RIGHTS AS TO PRE-EXISTING FRANCHISES.

In the event that any Franchisee has been granted a franchise by the City prior to the date of this Ordinance (a "Pre-existing Franchise"), then that franchise shall continue in accordance with its terms until expiration thereof. The City hereby declares that the 1999 Agreement Between The Town of Polk City and BFI Waste Systems of North America, Inc. For Solid Waste Collection and Disposal dated September 30, 1999, as amended and extended on June 16, 2004, and August 12, 2008, constitutes a Pre-existing Franchise for the remainder of its current term. If a Service Franchise granted under this Ordinance or a Pre-existing Franchise is terminated, revoked, or expires, then upon the termination, revocation or expiration of said franchise, the following shall apply:

(a) The City may in its sole discretion, either terminate the franchise rights of Franchisee or enter into negotiations for a new franchise consistent with the requirements of this Ordinance and Florida State law.

(b) If the City chooses to enter into negotiations with a Franchisee under this ordinance, then Franchisee shall be considered a tenant at sufferance on the City's property, streets and rights-of-way and shall be obligated to continue to perform its obligations under the terms of the terminated or expired Pre-existing Franchise or Service Franchise (as applicable) until any such negotiations have been completed and a new Service Franchise has become effective or, if applicable, the parties have aborted such negotiations.

SECTION 39. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, then that section, subsection, sentence, clause, phrase, or portion deemed invalid or unconstitutional shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining sections, subsections, sentences, clauses, phrases, or portions of this Ordinance; provided, however, that the remaining portions of the Ordinance when read together shall constitute a feasible, reasonable, workable plan to permit Franchisee and the City to carry out the intent of this Ordinance.

SECTION 40. CODIFICATION. It is the intention of the City Council that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Polk City and that sections of this Ordinance may be renumbered or re-lettered and the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions; and regardless of whether such inclusion in the code is accomplished, sections of the ordinance may be renumbered or re-lettered and typographical errors which do not affect the intent may be authorized by the City Manager, or his designee, without need of public hearing, by filing a corrected or recodified copy of the same with the City Clerk.

SECTION 41. ENFORCEMENT. No provision of this Ordinance shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provisions of this Ordinance, a Service Franchise or any rule, regulation, requirement or directive promulgated under this Ordinance, whether administratively, judicially or both. Neither the existence of other remedies identified in this Ordinance nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover fines, penalties or monetary damages for such violation by Franchisee or judicial enforcement of Franchisee's obligations by means of specific performance, injunctive relief or mandate or any other administrative remedy or judicial remedy at law or in equity.

SECTION 42. CONFLICTS. Should any provision contained in this Ordinance conflict with any prior provision of the Code or any City ordinance, then the provisions of this ordinance shall control.

SECTION 43. SEVERABILITY. If any word, sentence, clause, phrase, or provision to this ordinance, for any reason, is held to be unconstitutional, void, or invalid, the validity of the remainder of the ordinance shall not be affected thereby.

SECTION 44. EFFECTIVE DATE. This ordinance shall take effect immediately upon final passage.

PASSED ON FIRST READING this _____ day of _____,
2012.

PASSED ON SECOND READING this _____ day of _____,
2012.

CITY OF POLK CITY, FLORIDA

Joseph LaCascia, Mayor

ATTEST:

Patricia Jackson, City Clerk

APPROVED AS TO FORM AND
LEGALITY:

Thomas A. Cloud, Esquire
City Attorney