

TITLE 5: PUBLIC HEALTH AND SAFETY

CHAPTER 1: SOLID WASTE MANAGEMENT AND COLLECTION-FRANCHISEES

5.01.01 FINDINGS-PURPOSE: It is declared to be the policy of the City to regulate the collection, transportation, deposit, transfer, recycling and disposal of solid waste in a manner that is consistent with State law and that will:

- (A) Protect public health and welfare.
- (B) Prevent water or air pollution.

- (C) Prevent the spread of disease and the creation of nuisances.

- (D) Conserve natural resources.

- (E) Enhance the beauty and quality of the environment.

5.01.02 DEFINITIONS: In the construction of this Chapter, the following definitions shall apply, unless the context clearly requires otherwise:

CITY: City of Fernley, County of Lyon, State of Nevada.

COMMERCIAL AND INDUSTRIAL WASTE: (C&I) is produced by non-single family dwelling, business and commerce, and includes but is not limited to, waste from schools, restaurants, offices, retail and wholesale businesses, multi-family apartment complexes, manufacturing industries, service establishments of any type, professional offices, and other types of commercial businesses.

CONSTRUCTION OR DEMOLITION WASTE: Solid waste resulting from the construction or demolition of buildings and other structures, including but not limited to wood, plaster, metals, asphaltic substances, bricks, block and concrete, and landscaping, native vegetation, excavation dirt, rock, stone and gravel. The term "construction or demolition waste" does not include uncontaminated soil, rock, stone, gravel, unused brick and block and concrete if they are separated from other construction or demolition waste and are to be used as clean fill.

COUNCIL: The City of Fernley, City Council.

COUNTY: The County of Lyon, Nevada or the area within the limits of the County and such territory outside of the County over which the County has jurisdiction or control by virtue of any constitutional or statutory provisions.

CPI-U: The Consumer Price Index, All Urban Consumers, U.S. City Average- Item: Garbage and Trash Collection (1983=100) ("CPI") as published by the Bureau of Labor Statistics, Washington, D.C.

DEAD ANIMALS: All dead animals or parts thereof (including condemned meats) that are not intended to be used as food for man or animal.

EMPLOYEES: Whenever reference is made in this Code to a City employee by title only, this shall be construed as though followed by the words "of the City of Fernley".

EXCLUSIVE RESIDENTIAL FRANCHISE AGREEMENT: An agreement between the City and a third party by which such third party is exclusively authorized to collect, transport and dispose of single family dwelling garbage.

FRANCHISE AGREEMENT: An agreement between the City and a third party by which such third party is authorized to collect, transport and dispose of non-single family dwelling garbage, commercial, industrial, construction and demolition waste generated within the City.

FRANCHISE FEE: The fee required by a franchise agreement based upon a percentage of a Franchisee's gross cash receipts or gross revenues derived from the collection, transportation and disposal of solid waste in the City.

FRANCHISEE: Any person who has contracted with the City for collection, transportation and disposal of solid waste.

FEE: A sum of money charged by the City for the carrying on of a business, profession or occupation.

GARBAGE: Putrescible animal and vegetable wastes that result from the handling, storage, sale, preparation, cooking and serving of food, and that have been discarded or abandoned. This includes but is not limited to:

- (A) Offal, swill, kitchen and table waste, and other organic animal and vegetable waste;
- (B) Bottles, cans, cups, plates, utensils, containers, and/or covering of any construction or material that has been in intimate contact with food, confection, and/or beverage;
- (C) Any component used in the preparation or manufacture of matter intended for animal or human consumption and;
- (D) Such matter and/or materials listed in (A) through (C) above that have been discarded without first being sanitized.

The mixing, addition, or commingling of garbage with rubbish, trash, or other waste matter renders the entire resulting mixture as garbage and requires the mixture to be handled as garbage.

GREEN WASTE: Includes grass clippings, tree, bush and shrub trimmings, branches and other similar material resulting from domestic or commercial gardening, landscaping or maintenance activities.

GROSS CASH RECEIPTS OR GROSS REVENUES: All receipts derived from the collection of solid waste and includes, by way of illustration and not limitation, all money, cash, receipts, property, credits, property or other things of value collected by Franchisee or other consideration of any kind derived directly or indirectly by a Franchisee (or any of its authorized agents or affiliates) for the collection, transportation and disposal of solid waste, including all revenue received from single family dwelling service, commercial and industrial service, transfer station fees, sewage-waste service, container rentals, packaging, shipping and late fees.

HAZARDOUS WASTE: Any waste or combination of wastes, including solids, semisolids, liquids or contained gases which:

- (A) Because of its quantity or concentration or its physical, chemical or infectious characteristics may:
 - (1) Cause or significantly contribute to an increase in mortality or serious irreversible or incapacitating illness; or
 - (2) Pose a substantial hazard or potential hazard to human health, public safety or the environment when it is given improper treatment, storage, transportation, disposal or other management;

- (B) Is identified as hazardous waste by the Nevada Department of Conservation and Natural Resources as a result of studies undertaken for the purpose of identifying hazardous wastes; and

- (C) Includes, among other wastes, toxins, corrosives, flammable materials, irritants, strong sensitizers and materials which generate pressure by decomposition, heat or otherwise.

- (D) A hazardous material is one which meets one or more of the following criteria:
 - (1) Is listed in the annual registry of toxic effects of chemical substances, or is known to be toxic within the parameters of that registry, and is present at a level of 1% or greater of the composition, except chemicals classified as carcinogens under 29 CFR 1910.1200 (d)(4) shall be listed if the concentrations are 0.1% or greater.
 - (2) It has an OSHA established Threshold Limit Value (TVL) or Ceiling Concentration (C) or an American Conference of Governmental Industrial Hygienist's (ACGIH) TLV or C, and by the nature of the product or its known use is likely to become airborne.
 - (3). It contributes to one or more of the following hazards to the product:
 - (a) Flashpoint below 200 degrees F; or
 - (b) Subject to spontaneous heating or decomposition;
 - (c) Causes skin burns (DOT);
 - (d) Subject to hazardous polymerization.

LAW: Denotes applicable Federal law, the constitution and statutes of the State of Nevada, the ordinances and resolutions of the County, the ordinances and resolutions of the City and, when appropriate, any and all rules and regulations which may be promulgated thereunder.

LICENSE: The permission granted for the carrying on of a business, profession or occupation.

MANDATORY SINGLE FAMILY DWELLING WASTE COLLECTION: Every person which accumulates or causes the accumulation of garbage as defined in this Chapter upon a single family dwelling located on two (2) acres or less in the City shall subscribe to the collection, hauling and disposal of garbage pursuant to the provisions of this Chapter.

For purposes of determining whether garbage service must be subscribed to in accordance with the provisions of this chapter, it is presumed that every dwelling is accumulating or causing the accumulation of garbage upon the premises.

MULTIPLE FAMILY DWELLINGS: Any premises on which there are five or more attached residential dwelling units which are grouped together under the management of one person and which do not require separate individual collection of solid waste.

NON-SINGLE FAMILY DWELLING CUSTOMER: Any solid waste disposal service customer of a Franchisee except for any single family dwelling customer.

OCCUPANT: When applied to a building or land, shall include any person who occupies the whole or any part of such building or land whether alone or with others.

OPERATOR: The person who is in charge of any operation, business or profession.

OVERFLOW or OVERFLOWING SOLID WASTE: Solid waste of non-single family dwelling customers that is deposited on the ground outside of a solid waste container (except for any items bundled in accordance with this Chapter), or excess solid waste that has been piled onto a solid waste container that is already full to such an extent that the excess solid waste will spill onto the ground in the emptying process, requiring more than minimal manual cleanup of solid waste from the ground.

OWNER: As applied to a building or land, includes any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety of the whole or a part of such building or land.

PERSON: Any public or private corporation, firm, partnership, association, organization, government or any other group acting as a unit, or the manager, officer or employee of any of them, as well as a natural person.

PLACE OF BUSINESS: Any place of business in the City, other than multiple family dwellings, to conduct or carry on principally or exclusively any pursuit or occupation for the purpose of gaining a livelihood.

PREMISES: A nonresidential or residential lot, including any buildings, improvements, and personal property located thereon.

PROPERTY: Includes real and personal property.

PUTRESCIBLE: Capable of being decomposed by microorganisms with sufficient rapidity as to cause nuisances from odors or gases.

REAL PROPERTY: Includes lands, tenements and hereditaments.

RECYCLABLE MATERIAL: Defined in NRS 444A.013 and includes solid waste that can be processed and returned to the economic mainstream in the form of raw materials or products, as determined by regulations adopted by the Nevada State Environmental Commission and the Nevada State Division of Health.

RESIDENTIAL FRANCHISEE: The person or entity who has entered into an Exclusive Residential Franchise Agreement with the City.

REVENUE: SEE GROSS CASH RECEIPTS OR GROSS REVENUE

SIDEWALK: That portion of a street between the curb line and the adjacent property line intended for the use of pedestrians.

SINGLE FAMILY DWELLING: A building or dwelling designed or used for single- family occupancy and where no business is conducted (other than a licensed home occupation business), and includes a mobile home, modular home, and multi-unit attached occupancies consisting of four units or less which includes, but is not limited to, duplexes, apartments, condominiums, or other attached occupancies consisting of four units or less.

STATE: The State of Nevada.

STREET: Includes all streets, highways, avenues, lanes, alleys, courts, places, squares, curbs or other public ways in this City which have been or may hereafter be dedicated and open to the public use or such other public property so designated in any law of this State

SOLID WASTE: All putrescible and nonputrescible materials in solid or semisolid form that have been discarded or abandoned by their owner, including domestic or household waste resulting from the ordinary domestic use or occupation of a house, flat, apartment, unit, boarding house, hostel or guesthouse; garbage, rubbish such as paper, cardboard, automobiles, cans, wood, glass, bedding, crockery and similar materials,

junk vehicles and parts, ashes or incinerator residue, street refuse, dead animals, construction or demolition waste, commercial or industrial waste, garbage, sewage waste, commingled recyclables and other refuse which includes discarded materials that have no useful physical, chemical or biological properties after serving their original purpose and that cannot be reused or recycled for the same or other purposes. The term "solid waste" does not include hazardous waste.

TENANT and OCCUPANT: As applied to a building or land, includes any person who occupies whole or part of such building or land, whether alone or with others.

TRANSFER STATION: A collection site where solid waste and recyclables may be taken by persons and deposited into designated containers as provided for in this Chapter.

UNFORESEEN ECONOMIC CIRCUMSTANCE means:

- (A) A percentage change in the CPI-U for a given twelve-month period that is greater than ten percent or below zero (a decrease);
- (B) An adverse economic occurrence beyond a Franchisee's reasonable control; or
- (C) A finding by the City Council that there have been economic occurrences during that period that have caused specific additional economic costs for a Franchisee which are not reflected in changes to the CPI-U during that same period.

WRITTEN, IN WRITING: May include printing and any other mode of representing words and letters, but when the written signature of any person is required by law to any official or public writing or bond required by law, it shall be in the proper handwriting of such person, or in case he is unable to write, by his proper mark.

YEAR: A calendar year.

5.01.03 COLLECTION OF WASTE SUBJECT TO RULES AND REGULATIONS.

Any person collecting, transporting, processing or disposing of solid waste, hazardous waste or recyclables shall do so subject to the codes, ordinances, rules and regulations of the City of Fernley, Lyon County, the State of Nevada and the Federal Government.

5.01.04 PERMIT REQUIRED:

- (A) No person shall collect, remove or convey any solid waste upon, along or across any public street, alley, highway or other public place without first applying for and receiving either an Exclusive Residential Franchise Agreement or a non-residential franchise permit therefor from the City Council.
- (B) No person shall operate a transfer station within the City without first applying for and receiving either an Exclusive Residential Franchise Agreement or a non-residential waste permit therefor from the City Council.

5.01.05 PERMIT APPLICATION, CONSIDERATION BY CITY COUNCIL

- (A) Any person desiring to obtain a non-residential franchise permit to remove or convey any solid waste upon or along any public street, alley, highway or other public place shall pay an application fee and sign and file an application with the City Council.
- (B) Any person desiring to obtain a non-residential franchise permit to operate a transfer station within the City shall pay an application fee and sign and file an application with the City Council.
- (C) When application shall be made to the City for a non-residential franchise permit, City staff will make a determination whether the application is complete. Thereafter the City Council shall consider the matter and shall have a right to grant or reject non-residential franchise the permit sought.
- (D) Upon approval by the City Council, applicant shall enter into a franchise agreement with the City subject to the terms and conditions approved by the City Council.

5.01.06 FRANCHISES PERMITTED, FEE

- (A) Each holder of a non-residential franchise permit shall pay a franchise fee of eight percent (8%) of their total gross revenues from customers located within the City unless otherwise provided for through City Council resolution.
- (B) The holder of the Exclusive Residential Franchise shall pay a franchise fee of a percentage of their total gross revenues from customers located within the City as set by City Council, as provided for in the Exclusive Residential Franchise Agreement.
- (C) The holder of the Exclusive Residential Franchise permit shall maintain a transfer station within the City unless otherwise agreed to between said Franchisee and City.
- (D) Any person operating a transfer station within the City shall pay a franchise fee of eight per cent (8%) of their total gross revenues collected from customers.

5.01.07 DURATION OF NON-RESIDENTIAL FRANCHISE PERMIT

Non-Residential Franchise permits shall be processed and renewed annually for non-exclusive commercial franchises and transfer stations, owned by non-exclusive commercial franchisees and continue in full force and effect unless terminated by City Council action. City Council termination action is not subject to cause and the Contractor will be given thirty days (30) notice to cease operations.

5.01.08 TRANSFERABILITY:

No permit granted pursuant to the provisions of this Chapter shall be assigned or transferred by the Contractor without the consent of the City Council.

5.01.09 REVOCATION OF NON-RESIDENTIAL FRANCHISE PERMIT

In the event that any Contractor holding a non residential franchise permit to operate a transfer station or to collect, remove or convey solid waste upon or along any public street, alley, highway or other public place shall violate any of the conditions of such franchise permit or any provisions of this Chapter or any other ordinance of the City that may now be in force or may hereafter be enacted, relating to or regulating the collection, removal or disposal of solid waste, or shall remove or convey such solid waste in an unlawful, improper or unsanitary manner, the City Council, in addition to any other penalty provided by this Chapter, may revoke such franchise permit issued to such Contractor. If the franchise permit shall be revoked, no permit may thereafter be granted to said Contractor.

5.01.10 DEPOSITING ON PRIVATE OR PUBLIC PREMISES OR WAYS UNLAWFUL.

(A) It is unlawful for any person to:

- (1) Dump, spill, throw, place or bury in any parcel of land, lot, street, highway, gutter, or in any alley or in any water or stream or in any canal or ditch within the limits of the City any garbage, solid waste matter, hazardous waste or any deleterious or offensive substances.
- (2) Throw or deposit, or cause to be thrown or deposited, any solid waste or hazardous waste upon the private or public property or premises or into the container of another person within the City, except as may be provided for in this Chapter.
- (3) Place, deposit or accumulate, or cause to be placed, deposited or accumulated, any solid waste or hazardous waste in such a manner, or permit the same to remain on his or her premises in such condition so that the same may be blown or carried over to public or other private property by any means whatsoever.
- (4) Throw or deposit or cause to be thrown or deposited any solid waste or hazardous waste in any areas of the City not designated, authorized or licensed by the City for deposit of these materials.

(B) There is hereby created a rebuttable presumption that the disposal of solid waste or hazardous waste in violation of this Section was done by the owner of such items.

5.01.11 BURNING WASTE UNLAWFUL—EXCEPTIONS: It is unlawful for any person, for the purpose of disposal of solid waste or hazardous waste by burning or knowingly to furnish the materials for any such fire, or to authorize any such fire to be kindled or maintained in any solid waste or hazardous waste on any street, alley, road, land or other public grounds or upon any private property, within the City, unless a written permit to do so shall first have been secured from the applicable State and/or local agency; provided, however, that solid waste and infectious waste may be burned in an incinerator duly approved by the applicable State and/or local agency.

5.01.12 COLLECTION BY OTHER THAN FRANCHISEE UNLAWFUL—EXCEPTIONS.

It is unlawful for any person, other than the City, or a Franchisee to collect or transport any solid waste; except under the following provisions:

- (A) Any duly licensed and permitted septic tank or grease trap pumpers, lawn maintenance services and tree trimmers may transport those materials accumulated in or generated by the performance of licensed services to a transfer station or a disposal site operated in accordance with all applicable laws, rules and regulations.
- (B) Any person may transport his or her own solid waste to a transfer station or a disposal site operated in accordance with all applicable laws, rules and regulations; provided however, that no person may hire, contract or otherwise engage another person to transport the person's own solid waste unless the hired, contracted or otherwise engaged person has a permit and franchise agreement with the City according to the terms of this Chapter.
- (C) A charitable organization qualified as such under the Federal Internal Revenue Code may collect solid waste from any premises at the express request of the owner, tenant or occupant and may transport the collected solid waste upon application and receipt of a Charitable Organization Waste Collection Permit processed by the City without any associated fees.
- (D) Except in case of an emergency declared by the City Manager under this Chapter.

5.01.13 EMERGENCY COLLECTION—PROVISIONS:

- (A) In the event of an interruption in the collection, transportation or disposal of solid waste by the City or its Franchisees, problems affecting the public health, safety and welfare may arise. These problems may include increases in pathogens, vectors, fire hazards, unsightly litter, odor and traffic hazards from the accumulation of solid waste. This Section is intended to provide for the emergency collection, transportation and disposal of solid waste by private citizens in order to minimize the adverse impact on the public health, safety and general welfare arising from an interruption in the collection, transportation and disposal of solid waste.
- (B) In the event of an interruption in the collection, transporting or disposal of solid waste by the City or its Franchisees, the City Manager may declare an emergency.
- (C) If the City Manager declares an emergency under Subsection (B) of this Section, the provisions of this Chapter which relate to transporting solid waste shall be suspended and the following provisions shall apply until the date specified in the declaration of emergency or in a subsequent declaration:
 - (1) The City Manager may designate, establish, operate and maintain temporary emergency collection areas for solid waste;

- (2) Any person may transport the solid waste generated or found on real property in his or her possession to a designated temporary emergency collection area;
- (3) Until hauled to a designated temporary emergency collection area, all putrescible solid waste shall be stored indoors in plastic bags or outdoors in containers or receptacles which will not permit access by flies or animals or constitute a fire hazard; and
- (4) All putrescible solid waste hauled to a temporary emergency collection area must be securely contained in plastic bags.

5.01.14 INTERFERENCE WITH CONTAINERS UNLAWFUL:

- (A) It is unlawful for any person other than the owner, the City or a Franchisee, or their duly appointed agents, to interfere in any manner with any container containing solid waste or hazardous waste, to remove any such container from the location where placed for collection by the owner, the City or a Franchisee.

- (B) It is unlawful for any person, other than the operator of a transfer station or his duly appointed agent, to interfere with or remove any solid waste from a transfer station.

5.01.15 TRANSPORTATION OF WASTE—REGULATIONS:

It is unlawful to use any cart or vehicle for the transportation or removal of solid waste unless such cart or vehicle is appropriately constructed, covered and/or restrained, within industry standards and in accordance with NRS Chapter 484, to prevent or minimize odors from or leakage, sifting, spilling, drifting or blowing of such solid waste in or upon the streets through which such cart or vehicle may be driven.

5.01.16 CONTAINERS—RESPONSIBILITY TO PROVIDE—PLACEMENT:

- (A) Every person owning or managing any premise or dwelling, except as otherwise provided in Subsection (E) of this Section, shall provide one or more containers sufficient for the depositing of all solid waste from the premises as provided for in this Chapter.

- (B) For single family dwellings, it is unlawful to place, keep, store or locate any solid waste or recyclables container within the right-of-way of a street, sidewalk or alley, as defined in the zoning regulations and Community Development Code of the City; provided, however, that such containers may be placed within such area, except for traffic lanes, for the purpose of the collection of solid waste and recyclables no earlier than two p.m. on the day prior to the designated collection day and no later than 6:00 a.m. on the designated collection day, and that such containers must be removed from the right-of-way no later than midnight of the collection day.

- (C) On any multiple family dwellings, commercial or industrial premises, it is unlawful to place, keep, store or locate any solid waste or recyclables container within the right-of-way of a street, sidewalk or alley. Containers shall be stored within an

enclosure if an enclosure was required in connection with development approval or is otherwise required.

- (D) Places of business whose solid waste consists principally of boxes, cartons and other items of such bulk that the placing of the same in a container would be impracticable may provide for such solid waste to be piled on the premises of such place of business adjacent to a street or alley, provided such boxes or cartons shall be flattened and tied in bundles.
- (E) The Residential Franchisee shall not be required to pick up solid waste from any location that the Franchisee, subject to the City's approval, determines is not safe to access with its disposal vehicles due to space limitations restricting vehicle access or maneuverability, including maneuvers requiring the unsafe backing up of vehicles.
- (F) The Residential Franchisee may charge a reasonable fee to a customer when a customer requests that the Residential Franchisee clean their designated container. The customer shall be responsible for the replacement cost of a designated container that is lost or damaged if the Residential Franchisee can prove the customer did cause its loss or damage.

5.01.17 CONTAINERS—CONSTRUCTION:

- (A) At any single family dwelling that receives individual curbside collection service, each container which cannot be emptied by mechanical or hydraulic equipment shall have a capacity of no more than thirty-two (32) gallons and shall weigh no more than fifty (50) pounds, including the contents thereof.
- (B) Except for manual type drop-box containers, all solid waste containers shall be constructed watertight and shall be provided with handles and tight-fitting covers. Each such container and cover shall be made of a material approved for such use by the City. Covers shall not be removed except when necessary to place solid waste therein. Each container and its cover shall be kept clean from accumulating grease and decomposing material.
- (C) It is unlawful for a non-single family dwelling customer to place out for collection a container which has overflowing solid waste.

5.01.18 REMOVAL BY AUTHORIZED PERSONS ONLY:

- (A) No person other than the owner, the City or a Franchisee, or their agents may:
 - (1) Remove any solid waste or recyclables from the solid waste containers or recyclables containers that are intended for collection by a Franchisee as part of its solid waste collection and curbside recyclables collection programs;
 - (2) Remove recyclables that have been tied, boxed, bundled or otherwise collected and placed for collection by a Franchisee as part of its curbside recyclables collection program; or
 - (3) Tamper with, engage in, interfere with or participate in curbside recyclables

collection.

- (B) No person other than an owner or operator of a transfer station, or their authorized agents, may remove solid waste from the transfer station that have been bundled, boxed, tied or otherwise collected and placed adjacent to the drop-off center.

5.01.19 WASTE TO BE PLACED IN CONTAINER—EXCEPTIONS:

- (A) All solid waste shall be placed in a container; provided, however, that:
 - (1) Places of business may place solid waste on their premises pursuant to Section 5.01.16 (D) and
 - (2) Tree trimmings, scrap lumber and other solid waste capable of being bundled in accordance with Subsection (B) of this Section may be bundled if securely tied and placed next to a container.

- (B) Items bundled pursuant to this Section shall not exceed four feet in length nor weigh more than fifty pounds.

5.01.20 SINGLE FAMILY DWELLING COLLECTION CHARGES:

The charges for collecting, transporting and disposing of solid waste from single-family dwellings and multiple family dwellings consisting of four units or less shall be determined in accordance with the terms of the Exclusive Residential Franchise Agreement.

5.01.21 SINGLE FAMILY DWELLING COLLECTION CHARGES—ONE-TIME COLLECTIONS:

The charges for special one-time collections for single family dwellings, may be billed at the time of service as on-call services in accordance with the terms of the Exclusive Residential Franchise Agreement.

5.01.22 COLLECTION CHARGES—OVERFLOW:

- (A) No single family dwelling overflow charges may be assessed unless:
 - (1) Written notice of an overflow, delivered by regular U. S. mail, e-mail or facsimile (fax) or personal delivery, has been provided to the owner or manager of the premises, and a subsequent overflow occurs at the premises within ninety days after:
 - (a) Such notice has been given; or
 - (b) The last overflow charge has been assessed at the premises; and
 - (2) There is significant overflow from a container, as defined in this Chapter and as evidenced by a photograph; and
 - (3) The overflow has actually been collected by the City or its Franchisee.

- (B) No single family dwelling overflow charge may be assessed for an overflow that is caused by a prior collection being missed or being performed improperly, or by containers being repositioned by a Franchisee after collection such that a container is inaccessible to tenants of the premises, resulting in overuse of and

overflow occurring in another container.

- (C) No single family dwelling overflow charge may be assessed for an overflow that is caused because the time of day of collection was more than four hours later than the time of day when the last regularly scheduled collection occurred.
- (D) Single family dwelling overflow charges assessed pursuant to this Section may be waived by the Franchisee if it is determined that the owner or manager of the premises has taken reasonable steps to avoid future overflows, including but not limited to increasing the container capacity or collection frequency, installing locks on the lids of containers or on access gates to curtail illegal dumping by third parties, or other property-management measures designed to avoid overflows.

5.01.23 COLLECTION CHARGES—DEREGULATED FOR SPECIFIED CATEGORIES:

The charges specified in Section 5.01.20 for collecting, transporting and disposing of solid waste shall not apply to non-single family dwelling waste, multiple family dwellings that are not part of the exclusive residential franchise agreement, construction or demolition waste, commercial or industrial waste, septic-tank waste, grease-trap waste, or landscaping or tree-trimming waste handled in accordance with this Chapter. A Franchisee or other licensed service provider may set its own charges for the collection, transportation and disposal of such solid waste.

5.01.24 MANDATORY SINGLE FAMILY DWELLING SERVICE—BILLINGS—PENALTIES:

- (A) To ensure the uniform, safe and sanitary treatment of solid waste in the City and to discourage the illegal handling and disposal of solid waste, it shall be mandatory for any person owning, occupying or managing any single family dwelling in the City which are located upon two (2) acres or less to subscribe to solid waste collection service provided by the City or its authorized Franchisee and to pay the charges specified in the Exclusive Residential Franchise Agreement. No person may discontinue paying for solid waste collection service for a residence, unless such residence is not occupied for the period of one (1) month.
- (B) Exemptions.
 - (1) City of Fernley staff may grant exemptions from mandatory residential garbage collection service based upon written documentation, including filling out a “City of Fernley Exemption Form”, which provides proof of the following:
 - (a) No garbage is produced or stored upon the premises;
 - (b) A geographical condition exists that presents a significant hardship for the resident of the property or for the franchised collector to process normal curbside collection of garbage; or
 - (c) Residents wish to haul and dispose of their own residential garbage and will provide a written Affidavit of Compliance which provides for

compliance with City, State and Federal laws and regulations, which requires weekly garbage removal in urban areas and that no garbage will accumulate upon the property.

- (d) Staff may perform a “drive by” inspection of the premises granted an exemption at any time or will respond to a complaint of accumulated garbage as provided for in City Code Enforcement procedures. If an exempt resident’s premise is determined by the City Code Enforcement Officer to be non-compliant with City code, the exemption for mandatory residential garbage collection will be revoked.
 - (e) If a resident’s exemption is revoked for any reason, they or any co-habitant may not apply for an exemption from mandatory residential garbage collection for a period of three (3) years.
 - (f) Caregiver Exemption. Premises where a person provides unpaid care by looking after an ill, frail or disabled family member, friend or partner and the caregiver provides for disposal of all garbage generated upon the premises may be allowed an exemption. The Caregiver Exemption may be applied for by either the person who provides the care or by the person who receives the care, and must include a written affidavit setting forth the necessary facts and signed by the caregiver and the recipient of the care, along with the City of Fernley Exemption Form.
 - (g) Persons having applied for an exemption, in writing, to the Fernley City Council prior to August 1, 2009, will have the exemption applied retroactively. If at any time, it is found that the person receiving the permanent exemption is not compliant with the provisions of this chapter relative to regular garbage removal or an accumulation of garbage occurs upon the premises, which constitutes a health and safety issue, the permanent exemption for mandatory residential garbage collection will be revoked. A person having the permanent exemption from mandatory residential garbage collection revoked will be subject to the provisions of chapter 5.01.24 (B)1a-f.
- (2) Exemptions will not be granted if an outstanding balance exists with the Residential Franchisee.
- (3) Exemptions from mandatory residential garbage collection will be valid for a period of one (1) year and can be reapplied for annually prior to the expiration date of the exemption.
- (a) Exemptions may be granted administratively, but will not exceed more than twenty-five (25) exemptions, including Caregiver Exemptions, in any calendar year.
 - (b) The City Council, at its discretion, may grant additional exemptions from mandatory residential garbage collection beyond the twenty-five (25) exemptions allowed by City Code Enforcement. The exemptions petitioned to the City Council will be heard on a case by case basis.
 - (c) Annual exemptions allowed by City Code Enforcement that are not reapplied for prior to expiration will be considered new exemptions

from mandatory residential garbage collection. It is the responsibility of the holder of the exemption to reapply for the exemption in a timely manner. The City is not responsible for notification to the holder of the exemption of the expiration of the exemption allowance. (ORD 2009-011)

- (C) For a temporary exemption from mandatory single family dwelling waste collection, the owner of the property must provide an affidavit of non-occupancy for the period of one (1) month. Such affidavit is sufficient proof to warrant a credit or refund of the single family dwelling collection rate from the Residential Franchisee to the customer. (ORD 2009-011)
- (D) In order to discontinue paying for solid waste collection service pursuant to Subsection (A) of this Section, a person must request discontinuation of service and provide proof that there is no occupancy of the premises. No fee may be charged to discontinue service or to reestablish service to the premises after service has been discontinued pursuant to this Subsection (B).
- (E) All charges for regular or periodic services provided by the City, or its Franchisees, pursuant to this Chapter shall be billed in advance on the first business day of the quarter and shall be due and payable within twenty five (25) days; provided, however, that charges for on-call service may be billed at the time of service. All charges for services under this Chapter, including the penalties for delinquent payment, shall constitute a debt and obligation of the legal owner of the premises to the City or its Franchisee, and such person shall be liable therefore in a civil action commenced by the City or its Franchisee in any court of competent jurisdiction for the recovery of such charges and penalties. (ORD 2009-011)
- (F) If any person fails to pay the charges authorized by the Exclusive Residential Franchise Agreement by the date they become due and payable, the Franchisee may impose a penalty.
- (G) A customer shall be entitled to a refund of an advance payment for service he or she has made upon presenting proof that occupancy did not occur at the customer's premises during the entire billing period for which the advance payment was made. All refunds from a Franchisee to a customer shall be paid within thirty days from the date of the customer's request for reimbursement or date of Franchisee's knowledge that a refund is owed or a credit provided to the customer's account.
- (H) No person shall accept and no Franchisee shall offer or give any solid waste collection, transportation and disposal without charge or shall offer or give a discount, refund or rebate of any charge authorized by the Exclusive Residential Franchise Agreement, except that this provision does not apply to any credits or refunds issued pursuant to this Chapter, charitable organizations which are

exempt from federal income tax pursuant to Section 501(c) of the Internal Revenue Code and hold a permit issued by the City or as further provided by franchise agreement.

5.01.25 DELINQUENT CHARGES AND PENALTIES—LIEN:

All solid waste collection charges authorized and established by the Exclusive Residential Franchise Agreement, including any penalties assessed under Section 5.01.24, shall constitute a lien upon the real property of the premises served until such charges have been paid. Such lien shall be enforced in the manner specified in NRS 444.520.

5.01.26 SINGLE FAMILY DWELLING CHARGES—PERIODIC ADJUSTMENTS:

The single family dwelling charges established pursuant to the Exclusive Residential Franchise Agreement shall be adjusted annually based upon the percentage of change in the CPI-U as provided for in the Exclusive Residential Franchise Agreement.

5.01.27 FRANCHISE FEE:

- (A) Every Franchisee shall pay a quarterly franchise fee, in the amount specified in the franchise agreement, based on its gross cash revenues derived from the operation of a transfer station, collection of solid waste and curbside recyclables for the preceding calendar quarter. All franchise fees shall be due no later than 15 days after the end of each calendar quarter.
- (B) All charges to customers for the collection of solid waste pursuant to the Exclusive Residential Franchise Agreement shall be deemed to include the franchise fee which the Franchisee pays to the City. The Franchisee may pass such fees through to its customers only as a part of the general service charges charged to its customers, not as a separate charge that is additional to the general service charges.
- (C) If a franchise fee is received by the City after the due date, a late fee of ten percent (10%) per month of the delinquent amount will be assessed to the Franchisee.
- (D) The City shall have the right, upon reasonable advance notice, to inspect, audit, and copy all records relating to the permit. In the absence of extraordinary circumstances, five business days notice shall be considered reasonable. Such records should be made available to the City at the Contractor's regular place of business during regular business hours, but in no event outside the City of Fernley.
- (E) All Franchisees shall keep full, true, and correct books, records, and accounts, establishing the identity and number of customers served by it, and the amount of its gross monthly revenues which said books, records, and accounts shall at all times be open to inspection by the duly authorized representatives of City during regular business hours. Further, Franchisee shall furnish to City quarterly

a statement of all of its gross revenues attested as being correct by a representative of Franchisee duly authorized to do so. (ORD 2009-011)

- (F) **Audit Requirement.** Franchisees shall be required to submit to certain “agreed upon procedures” performed by City staff or a qualified independent person or firm to verify gross revenues as defined in this Chapter and the associated franchise fees payable or paid to the City. The verification and review to be conducted shall be limited to an analysis of Franchisee’s revenue and shall not include any analysis or review of Franchisee’s expenses or costs associated with performance under the terms of this Chapter. The Franchisee shall reimburse the City for the cost of conducting the agreed upon procedures in an amount not to exceed Seven Thousand Five Hundred Dollars (\$7500.00). The City will not require the agreed upon procedures more often than every three (3) calendar years, with the procedure generally covering a three (3) year period. Following completion of the agreed upon procedures, the Franchisee will be provided a copy of the report of the procedures performed, the results and summary of amount due to City or to be refunded to Franchisee. Franchisee shall have thirty (30) days following receipt of the report to appeal the results of the report to the City Council. Following expiration of any appeal period, either the Franchisee shall remit amounts due the City or the City shall process a refund of franchise fees, depending upon the results of the agreed upon procedures report.
- (G) City shall have the right, at any time, to audit and otherwise review any Franchisee’s records with regard to Franchisee’s revenue generated from activities conducted pursuant to this Chapter.
- (H) If the examination discloses that the Franchisee is charging collection and disposal rates below or above the City Council approved single family dwelling rates or the gross revenues are not reported correctly and accurately by any Franchisee, the Franchisee’s solid waste permit will be subject to revocation.

5.01.28 DEPOSIT OF WASTE AT DISPOSAL SITE:

All solid waste and hazardous waste collected from the public and private places and premises in the City shall not be deposited at any place other than at a transfer station or disposal site operated in accordance with all applicable laws, rules and regulations.

5.01.29 VIOLATION:

GENERAL PENALTY. Except where other penalties are provided by law, violations of this Chapter of the City of Fernley Municipal Code hereby are declared to be misdemeanors, punishable as provided in the Nevada Revised Statutes for misdemeanor violations as said statutes may be from time to time amended.

INJUNCTIVE RELIEF. The City, in addition to the remedies and penalties above named, may seek injunctive relief against any violator of this Chapter, with or without prior notice, to prevent or correct any solid waste or hazardous waste problem.

5.01.30 ALTERNATIVE COLLECTION SCHEDULES—RECYCLING PROGRAMS:

Notwithstanding any provision in this Chapter to the contrary, the City Manager, Single Family Dwelling Waste Franchisee and specific property owners in designated control areas may agree upon alternative collection schedules for specified test periods for the purpose of testing recycling.

5.01.31 CITY'S RIGHT TO COLLECT AND DISPOSE OF WASTE:

Except as otherwise provided for in the Exclusive Residential Franchise Agreement nothing in this Chapter shall limit the right of the City to collect, transport, process or dispose of any solid waste or hazardous waste including the operation of transfer stations and recycling centers.

5.01.32 DECLARATION OF NUISANCE:

Solid waste and hazardous waste, as defined in Section 5.01.02 and for the purpose of this Chapter, are a nuisance per se.

CHAPTER 2: ABATEMENT OF DANGEROUS OR NOXIOUS CONDITIONS

5.02.01: DEFINITIONS: For the purposes of this ordinance, unless the context otherwise requires, the following definitions apply:

COUNCIL: The Fernley City Council.

CODE ENFORCEMENT OFFICER: A City employee or department designated by the Council to enforce the provisions of this chapter.

DANGEROUS STRUCTURE: As defined in the City Construction Code.

JUNK VEHICLE: Any car, truck, trailer, recreational vehicle, boat or other vehicle, or parts thereof, that is non-operational, unlicensed, disassembled or in disrepair.

NOXIOUS PLANT GROWTH: Any accumulation of weeds or other harmful plants that create a danger to persons or animals or pose a fire hazard.

RUBBISH: Any litter, vegetable waste, debris, garbage, junk, non-running vehicles or trailers or parts thereof, filth or refuse of any kind.

5.02.02: DANGEROUS STRUCTURES, RUBBISH AND NOXIOUS PLANT GROWTH: It is unlawful for any person to allow the continued existence of a dangerous structure, the accumulation of rubbish or the existence of noxious plant growth within or upon any private alley, yard or area except where the same is temporarily deposited for immediate removal. The Council or its designee may order the owner of property within the City to:

- (A) Repair, safeguard or eliminate a dangerous structure;
- (B) Clear debris, rubbish and refuse; or
- (C) Clear weeds and noxious plant growth, to protect the public health, safety and welfare of the residents of the county.

5.02.03: PARKING AND STORAGE OF JUNK VEHICLES: No junk vehicle shall be parked or stored on a lot or parcel of land unless it is contained within a building or screened from view from a public street, road or alley by a solid fence, wall or other similar structure.

5.02.04: EXEMPTIONS: The following items are exempt from the regulations of this Chapter on parcels that are located within rural residential zoning.

- (A) Equipment and materials used for farming, ranching or keeping of livestock, appropriate to the size and zoning of the parcel, including fencing, lumber, compost, gates, irrigation equipment and materials, etc.
- (B) Junk vehicles in one-acre rural residential or lower-density zoning, provided that they are placed outside the front-yard setback area.

5.02.05: NOTIFICATION: Upon receipt of a complaint alleging a violation of this chapter, the Code Enforcement Officer shall determine the validity of the complaint. If the complaint is determined to be valid, the Code Enforcement Officer shall deliver by personal service or by certified mail, return receipt requested, to the property owner or tenant, a notice of the alleged violation and the date by which the condition must be abated. The owner or tenant will be given a period of time of not less than 15 days to abate the condition. The notice must also inform the owner or tenant that they may;

- (A) Request a hearing.
- (B) If they do not prevail at the hearing, appeal to the Council.

5.02.06: HEARING AND APPEAL: An owner or tenant who desires a hearing to challenge the allegations of a violation must contact the Code Enforcement Officer prior to the date indicated on the notice by which the condition is to be abated. The owner or tenant will be afforded an opportunity for a hearing before the designee of the Council, and, if not satisfied with the results of the hearing, may request an appeal of the decision by contacting the City Manager and requesting that the appeal be placed on the next available Council agenda. The decision of the Council shall be final. The date specified in the notice by which the condition is to be abated will be told during the hearing and appeal process.

5.02.07: ABATEMENT BY THE CITY: The Council may direct the City to abate, or cause to be abated, the condition on the property and may recover the amount expended by the City for labor and materials used to abate the condition if:

- (A) The owner or tenant has not requested a hearing within the time prescribed for abatement of the condition and has failed to abate the condition on the property.
- (B) After a hearing in which the owner or tenant did not prevail, the owner or tenant has not filed an appeal and has failed to abate the condition within the period specified.
- (C) The Council has denied the appeal and the owner or tenant has failed to abate the condition within the period specified.

Upon correction of the condition, or any portion thereof, by the City, all the expenses thereof shall constitute a civil debt owing to the City, and shall be collectible in the same

manner as any civil debt owing to the City.

5.02.08: CREATION OF A LEIN: In addition to any other reasonable means of recovering money expended by the City to abate the condition, the Council may provide that the expense is a lien upon the property upon which the condition is located. The lien must be perfected as provided by Subsection 4 of NRS 268.4122. (ORD 2002-0010)