

## ORDINANCE NO. 1504

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OVIEDO RELATING TO SOLID WASTE; PROHIBITING AND MAKING UNLAWFUL CERTAIN ACTIVITIES RELATIVE TO SOLID WASTE AND RECYCLABLE MATERIALS; PROVIDING FOR THE OWNERSHIP OF MATERIALS; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR PENALTIES AND ENFORCEMENT; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Oviedo desires to protect the public health, safety and welfare of the citizens of the City and maintain a high quality of life for the citizens of the City; and

**WHEREAS**, this Ordinance is enacted pursuant to the home rule powers of the City of Oviedo as set forth at Article VIII, Section 2, of the *Constitution of the State of Florida*; Chapter 162, *Florida Statutes*; Chapter 166, *Florida Statutes*; and other applicable controlling law; and

**WHEREAS**, the City of Oviedo has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance; and

**WHEREAS**, this Ordinance, although neither creating or amending land development regulations, is consistent with the goals, objectives and policies of the *Comprehensive Plan of the City of Oviedo*.

**NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF OVIEDO, FLORIDA, AS FOLLOWS:**

**SECTION 1. LEGISLATIVE FINDINGS AND INTENT.** A new section of the *Code of Ordinances of the City of Oviedo, Florida* is created to read as follows:

The City Council of the City of Oviedo hereby adopts and incorporates into this Ordinance the recitals (whereas clauses) to this Ordinance, the City staff report and City Council agenda memorandum relating this Ordinance.

**SECTION 2. OWNERSHIP OF RECYCLABLE MATERIALS.** A new section of the *Code of Ordinances of the City of Oviedo, Florida* is created to read as follows:

All recyclable materials once placed at a collection location, or in a recycling container at a collection location, become the exclusive property of the City of Oviedo. Recovery of recyclable materials from any solid waste generated or brought within the City must occur prior

to the placing in a recyclable container at a collection location, and such recovery shall be subject to Federal, State and local public health and safety laws.

**SECTION 3. VIOLATIONS RELATIVE TO SOLID WASTE AND RECYCLABLE MATERIALS.** A new section of the *Code of Ordinances of the City of Oviedo, Florida* is created to read as follows:

(a) It is prohibited and unlawful for any person to do any of the following; provided, however, that a law enforcement officer is exempt from the provisions of this Ordinance when acting in the scope of employment:

(1) To place, or cause to be placed, without permission, or recyclable materials in or upon the property of another or in a dumpster or container of another.

(2) To convey or cause to be conveyed over and upon any of the roads, streets or rights-of-way of the City, as defined by Section 334.03, *Florida Statutes*, any solid waste or recyclable materials without a franchise or license, or both such franchise and license, as may be required by the regulations affecting the collection and disposal of solid wastes or recyclable materials.

(3) To deposit or dispose of any solid waste or recyclable materials in or upon any public roads, streets or rights-of-way of the City, as defined by Section 334.03, *Florida Statutes*, or any stream, ditch, river, pond, creek, park or public place in the City.

(4) To burn any solid waste or recyclable materials generated or brought within the City, except for trees and brush as may be permitted to be burned where applicable permits have been obtained from the City and other appropriate entities in accordance with Federal, State and local laws, rules and regulations.

(5) To place solid waste or recyclable materials out for collection earlier than 6:00 p.m. on the day before a scheduled collection day or leave containers adjacent to the street on which collection is to occur any later than 6:00 a.m. on the day after the containers are emptied; provided, however, that the City Manager, or designee, may grant exemptions from this requirement to address the requirements of the *Americans With Disabilities Act*.

(6) To place solid waste or recyclable materials out for collection at any location not serviced by the franchisee.

(7) To remove solid waste or recyclable materials from any container, garbage can or recycling bin at a collection location or from curbside unless authorized to do so.

(8) To accumulate or cause to be accumulated any yard waste, industrial waste, junk, rubbish or other solid waste in or upon any premises or lot owned by a person or in a person's control such as to cause a nuisance.

(9) To deposit flammable liquids, hazardous wastes or explosives in any container or garbage can.

(10) To open, remove, untie or to interfere with the orderly and legitimate collection of solid waste or recyclable materials or a recycling container, or to disturb or scatter solid waste or recyclable materials stored in containers placed for collection at a curbside, drop-off or collection location.

(11) To transport over any public road any solid waste or recyclable materials which is subject to leakage or spillage or unless the solid waste is securely tied or covered and encapsulated so as to prevent spillage and leakage.

(12) To allow solid waste or recyclable materials to spill, blow or drop from any vehicle on any roads, streets or rights-of-way of the City, as defined by Section 334.03, *Florida Statutes*, or on private or public property.

(13) To allow the water saturating or covering solid waste to leak from any vehicle on any road, street or private or public property.

(14) To collect or transport solid waste or recyclable materials for hire or for remuneration or other consideration in any form without first being awarded a franchise agreement and receiving any all permits required by the City or any other agency of government or to fail to pay the City's local business tax.

(15) To dispose of solid waste at any site, public or private, which is unapproved by the City or to process recyclable materials at any site, public or private, which is unapproved by the City.

(16) For reasons of general health, safety and welfare including, but not limited to sanitation and community appearance, to accumulate any solid waste for a period in excess of seven (7) days upon public or private property. Creation or maintenance of a backyard compost pile consistent with sound and sanitary gardening practices shall be considered recycling, not disposal, unless the site results in the creation of a nuisance. This prohibition shall not apply to circumstances in which a person leaves solid waste in containers for a reasonable period of time awaiting lawful and normal collection and the condition of the solid waste does not constitute a nuisance when the person has been absent from the property or unable to place the containers at the collection point for a collection cycle.

(17) To permit any garbage or other refuse of any kind that is unsafe or unsanitary, offensive to public health, or that is a menace to the welfare of the City, either by reason of danger by fire or otherwise, to remain upon the premises of such person or upon the public rights-of-way adjoining such premises.

(18) To place, deposit or dump or dispose of any solid waste, garbage, trash or other refuse in any place within the City except in approved containers.

(19) For any nonresident of the City, or for any business or commercial establishment, whether located within or without the boundaries of the City, to deposit any refuse or trash of any kind in any residential containers authorized in this Ordinance except for *de minimus* uses by guests or visitors of the owner of a premises who specifically authorizes such nominal activity.

(20) To collect or remove either recycling containers or recyclable materials placed in or near the recycling containers, designated collection locations or commercial dumpster locations unless previously authorized by the City or to vandalize containers or recyclable materials.

(21) For any person, after notice from the City, to employ or continue to employ any company to transport solid waste or recyclable materials which company has not entered a franchise agreement entered with the City in accordance with this the codes, ordinances and agreements of the City.

(22) For any person to collect, transport or process recyclable materials without first securing a franchise agreement with the City.

(23) To engage in solid waste or recyclable materials collection services on Sunday unless specifically authorized by the City.

(24) To refuse City access to the equipment and vehicles of the franchisee for the purposes of inspections.

(25) To overload a collection container.

(26) To do any act prohibited or to fail to do any act required by this Ordinance or the laws, rules or regulations affecting solid waste and recyclable materials within the City.

(b) If an owner has not removed nonconforming solid wastes or other industrial waste, hazardous wastes or noncombustible refuse or any other material of a similar type or nature within twenty-four (24) hours after notification from the City, the City may order such removal and all costs incurred shall be charged against the owner or shall otherwise be due and payable and collected in accordance with controlling law to include, but not be limited to, the assessment of a nuisance abatement lien.

**SECTION 4. PENALTIES/VIOLATIONS/INTERPRETATION OF ORDINANCE/RECONCILIATION WITH FRANCHISE AGREEMENT/CHARGES.** A new section of the *Code of Ordinances of the City of Oviedo, Florida* is created to read as follows:

(a) Any person violating any of the provisions of this Ordinance shall be punished to the maximum extent as provided in State law and other controlling legal authority.

(b) All persons participating in, or contributing to, a violation of this Ordinance shall be in violation.

(c) The City may engage in any code enforcement activities and processes, as it deems appropriate under the circumstances, and may seek judicial and administrative remedies as deemed appropriate by the City.

(d) Should any franchisee be found by the City Manager, after notice and an opportunity to be heard, to be in violation of the terms and conditions of this Ordinance then the City Manager may suspend or revoke the franchise, exercise any contractual rights of the City, and take appropriate actions to protect the public health safety and welfare.

(e) Each act of violation of this Ordinance shall constitute a separate violation.

(f) This Ordinance shall be interpreted in conjunction with any franchise agreements entered and permits issued by the City.

(g) The City Council may deviate from the provisions of this Ordinance in entering a franchise agreement as to technical solid waste and recyclable materials collection matters relating to franchisees operating within the City.

(h) In the event that this Ordinance and a franchise agreement conflict, the provisions of the franchise agreement shall prevail. In the event that the provisions of this Ordinance and the franchise agreement have equivalent effect, those provisions may be enforced by the City either as a matter of contract or as a matter of code enforcement regulatory authority. In the event that a provision of this Ordinance is applicable and no similar provision is set forth in the franchise agreement, the provisions of this Ordinance shall be applicable.

**SECTION 5. IMPLEMENTING ADMINISTRATIVE ACTIONS.** The City Manager is hereby authorized and directed to implement the provisions of this Ordinance by means of such administrative actions as may be deemed appropriate and necessary to include, but not be limited to, the adoption of administrative rules.

**SECTION 6. SAVINGS.** The prior actions of the City of Oviedo relating to the regulation of solid waste and recyclable materials are hereby ratified and affirmed.

**SECTION 7. CONFLICTS.** All ordinances or part of ordinances in conflict with this Ordinance are hereby repealed.

**SECTION 8. SEVERABILITY.** If any section, sentence, phrase, word, or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word, or portion of this Ordinance not otherwise determined to be invalid, unlawful, or unconstitutional.

**SECTION 9. CODIFICATION.** The provisions of this Ordinance shall become and be made a part of the *Code of Ordinances of the City of Oviedo, Florida* and the sections of this Ordinance may be renumbered or relettered to accomplish such intention and the word

"Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word; provided, however, that Sections 5, 6, 7, 8, 9 and 10 shall not be codified.

**SECTION 10. EFFECTIVE DATE.** This Ordinance shall become effective immediately upon enactment.

**FIRST READING:**

October 18, 2010

**SECOND READING:**

November 15, 2010

**PASSED AND ADOPTED THIS**

15<sup>th</sup>

day of

November

A.D., 2010.

  
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**DOMINIC PERSAMPIERE**  
**MAYOR of the City of Oviedo, Florida**

**ATTEST:**

  
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**Barbara J. Barbour**  
**City Clerk**

