

ORDINANCE NO. 2017-9981

AN ORDINANCE AMENDING CHAPTER 33 ENTITLED "REFUSE, GARBAGE AND WEEDS" OF THE CODE OF CIVIL AND CRIMINAL ORDINANCES OF THE CITY OF IRVING, TEXAS, PROVIDING FOR NEW MONTHLY CHARGES FOR REFUSE PICKUP SERVICE FOR RESIDENCES, APARTMENTS, AND CHURCHES; PROVIDING AN EFFECTIVE DATE; AND PROVIDING A SEVERABILITY CLAUSE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF IRVING, TEXAS:

SECTION 1. That Chapter 33 of The Code of Civil and Criminal Ordinances of the City of Irving, Texas, is hereby amended to read as follows:

Chapter 33 REFUSE, GARBAGE AND WEEDS

ARTICLE I. IN GENERAL

Sec. 33-1. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Container, commercial. A metal or plastic receptacle for nonresidential refuse, also known as a dumpster, designed to be lifted and emptied mechanically. This term includes collection boxes for used clothing.

Director shall mean the director of any department that is assigned the duties of this chapter by the city manager or his/her designee.

Garbage. Any worthless, unnecessary or offensive matter.

Industrial waste. All residue or waste resulting from manufacturing or industrial operations or processes.

Receptacle means a vessel or container including plastic recycling bags, plastic and paper refuse bags, roll-off containers, and mechanical containers used for the purpose of holding solid waste materials.

Refuse. The term refuse as used in this chapter shall mean all garbage, trash and rubbish.

Refuse bag. A plastic or paper bag or sack-type container which meets the material specifications set forth in section 33-7 of this chapter.

Residence. A structure intended for the use and occupancy as a dwelling unit, including but not limited to structures intended for use and occupancy as a single family, duplex or triplex.

Roll-off container means an open top roll-off container, typically used to dispose of construction and demolition debris, that must be serviced by a truck equipped with a roll-off hoist.

Sanitary landfill. A method of disposing of refuse on land without creating nuisances or hazards to public health or safety, by utilizing the principles of engineering to confine the refuse to the smallest practical area, to reduce it to the smallest practical volume, and to cover it with a layer of earth at the conclusion of each day's operation or at such more frequent intervals as may be necessary.

Trash. Rubbish, boxes, crates, cloth, rags, paper, leaves, flowers, lawn cuttings and tin cans.

Weight limitations. The total weight of any refuse bag and contents shall be fifty (50) pounds or less if collected by manual labor.

Sec. 33-2. Disposal of industrial waste.

All industrial waste shall be disposed of by the owner or occupant of the premises where such wastes accumulate unless a specific contract is entered into with the city for collecting and disposing of such industrial wastes.

Sec. 33-3. Throwing container of garbage into streets, etc., prohibited.

It shall be unlawful for any person to throw or scatter into or onto any public street, alley or sidewalk in the city the contents of any can, box, bale, bundle, sack or other container of garbage or trash deposited within any receptacle for collection.

Sec. 33-4. Depositing rubbish or trash on private property without permission prohibited.

It shall be unlawful for any person to throw or deposit in or on any private property, not belonging to or under the control of such person, any bottles, cans, tacks, wire, bale, bundle, sack, paper, pasteboard box, cloth or any other kind of rubbish or trash.

Sec. 33-5. Waste from building construction.

Rocks, bricks, broken concrete, lumber, building materials, or other trash resulting from construction or major remodeling or resulting from a general cleanup of vacant or improved property will not be removed by the city as a regular service, but can be collected as part of its roll-off container service. Otherwise, the owner shall have such trash and debris removed at his expense.

ARTICLE II. GARBAGE CANS AND RECEPTACLES

Sec. 33-6. Duty to provide.

(a) It is the mandatory duty of every person occupying a residence to provide sufficient refuse bags to hold the peak output of refuse from those premises on or before January 1, 1973.

(b) It shall be the duty of every owner, agent, lessee, occupant, or person in charge of any public, commercial, business, and industrial establishment in the city to provide refuse bags or commercial garbage containers of sufficient number and size to hold the garbage, trash, or industrial waste that will normally accumulate on the premises from and after January 1, 1973. Any such premises that requests city pickup service or more than twenty (20) twenty-gallon containers twice a week shall provide a mechanical or commercial container.

Sec. 33-7. Specifications.

(a) *Refuse bags:*

- (1) *Plastic refuse bags* shall be of sufficient strength to be equal to a plastic refuse bag with a 2.0 mil rating.
- (2) *Paper refuse bags* shall be of sufficient strength to be equal to a paper refuse bag constructed of two-ply, fifty-pound wet strength kraft paper.
- (3) *Refuse bags* shall not be less than twenty (20) nor more than thirty (30) gallons in capacity.

(b) *Mechanical containers.* All mechanical garbage containers will meet the city specifications that are serviced by the city forces.

Sec. 33-7.1. Charges for plastic refuse/recycle bags sold by city.

Charges for two-mil plastic refuse and recycle bags shall be set at the city's annual bid prices plus applicable sales tax.

Sec. 33-7.2. Charges for kitchen grease collection bags sold by city.

Charges for bags for household collection of fats, oils, and grease shall be set at the city's annual bid price plus applicable sales tax.

Sec. 33-8. Closed or covering.

(a) Refuse bags shall at all times be kept secure and closed so that flies and other insects may not have access to the contents thereof, and shall remain closed except while refuse bag is being filled.

(b) The doors or covers of all mechanical garbage containers shall at all times be kept secure and fastened so that flies and other insects may not have access to the contents thereof, and such doors or covers shall not be opened except while the containers are being filled or emptied.

Sec. 33-8.1. Location and screening of commercial containers.

(a) No owner, occupant, or person in control of property shall suffer or permit the placement of a commercial container, or other refuse storage facility in any of the following:

- (1) In the open space between a building face and adjoining public right-of-way extending across the entire width of a lot or tract [the area commonly called the front yard or side yard];
- (2) On curbs or in the public right-of-way;
- (3) In a fire lane;
- (4) In a required parking space;
- (5) In any location that blocks vehicular or pedestrian traffic;
- (6) To obstruct drivers' sight lines at intersection of streets and driveways; or
- (7) To interfere with utilities.

(b) The owner, occupant, or person in control of property who suffers or permits the placement of a commercial container or other refuse storage facility, other than publicly accessible commercial container solely for collection of recyclable paper, shall screen the commercial container as follows:

- (1) *Enclosure.*
 - a. If the commercial container is located in front of a building line, in a location visible from view of a public street or an adjoining single-family or public property, then on three (3) sides with a wall constructed of masonry, brick, stone, 24-gauge prefinished architectural metal panel, cementitious fiberboard, or similar material and approved accent materials stated in section 52-35c; or
 - b. If the commercial container is located behind the building line or building, in a location visible from view of a public street or an adjoining single-family or public property, then on three (3) sides with a wall constructed of:
 1. Masonry, brick, stone, 24-gauge prefinished architectural metal panel, cementitious fiberboard, or similar material and approved accent materials stated in section 52-35c; or

2. Stained cedar board-on-board fencing with six-inch-wide boards, three (3) runners, and a stained cedar cap rail. The fence shall be restained on a regular basis to maintain the original stained cedar color and the integrity of the cedar board; or
- c. If the commercial container is on property that is zoned for retail uses and placed as far from the public street as practical and there is no physical location behind the building for the commercial container, then screening must be constructed in accordance with the requirements provided in subsection (b)(1)b.
- d. If the commercial container is on property that is zoned for industrial uses and placed as far from the public street as practical, then screening is not required; however, any screening must be constructed in accordance with the requirements provided in subsection (b)(1)b.
- e. If the commercial container is behind a building and in a location not visible from view of a public street or an adjoining single-family or public property, then screening is not required; however, any screening that is constructed must be in accordance with the requirements provided in subsection (b)(1)b.

(2) *Gate.*

- a. If screening is required by subsection (b)(1)a., then on the fourth side with double swing, blind gates constructed of wood or metal with stop pins or rods and corresponding holes drilled into the approach and pad to keep the gates open during the emptying process and securely closed at all other times; or
- b. If screening is required by subsection (b)(1)b. and the fourth side is visible from view of a public street, then on the fourth side with double swing, blind gates constructed of wood or metal with stop pins or rods and corresponding holes drilled into the approach and pad to keep the gates open during the emptying process and securely closed at all other times.

(3) *Height.* Any screening wall and/or gate constructed in accordance with this subsection shall be at least one (1) foot higher than the commercial container it surrounds, but in no instance shall the screening wall and/or gate be shorter than four (4) feet or higher than nine (9) feet.

(c) The owner, occupant, or person in control of property who suffers or permits the placement of publicly accessible commercial containers solely for collection of recyclable paper shall be limited to no more than two (2) bins per lot or parcel, placed as far from the public street as practical. If such property abuts a single-family residential property, the owner, occupant, or person in control of the property shall provide a screen as described in subsection (b)(1) on the side adjacent to the residential property.

(d) The owner, occupant, or person in control of property shall provide and maintain a pad and approach for each commercial container that consists of five (5) inch, two thousand five hundred (2,500) P.S.I. concrete with #3 rebar on twenty-four-inch centers or six (6) inches by six (6) inch wire mesh reinforcement, or asphalt of comparable strength, or other approved paved surface.

(e) It is an affirmative defense to this section that:

- (1) The commercial container is located behind a building and is not visible from a public street or adjoining single-family or public property;
- (2) The commercial container is for the temporary purpose of disposing of waste generated during the time of an active building permit for the demolition or construction of improvements on the property upon which the commercial container is located;
- (3) The commercial container was placed by or upon written authority of the director of solid waste services on a temporary bases; or

- (4) The commercial container is a part of a City of Irving attended full service drop off recycling center.

(f) *Applicability.*

- (1) This section shall apply to all commercial containers in the city after the effective date.
- (2) All commercial containers currently in the city shall be moved to a location in compliance with this section no later than sixty (60) days after the effective date.
- (3) All commercial containers shall be screened in compliance with this section no later than December 31, 2011.

(g) *Modification procedures.*

- (1) A person may obtain a modification to this section only through an application to and written permission from the director of planning and inspections.
- (2) A modification to the provisions of this section may be granted in the following areas:
 - a. Setback regulations; and
 - b. Location requirements.
- (3) A modification shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss. In order to grant a modification to the provisions of this section it must be determined that:
 - a. The requested modification does not violate the intent of this section;
 - b. The requested modification will not adversely affect surrounding properties;
 - c. The requested modification will not adversely affect public safety; and
 - d. Special conditions exist which are unique to this property which make compliance with the regulation extremely difficult.

Sec. 33-9. Location.

(a) Garbage receptacles and containers shall be placed at the location designated by the city as the most accessible for collecting and removing the same. In the event that trash is of such a nature that it cannot be put in receptacles, it shall be carefully placed in bundles under fifty (50) pounds and tree limbs, trunks and hedge cuttings shall not exceed three (3) feet in length and one and one-half (1½) feet thick. All garbage receptacles shall be removed from the public easements by the owner of the same after the garbage and trash has been removed therefrom.

(b) If however any owner of property utilized for commercial purpose or multi-family structures desires to place his receptacles and containers at a location on private property and requests the city to collect and remove the garbage from the location, the city may, at its discretion, agree to this request only upon the property owner executing a release and hold harmless agreement prepared by the city attorney's office. Such agreement shall be subject to cancellation at any time by the city and the property owner. The city reserves at all times the right to require the property owner to place the receptacles at a designated place on city right-of-way.

(c) The city refuse collection in residential areas shall be conducted from streets only except as hereafter provided. For the purposes of this section, the word "street" shall mean an improved public road surface designed and used for vehicular traffic and providing primary public and private access and service, or private road conforming to public street and subdivision standards.

(d) If an organization representing a subdivision having private alleys desires that the alleys be used for refuse collection and requests the city to provide such alley service, the city may, at its discretion, agree to this request under the following conditions, and reserves at all times the right to require that refuse be placed for collection from the street:

- (1) The representing organization shall be an organization of all property owners in the subdivision and shall be empowered and capable of maintaining the alleys as provided herein.
- (2) Publicly owned alleys shall not receive refuse collection.
- (3) Plats for the subdivision represented by the organization shall explicitly allow alley access to refuse collection, provided the city and its contractors shall not be responsible for damage to pavement resulting from refuse collection service, and shall assume responsibility for all repair and maintenance of the pavement and related structures. In the absence of plat notes as described above, the same provisions shall be incorporated in a separate agreement provided by the representing organization.
- (4) Request for service shall be in writing and shall include:
 - a. A copy of the resolution of the organization authorizing the request.
 - b. A plat showing all properties and alleys in the subdivision and designation of which alleys are to be served.
 - c. Evidence of representation, of empowerment, and of capability as described in subsection 33-9(d)(1) above.
 - d. Agreements as described in subsection 33-9(d)(3) above.
 - e. As-built construction plans of all alleys to be served demonstrating compliance with design criteria herein required.
- (5) Alley width of pavement shall be no less than sixteen (16) feet.
- (6) Alley pavement shall be reinforced concrete no less than six (6) inches thick with strength, reinforcement spacing, and subgrade conforming to city standards for public alleys.
- (7) Minimum inside radius of all curves shall be no less than twenty-seven (27) feet.
- (8) Maximum pavement slope shall be nine (9) percent. Maximum cross slope shall be one-half (½) inch per foot.
- (9) Overhead clearance shall conform to the City Electrical Code ordinance.
- (10) Sharp drop-offs from the edge of pavement shall have a slope no greater than one (1) vertical to four (4) horizontal, or the pavement shall have a curb and there shall be a guardrail at that location.
- (11) Length of vertical curves shall be such as to allow the driver of the refuse truck to see a six-inch high object on the pavement no less than one hundred (100) feet in front of the vehicle.
- (12) Dead end alleys shall not be served.
- (13) Alleys shall at all times be maintained as follows by the requesting representative organization:
 - a. Alleys shall be kept free of debris, accumulations of algae and zoogeleal growth, overhanging limbs, fallen trees, fences or structures, and blockages by traffic, utility work, construction or any other cause which interferes with or prevents refuse collection as scheduled.

- b. Alleys with ice shall be promptly and sufficiently sanded to render them safely passable for refuse collection as scheduled.
- c. Proper drainage shall be maintained.
- d. Pavement failure shall be promptly repaired.
- e. Failure to provide maintenance as described above may cause temporary interruption of scheduled service and/or cancellation of refuse collection in alleys.

(14) Brush shall not be collected in alleys but at curbside.

Sec. 33-10. Duty to place garbage and trash in receptacles.

It shall be the duty of each person in control or possession of any premises described in section 33-6, to place or cause to be placed in the receptacles required in such section all garbage and trash which may accumulate upon the premises; provided, that it shall be the duty of each person placing garbage and trash in any such receptacle to eliminate as far as possible all water and liquid from such garbage.

Sec. 33-11. Maintenance.

It shall be the duty of each person to keep and maintain any receptacle required by this article in such a manner that it shall not become or constitute a public nuisance to or in the neighborhood of such premises.

Sec. 33-12. Deposit of dead animals or fowl in receptacles prohibited.

Dead animals and fowl shall not be placed in a receptacle required by this chapter.

ARTICLE III. COLLECTION AND REMOVAL OF GARBAGE AND TRASH

Sec. 33-13. Schedule for removal and type of receptacle.

The city will not collect used or scrap tires curbside. All tires shall be removed by the owner at the owner's own expense or taken to the City of Irving Landfill.

Sec. 33-13.2. Reserved.

Sec. 33-14. Monthly charges for residences, apartments and churches.

(a) Each residential owner, apartment unit owner, or church shall pay a regular charge for each month or part thereof for such refuse pickup service, as provided in article V. of this chapter.

(b) Residential customers age 65 or older who are the responsible occupant may upon completion of an application and proof of age be granted a twenty (20) percent reduction in the monthly charge for residential single-family sanitation service. The discounted rate shall be effective on the first billing date following receipt of said application and proof of age. Responsible occupant is defined as an individual residing at the address and in whose name the account has been established.

(c) Residential customers receiving social security disability income as a result of a disability who are the responsible occupant may upon completion of an application and proof of being a recipient of social security disability income due to a disability be granted a twenty (20) percent reduction in the monthly charge for residential single-family sanitation service. The discounted rate shall be effective on the first billing date following processing of said application and proof of age. Responsible occupant is defined as an individual residing at the address and in whose name the account has been established.

(d) No customer or account shall receive more than one (1) discount.

Sec. 33-15. Monthly charges for all other customers besides residential.

(a) Each public, commercial, business and industrial entity shall pay a regular charge for each month or part thereof for each refuse pickup service, as provided in article V. of this chapter.

(b) Mechanical garbage container service charges. Where the city furnishes a garbage container designed for mechanical garbage collection, each customer served by the city with garbage, trash and rubbish pickup service shall pay a regular charge for each month or part thereof for such service, as provided by article V. of this chapter.

(c) Minimum sanitation charge. Where there is only one (1) public, commercial, industrial or business entity (excluding apartment) in operation at one (1) location, the entity shall only be charged one (1) minimum rate under section 33-15(a) above unless the entity requests or is provided sanitation services in excess of the minimum service.

Sec. 33-15.1. Energy charge for all solid waste customers.

In addition to the regular charge for refuse pickup service, each solid waste customer shall pay an energy charge for each month or part thereof, as provided in article V. of this chapter.

Sec. 33-16. Mandatory payment for garbage service.

Any person making application for water service and posting a deposit with the city water department will pay the minimum charge that is applicable for garbage service even if the city service that is available is not used.

The city shall collect the charges set forth in this article by adding the monthly water bill for each customer. Failure to pay any charges under this article for garbage collection service shall be considered notice by the customer to the city to discontinue water service and garbage service and shall authorize the city to apply customer's deposit to the satisfaction of the past-due bill.

Sec. 33-17. Garbage collection permit—required.

Only the duly authorized agents and employees of the city shall collect refuse, empty refuse containers or convey or transport refuse, garbage or trash on the streets, alleys and public thoroughfares of the city without a franchise agreement granted and issued by city council with the exception that Irving resident owners or public institutions, churches, businesses and industrial firms that used a vehicle less than one (1) ton to haul their own refuse shall not be required to have a permit to do so.

Sec. 33-18. Roll-off container service.

(a) The city will provide a roll-off container service on the following basis:

(1) *Customers.* The city will provide roll-off container service to a residential customer, with proof of a current city water account in his or her name, or to a commercial customer, a business, church, governmental agency, or other entity, with proof of business status and location within the city.

(2) *Terms of service.*

a. *Agreement required.* Each customer must sign a written agreement, pay the applicable use fees, or agree to pay them as a part of his or her water bill, and agree to comply with all policies and procedures applicable to the use of the roll-off container service.

b. *Scheduled disposal.* Scheduled disposal for residential customers includes: delivery of a roll-off container to the customer's premises, setup, fourteen-day rental, collection, and

disposal at the landfill. Scheduled disposal for commercial customers includes: the first fourteen-day rental period, collection, and disposal at the landfill; however, delivery is at an additional charge.

- c. *Delivery.* Delivery to and setup of a roll-off container at a customer's premises by city personnel will result in assessment of a delivery fee in all circumstances other than the first delivery under an agreement with a residential customer.
- d. *Additional disposal.* Customers may request the collection and disposal of a roll-off container additional times during the rental period, at the applicable additional disposal fee for the container size being used, subject to availability of staff. Same day service is not guaranteed.
- e. *Rental fee.* A customer may extend the use of a roll-off container for longer than fourteen (14) days by agreeing to pay a rental fee for each day of continued use.
- f. *Extended service period.*
 - 1. *Residential customers.* Unless extended by prior agreement, at the end of thirty (30) days, a residential customer's roll-off container will be collected and the customer will be billed in full on his or her water account. A residential customer may not locate a roll-off container on the customer's premises for more than one hundred eighty (180) days in any three hundred sixty-five-day period.
 - 2. *Commercial customers.* Unless extended by prior agreement and payment for extended service, at the end of fourteen (14) days, a commercial customer's roll-off container will be collected.
- g. *Relocation.* A customer may request that a roll-off container be relocated, provided the new location is suitable and approved by the City of Irving Solid Waste Services Department, and upon payment of a relocation fee, as provided in article V. of this chapter.
- h. *Accessibility.* A customer is required to maintain minimum clearances to provide access to the roll-off container for servicing at all times, as provided in the service agreement, and an inaccessible fee will be charged as provided in article V. of this chapter, if the staff attempts to collect a container at the customer's location and determines that the container is inaccessible due to the customer's failure to maintain minimum clearances.
- i. *Payment.* All customers must pay the charges with cash or city-accepted credit card. Customers without an active water account must pay the delivery fee, if applicable, and scheduled disposal fee, at the time the order is placed.
- j. *Construction/demolition debris.* Roll-off containers set for construction and demolition debris shall be limited to twelve-yard and twenty-yard containers only.

(b) *Fees for roll-off containers.* Fees for roll-off containers will be charged as provided in article V. of this chapter.

(c) *Pass-through charges.* Landfill fees, gate rates, and other costs resulting from local, state, or federal solid waste regulations charged to the city shall be passed through and be added to the rate schedules on the effective date of such regulations.

Sec. 33-18.1. Statement of policy.

Recognizing the need for waste and recyclable material collection and hauling services to be operated in a safe and efficient manner, the City of Irving has established the requirements in this article.

Sec. 33-18.2. Definitions.

In this article:

Applicant means the individual or corporation applying for a franchise agreement to collect solid waste in the City of Irving.

Director means the director of the department designated by the city manager to enforce and administer this article or the director's authorized representative.

Franchisee means an individual or corporation who has been issued a solid waste collection franchise under this article.

Person means an individual, corporation, government or governmental subdivision, or an agency, trust, partnership, or two (2) or more persons having a joint or common economic interest.

Solid waste collection service means the business of removing wet or dry solid waste from any premises.

Sec. 33-18.3. Authority of director.

(a) The director shall implement and enforce this article and may by written order establish such rules or regulations, consistent with this article, as the director determines are necessary to discharge any duty under or to effect the policy of this article.

(b) The director shall have authority to initiate action to correct any vehicle, dumpster, or roll-off container:

- (1) Whose contents have become foul or offensive; or
- (2) That is being used for the collection of waste material in violation of this article.

Correction may include but is not limited to:

- i. Contacting franchisee to facilitate correction;
- ii. Directing the disposing of the contents of a fouled dumpster, roll-off, compactor container, trailer or vehicle at a location of the city's choice and remedy costs would accrue to the franchisee; and
- iii. Taking any other legally permissible action that the director deems appropriate.

(c) A vehicle, dumpster, roll-off container, compactor container or trailer impounded under correction order may not be returned to service without consent of the director unless the contents are disposed of, the vehicle, dumpster, roll-off container, compactor or trailer is cleaned and brought into compliance with this article, and if any costs are incurred by the city in making the correction, these correction costs must be reimbursed to the city.

Sec. 33-18.4. Exclusions.

No provision of this article, except sections 33-18.3, 33-18.20 (a) and (b), 33-18.24, 33-18.25, and 33-18.26, shall apply to a solid waste collection service:

- (1) Operated by a governmental entity;
- (2) Operated by a person who gathers clothes, salvageable newspaper, or other recyclable material, as long as the material being collected has not been set out for collection by or for city forces;

- (3) In which a vehicle is not operated more than twice during any calendar year to remove dry or wet solid waste from any premises;
- (4) Operated by a person who collects medical - bio-hazardous waste;
- (5) Operated by a person engaged in collecting construction and demolition debris; or
- (6) Operated by a person engaged in collecting of landscape waste.

Sec. 33-18.5. Franchise and permit required.

A person who operates a solid waste collection service within the city without a valid solid waste collection franchise issued under this article commits an offence.

Sec. 33-18.6. Franchise application.

To obtain a solid waste collection franchise, a person must submit an application on a form provided for that purpose to the director. The applicant must be the person who will own, control, or operate the proposed solid waste collection service. The application must be verified and contain the following information:

- (1) The applicant's name, address, and verified signature;
- (2) The form of business of the applicant, and, if the business is a corporation or association, a copy of the documents establishing the business;
- (3) A description of any past business experience of the applicant, particularly in providing solid waste collection service, and an identification and description of any revocation or suspension by the city of a solid waste collection franchise held by the applicant or business before the date of filing the application;
- (4) The number and description of vehicles the applicant proposes to use in the operation of the solid waste collection service, including year, make, model, vehicle identification number, and state franchise registration number for each vehicle;
- (5) The number of dumpsters and roll-off containers, whether or not owned by the applicant, with which the proposed service will collect solid waste;
- (6) A description of the proposed solid waste collection service;
- (7) Documentary evidence from an insurance company indicating a willingness to provide liability insurance as required by this article;
- (8) Documentary evidence of payment of ad valorem taxes owed on the real and personal property to be used in connection with the operation of the proposed solid waste collection service if the business establishment is located in the city; and
- (9) Such additional information as the applicant desires to include to aid in the determination of whether the requested franchise should be granted.

Sec. 33-18.7. Fees.

- (a) Amount and calculation of fees.
 - (1) The annual fee shall be five (5) percent of gross revenues for service provided by the franchisee in the City of Irving servicing dumpsters, roll-off containers, compactor containers, collection in refuse vehicles or collecting and hauling refuse in open top trucks, owned or not owned by the franchisee, that is serviced by the franchisee used in the City of Irving.

- (2) The calculation of gross revenues generated from operation within the city shall include all revenue, as determined in accordance with generally accepted accounting principles, which is derived, directly or indirectly, by the franchisee from or in connection with its operation within the city. Gross revenues shall include, but are not limited to revenues received from the collection and disposal of all solid waste, whether by a company bearing franchisee's name or a company owned or controlled by franchisee but operating under a different name.

(b) That portion of the annual fee attributable to subsection (a)(1) above must be paid in a manner and on a schedule approved by the director.

(c) The annual fee shall be paid quarterly, no later than thirty (30) days after the end of each calendar quarter. The payment shall be made to the City of Irving Financial Services Department. No refund of a fee will be made.

(d) Fee payments received after the due date shall be subject to interest at the rate of twelve (12) percent per annum until the fees are paid in full. In addition, delinquent fees shall be subject to a late payment penalty of five (5) percent for each month or portion thereof that the fees are outstanding. In no event, however, shall the penalties exceed twenty-five (25) percent of the total delinquent fees nor shall interest charged exceed the maximum rate allowed by law.

Sec. 33-18.8. Issuance, denial, and display of franchise and permit.

(a) A solid waste franchise may be issued to the applicant only if the director determines that the applicant:

- (1) Complied with all requirements for issuance of the franchise; and
- (2) Has not made a false statement in the application for a franchise.

(b) Upon issuance of a franchise to an applicant, satisfactory completion of all inspections required by this article, and payment of all required fees, the director shall issue a permit for each vehicle to be operated by the applicant in the solid waste collection service.

(c) If the director determines that the requirements of subsection (a) above have not been met, the director shall not recommend that a solid waste collection franchise be granted to the applicant.

(d) If the city council determines that an applicant should be denied a solid waste collection franchise, the director shall notify the applicant in writing that the application is denied.

(e) A franchise and permit issued under this section must be displayed in a manner and location approved by the director. A franchise and permit must be presented upon request to the director or to a peace officer for examination.

Sec. 33-18.9. Revocation of franchise.

(a) The city council may revoke any solid waste collection franchise if the franchisee:

- (1) Fails to comply with any provision of this article, any other city ordinance, or any state or federal law applicable to the collection and disposition of solid waste material;
- (2) Makes a false statement in the application or in a hearing concerning the solid waste collection franchise; or
- (3) Fails to pay a fee required by the article at the time it was due.

(b) Before revoking a franchise under subsection (a) above, the director shall notify the franchisee in writing that the franchisee is being considered for revocation. The notice must include the reason for the proposed revocation, and a statement that the franchisee has ten (10) days to comply with the notice.

(c) The city council, after due notice and hearings, may revoke a franchise.

Sec. 33-18.10. Amendments to franchise.

(a) Minor amendments to a solid waste collection franchise may be made by the city council upon written request by a franchisee. An amendment that substantially changes the scope of the franchise must be applied for in the same manner as the original franchise.

(b) Before any vehicle not listed in the application for a solid waste collection franchise may be placed in service by a franchisee, the franchisee must notify the director of the additional vehicle, and meet any requirements set by the director.

Sec. 33-18.11. Expiration and renewal of franchise; voidance of authority to operate vehicles, collection trailers and service dumpsters, roll-off containers and compactors.

(a) A solid waste collection franchise may be renewed upon expiration of the agreement by making application in accordance with section 33-18.6. A franchisee shall apply for renewal at least sixty (60) days before the expiration of the franchise.

(b) Any permit to operate a vehicle and any authorization to service a dumpster or roll-off container, compactor or trailer granted under this article expires upon expiration, revocation, suspension, or nonrenewal of the accompanying solid waste collection franchise.

(c) Should a franchisee have its franchise revoked, the franchisee may be granted a period of time, up to a maximum of six (6) months, by the director to conclude its solid waste business in the City of Irving, as long as the franchisee continues paying the set franchise fee and maintains the required insurance requirements.

Sec. 33-18.12. Nontransferability.

(a) A solid waste collection franchise issued to one person may not be transferred to another person without authorization by city council.

(b) A solid waste collection permit issued for one vehicle may not be transferred to another vehicle without written permission of the director.

Sec. 33-18.13. Insurance; suspension of franchise.

(a) It is unlawful for the holder of a solid waste collection franchise to operate a solid waste collection business unless said holder shall maintain in force during the authorized period of its operating authority the amount and character of insurance coverage for all motor vehicles used in the solid waste collection service as follows:

- (1) A one million dollar (\$1,000,000.00) per occurrence combined single limit liability policy with a deductible not to exceed one thousand dollars (\$1,000.00) which shall pay on behalf of the insured named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, all sums which the insured shall become legally obligated to pay as damage arising out of the operation of the solid waste collection service or the ownership, maintenance or use of such motor vehicles or motor vehicles operated by independent contractors or vehicles operated for or on behalf of the franchise holder;

- (2) Carried with an insurance company authorized to do business in the State of Texas;
- (3) Including a cancellation rider under which the insurance company is to renotify the city in writing no later than thirty (30) days before making a material change to the insurance policy;
- (4) Providing that the city is an additional named insured;
- (5) Providing coverage for all solid waste collection vehicles operating under the name of the franchise holder whether said solid waste collection vehicles are owned, leased, hired or contracted and liability coverage for the drivers operating said solid waste collection vehicles, whether on or off duty; and
- (6) Containing a provision for a continuing liability thereon up to the full amount thereof, notwithstanding any recovery thereon.

(b) The insurance policy required by this chapter shall be filed with the director five (5) working days prior to the time any solid waste collection vehicle operated by the holder is operated upon city streets.

(c) The holder shall secure written confirmation from the city that the policy meets the requirements of this section before operating any solid waste collection vehicle on the streets of the city.

- (1) Except as provided in subsection (g) below, a franchisee shall procure and keep in full force and effect automobile and truck liability insurance written by an insurance company approved by the State of Texas and acceptable to the city and issued in the standard form approved by the Texas Department of Insurance. All provisions of the policy must be acceptable to the city. The insured provisions of the policy must name the city and its officers and employees as additional insured and the coverage provisions must provide coverage for any loss or damage that may arise to any person or property by reason of the operation of a solid waste collection service by the franchisee.
- (2) The automobile and truck liability insurance must provide combined single limits of liability for bodily injury and property damage of not less than five hundred thousand dollars (\$500,000.00) for each occurrence, or the equivalent, for each motor vehicle used by the franchisee, with a maximum deductible of not more than the deductible allowed under the Texas Safety Responsibility Act, as amended. Aggregate limits of liability are prohibited.

(d) Insurance required under this section must include:

- (1) A cancellation provision in which the insurance company is required to notify the director in writing not fewer than thirty (30) days before canceling, failing to renew, or making a material change to the insurance policy; and
- (2) A provision to cover all vehicles, whether owned or not owned by the franchisee, operated under the franchisee's solid waste collection franchise.

(e) No insurance required by this section may be obtained from an assigned risk pool.

(f) A solid waste collection franchise will not be granted or renewed unless the applicant or franchisee furnishes the director with such proof of insurance as the director considers necessary to determine whether the applicant or franchisee is adequately insured under this section.

(g) If the insurance of a franchisee lapses or is canceled and new insurance is not obtained, the director shall suspend the franchise until the franchisee has provided evidence that insurance coverage required by this section has been obtained. A person may not operate a solid waste collection service while a franchise is suspended under this section whether or not the action is appealed.

(h) This section does not apply to any person who:

- (1) Operates a solid waste collection service only to remove, transport, or dispose of wet or dry solid waste actually generated by the person's own business; and
- (2) Does not receive any compensation for operating a solid waste collection service.

Sec. 33-18.14. Location and inspection of franchisee's records and reports.

Each franchisee shall maintain at a single location business records of its solid waste collection service within a fifty-mile radius of the City of Irving. A franchisee shall make its records available for inspection by the director at reasonable times upon request.

Sec. 33-18.15. Annual reports.

By February 1 of each year, a franchisee shall file an annual report with the director containing the following information for the preceding calendar year concerning solid waste and recyclable materials collected by the franchisee within the city:

- (1) Total volume in tons of wet and dry solid waste collected by the franchisee, with separate figures for a total residential waste and total commercial waste.
- (2) Total volume in tons of waste materials recycled by the franchisee, with separate figures for total recycled residential waste and total recycled commercial waste.
- (3) A description and the total volume in tons of each type of waste material recycled by the franchisee.

Sec. 33-18.16. Failure to pay ad valorem taxes.

A franchisee or an applicant for a franchise shall not allow the payment of ad valorem taxes upon any vehicle, equipment, or other property used directly or indirectly in connection with the solid waste collection service to become delinquent.

Sec. 33-18.17. Notification of change of address or ownership.

A franchisee shall notify the director within ten (10) days of a change in:

- (1) The address or telephone number of the solid waste collection service; or
- (2) The form of the business or the officers of the corporation of the solid waste collection service.

Sec. 33-18.18. Vehicle inspection.

The franchisee shall properly maintain each of its vehicles in compliance with department of transportation requirements pertaining to the vehicle class being used in its solid waste collection service in the City of Irving. The director may request an inspection of a franchisee's vehicles to assure compliance with department of transportation requirements and for other reasons as deemed necessary by the director.

Sec. 33-18.19. Requirements for solid waste collection vehicles.

- (a) Any vehicle used for transporting dry solid waste material within the city must:
 - (1) Be fitted with a substantial, tight-fitting enclosure that is free of any cracks or breaks and that has side boards and head boards of not less than twenty-four (24) inches in height and tail board of not less than eighteen (18) inches in height, to prevent waste material from being scattered or thrown onto the streets; and

- (2) Be equipped with a closely fitting cover that must be used to prevent the escape of loose material or effluvia.
- (b) Any vehicle used for transporting wet solid waste material within the city must:
 - (1) Be fitted with a substantial, tight-fitting enclosure, with the deck, sides, and ends of the bed constructed of sheet steel so that the vehicle may be easily cleaned and with the sides not less than twenty-four (24) inches high and the tail board not less than eighteen (18) inches high;
 - (2) Have a tight-fitting cover to prevent spillage;
 - (3) When carrying cans to transport wet solid waste material, use only cans equipped with tight-fitting lids and holding chains so that the cans will not turn over and spill; and
 - (4) Not have any drain holes in the sides of the vehicle and must have any drain holes in the deck of the vehicle must be securely capped to prevent spillage or leakage.
- (c) Any vehicle used for transporting dry or wet solid waste material within the city must:
 - (1) Be clean and odor free prior to each day's work;
 - (2) Contain evidence of insurance required by this chapter;
 - (3) Have a valid permit issued by the director placed on the vehicle in a place and manner designated by the director;
 - (4) Be equipped with any other equipment required to comply with all applicable federal and state motor vehicle safety standards; and
 - (5) Be equipped with any other special equipment that the director determined to be necessary for the solid waste collection service to be operated.

Sec. 33-18.20. Identification of vehicles, dumpsters, and roll-off containers.

(a) Every vehicle operated by a solid waste collection service must have the company name and the vehicle permit number, if issued by the city, conspicuously displayed on the vehicle in a manner and location approved by the director.

(b) Every dumpster, roll-off container, compactor container and open top truck being used in the collection of refuse, serviced by a solid waste collection service, must have the name of the company, contact phone number, and information clearly stating materials unacceptable for collection displayed on the dumpster, roll-off container, compactor container and open top truck being used in the collection of refuse in a manner and location approved by the director.

Sec. 33-18.21. Responsibility of producer of dry or wet solid waste.

It is the responsibility of the producer of any dry or wet solid waste to insure that such waste material is disposed of in an approved manner at an approved disposal site. It is the producer's responsibility to inform the franchisee, in writing, of any waste that includes any material that is hazardous by reason of its pathological, radiological, explosive, toxic, or corrosive character.

Sec. 33-18.22. Hazardous waste material—compliance with state and federal laws.

A person providing solid waste collection service within the city shall comply with all city ordinances and state and federal laws regulating the handling, disposal, and transportation of hazardous waste materials.

Sec. 33-18.23. Restrictions on removal of solid waste.

(a) A person commits an offense if he removes from any garbage container or receptacle any dry or wet solid waste, or in any way interferes with any garbage container or receptacle.

(b) It is a defense to prosecution under subsection (a) of this section that the person was:

- (1) A governmental employee in the performance of official duties;
- (2) A franchisee under this article performing solid waste collection service in compliance with the terms of this article and the solid waste collection franchise;
- (3) Any owner or occupant of the premises on which the container or receptacle is located.

(c) Collection shall not be made within three hundred (300) feet of a residence earlier than 6:00 a.m., or later than 8:00 p.m., Mondays through Saturdays, and not at all on Sundays.

(d) Collection times and traffic patterns at schools shall be coordinated with the school to avoid student drop-off and pick-up traffic and minimize noise during the school day.

(e) This franchise shall apply only to the collection, transportation, handling, processing and disposal of municipal solid waste as defined by the Texas Commission on Environmental Quality or successor agencies, and to recyclable materials which have been diverted from the municipal solid waste stream.

(f) Liquid waste, as defined by the Texas Commission on Environmental Quality or successor agencies, shall not be mixed with municipal solid waste.

(g) Public alleys serving residential areas may not be used for access by waste or recyclable material collection trucks, unless alley is in conformance with standards set in section 33-9 of this chapter.

(h) In the event of disaster, franchise holders will be expected to assist in cleanup by making additional collection equipment available to the city as required at regular rates.

(i) Applicant shall file annually a listing of the various kinds of service available to customers.

(j) Franchise holder's trucks shall be in good repair, properly registered with the director, inspected, and covered by insurance, and shall at all times be within legal wheel load limitations.

(k) Franchisee shall provide containers to customers that are sufficient in size and number to hold the waste generated between scheduled collections. The scheduled collection frequency shall be a minimum once a week or of sufficient frequency, more than minimum, to remove trash before odor or litter problems develop. The franchisee shall maintain all containers in good repair, free of rust damage and broken sides, tops or bottoms, with properly operating lids, and shall keep them clean, free of accumulations of grime, objectionable material, and graffiti.

(l) Franchisee shall coordinate collections and equipment features (e.g., locking devices) with customers so as to minimize the opportunity for scavenging of refuse by others.

(m) Franchisee shall coordinate with customers so as to maintain the area surrounding waste or material containment equipment clean, and free from odors, accumulated debris, litter, vermin, and graffiti. Coordination with customer may include requiring upgrading size or number of containers or collections in the event the collection site is identified as a nuisance.

(n) Franchisee shall require customer to keep off-road access to solid waste containers in good repair, free from ruts and holes, and of a design sufficient to support collection vehicles. Standing water in the access shall be drained or otherwise eliminated.

(o) Special equipment provided by franchisee for volume minimization, e.g., compactors, shall be installed only in accord with the applicable codes and necessary permits, shall be free of hazard to operators, and to the public, and shall not constitute an attractive nuisance to children.

(p) The franchise shall observe zoning ordinances and other applicable regulations in the placement of collection equipment. Collection equipment and commercial containers shall not be placed in the open space between a building face and adjoining a public right-of-way extending across the entire width of a lot or tract.

(q) No franchise, customer, or any other person shall place collection equipment or commercial containers:

- (1) On curbs, or in the public right-of-way;
- (2) In a fire lane;
- (3) In a required parking space;
- (4) In any location that blocks vehicular or pedestrian traffic;
- (5) To obstruct intersection sight distances; or
- (6) To interfere with utilities.

Sec. 33-18.24. Restrictions on disposal of waste.

A person engaged in the removal, handling, or transfer of dry or wet solid waste or in any manner dealing with dry or wet solid waste commits an offense if, either in person or by an agent, employee, or servant, he separates, unloads, offers for sale or trade, or exchanges any part of the waste materials within the city, except at a place designated by and in compliance with this chapter and other applicable city ordinances.

Sec. 33-18.25. Accumulations and deposit of waste prohibited.

(a) A person commits an offense if he deposits, causes to be deposited, or permits to accumulate any dry or wet solid waste upon any public or private premises within the city in such a manner as to emit noxious or offensive odors or to become unsanitary or injurious to public health, or in any way to become a public nuisance.

(b) It is a defense to prosecution under subsection (a) of this section that the person was:

- (1) Depositing such solid waste at a temporary disposal site designated by the director as a temporary holding site in response to the need for clean-up after a disaster declared by the emergency coordinator, and
- (2) The solid waste deposited was waste generated during the disaster.

Sec. 33-18.26. Penalties for violation.

(a) A person who violates a provision of this article, or who fails to perform a duty required of him under this article, commits an offense. A person is guilty of a separate offense for each day or part of a day during which a violation is committed, continued, or permitted.

(b) An offense under this article is punishable by a fine of not more than two thousand dollars (\$2,000.00) and, upon a first conviction, not less than one hundred dollars (\$100.00).

Sec. 33-19. Operation of city sanitary landfill site.

(a) *Schedule of disposal service charges; disposal of refuse collected outside city limits prohibited.* City of Irving landfill sites shall only be utilized for the disposal of refuse originating within the City of Irving city limits. The following disposal service charges are established for disposing of refuse at the City of Irving sanitary landfill site when said refuse is generated within the city limits of the City of Irving:

- (1) The city charges by the ton and the rate as provided in article V. of this chapter. Charge(s) by the ton will be calculated to the nearest one-fourth ($\frac{1}{4}$) ton.
- (2) Earth, rocks and inert materials suitable for cover of refuse will not be charged a fee.
- (3) If the scale is not operating, a flat fee schedule will be in effect and assessed as provided in article V. of this chapter.

(b) *Schedule of charges for materials sold at the landfill.* The city landfill site will sell mulch to residents or businesses. The mulch will be sold at a rate as provided in article V. of this chapter.

(c) *Payment of disposal service charges.* Disposal service charges shall be payable by one (1) of the following methods at the discretion of the operator:

- (1) Cash at sanitary landfill site; or
- (2) City-accepted credit card.

(d) *Authority to accept, reject wastes.* The director of environmental services in consultation with the director of health shall have the authority to cause to be rejected, for processing or disposal, any material which, in his judgment, would create a nuisance by reason of emission of disagreeable odors, or would require special and unusual handling and/or record keeping, or would operate to make the processing or disposal facilities unwholesome or adversely affect the public health, safety and welfare.

(e) *Disposal limitations for certain wastes.*

- (1) Class I wastes as defined by the Texas Department of Water Resources shall not be disposed of in the landfill.
- (2) Special waste as defined by the Texas Commission on Environmental Quality shall not be disposed of in the landfill, except that dead animals may be accepted.
- (3) Refuse originating outside the city limits shall not be disposed of in any city landfill site. If the operator of a vehicle presenting refuse for disposal at a city landfill site does not display to the landfill personnel a Texas Department of Public Safety vehicle operator's license indicating that the residence of said vehicle operator is located within the city, then it shall be conclusively presumed that the refuse originated outside the city; however, display of such license shall not necessarily prove that refuse is of Irving origin.
- (4) Tree stumps of trees with trunk diameter larger than four (4) inches shall not be disposed of in the landfill, except that root balls of no more than thirty-six (36) inches in any direction, of trees with trunk diameter less than thirty-six (36) inches and stump height less than twenty-four (24) inches above the ground line, may be admitted.
- (5) Concrete with or without reinforcement, rocks, or material of similar hardness, of dimension greater than twenty-four (24) inches in any direction, shall not be disposed of in the landfill.
- (6) Should prohibited materials be deposited in the sanitary landfill, the vehicle carrying same shall be prohibited entry into the sanitary landfill for six (6) months.

(f) *Salvaging, removing materials from site.* It shall be unlawful for any person to take, remove or carry away from the sanitary landfill site operated by the city, any garbage, rubbish, trash, article, thing or object situated thereon, whether or not same has monetary value. In prosecutions for this offense, it shall not be necessary to describe the thing or things taken, removed or carried away other than as generally described herein or as "article," "thing" or "item" and it shall not be necessary to allege that the same had "value."

The city council shall award any contract for salvage rights at the city sanitary landfill site.

(g) *Loads to be secured.* Vehicles and/or trailers accepted into the landfill site and not constructed with an enclosed transport body shall be using other devices, such as nets, canvasses, coverings or tarpaulins to prevent blowing or spillage of loads. Vehicles not using such device shall be assessed an antilitter charge in addition to the fees above, of one dollar (\$1.00) per quarter ton, or portion thereof, of the weight of the net load. In the event that scales are inoperative, the antilitter charge will be thirty (30) percent of the landfill charge, except that vehicles described in paragraph (a)(2) of section 33-19 of this Code shall be charged one dollar (\$1.00).

(h) Waste originating outside the city may be disposed in the city landfill if it is waste received pursuant to a contract between the hauler or originator of the waste and the city for a defined disposal volume.

Sec. 33-19.1. Use of city landfill site by commercial waste disposal operators prohibited; penalty.

(a) It shall be unlawful for any person, firm, corporation, association or entity operating a commercial waste disposal operation to deposit or dispose of or dump any garbage, rubbish, trash, grass, trees, tree limbs, article, thing or object in the city landfill.

(b) Violation of subsection (a) of this section shall be punished by a fine not to exceed two thousand dollars (\$2,000.00), and each act of dumping, depositing or disposing shall constitute a separate offense.

(c) A commercial waste disposal operation shall be defined as the collecting, handling, transporting and/or disposing either primarily or incidentally, of solid waste, as defined by the department of health, using any vehicle rated one (1) or more tons in capacity or trailers nine (9) feet or more in length; but shall not include a vehicle carrying a load of one and one-half (1½) tons or less, presenting not more than two (2) loads per day for disposal and which is certified pursuant to the procedure set forth in subsection (e), below, and is operated by qualified operator.

(d) A qualified operator shall be either:

- (1) A resident of the city as demonstrated by presentation of a valid driver's license bearing an address located within the city limits, or
- (2) Employed by a business located within the city as demonstrated by both:
 - a. A copy of a tax bill, a water bill or building permit, naming said business; and
 - b. A letter from said business, signed by an owner, officer or general manager thereof, stating the following: name, address and telephone number of said business; origin of waste; employee's name and vehicle license number.

ARTICLE IV. CONDITION OF PREMISES

Sec. 33-20. Definitions.

(a) For purposes of this article, the following terms shall have the following designated meanings:

Brush shall mean scrub vegetation or dense undergrowth.

Carriion shall mean the dead and putrefying flesh of any animal, fowl or fish.

Code shall mean the Code of Civil and Criminal Ordinances of the City of Irving, Texas.

Filth shall mean any matter in a putrescent state.

Garbage shall mean all decayable wastes.

Junk shall mean all worn out, worthless, or discarded material, including, but not limited to, odds and ends, old iron or other metal, glass, and cordage.

Impure or *unwholesome matter* shall mean a putrescible or nonputrescible condition, object or matter, which tends, may, or could produce injury, death, or disease to human beings.

Objectionable, unsightly or *unsanitary matter* shall mean any matter, condition, or object, which is or should be objectionable, unsightly, or unsanitary to a person of ordinary sensitivities.

Owner shall mean a person having title to real property.

Person shall mean any individual, firm, partnership, association, business, corporation, or other entity.

Putrescible waste shall mean waste liable to become putrid (decomposed or rotten), usually applied to food and animal products.

Refuse shall mean a heterogeneous accumulation of worn out, used up, broken, rejected or worthless materials and includes garbage, rubbish, paper or litter and other decayable or nondecayable waste.

Rubbish shall mean trash, debris, rubble, stone, useless fragments of building materials, or other miscellaneous useless waste or rejected matter.

Stagnant shall mean foul or stale from standing.

Weeds shall mean vegetation, including grass, that because of its height is objectionable, unsightly or unsanitary, but excluding:

- (1) Shrubs, bushes, and trees,
- (2) Cultivated flowers, and
- (3) Cultivated crops.

- (b) Any word not defined herein shall be construed in the context used and by ordinary interpretation; not as a word of art.

Sec. 33-21. Weeds, rubbish and other unsanitary matter.

(a) *Rubbish and other unsanitary matter.* A person owning, claiming, occupying, or having supervision or control of any real property, occupied or unoccupied, within the city limits and outside the city limits for a distance of five thousand (5,000) feet, commits an offense if said person permits or allows any stagnant or unwholesome water, sinks, filth, carriion, weeds, rubbish, brush, refuse, junk, or garbage, or impure or unwholesome matter of any kind, or objectionable, unsightly matter of whatever nature to accumulate or remain on such real property or within any easement area on such real property or upon any adjacent right-of-way for streets and alleys between the property line of such real property and where the paved surface of the street or alley begins. Such condition or conditions are hereby defined as public nuisances.

- (b) *Weeds.*

- (1) *General requirement.* A person, owner, tenant, agent, or person responsible for any premises within the city, occupied or unoccupied, commits an offense if said person permits or allows weeds to grow on the premises to a greater height than ten (10) inches. Said premises shall include, but not be limited to, the parkway between sidewalk and the curb; the right-of-way between any fence, wall, or barrier and the curb or pavement if such exists or the center line of said right-of-way; or the area between a fence, wall, or barrier and within any abutting drainage channel easement to the top of such channel closest to the property.
- (2) *Agricultural properties.* With respect to uncultivated agricultural properties, a person, owner, tenant, agent, or person responsible for such property commits an offense if said person permits or allows weeds to grow to a greater height than ten (10) inches within one hundred fifty (150) feet from any adjacent property under different ownership or any street right-of-way. However, on cultivated agricultural properties where the distance between the growing crop and abutting property under different ownership or street right-of-way is less than one hundred fifty (150) feet, the person, owner, tenant, agent, or person responsible for such property commits an offense if said person permits or allows weeds to grow to a greater height than ten (10) inches between such growing crop and such property or street right-of-way. A person commits an offense if the person permits or allows weeds or crops on a corner lot to grow to any height which would create a traffic hazard.

Sec. 33-22. Notice of violation.

In the event that any person violates the provisions of this section, the director of inspections, hereafter director, or his designee, shall give notice to such person setting forth the noncompliance with this section.

- (1) *Notice required.* Such notice shall be given in any one of the following ways:
 - a. Personally to the owner in writing;
 - b. By letter addressed to the owner at the owner's address as recorded in the appraisal district records of the appraisal district in which the property is located; or
 - c. If personal service cannot be obtained:
 1. By publication at least once;
By posting the notice on or near the front door of each building on the property to which the violation relates; or
 3. By posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates, if the property contains no buildings.
- (2) *Return of notice.* If the notice to a property owner is returned by the United States Postal Service as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered delivered.
- (3) *Continuing notice.* In a notice provided under this section, the city may inform the owner by regular mail and a posting on the property, or by personally delivering the notice, that if the owner commits another violation of the same kind or nature that poses a danger to the public health and safety on or before the first anniversary of the date of the notice, the city without further notice may correct the violation at the owner's expense and assess the expenses against the property. If a violation covered by a notice under this subsection occurs within the one-year period, and the city has not been informed in writing by the owner of an ownership change, then

the city without notice may take any action permitted by section 33-23 and assess its expenses as provided in section 33-24.

Sec. 33-23. Work or improvements by city.

If such person fails or refuses to comply with the demand for compliance in the notice within seven (7) days of such notice or publication, the city may do such work or cause such work to be done to bring the real property into compliance with this section.

Sec. 33-24. Assessment of expenses; lien.

(a) *Assessment of expenses.* The costs, charges, and expenses incurred in doing or having such work done or improvements made to the real property, including the sum two hundred and fifty dollars (\$250.00) per lot or tract of land, which sum is hereby found to be the cost to the city of administering the terms of this section, shall be a charge to and personal liability of such person (called charges).

(b) *Lien.* If a notice as provided herein is delivered to the owner of such real property, and he fails or refuses to comply with the demand for compliance within the applicable time period as herein provided, the aforementioned costs, charges, and expenses shall be, in addition to a charge to and personal liability of the owner, a privileged lien upon and against such real property, including all fixtures and improvements thereon. In order to perfect such lien, the director, or his designee, shall first give such owner written notice of demand for payment of such charges. Such written notice may be given by any one (1) of the methods provided for the initial notice requiring compliance. If the owner fails or refuses to make complete payment of the charges within twenty (20) days of such notice, the director, or his designee, shall file a written statement of such charges with the Dallas County Clerk, for filing in the county land records. The statement shall be sufficient if it contains the following:

- (1) The name of the owner;
- (2) A description of the real property;
- (3) The amount of the charges, including interest thereon;
- (4) A statement that all prerequisites required by this section for the imposition of the charges and the affixing of the lien have been met; and
- (5) A statement signed by the director, or his designee, under oath, that the statements made therein are true and correct.

The statement may also contain such other information deemed appropriate by the director, or his designee.

(c) *Interest.* All charges shall bear interest at the rate of ten (10) percent per annum from the date the city incurs the expense. The city may bring suit to collect the charges, institute foreclosure proceedings, or both. The statement, as provided herein or certified copy thereof, shall be prima facie evidence of the city's claim for charges or right to foreclose the lien. The owner or any other person responsible as provided herein shall be jointly and severally liable for the charges.

Sec. 33-25. Dangerous weeds.

In the event that a property owner permits or allows weeds to grow on the premises to a height greater than forty-eight (48) inches and such weeds are deemed by the city's director of inspections, or his designee, to be an immediate danger to the health, life, or safety of any person, the director, or his designee, without notice to the property owner, may do such work or cause such work to be done to bring the real property into compliance with this section. The costs, charges, and expenses incurred in doing or

having such work done or improvements made to the real property shall be assessed to the property owner. Not later than the tenth day after the date upon which the weeds were abated under this section, notice shall be given to the property owner of the abatement. Such notice shall be sufficient if it contains the following:

- (1) An identification of the property, which is not required to be a legal description;
- (2) A description of the violations that occurred on the property;
- (3) A statement that the city abated the weeds;
- (4) The amount of the charges, including interest thereon; and
- (5) An explanation of the property owner's right to request an administrative hearing about the city's abatement of the weeds.

Sec. 33-26. Appeal.

If, not later than the thirtieth day after the date of the abatement of the weeds, the property owner files a written request for a hearing with the director, the director shall forward the request and all documents related to the matter to the city manager, who shall conduct or designate a person to conduct in his behalf, an administrative hearing on the abatement of dangerous weeds under section 33-25 and/or the assessment of the administrative charge under section 33-24(a). The administrative hearing shall be conducted not later than the twentieth day after the date the request for a hearing is filed. The property owner may testify or present any witnesses or written information relating to the city's abatement of the weeds. Within ten (10) working days of the date of the hearing, the city manager, or his designee, shall provide written notice of his decision. The city manager, or his designee, may after hearing, waive the assessment of charges in the event he determines that the requirements for abatement of dangerous weeds provided in section 33-25 were not met and may uphold, alter or waive the assessment of administrative charges upon a finding of good cause for so doing. The decision of the city manager, or his designee, is final.

Sec. 33-27. Penalty.

Any person who intentionally, knowingly or unlawfully violates or permits the violation of any provision of this chapter shall be punished by a fine not to exceed two thousand dollars (\$2,000.00). Each day in which a violation of this chapter exists shall constitute a separate offense.

Sec. 33-28. Enforcement.

The provisions of this chapter shall be enforced by representatives of the city's inspections department. Notwithstanding any provisions of this chapter to the contrary, the director, his designee, or any inspector has authority to issue immediate citations to persons violating any provision of this chapter in the presence of said department representative. It shall be unlawful for any person to interfere with the director, his designee, or an inspector in the exercise of their duties under this chapter.

Sec. 33-29. Unlawful to use refuse service without payment.

It shall be unlawful for any person to use the city refuse pickup service, or sanitary landfill, without paying the prescribed charge.

ARTICLE V. RATES AND FEES

Sec. 33-30. Monthly charges for residences, apartments and churches.

Each residential owner, apartment unit owner, or church shall pay a regular charge for each month or part thereof for such refuse pickup service, which monthly charge shall be as follows, plus the applicable sales tax:

- (1) One-family residence \$24.42
 - a. One family residence – senior citizen discount rate \$19.54
 - b. One family residence – disabled citizen discount rate \$19.54
- (2) Each living unit of a duplex \$24.42
- (3) Each mobile home \$24.42
- (4) Each church \$24.42
- (5) Apartment house rates shall be the same rates set for commercial businesses where refuse bags or mechanical garbage containers are used and placed in a central location, but if such apartment houses require individual and separate pickups for each apartment then the rate shall be \$24.42 for each living unit in each apartment house.

Sec. 33-31. Monthly charges for all other customers besides residential.

Each public, commercial, business and industrial entity shall pay a regular charge for each month or part thereof for each refuse pickup service, which monthly charge shall be as follows:

- (1) Refuse bags collection charges:

<i>Number of 30-Gallon Containers</i>	<i>Two Pickups per Week¹</i>
0—5	\$16.80 (800)
6—10	33.60 (1,600)
11—15	50.29 (2,400)
16—20	67.09 (3,200)

¹ Maximum gallons per month shown in parentheses.

Charges for number of thirty-gallon containers in excess of twenty (20) shall be three dollars (\$3.00) per container per pickup. Customers requesting pickup in excess of twenty (20) twenty thirty-gallon containers shall provide mechanical or commercial containers.

- (2) Mechanical garbage container service charges. Where the city furnishes a garbage container designed for mechanical garbage collection, each customer served by the city with garbage, trash and rubbish pickup service shall pay a regular charge for each month or part thereof for such service, and the garbage collection charge shall be as follows, plus the applicable sales tax:

<i>Container Size (in yards)</i>	<i>Pickups per Week</i>			
	2	3	4	5
4	\$157.00	\$251.00	\$334.00	\$416.00

6	188.00	282.00	376.00	468.00
8	208.00	312.00	417.00	519.00

- a. When a customer furnishes his own container, these containers will be maintained to city standards. There will be no credit allowed against the monthly collection charge for customer-furnished containers.
- b. When two (2) or more customers shall use one (1) or more containers jointly, charges shall be divided proportionately as to use among the using customers, with a minimum fee of sixteen dollars and eighty cents (\$16.80) per month for each customer.

When joint use of a city container involves customers who each have their own independent water meter, the minimum charge shall be sixteen dollars and eighty cents (\$16.80) per water meter or the container monthly rate whichever is greater. In such cases, the building owner shall contract with the city to provide container service for each business within the building. The individual business shall be relieved of the minimum garbage service billing provided the owner of the complex has contracted with the city for container service.

- c. When a customer requests service that is not a scheduled service the charge shall be as follows, plus the applicable sales tax, for each nonscheduled service:

Four-yard container \$20.00

Six-yard container \$22.00

Eight-yard container \$25.00

- d. Should a customer order unscheduled service more than three (3) times in any calendar year, the customer may be required to order a larger container or request additional standard weekly pickups.

(3) Minimum sanitation charge.

- a. Where there is only one (1) public, commercial, industrial or business entity (excluding apartment) in operation at one (1) location, the entity shall only be charged one (1) minimum rate unless the entity requests or is provided sanitation services in excess of the minimum service.
- b. Where there is more than one (1) public, commercial, industrial or business entity in operation at one (1) location, and the entity contracts with an independent contractor for monthly service, the city's charge to the customer shall be a sixteen dollar and eighty cents (\$16.80) monthly charge per water meter connection. If the owner of a complex contracts with an independent contractor for container service, the owner may by contract with the city have the city's minimum monthly charge for each water meter connection billed to said owner, instead of each tenant.

Sec. 33-32. Energy charge for all solid waste customers.

In addition to the regular charge for refuse pickup service, each solid waste customer shall pay a ninety-eight cent (\$0.98) energy charge for each month or part thereof.

Sec. 33-33. Roll-off container service.

(a) *Relocation.* A customer may request that a roll-off container be relocated, provided the new location is suitable and approved by the City of Irving Solid Waste Services Department, and upon payment of a fifty-dollar (\$50.00) relocation fee.

(b) *Accessibility.* A customer is required to maintain minimum clearances to provide access to the roll-off container for servicing at all times, as provided in the service agreement, and a fifty dollar (\$50.00) inaccessible fee will be charged, if the staff attempts to collect a container at the customer's location and determines that the container is inaccessible due to the customer's failure to maintain minimum clearances.

(c) *Fees for roll-off containers.* The following charges will apply for the services as designated, based on a standard (less than three months) rental agreement:

<i>Container Size (in yards)</i>	<i>Delivery Fee</i>	<i>Rental Fee</i>	<i>Scheduled Disposal Fee</i>	<i>Additional Disposal Fee</i>
12	\$50.00/container	\$4.00/day	\$123.50	\$136.50
20	\$50.00/container	\$4.00/day	\$253.50	\$266.50
30	\$50.00/container	\$4.00/day	\$292.50	\$383.50

The following charges will apply for the services as designated, based on a long-term (minimum three-month period) rental agreement:

<i>Container Size (in yards)</i>	<i>Delivery Fee</i>	<i>Monthly Rental Fee</i>	<i>Individual Dump Fee per month</i>
12	\$50.00/container	\$225.00	\$136.50
20	\$50.00/container	\$500.00	\$266.50
30	\$50.00/container	\$575.00	\$383.50

Sec. 33-34. City sanitary landfill site.

(a) *Schedule of disposal service charges; disposal of refuse collected outside city limits prohibited.* City of Irving landfill sites shall only be utilized for the disposal of refuse originating within the City of Irving city limits. The following disposal service charges are established for disposing of refuse at the City of Irving sanitary landfill site when said refuse is generated within the city limits of the City of Irving:

- (1) The city charges by the ton, when scale is operating, the rate will be, per ton \$40.00
Charge(s) by the ton will be calculated to the nearest one-fourth ($\frac{1}{4}$) ton.
- (2) Earth, rocks and inert materials suitable for cover of refuse No charge
- (3) If the scale is not operating a flat fee schedule will be in effect and assessed as follows:
 - a. Passenger vehicles will be charged the minimum fee of \$10.00.
 - b. All other vehicles will be charged a cubic yard (CY) fee based on the volume of material being disposed of and by using the TCEQ established conversion from tons to cubic yards.

Loose waste will be converted as five (5) CY per ton or \$8.00/CY

Compacted waste will be converted as three (3) CY per ton or \$13.00/CY

- (4) Passenger vehicle tires in excess of five (5) per load will be assessed a tire recycling fee of \$5.00 per tire.

(b) *Schedule of charges for materials sold at the landfill.* The city landfill site will sell mulch to residents or businesses. The mulch will be sold at a rate of three dollars (\$3.00) per two (2) cubic foot (CF) bag or twelve dollars (\$12.00) per cubic yard (CY) in bulk form.

(c) *Loads to be secured.* A vehicle and/or trailer accepted into the city landfill site and not constructed with an enclosed transport body shall use another device, such as a net, canvass, covering or tarp to prevent the blowing or spillage of loads. A vehicle not using such a device shall be assessed an anti-litter charge, in addition to the fees above, of twenty dollars (\$20.00) per load.

(d) *Fee free weekends for residents.* The director may authorize up to two (2) weekends each year where residents can utilize the City of Irving landfill in accordance with applicable law at no cost.

Sec. 33-35. Applicable taxes.

All rates and fees as provided in this article shall be subject to applicable sales tax.

SECTION 2. The new rates and fees established by this ordinance shall take effect on October 1, 2017; however, the prior rates and fees shall be in effect for service to said date.

SECTION 3. That the terms and provisions of this ordinance shall be deemed to be severable and that if the validity of any section, subsection, sentence, clause, or phrase of this ordinance should be declared to be invalid, the same shall not affect the validity of any other section, subsection, sentence, clause, or phrase of this ordinance.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF IRVING, TEXAS, on first reading on September 7, 2017.

RICHARD H. STOPFER
MAYOR

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF IRVING, TEXAS, on second and final reading on September 21, 2017.

RICHARD H. STOPFER
MAYOR

ATTEST:

Shanae Jennings
City Secretary

APPROVED AS TO FORM:

Kuruvilla Oommen
City Attorney