

**City of Umland
State of Texas**

HEALTH & SANITATION ORDINANCE

ORDINANCE NO. 114

AN ORDINANCE PROMOTING PUBLIC HEALTH AND SANITATION, PROVIDING FOR: FINDINGS OF FACT; DEFINITIONS; ALLOWING FOR A CITY WIDE FRANCHISE FOR ALL SOLID WASTE; SANITATION REQUIREMENTS; COMPLAINT PROCEDURES; ADMINISTRATIVE ACTION; ESTABLISHING A PENALTY; CONFLICTING PROVISIONS; REPEALER; SEVERABILITY; EFFECTIVE DATE; AND PROPER NOTICE AND OPEN MEETING.

WHEREAS, the City of Umland seeks to promote the health, safety and general welfare of the community by preventing death, injury, property damage and urban blight within the city limits; and

WHEREAS, the City Council finds that the existence of stagnant water and other unsanitary conditions will harbor and attract rodents and insects, will result in the production of disease, and decrease the aesthetics of the City; and

WHEREAS, the City Council finds that the existence of rubbish, brush, filth, carrion and other unsightly, unsanitary and unwholesome matter will lower the quality of life for citizens of the City by decreasing the aesthetics of the City, will harbor rodents, will increase illegal dumping and littering, will increase fire hazards, and will increase crime by decreasing visibility and access; and

WHEREAS, pursuant to Texas Local Government Code section 51.001 the City Council is authorized by law to adopt an ordinance that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, pursuant to Texas Local Government Code section 51.032 the City Council is authorized by state law to adopt an ordinance, not inconsistent with state law, that the City Council considers proper for the government of the City; and

WHEREAS, pursuant to Texas Local Government Code Chapter 217 the City has the statutory authority to define and abate nuisances and impose fines; and

WHEREAS, pursuant to the Texas Health and Safety Code, including but not limited to Chapter 342, the City Council is authorized by law to regulate public health and sanitation within the City in the areas of stagnant water, filth, carrion, weeds,

dangerous weeds, and other unhealthy, unsanitary and unwholesome conditions and is authorized to enact ordinances to encourage the reduction of waste by methods including recycling; and

WHEREAS, the City Council finds that it is necessary and proper for the good government, peace or order of the City and for proper public health and sanitation in the City to adopt an ordinance on public health and sanitation that regulates stagnant filth, carrion, solid waste and commercial and industrial waste and other unhealthy, unsanitary and unwholesome conditions in the City;

NOW, THEREFORE, be it ordained by the City Council of the City of Uhland, that:

SECTION 1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as legislative findings of fact as if set forth herein at length.

SECTION 2. DEFINITIONS

A. General

Words and phrases used in this Ordinance shall have the meanings set forth in this section. Terms and phrases which are not defined in this Ordinance but are defined in other ordinances of the City of Uhland shall be given the meanings set forth in those ordinances. Other words and phrases shall be given their common, ordinary meaning unless the context clearly requires otherwise. Headings and captions are for reference purposes only, and shall not be used in the interpretation of this Ordinance.

B. Specific

- (1) **Bulky Waste:** means any item that is of a size or weight or dimension that would preclude it from being put in the hopper a standard garbage truck. Items in this category include large chairs, couches, mattresses, bed frames, stoves, household or commercial demolition debris and the like.
- (2) **Code Enforcement Officer:** means the person or persons officially designated by the City Council to assist the City Council in implementing and enforcing this Ordinance. Such person may be a volunteer, a member of the City Council, an employee of the City, a person contracted by the City or a person otherwise designated by the City to serve in this capacity, and such assistance shall include, but is not limited to, investigating alleged violations of this Ordinance.
- (3) **Commercial Solid Waste:** means all bulky waste, construction debris, garbage, rubbish or stable matter, generated by a producer at a commercial or industrial unit.
- (4) **Construction debris:** means lumber, brick, masonry blocks, sheetrock, plumbing pipe

and fixtures, electrical panels and other materials taken from a structure during demolition or left over from construction of a structure.

- (5) **Dead animals:** means any dead animal or parts of dead animals such as household pets, domestic animals, wildlife and the like. It does not include discarded parts of animals commonly found when preparing food in a home or commercial restaurant.
- (6) **Designee:** means an official agent of the City appointed by resolution of the City Council, or designated by executive order of the Mayor in an emergency.
- (7) **Garbage:** means any putrescible solid waste, including dead animals, animal and vegetable waste, food containers, and all other waste matter which is likely to attract flies, vermin, except any matter included in the definitions of bulky waste, construction debris, dead animal, hazardous waste, rubbish or stable matter.
- (8) **Hazardous waste:** means any chemical, compound, mixture, substance or article designated as a "hazardous material" under state or federal law.
- (9) **Objectionable, unsightly or unsanitary matter:** means any matter, condition or object which is or should be objectionable, unsightly or unsanitary to a person of ordinary sensitivities.
- (10) **Person:** means an individual, corporation organization, government agency, business, trust, partnership, association, or any other legal entity.
- (11) **Recyclable material:** shall include all materials mutually agreed on by the franchisee and the City of Umland. This list may include, glass (all colors), paper, cardboard, plastics of various kinds, metals such as aluminum or steel. A list of current acceptable recyclable material will be kept in the city office and communicated as changes are made to all users of the system.
- (12) **Residential unit:** shall include all structures used primarily for residences, including multi-family residential structures.
- (13) **Rubbish:** means any solid waste that is not readily decayable, including wood, wood products, grass cuttings, plants, leaves, paper, cardboard, cloth, leather, footwear, ashes, cinders, floor sweepings, glass, mineral or metallic materials, and all other waste material other than bulky waste, construction debris, garbage, hazardous waste, stable matter, tree trimmings or yard waste.
- (14) **Stable matter:** means fecal matter from domestic livestock, stable bedding, and earth contaminated with domestic livestock urine and the like.
- (15) **Unwholesome:** means harmful to body or mind.
- (16) **City:** means the City of Umland, a municipality of the State of Texas.

(17) **City Council and Council:** mean the governing body of the City of Uhland.

SECTION 3. SANITATION REQUIREMENTS

- A. A person who is an owner, tenant, resident, occupant, agent or person having supervision of any lot, tract, or parcel of land, or a portion thereof, occupied or unoccupied within the City must:
- (1) fill, drain or regulate any hole or place which contains stagnant water, an unwholesome condition, or any other condition that may produce disease;
 - (2) keep any building, establishment, or ground free of filth, carrion, refuse, rubbish or other impure or unwholesome matter;
- B. The duties imposed by this section apply to the entire lot and extend to the edge of the property line. The area included under this section specifically includes public rights-of-way up to the edge of the street or alley.

SECTION 4. SOLID WASTE FRANCHISE

- A. Upon proper application and approval of the City Council an entity or individual may be granted a franchise to use and operate in the entire area of the city a commercial and/or residential waste hauling service. The term of the contract shall be decided by the City Council and may contain extensions of the contract as deemed appropriate by the City Council.
- B. Due to the wear and tear on the city streets, traffic control and other health and safety issues only one franchise will be issued for commercial waste and one franchise will be issued for residential waste. At the City of Uhland's discretion one franchise can be awarded for both categories of waste disposal. A franchise fee may be levied by the City of Uhland on the holder of the franchise to compensate the City for wear and tear on the streets.

SECTION 5. COMPLAINT PROCEDURES

- A. Any City resident or property owner may file a complaint alleging a violation of this Ordinance. The complaint must:
- (1) be in writing;
 - (2) provide sufficient details about the alleged violation;
 - (3) be signed by the complainant; and
 - (4) be filed with the Mayor, Code Enforcement Officer or the City Secretary.
- A. The Code Enforcement Officer, on his/her own knowledge or on the basis of a complaint by a City resident or property owner, shall investigate the alleged violation.
- B. The Code Enforcement Officer will follow current City of Uhland ordinances upon

finding a violation.

SECTION 6. ADMINISTRATIVE ACTION

- A. The City may proceed administratively to remove an alleged violation of this Ordinance by giving notice to the owner of the property where the alleged violation occurred, in accordance with the following procedures.
- (1) The notice will inform the property owner that the owner has seven (7) days from receipt of the notice to comply with the violation, and if this action is not taken, the City may, but is not obligated to:
 - (a) authorize that the necessary work be done or improvements made; and
 - (b) pay for the expenses incurred in having the work done or improvements made and charge the expenses to the property owner.
 - (2) The notice must be given personally to the property owner in writing or by certified mail return receipt requested addressed to the owner at the owner's address as recorded in the records of the appropriate County Central Appraisal District (either Hays or Caldwell), as may be appropriate; or
 - (3) If notice by personal service cannot be obtained, the Officer may give notice by:
 - (a) Publication of the notice, at least once, in a newspaper of general circulation;
 - (b) Posting the notice on or near the front door of each building on the property to which the violation relates, or
 - (c) Posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.
 - (4) If notice by letter is mailed to the owner and the U.S. Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected and the notice is considered to have been delivered.
- B. If the City incurs expenses for the work done or improvements made, the City Council or its designee shall assess the expenses and create a lien, including possible foreclosure, against the property in the manner provided as follows:
- (1) The City shall send a statement of expenses to the owner, requesting that payment be made to the City Secretary within twenty (20) days after receipt. The expenses to be charged to the owner of the property shall include: the amount paid by the City for the work done or improvements made; the costs of inspection; the costs of providing notice; the costs of identifying and notifying the owner of the property; and any incidental expenses.
 - (2) If the violator does not pay the expenses within twenty (20) days, the mayor, or a municipal official designated by the mayor shall file a statement of expenses with the

County Clerk, as applicable, stating the owner's name, if known, and the legal description of the property. A lien attaches upon the filing of the expense statement with the County Clerk, as appropriate.

- (3) The lien is security for the expenses incurred by the City and interest accruing at the rate of ten percent (10%) per year on the amount due from the date of payment by the City.
 - (4) The lien is inferior only to tax liens and liens for street improvements.
 - (5) The City or its designee may bring a suit for foreclosure in the name of the City to recover the expenses and interest due.
 - (6) The City may foreclose the lien in a proceeding brought under the Tax Code, Chapter 33, and Subchapter E.
 - (7) The statement of expenses or a certified copy of the statement is prima facie proof of the expenses incurred by the City in doing the work or making the improvements.
- C. The City, in the notice of violation, may inform the owner by regular mail and a posting on the property 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 expense against the property. If a violation covered by a notice 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 6 of this Ordinance and assess its expense as provided by Section 6(B) of this Ordinance.

SECTION 7. ENFORCEMENT

A. Civil and Criminal Penalties

The City shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Ordinance is hereby declared to be a nuisance.

B. Criminal Prosecution

Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding two thousand dollars (\$2,000.00). Each day that a provision of this Ordinance is violated shall constitute a separate offense. An offense under this Ordinance is a misdemeanor.

C. Civil Remedies

Nothing in this Ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this Ordinance, and to seek remedies as allowed by law, including, but not limited to the following:

- (1) injunctive relief to prevent specific conduct that violates the ordinance or to require specific conduct that is necessary for compliance with the ordinance; and
- (2) a civil penalty up to one thousand dollars (\$1,000.00) a day (with each day constituting a separate offense and separate violation) when it is shown that the defendant was actually notified of the provisions of the ordinance and after receiving notice committed acts in violation of the ordinance or failed to take action necessary for compliance with the ordinance; and
- (3) other available relief.

D. Abatement

The City or designee can abate a nuisance in any manner deemed expedient if the nuisance may injure or affect the public health or comfort.

SECTION 8. CONFLICTING PROVISIONS

If any provision in this Ordinance conflicts with any provision in other City ordinances, resolutions or orders, then the stricter provision shall apply.

SECTION 9. SEVERABILITY

It is hereby declared to be the intention of the City Council that the words, phrases, clauses, sentences, paragraphs and sections of this Ordinance be severable, and if any word, phrase, clause, sentence, paragraph or section of this Ordinance be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect any remaining word, phrase, clause, sentence, paragraph or section of this ordinance which can be given effect as written, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 10. EFFECTIVE DATE

This Ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

SECTION 11. PROPER NOTICE & OPEN MEETING

It is hereby officially found and determined that the meeting as which the Ordinance was passed was open to the public, as required, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter

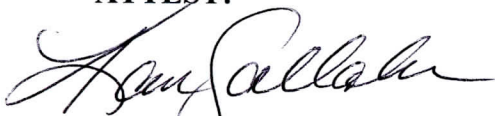
551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED AND APPROVED this the 3 day of March 2011, by a vote of the City Council of the City of Umland, Texas.

CITY OF Umland

by: Daniel R. Heideman
Mayor

ATTEST:



City Secretary

Ord #114

City of Umland

State of Texas

Solid Waste and Recycling Franchise

AN ORDINANCE FOR THE CITY OF UHLAND, TEXAS, CREATING A FRANCHISE FOR RESIDENTIAL AND COMMERCIAL SOLID WASTE COLLECTION AND DISPOSAL SERVICES AND RECYCLING SERVICES IN ACCORDANCE WITH THE PROVISION OF THE CITY OF UHLAND HEALTH AND SANITATION ORDINANCE; AUTHORIZING THE CITY COUNCIL TO GRANT AN EXCLUSIVE FRANCHISE FOR SUCH SERVICES; REQUIRING USE OF THE FRANCHISE SERVICES BY ALL RESIDENTS AND COMMERCIAL AND INDUSTRIAL UNITS WITHIN THE CITY AS ALLOWED BY THE TEXAS HEALTH AND SAFETY CODE; PROHIBITING SOLID WASTE COLLECTION AND DISPOSAL BY COMPANIES NOT FRANCHISED BY THE CITY; PROVIDING A PENALTY FOR COMPANIES OPERATING WITHOUT A FRANCHISE AGREEMENT; PROVIDING A PENALTY; AND SETTING A FRANCHISE FEE IN THE AMOUNT OF a flat rate of \$10.00.

WHEREAS, the City of Umland, Texas, desires to adopt a franchise for residential, commercial and industrial solid waste collection and disposal and recycling services for the health, safety and welfare of its citizens; and

WHEREAS, the City of Umland, Texas, desires to grant a franchise agreement with IESI TX Corporation for a term of three years in accordance with the Solid Waste Collection and Disposal Agreement ("Agreement"); and

WHEREAS, the Texas Health and Safety Code and the City of Umland Ordinance 114, Health and Sanitation Ordinance provides that the City can require use of solid waste and recycling services offered by a City franchise of its customer within the City and to charges fees for the services;

WHEREAS, The City prohibits solid waste collection by companies not franchised by this Ordinance and will impose a two hundred (\$200.00) per day penalty per customer for companies operating without a franchise agreement;

WHEREAS, in consideration of the Agreement for franchise, the City shall charge a flat rate fee of \$10.00 of the fees charged by IESI TX Corporation under the Agreement; and

Section 1.0 All of the facts recited in the preamble to this Ordinance are hereby found by the City Council to be true and correct and are incorporated by reference herein and expressly made a part thereof, as if copied herein verbatim.

Section 2.0 The solid waste collection, disposal and recycling service contracted for by the City from IESI TX Corp. referenced in the Agreement shall be used by all customers within the City and charged fees for the services required by the agreement.

Section 3.0 The city prohibits solid waste collection, disposal and recycling by companies not franchised by this Ordinance and will impose a two hundred (\$200.00) per day penalty per customer for companies operating with the city limits without a franchise agreement;

Section 4.0 IESI TX Corporation in consideration of the Agreement for franchise, shall pay or allow the City to collect xxx percent (xx%) of the fees charged by it under the Agreement.

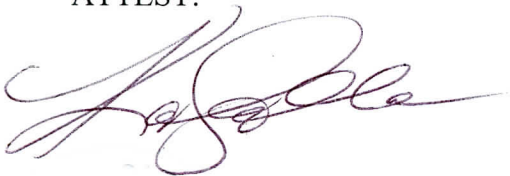
Section 5.0 The city of Uhland, Texas, authorizes the Mayor to execute the Agreement with IESI TX Corporation to provide residential, commercial and industrial solid waste collection, disposal and recycling services in accordance with the terms and conditions of the attached Agreement.

PASSED, APPROVED and ADOPTED by the City Council of the City of Uhland, Texas this ___ day of April, 2011.



Mayor

ATTEST:



City Secretary