

MODIFYING Chapters 729, “Waste Disposal,” and 730, “Commercial Waste Franchises” by **ORDAINING** new Sections 729-1-P2, “Person,” 730-1-C8, “Construction and Demolition Debris Facility,” 730-1-C9, “Construction and Demolition Debris Processing Facility,” 730-1-D2, “Disposal,” 730-1-S, “Solid Wastes,” 730-1-S1, “Solid Waste Landfill Facility,” 730-1-S2, “Solid Waste Transfer Facility,” and 730-18, “Estimated Fee Payments”; **MODIFYING** Chapter 730, “Commercial Waste Franchises,” by **AMENDING** Sections 730-1, “Definitions,” 730-1-C2, “Commercial Establishment,” 730-1-C3, “Commercial Waste,” 730-1-C4, “Commercial Waste Collection Service,” 730-1-C5, “Commercial Waste Collector,” 730-1-C7, “Container,” 730-1-F1, “Franchise Agreement,” 730-1-H, “Hazardous Waste,” 730-1-I, “Infectious Wastes,” 730-1-P, “Person,” 730-1-R1, “Recyclable Materials,” 730-1-R2, “Recycling,” 730-1-Y, “Yard Waste Materials,” 730-3, “Applicability; Requirement for Franchise; Term of Franchise,” 730-5, “General Provisions,” 730-7, “Award of Franchises,” 730-9, “Basis for Award of Franchise,” 730-11, “Denial of Franchise Application,” 730-13, “Suspension or Revocation of Franchise,” 730-15, “Right to Appeal the Denial, Suspension or Revocation of a Franchise,” 730-17, “Requirement to Execute a Franchise Agreement with the City; Payment of Franchise Fees,” 730-19, “Bond Requirements,” 730-23, “Books, Records, and Reporting Requirements,” 730-25, “Methods of Solid Waste Collection,” 730-25, “Inspections,” 730-27, “Program Rules and Regulations,” and 730-99, “Penalties”; **MODIFYING** Chapters 722, “Management and Control of the Use of the City Right-of-Way,” 729, “Waste Disposal,” 1101, “Administration,” and 1501, “Code Compliance and Hearings” by **AMENDING** Sections 722-3, “Construction Permit,” 729-1-C1, “Commercial Waste,” 729-1-C2, “Commercial Waste Collector,” 729-1-D2, “Disposal,” 729-1-P, “Private Waste Collector,” 729-1-R, “Recyclable Materials,” 729-59, “Commercial Waste,” 729-81, “Rules,” 1101-15, “Permits, Prior Approvals Required,” 1501-5, “Class B Civil Offenses,” 1501-9, “Class D Civil Offenses,” and 1501-11, “Class E Civil Offenses”; and **REPEALING** Sections 729-60, “Commercial Establishments to Maintain Commercial Waste Collection Service Contract,” 730-1-G, “Garbage,” 730-1-O, “ORC,” 730-1-R, “Rubbish,” and 730-1-W, “Waste,” to update the terms of the City’s commercial waste franchise program.

WHEREAS, Chapter 730, “Commercial Waste Franchises” of the Cincinnati Municipal Code requires that companies providing commercial waste collection services within the City of Cincinnati qualify for and obtain a franchise from the City and pay a franchise fee to promote quality service to businesses and residents, incentivize recycling by exempting diverted materials from the franchise fee, and ensure proper disposal of commercial waste for the protection of the public health, safety, and welfare; and

WHEREAS, Chapter 730 was revised in 2020 to expand the franchise requirement to apply to companies providing construction and demolition (C&D) waste collection services, but due to enforcement challenges, many companies continue to provide C&D waste collection services

without obtaining a franchise, which creates unfairness to companies that comply with the franchise requirement and pay the franchise fee; and

WHEREAS, the City desires to amend the Cincinnati Municipal Code to improve the administration and enforcement of the franchise requirement, including requiring that contractors designate a City franchisee commercial waste collection service for C&D waste and that the estimated franchise fee be paid before certain building permits or wrecking permits may be issued; and

WHEREAS, these revisions to Chapter 730 necessitate additional revisions to Chapters 722, 729, 1101, and 1501 of the Cincinnati Municipal Code now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That new Section 729-1-P2, "Person," of Chapter 729, "Waste Disposal" and new Sections 730-1-C8, "Construction and Demolition Debris Facility," 730-1-C9, "Construction and Demolition Debris Processing Facility," 730-1-D2, "Disposal," 730-1-S, "Solid Waste," 730-1-S1, "Solid Waste Landfill Facility," 730-1-S2, "Solid Waste Transfer Facility," and 730-18, "Estimated Fee Payments," of Chapter 730 are hereby ordained to read as follows:

Sec. 729-1-P2. Person.

"Person" shall have the same meaning as in section 730-1-P.

Sec. 730-1-C8. Construction and Demolition Debris Facility.

"Construction and Demolition Debris Facility" shall have the same meaning as the term is defined in Ohio Administrative Code section 3745-400-01(C)(6).

Sec. 730-1-C9. Construction and Demolition Debris Processing Facility.

"Construction and Demolition Debris Processing Facility" shall have the same meaning as the term is defined in Ohio Administrative Code section 3745-400-01(C)(7).

Sec. 730-1-D2. Disposal.

- (a) "Disposal," as applied to commercial waste but excluding construction and demolition debris shall have the same meaning as the term is defined in Ohio Revised Code section 3734.01(F) or its successor.
- (b) "Disposal," as applied to construction and demolition debris, shall have the same meaning as the term is defined in Ohio Administrative Code section 3745-400-01(D)(3) or its successor.

Sec. 730-1-S. Solid Wastes.

“Solid Wastes” shall have the same meaning as the term is defined in Ohio Revised Code section 3734.01(E) or its successor.

Sec. 730-1-S1. Solid Waste Landfill Facility.

“Solid Waste Landfill Facility” shall have the same meaning as the term is defined in Ohio Administrative Code section 3745-27-01(S)(4) or its successor.

Sec. 730-1-S2. Solid Waste Transfer Facility.

“Solid Waste Transfer Facility” shall have the same meaning as the term is defined in Ohio Administrative Code section 3745-27-01(S)(27) or its successor.

Sec. 730-18. Estimated Fee Payments.

(a) An applicant for a building permit or wrecking permit for work that will require commercial waste collection services involving the collection, loading, unloading, transporting, receiving, storing, or disposal or separation of construction and demolition debris shall do the following when applying for the permit:

- (1) identify one or more franchised commercial waste collectors (including itself when applicable) who shall provide commercial waste collection services in connection with the permit; and
- (2) cause the franchised commercial waste collector or collectors (including itself when applicable) to submit an estimated franchise fee payment for the services it will provide in connection with the permit to the department of buildings and inspections prior to the issuance of the permit. The estimated fee shall be calculated as follows:

(A) The franchisee shall first determine the estimated cubic yardage of construction and demolition debris (CDD) to be generated by the construction or demolition of the subject improvement using the standard Federal Emergency Management Agency’s debris calculator. This determination shall be made by multiplying the improvement’s length in feet (L) by the improvement’s width in feet (W) by the improvement’s height (H); multiplying the product of that calculation by the standard air space multiplier of 0.33; and dividing the product of that calculation by 27 to convert to cubic yards.

$$DD = (L \times W \times H \times 0.33) / 27$$

(B) The franchisee shall next determine the estimated cubic yardage of commercial waste (CW) that the construction or demolition of the subject

improvement will generate by multiplying the estimated cubic yardage of construction and demolition debris (CDD) determined in subsection (A) by the applicable landfill rate (LFR) taken from Table 1 below based on the type of improvement to be constructed or demolished.

$$CW = DD \times LFR$$

Table 1: Building Use Code Landfill Rate (LFR)

<u>Construction Use Code</u>	<u>Construction Use Code Name</u>	<u>Construction Landfill Rate</u>
New	All Building Types (includes alterations and additions to existing buildings)	0.1
<u>Demolition Building Use Code</u>	<u>Demolition Building Use Code Name</u>	<u>Demolition Building Use Code Landfill Rate</u>
A-1	Concert Hall or Theater	0.65
A-2	Nightclub or Restaurant	0.85
A-3	Churches	0.85
A-4	Sports Arena	0.4
A-5	Outdoor Facilities	0.9
B	Business	0.6
E	Education	0.85
F-1	Factory	0.3
F-2	Factory	0.3
H-1	Explosives	0.3
H-2,-3,-4	Flammable/Toxic/Corrosive	0.3
H-5	Haz Prod Materials	0.3
I-1	Inst Residential Care	0.9
I-2	Inst Hospital	0.75
I-3	Inst Prison	0.55
I-4	Adult Daycare	0.9
M	Mercantile	0.3
U	Utility	0.3
R-1	Hotel	0.9
R-2	Apartment Building	0.95
R-3	Townhomes	0.95

R-4	Assisted Living	0.9
S-1	Storage Moderate Hazard	0.3
S-2	Storage Low Hazard	0.3

(C) The franchisee shall then determine the estimated gross revenues (GR) that the construction or demolition of the improvement will generate (which gross-revenue estimate shall include the estimated franchisee fee) by multiplying the estimated cubic yardage of commercial waste (CW) determined in subsection (B) by a haul-and-tip-fee rate (HTR) of \$82.50 per cubic yard. The haul-and-tip-fee rate (HTR) will be adjusted on July 1 of each calendar year based on the rate of inflation as determined by the annual change in the Producer Price Index for Inputs to Construction established by the Bureau of Labor Statistics with a minimum annual increase of \$2.50, whichever is greater.

$$GR = CW \times HTR$$

(D) The franchisee shall finally determine the estimated franchise fee payment by multiplying the gross revenue (GR) amount determined in subsection (C) by 0.2.

$$FF = GR \times 0.2$$

- (b) No later than one year following the completion of commercial waste collection services in connection with a wrecking or building permit or the closeout of the permit, whichever comes first, a franchise may request a refund or credit for an estimated franchise fee payment on forms provided by the city manager or his or her designee. The franchisee shall be entitled to a refund or credit when it establishes by a preponderance of the evidence that the actual gross revenues generated by its commercial waste collection services were less than the estimated gross revenues used to calculate its estimated fee payment. When a franchisee meets its burden of proof, the city manager or his or her designee shall issue a refund or a credit to the franchisee equal to the difference between its estimated franchise fee payment and the franchise fee properly due and owing based on franchisee's actual gross revenues no later than ninety days following the filing of franchisee's request for a refund or credit.

Section 2. That existing Sections 730-1, "Definitions," 730-1-C2, "Commercial Establishment," 730-1-C3, "Commercial Waste," 730-1-C4, "Commercial Waste Collection Service," 730-1-C5, "Commercial Waste Collector," 730-1-C7, "Container," 730-1-F1, "Franchise Agreement," 730-1-H, "Hazardous Waste," 730-1-I, "Infectious Wastes," 730-1-P, "Person," 730-1-R2, "Recyclable Materials," 730-1-R2, "Recycling," 730-1-Y, "Yard Waste

Materials,” 730-3, “Applicability; Requirement for Franchise; Term of Franchise,” 730-5, “General Provisions,” 730-7, “Award of Franchises,” 730-9, “Basis for Award of Franchise,” 730-11, “Denial of Franchise Application,” 730-13, “Suspension or Revocation of Franchise,” 730-15, “Right to Appeal the Denial, Suspension or Revocation of a Franchise,” 730-17, “Requirement to Execute a Franchise Agreement with the City; Payment of Franchise Fees,” 730-19, “Bond Requirements,” 730-23, “Books, Records, and Reporting Requirements,” 730-25, “Methods of Solid Waste Collection,” 730-25, “Inspections,” 730-29, “Program Rules and Regulations,” and 730-99, “Penalties,” of Chapter 730, “Commercial Waste Franchises,” of the Cincinnati Municipal Code are hereby amended to read as follows:

Sec. 730-1. Definitions.

For the purpose of this chapter, the words and phrases defined in the sections below shall have the meanings provided in this chapter~~therein respectively ascribed to them~~, without limiting the generalities of the words, unless a different meaning is clearly indicated by the context. ~~Words used in this chapter that are defined in Chapter 729 of the Cincinnati Municipal Code shall have the same definition as in that chapter.~~

Sec. 730-1-C102. Commercial Establishment.

“Commercial Establishment” shall mean any building that does not constitute a dwelling. “Commercial Establishment” does not include any building owned or operated by the City of Cincinnati and used for the purpose of conducting City of Cincinnati operations.

Sec. 730-1-C3. Commercial Waste.

“Commercial Waste” ~~shall mean~~means any of the following:

- (a) All solid wastes generated by a commercial establishment; or
- (b) Construction and demolition debris generated in connection with:
 - (1) the construction, alteration, or demolition, in whole or in part, of a structure subject to regulation by the Ohio Building Code, including associated site improvements, utilities, and infrastructure; or

(2) the construction of a new structure subject to regulation by the Residential Code of Ohio, including associated site improvements, utilities, and infrastructure; or

(3) public infrastructure improvements.

“Commercial Waste” does not include:

(a) Infectious wastes or hazardous waste; or

(b) Recyclable materials returned to commerce via recycling. ~~delivered to a legitimate recycling facility.~~

Sec. 730-1-C4. Commercial Waste Collection Service.

“Commercial waste collection service” ~~shall mean~~ means the activity of collecting, loading, unloading, transporting, receiving, storing, disposing of, or separating any type of commercial waste generated within the city ~~on or after May 1, 2013~~. “Commercial waste collection service” includes all attendant services, such as providing, selling, leasing, moving, cleaning, repairing, and maintaining containers for commercial establishments in the city.

Sec. 730-1-C5. Commercial Waste Collector.

“Commercial waste collector” means any person who provides commercial waste collection services to another person. ~~shall have the same definition listed in CMC § 729-1-C.~~ “Commercial waste collector” includes persons (e.g., demolition and construction contractors) who collect, load, and dispose of commercial waste (e.g., construction and demolition debris) generated at a premises they do not own or lease regardless of whether the vehicles used for such services are for-hire or not-for-hire and regardless of whether the person collecting, loading, or disposing of the waste holds salvage rights or similar rights in the commercial waste.

Sec. 730-1-C7. Container.

“Container” means a for-hire ~~for hire~~ or not-for-hire ~~not for hire~~ commercial vehicle or other receptacle used to collect, store, and/or transport commercial waste, including but not limited to a car, truck, pickup truck, dump truck, trailer, semi-trailer or pole-trailer, equipment, dumpster, roll-on/roll-off box, compactor, bin, heavy-duty ~~heavy-duty~~ waterproof plastic bag, can, molded polyethylene barrel, or roll cart.

Sec. 730-1-F1. Franchise Agreement.

“Franchise agreement” means an agreement between the city and a commercial waste collector through which the city grants a franchise to the commercial waste collector to provide commercial waste collection services. ~~means a "franchise agreement for commercial waste collection services" between the city and a franchisee.~~

Sec. 730-1-H. Hazardous Waste.

“Hazardous waste” shall have the same definition listed in Ohio Revised Code Chapter 3734.01(J) or its successor.

Sec. 730-1-I. Infectious Wastes.

“Infectious wastes” shall have the same definition listed in Ohio Revised Code Chapter 3734.01(R) or its successor. ~~CMC § 729-1-I.~~

Sec. 730-1-P. Person.

“Person” means any and all persons, natural or artificial, including any individual, firm, or association; any municipal corporation other than the city of Cincinnati; ~~or any~~ private corporation organized or existing under the laws of this state or any other state; any county of this state; and any governmental agency of this state or the federal government.

Sec. 730-1-R1. Recyclable Materials.

“Recyclable materials” shall mean those materials which would otherwise be disposed of ~~become solid waste~~ and which may be collected, separated, converted, or processed as a commodity and returned to the economic mainstream as a commodity in the form of raw materials or products for reuse in a beneficial manner that does not constitute disposal. Examples of potential recyclable materials include, but are not limited to, newspapers, junk mail, magazines, phonebooks, cardboard, paperboard, glass bottles, aluminum cans, bi-metal cans, steel cans, plastic bottles, food waste, yard waste materials, clean hard fill, and certain construction and demolition debris, and the city manager may deem other materials that meet this definition to be recyclable.

Sec. 730-1-R12. Recycling.

- (a) “Recycling,” as applied to commercial waste but excluding commercial and demolition debris, shall have the same meaning as the term is defined in Ohio Administrative Code section 3745-27-01(R)(1) or its successor.
- (b) “Recycling,” as applied to construction and demolition debris, shall have the same meaning as the term is defined in Ohio Administrative Code section 3745-400-01(R)(2) or its successor. “Recycling” shall not include the use of construction and demolition debris as alternative daily cover at a solid waste landfill facility.

Sec. 730-1-Y. Yard Waste ~~Materials~~.

“Yard waste ~~materials~~” shall have the same meaning as the term is defined definition listed in Ohio Administrative Code 3745-27-01(Y)(1) or its successor ~~CMC § 729-1-Y.~~

Sec. 730-3. Applicability; Requirement for Franchise; Term of Franchise.

- (a) This chapter shall apply to any person engaged in the business of providing commercial waste collection services in the city on or after May 1, 2013.
- (b) This chapter applies to the collection of commercial waste, as defined in section 730-1-C3, on or after May 1, 2013.
- ~~(c) The requirements in this chapter shall supplement the requirements in Chapter 729, "Waste Disposal," of the Cincinnati Municipal Code.~~
- ~~(c)~~ On or after May 1, 2013, no person shall engage in the business of providing commercial waste collection services in the city unless that person has obtained a franchise from the city to provide such services.
- ~~(d)~~ No person shall obtain a franchise from the city until that person has complied with all of the following:
 - (1) Submitted a timely and complete application for franchise or submitted a timely and complete response to a request for services conducted by the city;
 - (2) Paid an application fee in the amount established in Section 730-7~~(e)~~;
 - (3) Posted a bond and obtained the insurance required in Sections 730-19 and 730-21; and
 - (4) Executed a franchise agreement with the city for commercial waste collection services.
- ~~(e)~~ Each franchise agreement shall take effect upon execution, unless the applicant requests and the city approves a later effective date. Each franchise agreement that takes effect on or after July 1, 2021 shall expire one year from the date of its issuance, unless the franchise agreement specifies a different expiration date or the franchise agreement is terminated prior to expiration or renewed pursuant to the agreement. Each franchise agreement shall renew for two one-year periods unless notice of nonrenewal is given.

Sec. 730-5. General Provisions.

- (a) It is unlawful for any person to commence or engage in the business of providing commercial waste collection service within the city without first obtaining a franchise and entering into a franchise agreement with the city. No person may obtain a license, permit, permission, or other approval from the city in furtherance of providing commercial waste collection service within the city without first obtaining a franchise and entering into a franchise agreement with the city.

- (b) A franchise shall be awarded to a person only if that person completes an application for franchise or request for services and the person's application or request for services submittal is selected as one of the most advantageous to the city under Sec. 730-7 and the criteria specified in the application or request for services.
- (b) Each franchisee shall comply with all laws of the ~~City~~city of Cincinnati, the state of Ohio, and the federal government. Each franchisee shall obtain and maintain all applicable licenses and permits required by federal, state, and local laws, rules, regulations, and orders of regulatory bodies.
- (d) A franchisee shall not be relieved of its obligation to comply with all requirements of this chapter, program rules and regulations, and the franchise agreement by failure of the city to enforce compliance with such requirements.
- (e) The city reserves its right to grant franchises and similar rights to more than one (1) person.
- (f) Each franchisee shall totally enclose or securely cover any commercial waste that the franchisee is transporting within the city. Each franchisee shall immediately clean up any commercial waste that the franchisee spills on public or private property in the city.
- (g) A franchisee providing commercial waste collection services is not and shall not be deemed to be an agent or employee of the city. A franchisee shall be solely responsible for any losses or damages of any kind arising from its performance or nonperformance under its franchise. A franchisee shall indemnify, defend, and hold the city harmless against any and all claims and suits brought against the city resulting from the franchisee's performance or nonperformance under the franchise agreement.
- (h) All of the commercial waste constituting solid wastes that is collected by franchisees in the city shall be delivered to a licensed ~~municipal~~-solid waste landfill facility, licensed sanitary landfill facility, licensed solid waste transfer facility, or a legitimate recycling facility. All commercial waste collected by franchisees in the city constituting construction and demolition debris shall be delivered to a state-licensed construction and demolition debris facility or a state-licensed construction and demolition debris processing facility. Upon request of the city manager, franchisees shall produce receipts or other documentation demonstrating that all of the commercial waste collected by the franchisee in the city was delivered to an appropriate facility.
- (i) The execution of the franchise agreement and the issuance of a franchise and the renewal thereof is at the sole discretion of the city manager and shall not be construed as creating any vested rights in the franchisee. Each franchise is revocable in accordance with the terms of this chapter and the terms of the franchise agreement.

- (j) A franchise may not be assigned or transferred to another person.
- (k) A franchise authorizes a franchisee to provide commercial waste collection services in the City of Cincinnati.

Sec. 730-7. Award of Franchises.

- (a) Any person wishing to obtain a franchise to engage in the business of providing commercial waste collection services within the city shall submit an application to the city manager in compliance with the process established for awarding franchises.
- (b) Where appropriate, the city may choose to conduct a request for services pursuant to Cincinnati Municipal Code Section 321-1-R6 to solicit qualified franchisees in lieu of an application process.
- (c) An applicant for a franchise shall provide the city with satisfactory evidence demonstrating that:
 - (1) The applicant has the experience, personnel, equipment, and other resources necessary to provide commercial waste collection services in compliance with the requirements in this chapter; and
 - (2) The applicant has the capacity and willingness to comply with all applicable local, state, and federal laws.
- (d) Applicants for a new franchise and applicants for the renewal of an existing franchise shall provide the information requested by the city manager and any other relevant information. The application and supporting information shall be submitted under oath and on forms supplied by the city manager. At a minimum, the application shall include the following information:
 - (1) The name and mailing address of the applicant; contact information for the applicant's designated representative; the name of the person to be granted the franchise; if the applicant is a corporation, limited liability company, or other legal entity, the names of the corporation, limited liability company, or legal entity's principal officers; the names of the local operating managers who will be responsible for performing collection services for the applicant, together with the business address and telephone number of each manager;
 - (2) If the applicant is a corporation, limited liability company, or other legal entity, proof that the corporation, limited liability company, or other legal entity is in good standing in the state of Ohio and, if the applicant is not an Ohio legal entity~~corporation~~, proof that the applicant is authorized to do business in the state ~~State~~ of Ohio. If the applicant is operating under a fictitious name, the applicant shall be required to submit information that such fictitious name is registered and held by the applicant;

- (3) A statement of whether the applicant operates or has operated a commercial waste collection service ~~solid waste collection business~~ in Ohio or any other state or territory. If the applicant has provided or is providing commercial solid waste collection services, the applicant shall describe all cases where and when it provided such services (but not more than ten ~~(10)~~ communities), and whether any of the applicant's permits, approvals, or licenses to provide such services have ever been revoked or suspended within the last five ~~(5)~~ years;
 - (4) A complete record of all felony convictions, and all misdemeanor convictions within the last five ~~(5)~~ years, involving the applicant's collection, receiving, storing, separating, transportation, or disposal of commercial solid waste. If the applicant is not an individual, the applicant also shall provide the complete record of such convictions for any person who is an officer, director, member, majority shareholder, or partner in the applicant, and any person having a controlling interest in the applicant;
 - (5) A complete record of all civil penalties and liquidated damages in excess of ~~five thousand dollars~~ ~~(\$5,000.00)~~ assessed against the applicant by local, state, and federal governmental entities within the last five ~~(5)~~ years involving the collection, transportation, or disposal of commercial waste;
 - (6) The types of commercial waste ~~materials~~ and, if applicable, recyclable materials to be collected, transported, or disposed of by the applicant under the franchise; and
 - (7) A list of the vehicles, equipment, and containers that will be used by the applicant to provide commercial waste collection services. ~~The list shall be provided on a form prescribed by the city manager. At a minimum, the list shall identify the make, model, and year of each vehicle and piece of commercial waste collection equipment, as well as the size and type of each container that will be used by the applicant. Identifiers including, but not limited to, license plate numbers, company vehicle numbers, and company equipment numbers shall be provided. The city manager may inspect all of the vehicles, equipment, and containers identified by the applicant and thereby determine whether the applicant possesses vehicles, equipment, and containers that are capable of providing safe and efficient commercial waste collection services in compliance with this chapter; and~~
 - ~~(8) A chart identifying the maximum rates that the applicant charges customers for various types of commercial waste collection services.~~
- (e) Each applicant shall submit a non-refundable application fee to the city in the amount of ~~one hundred~~ ~~(\$100)~~ dollars. The application fee is due and payable when the application is submitted. This fee shall not apply to responses to a request for services.
 - (f) New applications must be submitted to the city manager at least sixty ~~(60)~~ days before the applicant plans to begin providing commercial waste collection services. Renewal

applications must be submitted to the city manager at least thirty (~~30~~) days before the applicant's existing franchise expires.

Sec. 730-9. Basis for Award of Franchise.

A franchise for commercial waste collection services may be granted to a person when the city manager concludes that the applicant has satisfied the requirements in this chapter. This includes successfully responding to the request for services or completing the application, and the city rating the person's proposal or application as qualified~~most advantageous~~.

Sec. 730-11. Denial of Franchise Application.

- (a) The city manager may deny an application for a franchise for commercial waste collection services when the city manager concludes that the applicant failed to satisfy one (~~1~~) or more of the requirements of this chapter and the Code.
 - (1) The city manager may deny an application for any reason that would justify the suspension or revocation of a franchise, as described in CMC section~~§~~ 730-13.
 - (2) The city manager shall deny an application for a franchise for the following reasons:
 - (3) The applicant has not submitted a complete application with all of the required supporting documents, paid the application fee, provided an appropriate bond and insurance, and executed a franchise agreement;
 - (4) The applicant has submitted false or materially misleading statements in the application; or
 - (5) The applicant or a partner, director, or officer of the applicant has been convicted of a felony within the past five (~~5~~) years, or has been convicted of a misdemeanor within the past three (~~3~~) years, involving the collection, transportation, or disposal of commercial solid~~solid~~-waste.

Sec. 730-13. Suspension or Revocation of Franchise.

- (a) The city manager may suspend or revoke a franchise and the corresponding franchise agreement if the city manager concludes that:
 - (1) The franchise was issued by mistake of law or fact;
 - (2) The franchise was issued based upon a false statement or misrepresentation by the applicant;

- (3) The franchisee has violated an applicable provision of the Cincinnati Municipal Code, state law, or federal law;
 - (4) A necessary permit, approval, or license of the franchisee has become invalid;
 - (5) The franchisee is no longer engaged in providing commercial waste collection services to commercial establishments in the city;
 - (6) The commercial waste collection services and other activities authorized under the franchise are not being performed in accordance with the requirements of this chapter, the franchise agreement, or the application for a franchise;
 - (7) Timely and full payment of the franchise fee has not been accomplished by the franchisee in compliance with section 730-17 of this chapter;
 - (8) The franchisee or one ~~(1)~~ of its principals has been convicted under a local, state, or federal law for a crime involving the collection, transportation, or management of commercial solid waste;
 - (9) The franchisee failed to provide, pay for, and maintain the required bond and insurance coverage in accordance with the requirements of this chapter;
 - (10) The franchisee violated a requirement of this chapter or the franchise agreement;
 - (11) The franchisee failed to comply with a lawful order of the city manager; or
 - (12) The franchisee's actions or inactions demonstrate that the franchisee is not competent or fit to provide commercial waste collection services to the public.
- (b) Before the city manager suspends or revokes a franchise, the city manager or ~~his or her~~ the manager's designee shall provide notice to the franchisee and an opportunity to be heard in the manner set forth in section 730-15 of this chapter.
- (c) A franchise that has been suspended or revoked under this chapter shall not be reinstated or reissued unless, at a minimum, the franchisee has complied with all of the requirements of this chapter, submitted a complete application, paid the application fee, executed a franchise agreement, and been approved by the city manager.
- (d) The revocation of a franchise shall automatically terminate the corresponding franchise agreement.

Sec. 730-15. Right to Appeal the Denial, Suspension, or Revocation of a Franchise.

- ~~(a)~~—Prior to the denial of an application or the suspension or revocation of a franchise, the applicant or franchisee shall be given reasonable notice of the city manager's proposed

action and shall be given an opportunity to present evidence to the city manager or his or her designee explaining why the franchise should not be denied, suspended or revoked. The city manager shall consider any evidence presented by the applicant or franchisee that the city manager determines is relevant to the appeal before the city manager issues a final decision. Notice of the city's proposed action, and notice of the city's final decision, shall be served upon the applicant or franchisee by certified mail.

~~(b) The applicant or franchisee may appeal the city's final decision by filing a notice of appeal with the office of administrative hearings pursuant to Chapter 1501 of the Cincinnati Municipal Code within fifteen (15) days after written notice of the city manager's decision is served.~~

Sec. 730-17. Requirement to Execute a Franchise Agreement with the City; Payment of Franchise Fees; Reporting.

- (a) Each applicant shall execute a franchise agreement, including all required attachments, in the form that has been approved by ~~the city council and furnished to the applicant by the city manager or his or her~~ the manager's designee.
- (b) Each franchisee shall submit franchise fees and appropriate documentation to the city.
- (c) Each franchisee shall pay franchise fees to the city as compensation for the rights and benefits granted by the franchise, including but not limited to the right to collect commercial waste in the city. The franchise fee shall be equal to twenty ~~(20)~~ percent of the franchisee's gross revenues from the commercial waste collection services provided by the franchisee within the city.
- (d) ~~Each~~ The franchisee shall submit a quarterly franchise fee payment to the city finance department. Each quarterly payment shall be submitted no later than thirty (30) days after the three-month periods ending March 31, June 30, September 30, and December 31. Each payment shall be accompanied by (i) a statement of the franchisee's gross revenues and (ii) a statement of all estimated franchise fees paid in accordance with section 730-18, which statements shall be submitted on forms a form prescribed by the city manager or the manager's designee the city finance department. Statements and remittances shall be accepted as timely if postmarked within thirty ~~(30)~~ days after the end of the month; if the thirtieth day falls upon a Saturday, Sunday, or federal or state holiday, statements and remittances shall be accepted as timely if postmarked on the next business day. Payments not received by the due date shall be assessed ~~(i)(4)~~ an administrative fee to reimburse the city for the reasonable administrative costs associated with collecting such monies and ~~(ii)(2)~~ interest for each day of delinquency at the rate of eighteen ~~(18)~~ percent per annum or the maximum allowed by law, whichever is less, for each day of delinquency, until the total unpaid amount due and owing is paid in full. The administrative fee shall be equal to six ~~(6)~~ percent of the amount owed by the franchisee to the city or ~~fifteen dollars (\$15.00)~~, whichever is greater.

- (e) Each franchisee shall file ~~with the City Manager's office~~ an annual report with the city manager or the manager's designee concerning the franchisee's total gross revenues for the year. ~~This annual~~ Annual reports reporting greater than \$50,000 in gross revenues shall be examined by an independent certified public accountant, who shall confirm that the franchisee's computations concerning gross revenues and franchise fees were performed in accordance with the requirements of this chapter. The report of the certified public accountant shall state that its examination of the franchisee's records was performed in accordance with professional standards established by the American Institute of Certified Public Accountants or successor organization. Each franchisee shall file the auditor's report ~~with the City Manager's office~~ within one hundred twenty (120) days after the end of the franchisee's fiscal year. Each franchisee ~~Franchisee~~ shall be solely responsible for retaining the independent auditor and paying for the auditor's ~~his or her~~ services.

As part of the annual report, franchisees shall submit an environmental report with the city manager or the manager's designee that describes the amount of commercial waste that (i) went to a landfill and (ii) was recycled.

- (f) All amounts paid by the franchisee shall be subject to confirmation and re-computation by the city. An acceptance of payment shall not be construed as an accord that the amount paid is the correct amount, nor shall acceptance of payment be construed as a release of any claim the city may have for further or additional sums payable.
- (g) Billing methods that have the effect of reducing or avoiding the payment of franchise fees are prohibited and will be cause for termination of the franchise. Any person who uses false, misleading, or fraudulent billing methods for the purpose of reducing or avoiding the payment of franchise fees may be subject to the penalties provided by CMC section§ 730-99.
- (h) Payment of the franchise fee shall not exempt the franchisee from the payment of any other fee, tax, or charge on the business, occupation, property or income of the franchisee that may be imposed by the city, the county, the state, or the federal government.
- (i) A franchisee's failure to remit the franchise fees and documentation required by this chapter shall be grounds for the suspension or revocation of the franchise.
- (j) The city may seek judicial relief to recover all fees, costs, and interest due and owing by the franchisee. The franchisee shall pay the city's court costs, reasonable attorney fees, accounting and auditing costs, and other collection costs incurred by the city as a result of franchisee's failure to remit the franchise fees and documentation required by this chapter and the franchise agreement.

Sec. 730-19. Bond Requirements.

At the time of the execution of a franchise agreement, each franchisee shall provide the city with a bond in the amount of twenty percent (20%) of the franchisee's gross revenues for the quarter immediately preceding the execution date of the franchise agreement as attested to by a certified public accountant. For franchisees with no gross revenues earned within the city of Cincinnati in the quarter immediately preceding the execution date of the franchise agreement, the bond shall be in the amount of \$5,000.

The bond shall conform with the requirements of CMC Chapter 304. The bond shall be used to insure the franchisee's performance under this chapter and the franchise agreement. Among other things, the bond shall be used to ensure the franchisee's payment of franchise fees and other sums that are due and owing to the city. The bond shall also be used to indemnify the city from any damages that may be suffered by the city in any manner as a result of the city's award of a franchise to the applicant, including but not limited to damages resulting from the applicant's performance or non-performance of the conditions and requirements of the franchise agreement, the applicant's use of the city's streets, the failure of the applicant to conform with applicable laws, and any negligent, reckless or intentional wrongful act or omission of the applicant or the applicant's employees, agents, officers, or representatives. The bond shall be kept in full force at all times during the term of the franchise. The bond shall be released by the city within one year following the expiration or termination of the franchise agreement.

Sec. 730-23. Books and Records, ~~and Reporting~~ Requirements.

- (a) Each franchisee shall prepare, keep, and maintain current, accurate records demonstrating its compliance with the requirements in this chapter and the franchise agreement.
- (b) The city shall have the right to inspect and review a franchisee's records concerning its franchise. The city shall provide fifteen (15) days advance written notice of any such inspection. The city also may copy and audit the franchisee's records, at the city's expense. The records shall be readily accessible for review by the city.
- ~~(c) Each franchisee providing commercial waste collection services shall file an annual report concerning the franchisee's total gross revenues for the year.~~

~~This annual report shall be examined by an independent certified public accountant ("auditor") at franchisee's cost and expense., who shall confirm that the franchisee's computations concerning gross revenues and franchise fees were performed in accordance with the requirements of this chapter. The auditor's report shall state that its examination of the franchisee's records was performed in accordance with professional standards established by the American Institute of Certified Public Accountants or successor organization. The auditor's report shall be filed with the city manager within one hundred twenty (120) days after the end of the franchisee's fiscal year. The auditor's services shall be contracted and paid by the franchisee.~~

Sec. 730-25. Methods of Commercial Solid Waste Collection.

- (a) Each franchisee shall collect commercial waste in the manner required by this chapter and the franchise agreement. At a minimum, each franchisee shall comply with the following requirements:
- (1) Collection Day. A franchisee that offers weekly curbside collection service shall schedule the weekly curbside collection provided to its customers outside the Central Business District on the same day as the City's trash collection day for each customer's service location. The franchisee may apply for an exemption to this requirement where the franchisee can demonstrate that compliance with this regulation causes undue hardship.
 - (2) Hours of collection. Hours of commercial waste collection services within the city shall be between 7:00am and 11:00pm in residential zoning districts governed by the rules and regulations established by the Chapter 729 of the Cincinnati Municipal Code and as set forth in the franchise agreement.
 - (3) Equipment. All vehicles, equipment, and containers used to provide commercial waste collection services shall be maintained at all times in a clean, sanitary, and neat condition, and in good repair. All of the franchisee's collection vehicles, equipment, and containers shall bear the franchisee's name, current phone number in letters that are at least two (2) inches tall, or other identifying marks or decals prescribed by the city manager.
 - (4) Maximum weight of loaded vehicles. The total gross weight of any loaded vehicle used by the franchisee on a city road shall not exceed the maximum gross weight allowed per vehicle under any applicable federal, state, or city law.
 - ~~(4) Prohibited material. A franchisee shall take all reasonable measures to prevent prohibited materials from being collected, transported, or disposed of in a manner that poses a threat to human health, public safety, or the environment.~~
 - ~~(5) Delivery to Solid Waste Management Facility. If a franchisee collects, receives, transports, stores, or separates commercial waste that was generated within the city, the franchisee shall deliver such waste to a solid waste management facility.~~
 - ~~(6) Receipts from designated solid waste management facility. A franchisee, upon request of the city manager, shall produce receipts or other documents demonstrating that all of the commercial waste collected by the franchisee in the city was delivered to a solid waste management facility pursuant to Sec. 730-5(h).~~
- (b) Each franchisee shall offer recycling services to all of its customers. A franchisee, upon request of the city manager, shall produce receipts of other documents demonstrating that all recyclable materials collected by the franchisee in the city were delivered to a legitimate recycling facility.

Sec. 730-~~27~~25. Inspections.

All of the franchisee's equipment, vehicles and containers shall be subject at all times to inspection by the city. The city manager may require the franchisee to clean, repair, refurbish, or replace any equipment, vehicle, or container that fails to comply with the requirements in this chapter or the franchise agreement.

Sec. 730-~~2927~~. Program Rules and Regulations.

The city manager is authorized to adopt, promulgate, and enforce rules and regulations consistent with the provisions of this chapter to provide for the effective administration and enforcement of the city's commercial waste franchise program.

Sec. 730-99. Penalties.

A violation of any section of this chapter shall constitute a Class E ~~Class D~~ civil offense subject to the associated civil fines as specified in Section 1501-11. Each violation by a franchisee at a different commercial establishment shall be considered a separate civil offense, and each day of a continuing violation shall be considered a separate and subsequent civil offense.

Section 3. That existing Section 722-3, "Construction Permit," of Chapter 722, "Management and Control of the Use of the City Right-of-Way"; existing Sections 729-1-C1, "Commercial Waste," 729-1-C2, "Commercial Waste Collector," 729-1-D, "Disposal," 729-1-P, "Private Waste Collector," 729-1-R, "Recyclable Materials," 729-59, "Commercial Waste," and 729-81, "Rules," of Chapter 729, "Waste Disposal"; existing Section 1101-15, "Permits, Prior Approvals Required," of Chapter 1101, "Administration"; and existing Sections 1501-5, "Class B Civil Offenses," 1501-9, "Class D Civil Offenses," and 1501-11, "Class E Civil Offenses," of Chapter 1501, "Code Compliance and Hearings," of the Cincinnati Municipal Code are hereby amended to read as follows:

Sec. 722-3. - Construction Permit.

(a) *Permit Required for Construction in Right of Way.* The director is charged with regulating the right of way for the construction, maintenance, and repair of streets, sidewalks, sidewalk spaces, alleys, public ways and places, and no provider, whether an abutting owner or not, shall do or permit to be done by his agents or employees without having first obtained from the director a permit under Chapter 718, Chapter 719, Chapter 721, Chapter 722, or Chapter 723, any of the following acts:

- (i) Make any excavation or dig into any street, sidewalk, sidewalk space, alley, or other portion of the right of way;
 - (ii) Remove, break or make holes in any pavement of the roadway or sidewalk or in any sidewalk space or any curb;
 - (iii) Construct, build, erect, or place any thing or structure in, upon, over, or under a street, sidewalk, sidewalk space, alley, or public way or place;
 - (iv) Make an improvement to the surface of any street, sidewalk, sidewalk space, alley, or public way or place by grading or paving, or construct or repair a sidewalk or curb, or make any other improvement thereto;
 - (v) Occupy or obstruct the right-of-way for purposes of accessing or maintaining facilities; or
 - (vi) Engage in construction or demolition activities, make any street opening, place any obstruction, or otherwise perform work within, or in proximity to, the streetcar right-of-way that requires the power-down or shutdown of the streetcar transit system or that otherwise materially interferes with the operation of the streetcar transit system.
- (b) *Repealed.*
- (c) *Other Approvals, Permits, and Agreements.* Providers shall obtain any and all regulatory approvals, permits, authorizations, or licenses necessary for the offering or provision of such services from the appropriate federal, state and local authorities and upon the city's reasonable request, shall provide copies of such documents to the city. Further, permission to occupy the right-of-way shall not entitle a provider to use, alter, convert to, or interfere with, the facilities, easements, poles, conduits, lines, pipelines, wires, fiber, cable or any other real or personal property of any kind whatsoever under the management or control of the city.
- (d) *Conditions for Providers Occupying the Right of Way.* In order to provide for the safe and effective management of the right of way by the city and in addition to the requirements imposed by the Cincinnati municipal code, providers shall:
- (i) Prioritize efficient, and least obtrusive use of right of way, consistent with safety, and to minimize traffic and other disruptions including street cuts; and
 - (ii) Participate in the department of transportation and engineering's construction coordination system using Cincinnati Area Geographic Information System ("CAGIS") for joint planning, construction, and advance notification of the provider's capital improvement and capital replacement projects located within the right of way. On a continuing basis, providers shall identify all capital work planned within three years, enter the planned work into the CAGIS-based construction coordination system, and make updates as necessary to maintain accuracy of the construction coordination system. Noncompliance with construction coordination requirements shall be grounds for denial of a construction permit; and

- (iii) Upon written notice, and at the direction of the director, promptly remove or rearrange facilities as necessary for public safety; and
- (iv) Perform all work, construction, maintenance or removal of facilities within the right of way, including tree trimming, in accordance with good engineering, construction and arboricultural practice including any appropriate state building codes, safety codes and law and use best efforts to repair and replace any street, curb or other portion of the right of way, or facilities located therein, to a condition to be determined by the director to be adequate under current standards and not less than materially equivalent to its condition prior to such work and to do so in a manner which minimizes any inconvenience to the public, the city and other providers, all in accordance with all applicable provisions of this chapter and the Cincinnati municipal code; and
- (v) Construct, install, operate and maintain its facilities and system in a manner consistent with all applicable laws, ordinances, construction standards and governmental requirements including, but not limited to, the national electric safety code, national electric code and applicable FCC or other federal, state and/or local regulations; and
- (vi) Comply with CMC Section 743-19, "Protection of Public Trees," which prohibits providers from performing work within 15 feet of a public tree without first obtaining a permit for such work from the urban forestry division of the Cincinnati parks' department; and
- (vii) Warrant that all worker facilities, conditions and procedures that are used during construction, installation, operation and maintenance of the provider's facilities within the right of way shall comply with all applicable standards of the federal occupational safety and health administration; and
- (viii) Use its best efforts to cooperate with the city in any emergencies involving the right of way; and
- (ix) Weather permitting, remove all graffiti within 30 calendar days of notice. Provider shall remove any and all graffiti on any of the provider's facilities located within the city right-of-way. Should the provider fail to do so, the city may take action to remove the graffiti and bill the provider for the cost thereof; and
- (x) Field identify its facilities in the right of way in accordance with the requirements set forth in the Ohio revised code and the Cincinnati municipal code, including, but not limited to, CMC Section 722-5(a); and
- (xi) When applicable, obtain a separate streetcar power-down or shutdown permit pursuant to CMC Section 723-79. Permittee shall have valid authorization from the streetcar transit system when required for work occurring within, or in proximity to, the right of way of a streetcar route.

(xii) The director may not issue a right-of-way permit for a commercial waste container unless a commercial waste collector that is a city franchisee has been designated in accordance with Chapter 730. The permittee shall provide written notification to the director within ten business days of a change in the status of a designated franchisee following permit issuance.

Sec. 729-1-C1. Commercial Waste.

“Commercial waste” shall have the same meaning as in section 730-1-C3 ~~shall mean all waste not generated by the occupants of a dwelling.~~

Sec. 729-1-C2. - Commercial Waste Collector.

“Commercial waste collector” shall have the same meaning as in section 730-C-5 ~~shall mean all persons, firms or corporations, in the commercial business of hauling waste other than their own.~~

Sec. 729-1-D. - Disposal.

“Disposal” or “Dispose” shall have the same meaning as the term is defined in Ohio Revised Code section 3734.01(F) or its successor ~~mean the discharge, deposit, dumping, spilling, leaking, emitting, or placing of any waste material on any land, except if the disposition or placement constitutes temporary storage or treatment. Disposal shall not mean injection into any land by well or otherwise, which shall be prohibited on any land in the city. Notwithstanding the foregoing, disposal of waste into a residential septic system, as that term is defined in OAC 1301:7-9-02(B)(54), shall be permitted.~~

Sec. 729-1-P. - Private Waste Collector.

“Private waste collector” shall mean any person, ~~firm, or corporation~~ engaged in the practice of operating their own trucks for the removal of their own self-generated waste from a premises they own or lease, ~~and not in the commercial waste collection business.~~

“Private waste collector” does not include persons who:

- (b) Provide for-hire commercial waste collection services for another person (as defined in section 730-1-C4), regardless of whether the vehicles used for such services are for-hire or not-for-hire; or
- (c) Obtain salvage rights or receive a similar transfer of rights to another person’s commercial waste.

Sec. 729-1-R. - Recyclable Materials.

“Recyclable Materials” shall have the same meaning as in section 730-1-R ~~shall mean newspapers, junk mail, magazines, phonebooks, cardboard, paperboard, glass bottles, aluminum cans, bi metal cans, steel cans, plastic bottles, and such other materials determined by the director of the office of environmental quality.~~

Sec. 729-59. - Commercial Waste Generator Requirements.

A Commercial waste shall be hauled to disposal sites at the expense of the person, firm or corporation who generates commercial such waste is required to use and maintain a contract with a franchisee for commercial waste collection service. The commercial waste generator shall be responsible for contracting, scheduling, and payment of service fees to the franchisee. Commercial waste collection services are governed by chapter 730, and the terms in this section 729-59 are defined in chapter 730.

A person who violates this section commits a Class B civil offense and shall be subject to the associated civil fines as specified in Section 1501-5(b).

Sec. 729-81. - Rules.

The city manager or ~~the manager's~~ ~~his or her~~ designee shall be authorized to prepare and publish rules for the effective administration and enforcement of the provisions of this chapter, including without limitation, rules governing the collection and disposal of waste by private waste collectors or commercial waste collectors. Any such rules so published shall have the force of law, and a violation of any rule intended to effect the purpose of any section of this chapter shall be punished in the same way as a violation of such section.

Sec. 1101-15. Permits, Prior Approvals Required.

1101-15.1 *Sewers*: No permit for the construction of any building or addition shall be issued by the director of buildings and inspections until the applicant has obtained review and approval from the metropolitan sewer district of greater Cincinnati.

1101-15.2 *Electrical supply*: No permit for the construction, change of use, or addition to any building shall be issued by the Director of Buildings and Inspections until the applicant has obtained review and approval from the electrical inspection agency for the installation of the electrical system.

Exception: Buildings of use groups regulated under the Residential Code of Ohio.

1101-15.3 *Driveways*: When the applicant applies for a building permit upon a dedicated street where no sidewalks are constructed and where a driveway is to be constructed, he shall be required to present detailed drawings in triplicate to the engineering division of the department of public works of the City of Cincinnati to obtain a special approval before the building permit is issued to assure proper construction of the driveway. The grade of the proposed driveway at the property line and on the street right-of-way shall be constructed to meet the requirements of the engineering division of the department of transportation and engineering of the City of Cincinnati.

1101-15.4 *Water supply*: No permit for the construction of any building shall be issued by the director of buildings and inspections except where adequate water supply and facilities for fire fighting purposes are available, as determined by the fire chief. No permit for the construction of any building intended for human occupancy shall be issued by the director of buildings and inspections until the water works has certified the availability of city water, or the commissioner

of health has approved some other source. If the director of buildings and inspections finds that upon inspection of any building under construction that adequate water supply or facilities for firefighting purposes, as determined by the fire chief, are not being furnished as required, then the director of buildings and inspections may stop such construction and revoke the permit previously issued therefor until such time as adequate water supply or facilities for firefighting purposes, as determined by the fire chief, are furnished.

1101-15.5 *Flood insurance program*: The director of buildings and inspections shall review all permit applications to assure that proposed new construction, alterations, additions or development will be in accordance with Chapter 1109 CBC and the applicant has received all necessary permits from those governmental agencies from which prior approval is required.

1101-15.6 *Historic conservation*: No permit for the alteration of any historic structure, as determined by the historic conservation board, shall be issued by the director of buildings and inspections except where a certificate of appropriateness has been issued by the urban conservator.

1101-15.7 *Stormwater management*: No permit for the construction of any building, building addition, or parking lot, or for the excavation or fill of land shall be issued by the director of buildings and inspections until the applicant has obtained review and approval of the proposed work from the stormwater management utility division of the water works.

Exceptions:

- (1) Permits for buildings, building additions, and parking lots less than 800 square feet in area.
- (2) Cut or fill permits for the demolition of structures or for the installation of underground tanks.

1101-15.8 *Street Encroachments*: No permit involving the use of space in, under, or above any street or alley shall be issued unless the encroachment is authorized by the city manager or the city manager's designee under the authority of the Cincinnati Municipal Code or other applicable authority, law, rule, or regulation. The right of private occupancy of any part of a city street or alley is permissive only and may be withdrawn or revoked at any time. When the right is withdrawn or revoked, the occupancy shall be terminated and all necessary construction for such street or sidewalk restorations shall be made at the expense of the property owner or person in control. Every property owner or person in control using space in, under, or above any street or alley for private purposes shall be liable to the public and to the city for any loss or damage from nuisance arising out of such use.

1101-15.9 *Excavation and Fill*: The director of buildings and inspections may not issue a permit to place at a fill site more than 500 cubic yards of fill material from an off-site borrow unless the fill material has been approved under Chapter 1031, Soil Contamination Standards, of Title X, Environmental Code, of the Cincinnati Municipal Code.

Exceptions:

- (1) Up to 1,000 cubic yards of fill material if the fill site is wholly within a zone district less restrictive than the R-0.7 District.

- (2) Any amount of construction and demolition debris within the meaning of § 00091 of the Regulations of the Board of Health of the City of Cincinnati.

1101-15.10 *Restricted Fill Site*: The director of buildings and inspections may not issue a permit for work in violation of a restriction imposed by the city manager under Chapter 1031, Soil Contamination Standards, of Title X, Environmental Code, of the Cincinnati Municipal Code.

1101-15.11 Use of Franchised Commercial Waste Collectors: When the applicant for a permit is required to designate a franchised commercial waste collector and cause an estimated franchise fee to be paid to the department of buildings and inspections pursuant to CMC section 730-18, the director of buildings and inspections shall not issue a wrecking or building permit until the requirements of that section are satisfied. The permittee shall provide written notification to the director within ten business days of a change in the status of a designated franchisee following permit issuance.

Sec. 1501-5. - Class B Civil Offenses.

Any person who violates a standard of conduct set forth in a provision of the Cincinnati Municipal Code listed below is liable for the civil fine specified in § 1501-99 for a Class B Civil Offense. If the provision is listed under paragraph (a) below, the otherwise applicable civil fine is reduced by 50% if the person charged shows in accordance with § 1501-15 that the violation has been corrected. If a person has previously been found to have violated the same provision of the Cincinnati Municipal Code within one year that person may be charged as a second offender and on being found to have committed a second or subsequent offense is liable for the civil fine for the subsequent offense provided below, the amount of which fine is specified in § 1501-99 and is not subject to reduction for correction of the violation.

(a) Class B Civil Offenses With Civil Fines Subject to 50% Reduction for Correction of Violation:

			Civil Fine for Subsequent Offense
(1)	§ 720-15	Public [Stormwater] Facilities	Class C
(2)	§ 720-29	[Stormwater] Permits and Plan Review	Class B
(3)	§ 721-83	Street Contractor's License	Class C
(4)	§ 723-3	Unauthorized Wires, etc., in Streets	Class C
(5)	§ 1219-3	Material Subject to Spontaneous Ignition	Class B
(6)	§ 1219-7	Baled Material	Class B
(7)	§ 1219-9	Combustible Containers	Class B

			Civil Fine for Subsequent Offense
(8)	§ 1219-15	Fire Doors, Shutters and Windows	Class B
(9)	§ 1219-29	Drip Pans	Class B
(10)	§ 1219-41	Exhaust Fans	Class B
(11)	§ 1219-45	Gas Shutoff Valves	Class B
(12)	Chapter 1225	Smoking and the Use of Open Flame	Class B
(13)	§ 1231-11	Obstructing Fire Hydrants	Class B
(14)	§ 718-9	Advertising in the Public Right-of-Way	Class C
(15)	Chapter 765	Special Event Permits	Class B
(16)	§ 1601-7	Early Fire Warning System	Class C
(17)	§ 1127-07.99	Rental Property Inspection Pilot Program	Class C

(b) Class B Civil Offenses With Civil Fines Not Subject to 50% Reduction for Correction of Violation:

			Civil Fine for Subsequent Offense
(1)	§ 413-25	Sidewalk or Street Parking	Class C
(2)	§ 503-25	Damaging Street Surface	Class C
(3)	§ 506-63	Driving on Sidewalk Area	Class C
(4)	§ 506-64	Driving Over New Pavement	Class C
(5)	§ 721-25	Sale of Land on Private or Undedicated Streets	Class D
(6)	§ 721-41	Street Opening Without Permit Unlawful	Class D
(7)	§ 721-61	Warning Lights; Barriers	Class D

			Civil Fine for Subsequent Offense
(8)	§ 721-109	Sidewalk Covering Over Sub-space; Prohibited Materials	Class D
(9)	§ 721-111	Support for Sidewalk Covering Over Sub-space	Class D
(10)	§ 723-1	Street Obstructions	Class C
(11)	§ 723-33	Sweeping Onto Sidewalk or Roadway	Class C
(12)	§ 729-5	Waste Containers; Requirements.	Class D
(13)	§ 729-9	Setting Out Containers on Property Abutting Alleys	Class B
(14)	§ 729-27	Removal of Dead Animals	Class B
(15)	§ 729-41	Disposal of Combustible Garbage	Class B
(16)	§ 729-53	Transporting Putrescible Commercial By-Products	Class B
(17)	§ 729-5960	Commercial Establishments to Maintain Commercial Waste Generator Requirements Collection Contract	Class C
(18)	§ 729-69	Unloading Waste on Sidewalks	Class B
(19)	§ 729-71(c)(1)	Personal Property Left Abandoned on Streets and Sidewalks- 3 or fewer items	Class B
(20)	§ 729-75	Escaping Hot Water or Steam	Class B
(21)	§ 1219-5	Accumulated Waste and Waste Receptacles	Class B
(22)	§ 1219-13	Trap Doors	Class B
(23)	§ 1221-7	Smoking and Use of Open Flame	
(24)	§ 1601-57	Enforcement of Emergency Orders	Class B
(25)	§ 1601-59	Enforcement of Health Orders	Class B

Sec. 1501-9. - Class D Civil Offenses.

A person who violates a standard of conduct set forth in a provision of the Cincinnati Municipal Code listed below is liable for the civil fine specified in § 1501-99 for a Class D Civil Offense. If the provision is listed under paragraph (a) below, the otherwise applicable civil fine is reduced by 50% if the person charged shows in accordance with § 1501-15 that the violation has been corrected. If a person has previously been found to have violated the same provision of the Cincinnati Municipal Code within one year that person may be charged as a second offender and on being found to have committed a second or subsequent offense is liable for the civil fine for the subsequent offense provided below, which fine is specified in § 1501-99 and is not subject to reduction for correction of the violation.

(a) Class D Civil Offenses with Civil Fines Subject to 50% Reduction for Correction of Violation:

			Civil Fine for Subsequent Offense
(1)	§ 720-13	Private Facilities	Class E
(2)	§ 720-45	Notice of Violations	Class E
(3)	§ 720-69	Notice to Correct Drainage	Class E
(4)	Chapter 855	Rooming Houses	Class D
(5)	Chapter 895	Outdoor Advertising Signs	Class D
(6)	Chapter 1101	Administration, Cincinnati Building Code	Class E
(7)	Chapter 1106	General and Specialty Contractors	Class E
(8)	Chapter 1107	Elevator and Conveyer Equipment	Class E
(9)	Chapter 1117	Housing Code	Class E
(10)	Chapter 1119	Building Hazard Abatement Code	Class E
(11)	Chapter 1127	General Inspection Programs Code	Class E
(12)	Title XIV	Zoning Code	Class E
(13)	§ 1201-21	Maintenance	Class D
(14)	§ 1201-33	Evacuation	Class D

			Civil Fine for Subsequent Offense
(15)	§ 1201-35	Spills and Leaks	Class D
(16)	Chapter 1235	Detectors, Early Fire Warning Systems	Class D
(17)	§ 1123-11(a)	Vacant Foreclosed Property Registration - Failure to register a vacant, foreclosed property.	Class E
(18)	§ 874-07(a)	Failure to Register Residential Rental Property	Class D
(19)	Chapter 1109	Flood Damage Reduction	Class E

(b) Class D Civil Offenses With Civil Fines Not Subject to 50% Reduction for Correction of Violation:

			Civil Fine for Subsequent Offense
(1)	§ 718-25	Secret Street Uses	Class E
(2)	§ 721-59	Taking Material from Streets	Class E
(3)	§ 729-71(c)(2)	Personal Property Left Abandoned on Streets and Sidewalks - 4 or more items	Class D
(4)	§ 761-14	Eviction or Retaliation by Landlord	Class E
(5)	Chapter 891	Home Improvement	Class E
(6)	§ 1201-47	Failure to Comply with Orders	Class D
(7)	§ 1219-21	Causing Fire Through Negligence	Class D
(8)	Chapter 1251	Fire Starting Apparatus	Class D
(9)	§ 759-4	Use of a Motor Vehicle to Facilitate a Drug Related Crime	Class D
(10)	Chapter 722	Management and Control of the Use of the City Right-of-Way	Class E

			Civil Fine for Subsequent Offense
(11)	Chapter 730	Commercial Waste Franchises	
(1112)	§ 856-25(c)	Violation of Limitations on Operators or Operation of Short Term Rentals	Class D
(1213)	§ 1125-17(1)	Failure to Register a Vacant Building	Class E
(1314)	§ 1601-57	Enforcement of Emergency Orders	Class D
(1415)	§ 1601-59	Enforcement of Health Orders	Class D
(1516)	Chapter 811	e-Scooter Rental Franchises	Class D

Sec. 1501-11. - Class E Civil Offenses.

A person who violates a standard of conduct set forth in a provision of the Cincinnati Municipal Code listed below is liable for the civil fine specified in § 1501-99 for a Class E Civil Offense. If the provision is listed under paragraph (a) below, the otherwise applicable civil fine is reduced by 50% if the person charged shows in accordance with § 1501-15 that the violation has been corrected. If a person has previously been found to have violated the same provision of the Cincinnati Municipal Code within one year that person may be charged as a second offender and on being found to have committed a second or subsequent offense is liable for the civil fine for the subsequent offense provided below, the amount of which fine is specified in § 1501-99 and is not subject to reduction for correction of the violation.

(a) Class E Civil Offenses With Civil Fines Subject to 50% Reduction for Correction of Violation:

			Civil Fine for Subsequent Offense
(1)	§ 883-3	Public Assembly Permit	See § 883-23
(2)	§ 883-21	Prohibitions	See § 883-23
(3)	§ 1247-15	Material Safety Data Sheets	Class E
(4)	§ 1247-17	Location of Toxic or Hazardous Substance	Class E

			Civil Fine for Subsequent Offense
(5)	§ 1113-03	Prohibitions of Certain Excavations, Fills or Grades	Class E
(6)	<u>Chapter 730</u>	<u>Commercial Waste Franchises</u>	<u>Class E3</u>

(b) Class E Civil Offenses With Civil Fines Not Subject to 50% Reduction for Correction of Violation:

			Civil Fine for Subsequent Offense
(1)	§ 703-1	Blasting Unlawful Without Permit	Class E
(2)	§ 729-30	Dumping	Class E
(3)	§ 881-3	Facility for Public Assembly License	Class E
(4)	§ 881-19	Prohibitions	Class E
(5)	§ 1247-9	Labeling of Toxic and Hazardous Substances	Class E
(6)	§ 1247-27	Falsification of Information	Class E
(7)	§ 759-3	Use of a Motor Vehicle for Prostitution or Solicitation Prohibited	Class E3
(8)	§ 701-50	Nuisance, Dangerous, and Vicious Dogs	Class E

Section 4. That existing Section 729-60, “Commercial Establishments to Maintain Commercial Waste Collection Service Contract,” and Sections 730-1-G, “Garbage,” 730-1-O, “ORC,” 730-1-R, “Rubbish,” 730-1-W, “Waste,” of the Cincinnati Municipal Code are hereby repealed.

Section 5. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2023

Aftab Pureval, Mayor

Attest: _____
Clerk