ORDINANCE NO. 13-09

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 58 OF THE CODE OF ORDINANCES ENTITLED "SOLID WASTE" TO CONVERT MONTHLY UTILITY BILLING TO A NON AD VALOREM ASSESSMENT ON THE PROPERTY TAX ROLL BEGINNING IN FY 2014; AMENDING CERTAIN REGULATIONS TO CONFORM THE SOLID WASTE ORDINANCE WITH THE CURRENT SOLID WASTE COLLECTION PROCESS, AND THE CITY'S RECYCLING GOALS; BY AMENDING SECTION 58-1 TO ADD DEFINITIONS; AMENDING SECTION 58-2 TO CLARIFY AUTHORITY OF FRANCHISEES; AMENDING SECTION 58-31 TO CLARIFY WASTE CONTAINER REQUIREMENTS; AMENDING SECTION 58-32 TO CLARIFY TEMPORARY DUMPSTER PROVISIONS; AMENDING SECTION 58-35 TO CLARIFY BULK AND EXCESS YARD WASTE PICK-UPS; RESCINDING SECTION 58-62 TO RESCIND MONTHLY BILLING; RESCINDING SECTION 58-63 TO RESCIND DELINQUENCY PROVISIONS; AMENDING SECTION 58-66 TO ADJUST THE CONVERSION RATE FOR NON-COMPACTION CONTAINERS; AMENDING SECTION 58-68 REGARDING COMMERCIAL SOLID WASTE ACCOUNTS; AMENDING SECTION 58-71 TRASH HAULERS; RESCINDING SECTION 58-72 RESPONSIBILITY OF OWNER AND TENANT FOR PAYMENT; RESCINDING SECTION 58-73 REGARDING ISSUANCE OF BUSINESS TAX RECEIPT; AMENDING SECTION 58-82 TO AMEND RESIDENTIAL RECYCLABLE MATERIALS; AMENDING SECTION 58-84 REGARDING COLLECTION CONTAINERS OF RESIDENTIAL RECYCLABLE MATERIALS; AMENDING SECTION 58-86 TO INCLUDE WHITE GOODS IN THE ANTI-SCAVENGER CLAUSE; ADDING DIVISION V- SECTIONS 58-100 THROUGH 58-115 TO ESTABLISH REGULATIONS FOR IMPLEMENTING AN ANNUAL SOLID WASTE ASSESSMENT FOR RESIDENTIAL PROPERTIES

AND BILLING REGULATIONS FOR COMMERCIAL AND GOVERNMENT PROPERTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, pursuant to Article VIII, section 2(b), Florida Constitution, and sections 166.021 and 166.041, Florida Statutes, the City Commission has all powers of local self-government to perform municipal functions and to render municipal services except when prohibited by law, and such power may be exercised by the enactment of legislation in the form of City ordinances; and

WHEREAS, the City Commission may exercise any governmental, corporate, or proprietary power for a municipal purpose except when expressly prohibited by law, and the City Commission may legislate on any subject matter on which the Florida Legislature may act, except those subjects described in (a), (b), (c), and (d) of section 166.021(3), Florida Statutes. The subject matter of paragraphs (a), (b), (c), and (d) of section 166.021(3), Florida Statutes, are not relevant to the imposition of assessments related to Solid Waste collection and disposal services, facilities or programs of the City; and

WHEREAS, the purpose of this Ordinance is to (1) provide procedures and standards for the imposition of annual Solid Waste Service Assessments under the general home rule powers of

a municipality to impose special assessments;(2) authorize a procedure for the funding of Solid Waste collection and disposal services, facilities, or programs providing special benefits to property within the City; and (3) legislatively determine the special benefit provided to Assessed Property from the provision of Solid Waste collection and disposal services by the City; and

WHEREAS, pursuant to section 403.706(1),Florida Statutes, the City has the general responsibility and authority to provide for the collection and transport of Solid Waste generated within its incorporated area to appropriate Solid Waste disposal facilities; and

WHEREAS, in fulfilling its responsibilities, the City has entered into an agreement with a Franchisee for the furnishing of Solid Waste collection and disposal services and programs within the City. The City pays the Franchisee for such services provided to Residential Property and, in turn, separately bills the respective Owners of such Residential Property. Due to widely varied production of Solid Waste among the many and varied types of Commercial Property, the Franchisee bills and collects directly from Owners of Commercial Property; and

WHEREAS, the existence of any Building or other improvement on Improved Property results in such property generating Solid Waste or being capable of generating Solid Waste; and

WHEREAS, whether imposed throughout the entire City or a portion thereof, the imposition of a recurring annual Solid Waste Service Assessment is an alternative, equitable and efficient method to fairly and reasonably apportion and recover the Solid Waste management and disposal costs experienced by the City among the parcels of Residential Property within the area assessed; and

WHEREAS, the use of the uniform method of collection authorized by the Uniform Assessment Collection Act provides a mechanism to equitably and efficiently collect Solid Waste Service Assessments, as well as address payment delinquencies and recover unpaid fees, charges, or assessments advanced for Solid Waste management and disposal services, programs, and facilities allocable to specific parcels of Assessed Property; and

WHEREAS, the annual Solid Waste Service Assessments to be imposed pursuant to this Ordinance shall constitute non-ad valorem assessments within the meaning and intent of the Uniform Assessment Collection Act; and

WHEREAS, the Solid Waste Service Assessment imposed pursuant to this Ordinance is imposed by the City Commission, not the Monroe County Board of County Commissioners, Property Appraiser or Tax Collector. Any activity of the Property

Appraiser or Tax Collector under the provisions of this Ordinance shall be construed as ministerial; and

WHEREAS, the City Commission hereby declares that the Solid Waste services, facilities, and programs of the City provide a special benefit to property within the City that is improved by the existence of a Dwelling Unit or Building based upon the following legislative determinations:

(A) Solid Waste collection and disposal services, facilities, and programs furnished by the City possess a logical relationship to the use and enjoyment of Residential Property by providing: (1) the required use of Solid Waste collection and disposal services, facilities, and programs by the Owners and occupants of Residential Property to properly, safely, and cost effectively dispose of Solid Waste generated on such property, (2) better service to Owners and tenants, (3) the enhancement of environmentally responsible use and enjoyment of Residential Property, and (4) the protection of property values and the health and safety of the Owners and occupants of Residential Property resulting from the uniform delivery and availability of such services, facilities, and programs.

(B) The provision of comprehensive and mandatory Solid Waste collection and disposal services and programs furnished by or through the City to Residential Property enhances and strengthens the relationship of such services and programs to

the use and enjoyment of Residential Property within the City; and

WHEREAS, Florida Statutes section 197.3632 and 197.3635 authorize municipalities to collect non ad valorem assessments on the same bill as ad valorem property tax rolls; and

WHEREAS, amendments to shift Solid Waste billing as a non ad valorem assessment to the annual property tax rolls, and to amend the Solid Waste ordinance to conform with the City's current solid waste and recycling contract will promote the health, safety and welfare of the environment, the citizens and visitors of the City of Key West.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Chapter 58 of the Code of Ordinances, entitled "Solid Waste," is hereby amended as follows*:

Chapter 58 - SOLID WASTE

ARTICLE I. - IN GENERAL

Sec. 58-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in

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*(Coding: Added language is underlined; deleted language is ~~struck through~~.)

this section, except where the context clearly indicates a different meaning:

Aluminum means aluminum cans, aluminum foil, and aluminum containers or trays used in packing, preparation or cooking food.

Annual Rate Resolution means the resolution establishing the rate at which a Solid Waste Service Assessment for a specific Fiscal Year will be computed. The Final Assessment Resolution shall constitute the Annual Rate Resolution for the initial Fiscal Year in which a Solid Waste Service Assessment is imposed or reimposed.

Assessed Property means all parcels of land included on the Assessment Roll that receive a special benefit from the delivery of the Solid Waste collection and disposal services, programs or facilities identified in the Initial Assessment Resolution or a subsequent Preliminary Rate Resolution.

Assessment Roll means the special assessment roll relating to a Solid Waste Service Assessment approved by a Final Assessment Resolution or an Annual Rate Resolution.

Authorized refuse receptacles means any city authorized recycling receptacles and city authorized rubbish receptacles.

Bulk waste means any tangible item such as furniture, appliances, bicycles, or similar property not having a useful purpose to the owner or abandoned by the owner and not included within the definitions of garbage, yard waste, or rubbish.

Cans means all containers composed in whole of iron or steel (so-called tin cans) used as containers in the packing or storage of various food and nonfood items, except containers that contain paint or petroleum-based solvents, and any pressurized aerosol cans.

Certificate of Occupancy means the written certification issued by the City that a Building is ready for occupancy for its intended use.

Collector refers to a person authorized by the city commission, under the provisions of a franchise agreement, to collect and transport solid waste within his respective service area.

Commercial means all nonresidential and industrial establishments, including but not limited to, and without regard to whether they are profit or nonprofit organizations, retail and/or wholesale establishments, motels, hotels, guesthouses, timeshares, stores, schools, churches, hospitals, office buildings, restaurants, service stations, garages, laundries, cleaning establishments,

public or private institutions of all types, and all other businesses required to obtain a business tax receipt. Where a building is mixed use and both nonresidential and residential uses share the premises, the nonresidential use is deemed commercial for the purposes of this chapter.

Commercial establishment means any non-residential building, including, but not limited to, those used for retail, wholesale, industrial, manufacturing, dining, offices, professional services, automobile service, hotels and motels, restaurants, or shipping and receiving areas.

Construction and demolition debris or *C & D* means materials generally considered to be not water soluble and non-hazardous in nature, including, but not limited to, steel, glass, brick, concrete, or asphalt roofing material, pipe, gypsum wallboard, and lumber from the construction or destruction of a structure as part of a construction demolition project.

Container means ~~garbage~~ receptacle for containing garbage, recycling or yard waste.

Corrugated cardboard means paper in which a portion has been made to have a wavy surface (alternating ridges and grooves) and is placed between two flat surfaces for the sake of strength, and which is commonly used to form cartons or boxes.

Dumpster means any waste receptacle whose capacity exceeds 96 gallons and is designed to be mechanically dumped.

Dwelling Unit means a building, or a portion thereof, which is located upon residential property and lawfully used for residential purposes, consisting of one or more rooms arranged, designed, used, or intended to be used as living quarters for one family only.

Excess yard waste means any vegetative waste that because of its size cannot be broken down easily, including tree limbs and logs too large for a residential or commercial receptacle. Tree limbs and logs shall not exceed four feet in length, and must exceed six inches in diameter ~~and three cubic yards.~~

Final Assessment Resolution means the resolution which shall confirm, modify, or repeal the Initial Assessment Resolution and which shall be the final proceeding for the initial imposition of Solid Waste Service Assessments.

Garbage means materials resulting from the preparation, cooking and serving of food, market wastes, trimmings and other discarded matter from meat or produce, including containers in which packaged and any other matter, of any nature whatsoever, which is subject to decay, putrefaction and the generation of noxious or

offensive gases or odors or which, during or after decay, may serve as breeding or feeding material for flies or other germ-carrying insects, or any containers of the material defined in this chapter.

Garbage receptacle means any commonly available light gauge steel, plastic, or galvanized receptacle of a non-absorbent material, closed at one end and open at the other, furnished with a closely fitted top or lid and handle(s). Any receptacle including waste materials serving a single dwelling unit shall not exceed ~~32 gallons in capacity and/or~~ 50 pounds in weight unless the container is designed to be used with a mechanical device.

Glass containers means bottles and jars, made of silica, sand, soda ash, and limestone, being transparent or translucent, and used for packaging or bottling various materials. This does not include plastics or glass products such as window glass, blue glass, flat glass, mirrors, plate glass, light bulbs, dishes or ceramics.

Hazardous waste means any solid waste that is required to be accompanied by a written manifest or shipping document describing the waste as "hazardous" pursuant to any state or federal law including but not limited to RCRA, 42 USC 7901; TSCA, 15 USC 2601; and CERCLA, 42 USC 9601.

Household recycling receptacle means a container designed for use by one household to store recyclable materials between pickups.

Improved property refers to all residential, commercial or industrial property that generates or is capable of generating solid waste.

Industrial wastes means the waste products of canneries, slaughterhouses or packing plants; condemned food products; agricultural waste products; waste and debris from brick, concrete block, roofing shingle or tile pieces; debris and wastes accumulated from land clearing, excavating, building, rebuilding, and altering of buildings, structures, roads, streets, sidewalks or parkways; and other solid waste products generated from industrial processing or manufacturing.

Initial Assessment Resolution means the resolution hereof which shall be the initial proceeding for the identification of the Solid Waste Cost for which an assessment is to be made and for the imposition of a Solid Waste Service Assessment.

Magazines means publications printed on glossy, clay-coated paper.

Minimum service as it applies to commercial units is defined as one 32-gallon container pickup per week.

Multifamily residence refers to a building or structure that is designed for and capable of housing conveniently two or more individuals or families in separate quarters.

Newspaper means newsprint-grade paper, the common, inexpensive machine-finished paper made chiefly from wood pulp, which is printed and distributed, and includes all newspaper advertisement, comics and enclosures. This does not include newspaper soiled by food, paint, petroleum products, oil or oil solvents, or other solid wastes that are not recyclable.

Owner refers to the person owning an interest in improved property or refers to the person who has charge, care or control of any private property as agent or as executor, administrator, trustee or guardian of the estate of the owner or any other person in a representative capacity.

Plastic means clear and color coated bottles and jugs made from high-density polyethylene (HDPE) and polyethylene terephthalate (PET) plastics~~, excluding caps and lids~~. This includes plastics # 1- # 7.

Preliminary Rate Resolution means the resolution initiating the annual process for updating the Assessment

Roll and directing the reimposition of Solid Waste Service Assessments pursuant to an Annual Rate Resolution.

Property Appraiser means the Monroe County Property Appraiser.

Public way means any and all streets, roads, alleys, piers, bulkheads, boardwalks, lanes, trails, waters, or other public ways, and any and all public parks, squares, beaches, parks and any and all recreational facilities operated by the state, county, federal government or special governmental district.

Recyclable materials means any type of refuse designated by the ~~Recycling Coordinator for the~~ City of Key West through the rules and regulations issued under this chapter to be separated for recycling.

Refuse means all solid wastes, including but not limited to, garbage, rubbish, ashes, street cleaning, dead animals, bulk waste, industrial wastes and yard waste.

Residential property means any structure or shelter or any part thereof used or constructed for use as a residence for one or more families or individuals and includes the classification "multifamily residence" as defined in this section.

Residential unit means a single-family dwelling, each living unit in a duplex or condominium dwelling or

apartment house and each mobile home tiedown on a mobile home parcel or on a condominium parcel/site.

Rubbish means refuse accumulations of paper, excelsior, rags or wooden or paper boxes or containers, sweepings, and all other accumulations of a nature other than garbage, which are usual to housekeeping and to operation of stores, offices and other business places, and any bottles, cans or other containers which, due to their ability to retain water, may serve as breeding places for mosquitoes or other water-breeding insects.

Solid waste means garbage, rubbish, refuse, yard waste and other discarded solid or non-liquid materials, including materials resulting from industrial, commercial, agricultural and community activities. The term "waste" shall be synonymous with the term "solid waste".

Solid Waste Cost means the amount necessary to fund the Solid Waste collection, disposal and recycling activities of the City allocable to Assessed Property during a Fiscal Year and shall include, but not be limited to: (A) the cost, whether direct or indirect, of all services, programs or facilities provided by the City, or through contractual arrangements with the City relating to Solid Waste management and disposal activities; (B) the cost of any indemnity or surety bonds and premiums for

insurance; (C) the cost of salaries, volunteer pay, workers' compensation insurance, or other employment benefits; (D) the cost of computer services, data processing, and communications; (E) the cost of training, travel and per diem; (F) the recovery of unpaid or delinquent fees or charges advanced by the City and due for Solid Waste management and disposal services, programs or facilities allocable to specific parcels; (G)the cost of engineering, financial, legal or other professional services; (H) all costs associated with the structure, implementation, collection, and enforcement of the Solid Waste Service Assessments or a prior year's assessment for a comparable service, facility or program, including any service charges of the Tax Collector or Property Appraiser; (I) all other costs and expenses necessary or incidental to the acquisition, provision, or delivery of the services, programs or facilities funded by the Solid Waste Service Assessment, and such other expenses as may be necessary or incidental to any related financing authorized by the City Commission; (J) a reasonable amount for contingency and anticipated delinquencies and uncollectible Solid Waste Service Assessments; and (K) reimbursement to the City or any other Person or entity for any monies advanced for any costs

incurred by the City or such Person or entity in connection with any of the foregoing items of Solid Waste Cost.

Solid waste disposal system refers to the total plan for the collection, billing and disposal of solid waste within the city.

Solid waste facility means and includes land, equipment and buildings, constructed and maintained by the city to transfer and/or dispose of solid waste within the city.

Solid Waste Service Assessment means a special assessment lawfully imposed by the City against Assessed Property to fund all or any portion of the cost of the provision of Solid Waste collection and disposal services, facilities, or programs providing a special benefit to property as a consequence of possessing a logical relationship to the value, use, or characteristics of the Assessed Property.

Special waste means any solid waste that requires special handling and management; is not accepted at a landfill or other disposal facility or is accepted at a landfill or other disposal facility, but at a higher rate than is normally charged for refuse; or, is accepted at a landfill or other disposal facility, but with special delivery requirements. Special waste includes, but is not

limited to, asbestos, refrigerant containing white goods, whole tires, used oil, lead-acid batteries, mercury-containing devices, contaminated soils, and bio-hazardous waste.

Tax Collector means the Monroe County Tax Collector.

Tax Roll means the real property ad valorem tax assessment roll maintained by the Property Appraiser for the purpose of the levy and collection of ad valorem taxes.

Transfer station means a site and equipment designated by the city for the purposes of transferring refuse from collection vehicles to long-haul transport vehicles.

~~*Trash* means and includes all horticultural trimmings and all accumulations of grass, weeds, palm fronds, leaves, flowers, shrubs, vines, tree limbs, and other similar accumulations incidental to yard keeping.~~

Uniform Assessment Collection Act means sections 197.3632 and 197.3635, Florida Statutes, or any successor statutes authorizing the collection of non ad valorem assessments on the same bill as ad valorem taxes, and any applicable regulations promulgated thereunder.

White Goods means discarded washers, dryers, refrigerators, ranges, water heaters, freezers, small air conditioning units, and other similar domestic residential and commercial large appliances.

Yard waste means and includes all horticultural trimmings and all accumulations of grass, weeds, palm fronds, leaves, flowers, shrubs, vines, tree limbs, and other similar accumulations incidental to yard keeping.

Sec. 58-2. - Authority of franchisees to provide service.

No person, other than persons holding duly authorized franchises issued by the city commission, shall engage in or carry on within the city limits a private garbage collection service or enter into a business for the collection and disposal of garbage or white goods, nor shall any person other than a duly licensed franchise holder transport or cause to be transported along or over the city highways, roads, streets and thoroughfares any garbage, except as provided in this chapter. No franchise agreement between the city and any person shall be binding in any way upon the city until such agreement is approved by resolution of the city commission and as provided by the Charter. Nothing in this section shall be construed to prohibit non-franchised licensed haulers from hauling excess yard waste or C & D ~~or bulk waste~~.

ARTICLE II. - COLLECTION AND DISPOSAL

Sec. 58-31. - Container and receptacle requirements.

(a) All premises occupied as a dwelling, store or other place of business in the city shall have and maintain a proper watertight metal garbage container or plastic container for receiving garbage. It shall be provided with a good, tight and closely fitting metal or plastic cover, which cover shall be so constructed as to shed all rainwater and to prevent the access of flies to the contents of the can. Such cover shall be kept on at all times except when removed for the purpose of disposing of or removing garbage or for securing or airing the garbage can immediately after it has been emptied or before fresh garbage has been deposited in it.

(b) Residential and commercial receptacles for storage of refuse may not exceed ~~32 gallons in capacity and~~ 50 pounds unless the receptacles can be mechanically dumped.

(c) Garbage, ~~yard waste,~~ and rubbish may be placed in the same containers. ~~Yard waste will be collected with the garbage on the scheduled pickup day only if it is placed in containers and the container does not exceed set limits.~~ Residential yard waste must be placed in its own separate container. Containers shall not exceed ~~32 gallons~~ 50 pounds in capacity unless they are designed to be mechanically dumped. Any waste not

containerized, with the exception of bulk waste and excess yard waste, shall not be placed out on city property (including the right-of-way).

(d) It shall be unlawful for a property owner or customer to fail to provide sufficient containers to contain all refuse between collections. No refuse will be collected unless placed in proper containers or unless it meets the requirements set forth for bulk and excess yard waste pickup in section 58-35.

(e) Infectious, inflammable and explosive materials and human ~~or animal~~ wastes shall not be placed in containers for regular collection. Refuse, clothing, bedding, or other refuse from homes or other places where highly infectious or contagious diseases have prevailed should be disposed of under the supervision and direction of the county health officer.

(f) All containers, including recycling containers, placed upon city property, including the right-of-way, for pickup by the city's franchise hauler must not be placed on city property before 4:00 p.m. of the night before scheduled pickup and must be removed from city property by 8:00 p.m. of the day of such pickup. Bulk waste for pickup by the city's franchise hauler or by a non-franchised licensed hauler must not be placed on city property before 4:00 p.m. of the night before scheduled pickup.

(g) Any person placing for pickup on his property or city property, including the right-of-way, construction and

demolition (C & D) debris shall contact the city's franchise hauler or a non-franchised licensed hauler to arrange for special pickup and disposal of such items. Items may not be placed upon city property, including the right-of-way, before 4:00 p.m. of the night before the scheduled pickup.

Sec. 58-32. - Dumpsters on public right-of-way.

(a) Any person or firm intending to place a dumpster on the public right-of-way shall apply to the city for a dumpster permit. A permitted dumpster located on the right-of-way shall bear a notice, to city specifications, identifying the address of the property using the dumpster and the expiration date of the permit. An applicant for a dumpster permit or renewal of permit shall pay a fee, as set forth in section 62-3.

(b) The permit issued under subsection (a) of this section shall be valid for 15 days from the date or issuance. The permit may be renewed for up to an additional 15-day period. If use of the dumpster on the public right-of-way is not complete by the expiration of the renewal period, the permittee may apply for a new permit. The city may deny a permit or permit renewal if the applicant has an outstanding charge or fine related to dumpster use. The city may also deny a permit or permit renewal if the location of the proposed dumpster would be intrusive upon or disruptive to the neighborhood, its traffic flow or parking. In such event, the applicant may appeal the denial to the city

manager. The applicant shall be entitled to notice and hearing by the city manager.

(c) The placement of a permitted dumpster in the public right-of-way shall not substantially interfere with either pedestrian or vehicular traffic flow. A permitted dumpster located in the right-of-way shall bear the permit or a copy of the permit in plain view on the street side of the dumpster, near the top of the dumpster.

(d) If a temporary dumpster is to be placed in a public parking space, the permittee shall pay the sum of ~~$16.00~~ $20.00 per day for each obstructed parking meter. Payment shall be made in advance to the building department.

(e) Permits will not be granted to any firm intending permanently to place a dumpster on the right-of-way. Any dumpster scheduled for regular solid waste service shall not be placed on the right-of-way and must comply with requirements for placement set forth in subsection 58-31(f).

(f) Any firm failing to obtain a permit or failing to display a valid permit shall be subject to a fine of up to $500.00 pursuant to section 1-15 of this Code.

Sec. 58-33. - Storage of garbage causing pollution.

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Sec. 58-34. - Unlawful disposal.

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Sec. 58-35. - Requirements for bulk and excess yard waste pickup.

(a) Bulk waste and excess yard waste will be collected by the city's franchise hauler ~~weekly~~ on a scheduled basis and will not require containerization if the requirements set forth in the following subsections are met. Customer must arrange to schedule a pick-up with the City's franchise hauler.

(b) Bulk waste such as furniture, household appliances, and bicycles may be placed out for pickup as set forth in section 58-31(f). Customer must arrange to schedule a pick-up with the City's franchise hauler.

(c) Excess yard waste not in containers may be set out on the right-of-way for pickup consistent with the requirements of section 58-31. The property owner shall make arrangements directly with the franchise hauler for excess yard waste pickup. With the exception of ~~Exeept~~ any property upon which the land use activity is classified as residential pursuant to Code of Ordinances section 86-9, any yard waste that can fit in a container must be containerized~~. Yard waste from properties with such residential uses may be placed in a heavy duty, securely tied, plastic bag at least 3 millimeters thick and designed for containing such waste~~ and this container must not exceed 50 pounds. Excess yard waste pickup is subject to a fee in the amount of the cost of collection and disposal or $75.00,

whichever is greater. Payment shall be made to the franchise hauler.

(d) Nothing in this section shall be construed to prohibit nonfranchised licensed haulers from hauling excess yard waste~~,~~ or C & D~~, or bulk waste~~.

ARTICLE III. - SERVICE RATES~~,~~ AND CHARGES ~~AND BILLING PROCEDURE~~

Sec. 58-61. - Determination and levy of charge.

(a) The city commission shall determine, fix and levy upon all improved properties within the city a solid waste charge for the availability of waste collection, transfer and disposal service as set forth in this chapter.

(b) The fact that any residential or commercial unit located in the city is occupied or is capable of being occupied shall be prima facie evidence that garbage or solid waste is being produced or accumulated upon such premises. Temporary vacancy, regardless of duration, shall not constitute grounds for a refund or excuse the nonpayment of any solid waste charge. A solid waste charge for waste collection and disposal shall be levied against all existing and newly constructed residential or commercial units for which a certificate of occupancy is required.

~~Sec. 58-62. -- Monthly billing; due date.~~

~~The annual charges for collection of solid waste shall be billed monthly and shall be due and payable in advance of service.~~

~~Sec. 58-63. -- Delinquency.~~

~~(a) Solid waste charges shall become delinquent 20 days after date of billing.~~

~~(b) Any solid waste service charge which becomes delinquent shall be assessed a one-time penalty charge, which shall appear on the next billing statement, of the greater of $5.00 or 15 percent of the delinquent service charge amount. If any rates, fees or charges established for the use and privilege of use of the city solid waste collection system shall not be paid within 30 days after the rates, fees or charges shall become due and payable, the city may, at the expiration of such 30-day period and after 15 days' written notice, which notice may be given and may run within the 30-day period, disconnect the premises from the sewer system for which the solid waste rates, fees or charges have not been paid. The owner of the premises may cause to have his premises reconnected at his own expense with the sewer system, provided that the owner pays to the city its actual cost of disconnecting the premises and all delinquent solid waste rates, fees or charges.~~

~~Sec. 58-64. -- Dumping fee for navy-generated solid waste.~~

~~The dumping fee at the landfill site shall be $169.29 per ton for U.S. Navy-generated solid waste. Charges shall be verified by the weight scales ticket. Weight tickets for commercial hauling accounts will be collected and forwarded to the revenue department for monthly billing and collection.~~

Sec. 58-65. - Residential rates.

The annual solid waste charge levied upon residential units in the city for solid waste collection, transfer, and disposal service shall be $325.56 per year. ~~The rate shall be based upon pickup of three bags or cans of a maximum capacity of 32 gallons each.~~ This rate may be adjusted each October 1, by resolution of the city commission, by up to 100 percent of the percentage increase in the CPI-(U), U.S. City Averages (as of June). The city commission shall enact an ordinance amendment to this section in order to increase the rate in excess of the CPI.

Sec. 58-66. - Dumping fee for commercial establishments and licensed businesses.

Each commercial establishment and/or licensed business shall pay a solid waste dumping or tipping fee of $169.29 per ton based on a conversion rate of 163 pounds per cubic yard for non-compaction containers~~, which fee shall supersede the fee provided at section 58-64~~.

Sec. 58-67. - Annual adjustment of dumping or tipping fees.

All solid waste collection and dumping/tipping fees provided or referenced in this article, including without limitation those provided at sections 58-64 through 58-66, shall annually be administratively adjusted by a percentage equal to the change in the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor for June of the current year of adjustment, compared with the index for June of the preceding year. The annual adjustment shall take effect October 1 of each calendar year and shall be implemented by the city manager.

Sec. 58-68. - Commercial solid waste accounts.

All persons involved in a commercial use of property must register for and hold a commercial solid waste account with the city or its franchisee. All commercial units regardless of size or type must subscribe to at least minimum service. ~~A city-issued business tax receipt shall constitute a prima facie indication of commercial use, notwithstanding any other use of the property where the commercial use is located.~~

~~**Sec. 58-69. - Fees to constitute lien.**~~

~~The city shall have a lien on lands or premises served by the city's solid waste franchisee, which liens shall be prior to all other liens on such lands or premises except the lien of state, county, and municipal taxes and shall be on parity with~~

~~state, county, and municipal taxes. Such liens when delinquent for more than 30 days may be foreclosed in the manner provided by the laws of the state for the foreclosure of mortgages on real property.~~

Sec. 58-70. - New units.

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Sec. 58-71. - Trash haulers.

(a) Persons licensed by the city to transport ~~trash~~ yard waste or C & D, as defined in section 58-1, may establish monthly billing accounts with the city department of revenue for yard waste or C & D disposed of at the City's transfer station. Failure to pay such billings within 30 days shall be grounds for suspension or revocation of the license.

(b) When a person applies for a building permit and intends to use or uses a dumpster located either on private or public property, such person shall identify the trash hauler whose name shall then be placed on the building permit.

~~**Sec. 58-72. - Responsibility of owner and tenant for payment.**~~

~~(a) It shall be the joint and severable duty of the owner and tenant of each lot, tract, or parcel of land in any area in the city having a residential unit situated thereon, except as may be otherwise provided in this chapter, to pay or cause to be paid the solid waste charges due for each residential unit.~~

~~(b) It shall be the joint and severable duty of the owner and tenant of each improved lot, tract or parcel of land in the city having commercial units situated thereon to pay or cause to be paid the solid waste collection charges for each such commercial establishment.~~

~~(c) Failure on the part of the owners and/or tenants to pay or cause to be paid the solid waste collection charges as provided in subsections (a) and (b) of this section shall constitute a violation of this Code, punishable as provided in article VI of chapter 2 and F.S. § 162.21.~~

~~**Sec. 58-73. - Payment required for issuance of business tax receipt.**~~

~~No business tax receipt required by the city shall be issued or renewed until all solid waste fees chargeable to the subject commercial unit are paid.~~

Sec. 58-74. - Senior citizen and permanently and totally disabled residential fee adjustment.

The senior citizen and permanently and totally disabled residential fee adjustment shall mean a reduction of 15 percent of the residential rate imposed pursuant to section 58-65 to qualified senior citizens and other citizens who are totally and permanently disabled and who reside at the property where the reduction is sought. Any subscriber who is 60 years of age or

older by October 1 of the year in which the senior citizens fee adjustment is established, or who is totally and permanently disabled, and whose total annual income does not exceed the maximum social security benefit amount established each year shall be entitled to the reduction upon submission of such proof of age, disability, residency, and income as the city manager may reasonably require. Proof of age may be submitted anytime after the October 1 date at which time the fee adjustment will be made effective from that day forward.

ARTICLE IV. - RESIDENTIAL RECYCLING PROGRAM

Sec. 58-80. - Objective.

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Sec. 58-81. - Recycling coordinator.

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Sec. 58-82. - Residential recyclable materials.

The following materials shall be subject to the City of Key West's Residential Recycling Program, including, but not limited to:

(a) Aluminum (cans, foils, trays and containers).

(b) Corrugated cardboard.

(c) Glass containers (clear, green and brown).

(d) Ferrous cans (steel or tin).

(e) Magazines.

(f) Newspapers.

(g) Office paper, thin cardboard and cardstock.

(h) Plastic containers marked "1" through "7" (including but not limited to: milk, soda and water bottles).

(i) Residential yard waste, which will be collected on a separate day and must be containerized separately.

Sec. 58-83. - Mandatory separation of residential recyclable materials.

Each owner, occupier, caretaker or tenant of a residential dwelling unit in the City of Key West shall separate all designated recyclable materials and yard waste from other refuse in accordance with the provisions of this section irrespective of whether or not said dwelling unit receives paid solid waste services.

Sec. 58-84. - Collection containers of residential recyclable materials.

The City of Key West or its designee shall provide each single-family dwelling unit, duplexes and multifamily units with up to ten units with one recyclable materials container per unit. The container shall only be used to transport recyclable materials from the residential dwelling unit to the curbside for pickup. The containers shall remain at all times the property of

The City of Key West and the resident, caretaker, owner or tenant of the unit shall take proper care to protect such container from loss, theft, damage or misuse. So long as they are available, each residential dwelling unit will be entitled to one replacement container. Subsequent replacement containers shall be provided at the expense of the dwelling owner, occupier, tenant or caretaker or whomever is listed on the ~~waste management~~ solid waste bills or tax rolls. Any replacement containers provided by anyone other than the City of Key West shall be of the same or similar type construction, capacity and size of the city-issued container or any city-authorized recycling receptacle less than 50 pounds at full capacity. Replacement containers shall have consistent markings identifying it as a recycling materials container. Collection containers shall be placed on the outer edge of the sidewalk, so as not to obstruct the free passage of pedestrians, or in such other place and on days specified by the recycling coordinator.

Sec. 58-85. - Multifamily residences and dwelling units.

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Sec. 58-86. - Anti-scavenger clause.

All recyclable materials or white goods placed at the curbside for pickup shall be property of the City of Key West or its authorized agent. It is a violation of this section for any

person not authorized by the City of Key West to collect or pick up or cause to be collected or picked up any such recyclables. Any and each such collection in violation hereof shall constitute a separate and distinct offense punishable as provided in section 1-15.

Sec. 58-87. - Sale and donation of material.

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Sec. 58-88. - Reporting of recycling transportation tonnages.

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Sec. 58-89. - Enforcement.

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Sec. 58-90. - Education.

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ARTICLE V

ANNUAL SOLID WASTE COLLECTION AND DISPOSAL ASSESSMENTS

Sec. 58-100. General Authority.

(A) The City Commission is hereby authorized to impose an annual Solid Waste Service Assessment to fund all or any portion of the Solid Waste Cost upon benefitted property at a rate of assessment based on the special benefit accruing to such property from the City's provision of Solid Waste collection and disposal services, facilities or programs. All Solid Waste Service Assessments shall be imposed in conformity with the

procedures set forth in this Article V, sections 58-100 through 58-115.

(B) The amount of the Solid Waste Service Assessment imposed in a Fiscal Year against a parcel of Assessed Property shall be determined pursuant to an apportionment methodology based upon a classification of property designed to provide a fair and reasonable apportionment of the Solid Waste Cost among properties on a basis reasonably related to the special benefit provided by Solid Waste collection and disposal services, facilities, or programs funded with assessment proceeds.

(C) Any unpaid or delinquent fees, charges, or assessments due the City for Solid Waste management and disposal services or facilities which are allocable to specific parcels of Assessed Property may be included in the annual Solid Waste Service Assessment for such parcels. In such an event, any existing lien on each affected parcel for unpaid or delinquent fees, charges, or assessments shall be supplanted by the lien resulting from the inclusion of such unpaid or delinquent fees, charges, or assessments in the amount of the Solid Waste Service Assessment.

Sec. 58-101. Initial Proceedings.

The initial proceeding for the imposition of a Solid Waste Service Assessment shall be the adoption of an Initial Assessment Resolution by the City Commission (A) containing a

brief and general description of the Solid Waste collection and disposal services, facilities, or programs to be provided; (B) determining the Solid Waste Cost to be assessed; (C) describing the method of apportioning the Solid Waste Cost and the computation of the Solid Waste Service Assessment for specific properties; (D) providing a summary description of the parcels of property (conforming to the description contained on the Tax Roll) located within the City that receive a special benefit from the provision of Solid Waste collection and disposal services, facilities, or programs or describing a specific geographic area in which such service, facility, or program will be provided; (E) establishing an estimated assessment rate for the upcoming Fiscal Year; and (F) directing the City Manager to (1) prepare the initial Assessment Roll, as required by Section 58-102 hereof, (2) publish the notice required by Section 58-103 hereof, and (3) mail the notice required by Section 58-104 hereof using information then available from the Tax Roll.

Sec. 58-102. Initial Assessment Roll.

(A) The City Manager shall prepare, or direct the preparation of, the initial Assessment Roll, which shall contain the following:

(1) A summary description of all Assessed Property conforming to the description contained on the Tax Roll.

(2) The name of the Owner of the Assessed Property.

(3) The amount of the Solid Waste Service Assessment to be imposed against each such parcel of Assessed Property.

(B) The initial Assessment Roll shall be retained by the City Manager and shall be open to public inspection. The foregoing shall not be construed to require that the Assessment Roll be in printed form if the amount of the Solid Waste Service Assessment for each parcel of property can be determined by use of a computer terminal available to the public.

Sec. 58-103. Notice by publication.

Upon completion of the initial Assessment Roll, the City Manager shall publish, or direct the publication of, once in a newspaper of general circulation within the City a notice stating that at a meeting of the City Commission on a certain day and hour, not earlier than 20 calendar days from such publication, which meeting shall be a regular, adjourned, or special meeting, the City Commission will hear objections of all interested persons to the Final Assessment Resolution which shall establish the rate of assessment and approve the aforementioned initial Assessment Roll. The published notice shall conform to the requirements set forth in the Uniform Assessment Collection Act. Such notice shall include (A) a geographic depiction of the property subject to the Solid Waste Service Assessment; (B) a

brief and general description of the Solid Waste collection and disposal services, facilities, or programs to be provided; (C) the rate of assessment; (D) notification that unpaid or delinquent fees, charges, or assessments due the City for Solid Waste collection and disposal services allocable to specific parcels will be additionally included in the annual Solid Waste Service Assessment; (E) the procedure for objecting provided in Section 58-105 hereof; (F) the method by which the Solid Waste Service Assessment will be collected; and (G) a statement that the initial Assessment Roll is available for inspection at the office of the City Manager and all interested persons may ascertain the amount to be assessed against a parcel of Assessed Property at the office of the City Manager.

Sec. 58-104. Notice by mail.

In addition to the published notice required by Section 58-103, the City Manager shall provide notice, or direct the provision of notice, of the proposed Solid Waste Service Assessment by first class mail to the Owner of each parcel of property subject to the Solid Waste Service Assessment. Such notice shall include (A) the purpose of the Solid Waste Service Assessment; (B) the rate of assessment to be levied against each parcel of property; (C) the unit of measurement applied to determine the Solid Waste Service Assessment; (D) the number of such units

contained in each parcel of property; (E) the total revenue to be collected by the City from the Solid Waste Service Assessment; (F) a statement that failure to pay the Solid Waste Service Assessment will cause a tax certificate to be issued against the property or foreclosure proceedings to be instituted, either of which may result in a loss of title to the property; (G) notification that unpaid or delinquent fees, charges, or assessments due the City for Solid Waste management and disposal services allocable to specific parcels will be additionally included in the Solid Waste Service Assessment; (H) a statement that all affected Owners have a right to appear at the hearing and to file written objections with the City Commission within 20 days of the notice; and (I) the date, time, and place of the hearing. The mailed notice shall conform to the requirements set forth in the Uniform Assessment Collection Act. Notice shall be mailed at least 20 calendar days prior to the hearing to each Owner at such address as is shown on the Tax Roll. Notice shall be deemed mailed upon delivery thereof to the possession of the United States Postal Service. The City Manager may provide proof of such notice by affidavit. Failure of the Owner to receive such notice due to mistake or inadvertence, shall not affect the validity of the Assessment Roll nor release or discharge any obligation for payment of a

Solid Waste Service Assessment imposed by the City Commission pursuant to this Ordinance.

Sec. 58-105. Adoption of final assessment resolution.

At the time named in such notice, or to which an adjournment or continuance may be taken by the City Commission, the City Commission shall receive any written objections of interested persons and may then, or at any subsequent meeting of the City Commission adopt the Final Assessment Resolution which shall (A) confirm, modify, or repeal the Initial Assessment Resolution with such amendments, if any, as may be deemed appropriate by the City Commission; (B) establish the rate of assessment to be imposed in the upcoming Fiscal Year; (C) approve the inclusion of any unpaid or delinquent fees, charges, or assessments due the City for Solid Waste management and disposal services; (D) approve the initial Assessment Roll, with such amendments as it deems just and right; and (E) determine the method of collection. The adoption of the Final Assessment Resolution by the City Commission shall constitute a legislative determination that all parcels assessed derive a special benefit from the Solid Waste collection and disposal services, facilities, or programs to be provided and a legislative determination that the Solid Waste Service Assessments are fairly and reasonably apportioned among the properties that receive the special

benefit. All objections to the Final Assessment Resolution shall be made in writing, and filed with the City Manager at or before the time or adjourned time of such hearing. The Final Assessment Resolution shall constitute the Annual Rate Resolution for the initial Fiscal Year in which Solid Waste Service Assessments are Imposed or reimposed hereunder.

Sec. 58-106. Effect of Final Assessment Resolution.

The Solid Waste Service Assessments for the initial Fiscal Year shall be established upon adoption of the Final Assessment Resolution. The adoption of the Final Assessment Resolution shall be the final adjudication of the Issues presented (including, but not limited to, the determination of special benefit and fair apportionment to the Assessed Property,the method of apportionment and assessment, the initial rate of assessment, the initial Assessment Roll, and the levy and lien of the Solid Waste Service Assessments), unless proper steps shall be initiated in a court of competent jurisdiction to secure relief within 20 days from the date of the City Commission action on the Final Assessment Resolution. The initial Assessment Roll, as approved by the Final Assessment Resolution, shall be delivered to the Tax Collector, as required by the Uniform Assessment Collection Act, or if the alternative method described in Section 58-114 hereof is used to collect the

Solid Waste Service Assessments, such other official as the City Commission by resolution shall designate.

Sec. 58-107. Adoption of Annual Rate Resolution.

(A) The City Commission shall adopt an Annual Rate Resolution during its budget adoption process for each Fiscal Year following the initial Fiscal Year for which a Solid Waste Service Assessment is imposed hereunder.

(B) The initial proceedings for the adoption of an Annual Rate Resolution shall be the adoption of a Preliminary Rate Resolution by the City Commission (1) containing a brief and general description of the Solid Waste collection and disposal services, facilities, or programs to be provided; (2)determining the Solid Waste Cost to be assessed for the upcoming Fiscal Year; (3) establishing the estimated assessment rate for the upcoming Fiscal Year; (4) authorizing the date, time, and place of a public hearing to receive and consider comments from the public and consider the adoption of the Annual Rate Resolution for the upcoming Fiscal Year; and (5) directing the City Manager to (a) update the Assessment Roll, (b) provide notice by publication and first class mail to affected Owners in the event circumstances described in subsection (F) of this Section so require, and (c) direct and authorize any supplemental or

additional notice deemed proper, necessary or convenient by the City.

(C) The Annual Rate Resolution shall (1) establish the rate of assessment to be imposed in the upcoming Fiscal Year and (2) approve the Assessment Roll for the upcoming Fiscal Year with such adjustments as the City Commission deems just and right. The Assessment Roll shall be prepared in accordance with the method of apportionment set forth in the Initial Assessment Resolution, or any subsequent Preliminary Rate Resolution, together with modifications, if any, that are provided and confirmed in the Final Assessment Resolution or any subsequent Annual Rate Resolution.

(D) Nothing herein shall preclude the City Commission from providing annual notification to all Owners of Assessed Property in the manner provided in either or both Sections 58-103 or 58-104 hereof.

(E) Nothing herein shall preclude the City Commission from establishing by resolution a maximum rate of assessment provided that notice of such maximum assessment rate is provided pursuant to Sections 58-103 and 58-104 hereof.

(F) In the event (1) the proposed Solid Waste Service Assessment for any Fiscal Year exceeds the maximum rate of assessment adopted by the City Commission and included in the notice previously provided to the Owners of Assessed Property

pursuant to Sections 58-103 and 58-104 hereof, (2) the purpose for which the Solid Waste Service Assessment is imposed or the use of the revenue from the Solid Waste Service Assessment is substantially changed from that represented by the notice previously provided to the Owners of Assessed Property pursuant to Sections 58-103 and 58-104 hereof, (3) Assessed Property is reclassified or the method of apportionment is revised or altered resulting in an increased Solid Waste Service Assessment from that represented by the notice previously provided to the Owners of Assessed Property pursuant to Sections 58-103 and 58-104 hereof, or (4) an Assessment Roll contains Assessed Property that was not included on the Assessment Roll approved for the prior Fiscal Year, notice shall be provided by publication and first class mail to the Owners of such Assessed Property. Such notice shall substantially conform with the notice requirements set forth in Sections 58-103 and 58-104 hereof and inform the Owner of the date, time, and place for the adoption of the Annual Rate Resolution. The failure of the Owner to receive such notice due to mistake or inadvertence, shall not affect the validity of the Assessment Roll nor release or discharge any obligation for payment of a Solid Waste Service Assessment imposed by the City Commission pursuant to this Ordinance.

(G) As to any Assessed Property not included on an Assessment Roll approved by the adoption of the Final Assessment

Resolution or a prior year's Annual Rate Resolution, the adoption of the succeeding Annual Rate Resolution shall be the final adjudication of the issues presented as to such Assessed Property (including, but not limited to, the determination of special benefit and fair apportionment to the Assessed Property, the method of apportionment and assessment, the rate of assessment, the Assessment Roll, and the levy and lien of the Solid Waste Service Assessments) unless proper steps shall be initiated in a court of competent jurisdiction to secure relief within 20 days from the date of the City Commission action on the Annual Rate Resolution. Nothing contained herein shall be construed or interpreted to affect the finality of any prior fee, charge, or assessment imposed by the City or any Solid Waste Service Assessment not challenged within the required 20-day period for those Solid Waste Service Assessments previously imposed against Assessed Property by the inclusion of the Assessed Property on an Assessment Roll approved in the Final Assessment Resolution or any subsequent Annual Rate Resolution.

(H) The Assessment Roll, as approved by the Annual Rate Resolution, shall be delivered to the Tax Collector as required by the Uniform Assessment Collection Act, or if the alternative method described in Section 58-114 hereof is used to collect the Solid Waste Service Assessments, such other official as the City Commission by resolution shall designate. If the Solid Waste

Service Assessment against any property shall be sustained, reduced, or abated by any court, an adjustment shall be made on the Assessment Roll.

Sec. 58-108. Lien of Solid Waste Service assessments.

Upon the adoption of the Assessment Roll, all Solid Waste Service Assessments shall constitute a lien against such property equal in rank and dignity with the liens of all state, county, district or municipal taxes and assessments. Except as otherwise provided by law, such lien shall be superior in dignity to all other prior liens, mortgages, titles, and claims, until paid. The lien for a Solid Waste Service Assessment shall be deemed perfected upon adoption by the City Commission of the Final Assessment Resolution or the Annual Rate Resolution, whichever is applicable. The lien for a Solid Waste Service Assessment collected under the Uniform Assessment Collection Method shall attach to the property included on the Assessment Roll as of the prior January 1, the lien date for ad valorem taxes imposed under the Tax Roll. The lien for a Solid Waste Service Assessment collected under the alternative method of collection provided in Section 58-114 shall be deemed perfected upon adoption by the City Commission of the Final Assessment Resolution or the Annual Rate Resolution, whichever is

applicable, and shall attach to the property on such date of adoption.

Sec. 58-109. Revisions to Solid Waste Service Assessments.

If any Solid Waste Service Assessment made under the provisions of this Ordinance is either in whole or in part annulled, vacated, or set aside by the judgment of any court, or if the City Commission is satisfied that any such Solid Waste Service Assessment is so irregular or defective that the same cannot be enforced or collected, or if the City Commission has omitted any property on the Assessment Roll which property should have been so included, the City Commission may take all necessary steps to impose a new Solid Waste Service Assessment against any property benefited by the Solid Waste Costs, following as nearly as may be practicable, the provisions of this Ordinance and in case such second Solid Waste Service Assessment is annulled, vacated, or set aside, the City Commission may obtain and impose other Solid Waste Service Assessments until a valid Solid Waste Service Assessment is imposed.

Sec. 58-110. Procedural Irregularities.

Any informality or irregularity in the proceedings in connection with the levy of any Solid Waste Service Assessment under the provisions of this Ordinance shall not affect the validity of

the same after the approval thereof, and any Solid Waste Service Assessment as finally approved shall be competent and sufficient evidence that such Solid Waste Service Assessment was duty levied, that the Solid Waste Service Assessment was duly made and adopted, and that all other proceedings adequate to such Solid Waste Service Assessment were duly had, taken, and performed as required by this Ordinance; and no variance from the directions hereunder shall be held material unless it be clearly shown that the party objecting was materially injured thereby. Notwithstanding the provisions of this section, any party objecting to a Solid Waste Service Assessment imposed pursuant to this Ordinance must file an objection with a court of competent jurisdiction within the time periods prescribed herein.

Sec. 58-111. Correction of Errors and Omissions.

(A) No act of error or omission on the part of the Property Appraiser, Tax Collector, City Manager, City Commission, or their deputies or employees, shall operate to release or discharge any obligation for payment of a Solid Waste Service Assessment imposed by the City Commission under the provision of this Ordinance.

(B) When it shall appear that any Solid Waste Service Assessment should have been imposed under this Ordinance against

a parcel of property specially benefited by the provision of Solid Waste collection and disposal services, facilities, or programs, but that such property was omitted from the Assessment Roll or was not listed on the Tax Roll as an individual parcel of property as of the effective date of the Assessment Roll approved by the Annual Rate Resolution for any upcoming Fiscal Year, the City Commission may, upon provision of a notice by mail provided to the Owner of the omitted parcel in the manner and form provided in Section 58-104, impose the applicable Solid Waste Service Assessment for the Fiscal Year in which such error is discovered, in addition to the applicable Solid Waste Service Assessment due for the prior two Fiscal Years. Such Solid Waste Service Assessment shall constitute a lien against such property equal in rank and dignity with the liens of all state, county, district, or municipal taxes and special assessments, and superior in rank and dignity to all other prior liens, mortgages, titles, and claims in and to or against the real property involved, shall be collected as provided in section 58-113 and 58-114 hereof, and shall be deemed perfected on the date of adoption of the resolution imposing the omitted or delinquent assessments.

(C) Prior to the delivery of the Assessment Roll to the Tax Collector in accordance with the Uniform Assessment Collection Act, the City Manager shall have the authority at any

time, upon his or her own initiative or in response to a timely filed petition from the Owner of any property subject to a Solid Waste Service Assessment, to reclassify property based upon presentation of competent and substantial evidence, and correct any error in applying the Solid Waste Service Assessment apportionment method to any particular parcel of property not otherwise requiring the provision of notice pursuant to the Uniform Assessment Collection Act. Any such correction shall be considered valid ab initio and shall in no way affect the enforcement of the Solid Waste Service Assessment imposed under the provisions of this Ordinance. All requests from affected property owners for any such changes, modifications or corrections shall be referred to, and processed by, the City Manager and not the Property Appraiser or Tax Collector.

(D) After the Assessment Roll has been delivered to the Tax Collector in accordance with the Uniform Assessment Collection Act, any changes, modifications, or corrections thereto shall be made in accordance with the procedures applicable to correcting errors and insolvencies on the Tax Roll upon timely written request and direction of the City Manager.

Sec. 58-112. Interim Assessments.

An interim Solid Waste Service Assessment shall be imposed against all property for which a Certificate of Occupancy is

issued after adoption of the Annual Rate Resolution. The amount of the interim Solid Waste Service Assessment shall be calculated upon a monthly rate, which shall be one-twelfth of the annual rate for such property computed in accordance with the Annual Rate Resolution for the Fiscal Year in which the Certificate of Occupancy is issued. Such monthly rate shall be imposed for each full calendar month remaining in the Fiscal Year. In addition to the monthly rate, the interim Solid Waste Service Assessment shall also include an estimate of the subsequent Fiscal Year's Solid Waste Service Assessment. No Certificate of Occupancy shall be issued until full payment of the interim Solid Waste Service Assessment is received by the City. Issuance of the Certificate of Occupancy by mistake or Inadvertence, and without the payment in full of the interim Solid Waste Service Assessment, shall not relieve the Owner of such property of the obligation of full payment. For the purpose of this provision, such interim Solid Waste Service Assessment shall be deemed due and payable on the date the Certificate of Occupancy was issued and shall constitute a lien against such property as of that date. Said lien shall be equal in rank and dignity with the liens of all state, county, district or municipal taxes and special assessments, and superior in rank and dignity to all other liens, encumbrances, titles and claims in and to or against the real property

involved and shall be deemed perfected upon the issuance of the Certificate of Occupancy.

Sec. 58-113. Method of Collection.

(A) Unless otherwise directed by the City Commission, the Solid Waste Service Assessments shall be collected pursuant to the uniform method provided in the Uniform Assessment Collection Act, and the City shall comply with all applicable provisions of the Uniform Assessment Collection Act. Any hearing or notice required by this Ordinance may be combined with any other hearing or notice required by the Uniform Assessment Collection Act.

(B) The amount of a Solid Waste Service Assessment to be collected using the uniform method pursuant to the Uniform Assessment Collection Act for any specific parcel of benefitted property may include an amount equivalent to the payment delinquency, delinquency fees and recording costs for a prior year's assessment for a comparable service, facility, or program, provided: (1) the collection method used in connection with the prior year's assessment did not employ the use of the uniform method of collection authorized by the Uniform Assessment Collection Act, (2) notice is provided to the Owner as required under the Uniform Assessment Collection Act, and (3) any lien on the affected parcel for the prior year's assessment

is supplanted and transferred to such Solid Waste Service Assessment upon certification of a non-ad valorem roll to the Tax Collector by the City.

Sec. 58-114. Alternative Method of Collection.

In lieu of utilizing the Uniform Assessment Collection Act, the City may elect to collect the Solid Waste Service Assessments by any other method which is authorized by law or under the alternative collection method provided by this Section:

(A) The City shall provide Solid Waste Service Assessment bills by first class mail to the Owner of each affected parcel of property. The bill or accompanying explanatory material shall include (1) a brief explanation of the Solid Waste Service Assessment, (2) a description of the unit of measurement used to determine the amount of the Solid Waste Service Assessment, (3) the number of units contained within the parcel, (4) the total amount of the Solid Waste Service Assessment imposed against the parcel for the appropriate period, (5) the location at which payment will be accepted, (6) the date on which the Solid Waste Service. Assessment is due, and (7) a statement that the Solid Waste Service Assessment constitutes a lien against assessed property equal in rank and dignity with the liens of all state, county, district or municipal taxes and other non-ad valorem assessments.

(B) A general notice of the lien resulting from imposition of the Solid Waste Service Assessments shall be recorded in the Official Records of the County. Nothing herein shall be construed to require that individual liens or releases be filed in the Official Records.

(C) The City shall have the right to foreclose and collect all delinquent Solid Waste Service Assessments in the manner provided by law for the foreclosure of mortgages on real property or appoint or retain an agent to institute such foreclosure and collection proceedings. A Solid Waste Service Assessment shall become delinquent if it is not paid within 30 days from the date any installment is due. The City or its agent shall notify any property owner who is delinquent in payment of his or her Solid Waste Service Assessment within 60 days from the date such assessment was due. Such notice shall state in effect that the City or its agent will either (1) initiate a foreclosure action or suit in equity and cause the foreclosure of such property subject to a delinquent Solid Waste Service Assessment in a method now or hereafter provided by law for foreclosure of mortgages on real property, or (2) cause an amount equivalent to the delinquent Solid Waste Service Assessment, not previously subject to collection using the uniform method under the Uniform Assessment Collection Act, to be collected on the tax bill for a subsequent year.

(D) All costs, fees and expenses, including reasonable attorney fees and title search expenses, related to any foreclosure action as described herein shall be included in any judgment or decree rendered therein. At the sale pursuant to decree in any such action, the City may be the purchaser to the same extent as any Person. The City or its agent may join in one foreclosure action the collection of Solid Waste Service Assessments against any or all property assessed in accordance with the provisions hereof. All delinquent Owners whose property is foreclosed shall be liable for an apportioned amount of reasonable costs and expenses incurred by the City and its agents, including reasonable attorney fees and title search expenses, in collection of such delinquent Solid Waste Service Assessments, and any other costs incurred by the City as a result of such delinquent Solid Waste Service Assessments and the same shall be collectible as a part of or in addition to, the costs of the action.

(E) In lieu of foreclosure, any delinquent Solid Waste Service Assessment and the costs, fees and expenses attributable thereto, may be collected pursuant to the Uniform Assessment Collection Act; provided however, that (1) notice is provided to the Owner in the manner required by the Uniform Assessment Collection Act and this Ordinance, and (2) any existing lien of record on the affected parcel for the

delinquent Solid Waste Service Assessment is supplanted by the lien resulting from certification of the Assessment Roll, as applicable, to the Tax Collector.

(F) Notwithstanding the City's use of an alternative method of collection, the City Manager shall have the same power and authority to correct errors and omissions as provided to him or her or other county officials in Section 58-111 hereof.

(G) Any City Commission action required in the collection of Solid Waste Service Assessments may be by resolution.

Sec. 58-115. Government Property.

(A) If Solid Waste Service Assessments are imposed against Government Property, the City shall provide Solid Waste Service Assessment bills by first class mail to the Owner of each affected parcel of Government Property. The bill or accompanying explanatory material shall include (1) a brief explanation of the Solid Waste Service Assessment, (2) a description of the unit of measurement used to determine the amount of the Solid Waste Service Assessment, (3) the number of units contained within the parcel, (4) the total amount of the parcel's Solid Waste Service Assessment for the appropriate period, (5) the location at which payment will be accepted, and (6) the date on which the Solid Waste Service Assessment is due.

(B) Solid Waste Service Assessments imposed against Government Property shall be due on the same date as all other Solid Waste Service Assessments and, if applicable, shall be subject to the same discounts for early payment.

(C) A Solid Waste Service Assessment shall become delinquent if it is not paid within 30 days from the date any installment is due. The City shall notify the Owner of any Government Property that is delinquent in payment of its Solid Waste Service Assessment within 60 days from the date such assessment was due. Such notice shall state that the City will initiate a mandamus or other appropriate judicial action to compel payment.

(D) All costs, fees and expenses, including reasonable attorney fees and title search expenses, related to any mandamus or other action as described herein shall be included in any judgment or decree rendered therein. All delinquent Owners of Government Property against which a mandamus or other appropriate action is filed shall be liable for an apportioned amount of reasonable costs and expenses incurred by the City, including reasonable attorney fees and title search expenses, in collection of such delinquent Solid Waste Service Assessments and any other costs incurred by the City as a result of such delinquent Solid Waste Service Assessments and the same

shall be collectible as a part of or in addition to, the costs of the action.

(E) As an alternative to the foregoing, a Solid Waste Service Assessment imposed against Government Property may be collected as a surcharge on a utility bill provided to such Government Property in installments with a remedy of a mandamus action in the event of non-payment. The City Commission may contract for such billing services with any utility, whether or not such utility is owned by the City.

Section 2: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 3: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 4: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this 4 day of June, 2013.

Read and passed on final reading at a regular meeting held this 18 day of June, 2013.

Authenticated by the presiding officer and Clerk of the Commission on 19 day of June, 2013.

Filed with the Clerk June 19, 2013.

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

THE CITY OF KEY WEST
Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

MEMORANDUM

EXECUTIVE SUMMARY

TO: Bogdan Vitas, City Manager
E. David Fernandez, Asst. City Manager - Operations

FROM: Jay Gewin, Utilities Manager

DATE: April 30, 2013

RE: **Approval of Amendments to the City's Solid Waste Ordinances in Order to Shift Utility Billing to the Property Tax Roll, and to Enact Amendment to Waste Management Collection Contract.**

ACTION STATEMENT:

These Amendments to Chapter 58 of the City's Solid Waste Ordinances relates to the City's transfer of the billing for its Solid Waste utility to the property tax roll. They also are necessary to enact the terms of the Waste Management Collection Contract Amendment approved through Resolution 13-051.

BACKGROUND:

The City of Key West has struggled with excessive past-due accounts for our solid waste and stormwater utilities. While the total sum of delinquencies is now decreasing over last year, there is still a significant amount of funds that need to be collected by the City.

To remedy this situation, and to improve our collection rate going forward, the City Commission has given City Staff direction to move our solid waste and stormwater utility billings as a non-ad valorem assessment on the property tax roll. The Monroe County Tax Collector is supportive of this plan, and will work with the City to implement the transition.

Due to the requirements set forth in state statute, the soonest the City could move our billing to the tax roll would be FY 2014, which would be mailed to the public in November of 2013.

Additionally, in an effort to increase the City's recycling rates, the Commission approved Resolution 13-051 which amended the solid waste collection contract with Waste Management. These included the following components, some of which required a change in Code:

1) Utilization of new 65 gallon recycling carts.
2) Waste Management will partner with the City to shift to a one trash/one recycling/one yard waste pickup per week program at no additional cost.
3) Waste Management will add residential e-waste to its household hazardous waste collection at no additional charge, and increase frequency of these events to once a month.
4) For commercial customers, the collection charges for recycling and trash containers will be the same.
5) Waste Management will provide single-stream recycling in containers sizes ranging from carts to dumpsters to roll-offs for all businesses wishing to participate.

There were other changes to the contract that have not been incorporated into our ordinances over time. These include the recycling of plastics numbers 1-7, and the scheduling of bulk pick-ups as required by our residents.

PURPOSE AND JUSTIFICATION

In order to proceed with this billing transfer to a non-ad velorum assessment to the property tax roll, the City will need to modify its code of ordinances. Much of the language included in these amendments is based on the language from the code from the Village of Islamorada.

The other changes were based on an analysis of the new contract amendment and existing collection contract with Waste Management so that Commission-approved changes were incorporated into code.

OPTIONS / ADVANTAGES / DISADVANTAGES:

1. The City Commission can agree to the amendments that are proposed. Doing so will enable us to move forward in moving the solid waste utility billing to the property tax roll, and will allow us to enact the new amendment to the Waste Management contract.

2. The City Commission can decline the amendments. This option is not recommended by City Staff because it will preclude the City from achieving the benefits from the shift of billing to the tax roll and from the Waste Management contract amendment.

FINANCIAL IMPACT:

Shifting the utility billing to the property tax roll will result in an increased collection rate, and will eliminate postage and other fees associated with monthly billing.

The Waste Management contract amendment should result in increased recycling participation which could result in a recycling revenue share in the future solid waste collection contract.

RECOMMENDATION:

Staff recommends that the City Commission select option 1, approving the amendments to the solid waste code.