

Title 8

HEALTH AND SAFETY

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Chapter 8.04

HEALTH REGULATIONS

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8.04.010 **Enforcing officer.**

Consent is given that the county health officer shall enforce and observe in the city all orders, quarantine regulations and rules prescribed by the State Department of Health and all other rules and regulations issued under the provisions of the Health and Safety Code of the state and all statutes relating to the public health, all of which orders, regulations, rules and statutes are declared to be effective within the city. (Prior code § 11-1)

8.04.020 **County ordinances adopted.**

Except as provided in this chapter, the following described ordinances or sections of ordinances of the county are adopted by reference and made a part of this section with the same effect as if fully set forth in this section, and reference is made to copies of the ordinances which are on file in the office of the city clerk or further particulars:

A. Sections 2, 3, 4, 4-A subsections 1 and 2, 4-B subsections 1, 2, Section 5, except the phrase "it shall be unlawful for the owner, tenant or person having charge or control of said premises to remove therefrom the substances so deposited or accumulated," and Sections 17 and 20, all inclusive, of Ordinance No. 258 of the county, as adopted by the board of supervisors of the county on February 21, 1939, and entitled "An ordinance providing for the sanitary disposal of human excreta, etc.," as amended by Ordinance No. 384 of the county, as adopted by the board of supervisors of the county on April 12, 1949.

B. And Sections 1 through 6 of Ordinance No. 346 of the county as adopted by the board of supervisors of the county on June 3, 1947, and entitled "An ordinance relating to the regulation and manufacture, sale, transportation, storage, sale and serving of foods, confections, drinks, etc., requiring permits and prescribing penalties, etc.," and as amended by Ordinance No. 443 of the county as adopted by the board of supervisors of the county on October 24, 1951.

C. And Sections 1 through 12 of Ordinance No. 361 of the county as adopted by the board of supervisors of the county on February 17, 1948, and relating to and regulating the business of cleaning septic tanks, cesspools and sewage seepage pits, requiring permits and prescribing penalties, etc. (Prior code § 11-2)

8.04.030 **Definitions.**

Wherever any of the following names and terms are used in any of the ordinances adopted in Section 8.04.020, each shall have a meaning as follows:

A. "Board of supervisors" means the city council.

B. "County clerk" means the city clerk.

C. "County of Tulare" means the city of Lindsay or the incorporated territory of the city of Lindsay, as the case may require.

D. "Health officer" means and includes the health officer of the county and his deputies. (Prior code § 11-3)

8.04.040 **Fee collection and disposition.**

All fees required to be paid by the provisions of the ordinances adopted by reference in Section 8.04.020 shall be collected by the health officer of the county and his deputies, and shall be accounted for, deposited and used as may be provided by the terms of the contract entered into between the city and the county, pursuant to the provisions of Article 2(a), Chapter 1, Part II of Division 1 of the Health and Safety Code of the state. (Prior code § 11-4)

Chapter 8.05

SMOKING REGULATIONS

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8.05.010 Purpose and findings.

A. The U.S. Environmental Protection Agency (EPA) has determined that tobacco smoke is a major source of indoor air pollution, and the Surgeon General's "1986 Reports on the Health Consequences of Involuntary Smoking" concludes that exposure to tobacco smoke places healthy nonsmokers at increased risk for developing lung cancer. Other health hazards on involuntary smoking include respiratory infection, broncho-constriction and broncho-spasm. While all members of the population are truly at increased risk due to exposure to secondhand tobacco smoke, it constitutes a special health hazard for chil-

dren, the elderly and people with chronic lung disorders, including asthma, and those with obstructive airway disease and cardiovascular disease.

B. The Surgeon General labels smoking "the largest single preventable cause of death and disability for the U.S. population".

C. Employees, subjected to prolonged exposure to secondhand smoke in the workplace, have been found in scientifically conducted studies to experience a loss of job productivity and some have been forced to take periodic sick leave because of reactions to said secondhand smoke. Furthermore, studies have shown higher costs to the employer are associated with smoking in the workplace due to increases in absenteeism, accidents, cost of medical care, loss of productivity and cleaning and maintenance requirements. A recent scientific study has reported that secondhand smoke from tobacco may cause a significant amount of cardiovascular disease in the United States and that the number of deaths from this cause may exceed the deaths caused by lung disease associated with secondhand smoke.

D. Smoking in public places and workplaces is a major cause of fires and damage to merchandise and equipment as well as costly maintenance and repairs to furniture and fixtures.

E. The health care costs produced by smoking-related ailments and diseases constitute a heavy and avoidable financial drain on our community.

F. Opinion surveys show that a majority of the citizens of Lindsay favor restriction on smoking in areas accessible to the general public.

G. Air pollution caused by smoking is an offensive annoyance and irritant. Smoking results in serious and significant physical discomfort of nonsmokers and constitutes a public nuisance.

H. Research concludes that exposure the secondhand smoke is the third leading cause of preventable death, after smoking and alcohol.

I. Secondhand smoke has been found by the Environmental Protection Agency to be a known carcinogen.

J. The U.S. Surgeon General has concluded that secondhand smoke is a cause of lung cancer and other diseases in healthy nonsmokers.

K. The U.S. Surgeon General has concluded that children exposed to secondhand smoke have more respiratory infections and lung problems than children who are not exposed to secondary smoke.

L. Numerous government and privately sponsored scientific studies have concluded that approximately forty thousand deaths per year occur from lung cancer, other cancers and heart disease due solely to exposure to secondhand smoke.

Accordingly, the city council declares that the purpose of this chapter is to protect the health, safety and general welfare of the residents of, persons employed in, and persons who frequent the city who would benefit by the regulation of smoking, and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke. (Ord. 451 § 1 (part), 1993)

8.05.020 Authority.

This chapter is enacted pursuant to provisions of Health and Safety Code Sections 25946 and 25949 for the purpose of restricting and regulating smoking in order to reduce the hazards and nuisance which smoking causes those who are involuntarily exposed. (Ord. 451 § 1 (part), 1993)

8.05.030 Definitions.

As used in this chapter, those terms identified in this section shall, unless the context indicates otherwise, be ascribed the meaning contained herein.

“Bar” means an area which is devoted to the serving of alcoholic beverages for consumption on the premises, in which the serving of food, if any, is incidental to the consumption of alcoholic drinks. The dining area of a restaurant utilized primarily for the serving and consumption of food shall not constitute a bar, even though alcoholic beverages may be served therein.

Commercial Enterprise, Nonprofit Entity, Person, Public Agency.

1. “Commercial enterprise” means any business entity formed for profit making purposes, including but not limited to professional corporations and other entities under which legal, medical, dental, engineering, architectural or other professional services are delivered, and also any person charged with the responsibility of controlling conduct on behalf of the enterprise upon any premises regulated by this chapter.

2. “Nonprofit entity” means any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character building, political, social or other similar purposes,

the net proceeds from operations of which are committed to promotion of the objects or purposes of the organization and not to private gain, together with any person charged with the responsibility of controlling conduct on behalf of the entity upon any premises regulated by the provisions of this chapter.

A public agency is not a “nonprofit entity” within the meaning of this section.

3. “Person” means any natural person, partnership, corporation, unincorporated association, joint venture, business trust, joint stock company, club or other organization of any kind.

4. For purposes of this chapter and to the fullest extent allowed by law, public agencies and their facilities, located within the city, shall be subject to all provisions herein, in the same manner and to the extent as commercial enterprises, person and nonprofit entities.

“Employee” means any person, who is employed by an employer in the consideration for direct or indirect monetary wages or profit and any person who volunteers his or her services for a nonprofit entity.

“Employer” means any person, partnership or corporation, including any public entity or nonprofit entity, who employs the services of one or more individuals.

“Enclosed area” means all space between a floor and ceiling which is served by a common heating, ventilating and air conditioning system and is enclosed on all sides by solid walls or windows (exclusive of doors or passageways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solids, “office landscaping,” or similar structures.

“Members of the general public” means shoppers, customers, patrons, patients, students, clients and other similar invitees of a commercial enterprise, public agency or nonprofit entity, and excludes employees thereof, sales representatives, service repair persons and persons delivering goods, merchandise or services to a commercial enterprise, nonprofit entity or public agency.

“Office” means an area enclosed by walls containing a desk, table or similar furnishing for clerical, administrative or supervisory work, a complex of such enclosures and a building containing such enclosures, whether or not the building is utilized primarily for other purposes such as retailing, wholesal-

ing, or storage or manufacturing, together with all hallways, stairways, elevators, escalators, restrooms, lobbies, waiting rooms, reception areas, entry areas and conference rooms within or associated with the complex of such enclosure, including:

1. Legal, medical, dental, engineering, accounting, counseling, and other professional offices;
2. Insurance, real estate, ticket, collection agency and other offices where business services are offered to or goods or services are offered to or may be ordered by or may be paid for by members of the general public; and
3. Offices to which members of the general public are admitted in order to promote the objects or purposes of the public agency or nonprofit entities.

“Organized outdoor event” means a scheduled concert, performance, sporting event, public demonstration or other similar occurrence, open to members of the general public taking place outside an enclosed area.

“Proprietor” means each owner, operator manager or other person having control of an establishment or facility within which smoking is regulated by this chapter.

“Restaurant” means any dinner house, coffee shop, cafeteria, luncheonette, soda fountain, fast food service and other establishment where cooked or otherwise prepared food is sold to a member of the general public for consumption on the premises. The term does not include a cafeteria or lunchroom defined as a “workplace,” whether or not members of the general public incidentally frequent the facility.

“Smoking” means lighting, inhaling, exhaling or burning any pipe, cigar, cigarette, weed or plant, or carrying any lighted pipe, lighted cigar, lighted cigarette, lighted weed, lighted plant or other ignited combustible substance in any manner or in any form.

“Tobacco store” means a place utilized primarily for the retail sale to members of the general public of tobacco products or accessories and in which the sale of any other products is merely incidental.

“Workplace” means an enclosed area which is occupied by two or more employees of a commercial enterprise, nonprofit entity or public agency, including but not limited to the following:

1. A place utilized for: the manufacturing, processing, assembly, maintenance or repair of any products, goods, equipment, tools, appliances, furnishings or other object; or the physical storage for purposes

of wholesaling, future utilization for operational purposes, or future transfer preceding consumption or other utilization of any products, goods, merchandise, materials, supplies, equipment tools, appliances or furnishings;

2. A place utilized or operated for a purpose described by Sections 8.05.050 through 8.05.190 of this chapter and from which members of the general public are excluded;

3. A place utilized as a union hall, cafeteria, lounge, lunchroom, restroom, conference room, training room, lecture room or classroom primarily for the use or benefit of employees.

Notwithstanding the provisions of this definition, a private residence including either an attached or detached garage shall not constitute a workplace, except when the residence serves as a licensed or unlicensed day care facility for children or the elderly. (Ord. 451 § 1 (part), 1993)

8.05.040 Smoking prohibitions, public places.

Except as otherwise provided in this chapter, it is unlawful for any member of the general public or any other person, including an employee, to smoke in the public places named and described in Sections 8.05.050 through 8.05.170 of this chapter and other public places similarly situated, including but not limited to the following enclosed areas:

- A. Merchandise display areas, checkout stations and counters and other pay stations;
- B. Hallways;
- C. Restrooms;
- D. Escalators, elevators and stairways;
- E. Lobbies;
- F. Reception areas;
- G. Waiting rooms;
- H. Service lines;
- I. Classrooms, meeting or conference rooms or lecture halls;
- J. Other places in which members of the general public congregate for service or otherwise frequent.

It is also unlawful for any member of the general public or any other person, including an employee, to smoke in an area where public seating is provided while attending an outdoor public event, except in designated areas. Seating in areas designated for smoking will not exceed forty percent of the total public seating provided. (Ord. 451 § 1 (part), 1993)

8.05.050 Stores.

The prohibitions contained in Section 8.05.040 above shall be applicable to: (1) the enclosed common areas of shopping malls; (2) automobile dealerships, furniture or other showrooms for the display of merchandise offered for sale at retail; (3) grocery, specialty, department and other stores which sell goods or merchandise at retail; and (4) service stations, stores or shops for the repair or maintenance of appliance, shoes, or motor vehicles, barbershops, beauty shops, cleaners and laundromats, video game, pool hall and other amusement centers, and other similar establishments offering services or products to members of the general public. (Ord. 451 § 1 (part), 1993)

8.05.060 Banks.

The prohibition contained in Section 8.05.040 of this chapter shall be applicable to banks, including savings and loan associations, credit unions and other similar institutions which offer financial services to members of the general public. (Ord. 451 § 1 (part), 1993)

8.05.070 Hotels/motels.

The prohibitions contained in Section 8.05.040 of this chapter shall be applicable to hotels and motels in which guests typically rent lodging for continuous periods less than thirty days. Smoking is permissible in rental room and in on-premises restaurants, bars and other areas as provided in Sections 8.05.130, 8.05.190B and 8.05.190E of this chapter. The availability of nonsmoking rooms will be prominently posted in the lobby sign-in area. The rooms so designated will be posted as smoking prohibited and ashtrays removed. Customers seeking accommodations should be routinely advised of the availability of nonsmoking rooms. (Ord. 451 § 1 (part), 1993)

8.05.080 Terminals.

The prohibitions contained in Section 8.05.040 of this chapter shall be applicable to depots and other terminals utilized by members of the general public for the purpose of being transported upon or departing from airplanes, trains, buses and taxis. (Ord. 451 § 1 (part), 1993)

8.05.090 Buses and taxis.

Smoking by either passengers or operators shall be prohibited within buses, taxicabs and all public transit conveyances operated by or licensed by the city. (Ord. 451 § 1 (part), 1993)

8.05.100 Theaters.

The prohibitions contained in Section 8.05.040 of this chapter shall be applicable to theaters, including motion picture theaters, meeting halls and auditoriums where motion picture or live theatrical musical or dramatic productions are made to an audience consisting of members of the general public assembled for the purpose of witnessing the performance or presentation; provided, that neither this section nor Section 8.05.040 shall be construed to prevent smoking by performers in connection with a stage production or by persons making a presentation concerning addiction to tobacco or other drugs. (Ord. 451 § 1 (part), 1993)

8.05.110 Recreational facilities.

A. The prohibitions, contained in Section 8.05.040 of this chapter shall be applicable to enclosed areas of sports pavilions, gymnasiums, exercise rooms, health spas, boxing arenas, swimming pools, roller and ice skating rinks, bowling alleys and other similar places where members of the general public assemble to either engage in physical exercise, participate in athletic competition or witness sports events.

B. Smoking is prohibited at all times within the seating areas of an enclosed arena and in the surrounding open concourses where food and beverages are dispensed.

C. Smoking may be allowed in enclosed on-site restaurants and in enclosed on-site bars, subject to provisions of Section 8.05.130 of this chapter. (Ord. 451 § 1 (part), 1993)

8.05.120 Recreation Halls.

A. Within all recreation halls, the prohibitions contained in Section 8.05.040 of this chapter shall be applicable to lobbies, waiting areas, lounges, kitchens, restrooms and those activity seating areas which are designated as nonsmoking.

B. The prohibition contained in Section 8.05.040 of this chapter shall be applicable to those areas of recreation halls and other similar facilities where

members of the general public play bingo or cards, dance or engage in recreational, character-building or cultural activities which are designated as nonsmoking.

C. An owner, manager or operator of a recreation hall shall designate not less than eighty-five percent of the main activities area of such facility, not including restrooms, lounges and kitchens, as nonsmoking. The owner, manager or operator of a recreation hall shall designate not less than eighty-five percent of the available customer seating as nonsmoking. The owner, manager or operator shall select the smoking areas so as to minimize any potential for smoke to travel to nonsmoking sections of the recreation hall and shall be encouraged to use any and all devices that would ensure said objective. The owner manager or operator of the recreation hall shall post signs as prescribed by Section 8.05.200 of this chapter and remove all ashtrays from tables located in the nonsmoking areas. Where a bar shares the same enclosed area with the recreation hall, the bar seats must be counted with the recreation hall seats in determining the total number of nonsmoking recreation hall seats. The owner, manager or operator shall post a notice at the recreation hall entrance that a nonsmoking section is available. It shall not constitute a violation of this chapter to smoke in a location where smoking has been authorized by this chapter.

D. The provisions of this section shall not be construed in any manner to restrict or otherwise impair the authority of an owner, manager or operator to increase the nonsmoking area of a recreation hall. (Ord. 451 § 1 (part), 1993)

8.05.130 Restaurants.

A. Within all restaurants, the prohibitions contained in Section 8.05.040 of this chapter, shall be applicable to lobbies, waiting areas, lounges, kitchens, restrooms and those dining areas which are designated as nonsmoking.

B. The owner, manager or operator of a restaurant shall designate not less than eighty-five percent of the available customer seating as nonsmoking. The owner, manager or operator shall select the smoking areas so as to minimize any potential for smoke to travel to nonsmoking sections of the restaurant and shall be encouraged to use any and all devices that would ensure said objective.

C. The owner, manager or operator of the restaurant shall post signs as prescribed by Section 8.05.200 of this chapter and remove all ashtrays from tables located in the nonsmoking areas. Where a bar shares the same enclosed area with the restaurant, the bar seats must be counted with the restaurant seats in determining the total number of nonsmoking restaurant seats. The owner, manager or operator shall post a notice at the restaurant entrance that a nonsmoking section is available. It shall not constitute a violation of this chapter to smoke in a location where smoking has been authorized by this chapter.

D. The provisions of this section shall not be construed in any manner to restrict or otherwise impair the authority of an owner, manager or operator to increase the nonsmoking seating in a restaurant or bar. (Ord. 451 § 1 (part), 1993)

8.05.140 Places of exhibition.

The prohibitions contained in Section 8.05.040 of this chapter, shall be applicable to libraries, museums, galleries, convention halls and similar facilities where members of the general public assemble for the purpose of viewing the exhibition of art, artifacts, objects of historical or cultural significance, products, merchandise, equipment, appliances or services. (Ord. 451 § 1 (part), 1993)

8.05.150 Hospitals.

The prohibitions contained in Section 8.05.040 of this chapter, shall be applicable to hospitals, rest and convalescent homes, medical clinics, physical therapy facilities and other places where medical, dental, psychiatric or counseling services are delivered to members of the general public. Operators of facilities treating psychiatric or chemically impaired patients may permit smoking by patients in designated areas; provided the medical director of such facility has determined, in writing, that the practice is beneficial for the recovery and treatment of such patients and that the practice will not interfere with the recovery and treatment of nonsmoking patients, and provided that adequate nonsmoking areas are made available for nonsmoking patients. Neither this section nor Section 8.05.040 shall be construed to prevent smoking in locations or otherwise under conditions in which smoking is expressly authorized by or under statutes or administrative regulations applicable to such licensed facilities. (Ord. 451 § 1 (part), 1993)

8.05.160 Schools.

The prohibitions, contained in Section 8.05.040 of this chapter, shall be applicable to any school or educational institution operated by a commercial enterprise, public agency or nonprofit entity for the purpose of providing academic classroom instruction, trade, craft, computer or other technical training, or instruction in dancing, artistic, musical or other cultural skills. (Ord. 451 § 1 (part), 1993)

8.05.170 Day care facilities.

The prohibitions, contained in Section 8.05.040 of this chapter, shall be applicable to private residences during the time when such residences are operated as licensed or unlicensed day care facilities for children or the elderly. (Ord. 451 § 1 (part), 1993)

8.05.180 Smoking prohibitions, workplace.

A. Smoking is prohibited in enclosed workplaces under the control of a public or private employer which the general public has access to in the course of conducting business, including but not limited to open office areas, shared offices, private offices, hallways, restrooms, escalators, elevators, stairways, lobbies, reception areas, waiting rooms, classrooms, meeting or conference rooms and auditoriums.

B. On-site cafeterias, lunchrooms and lounges shall be deemed workplaces and smoking prohibited therein, whether or not such facilities are open to members of the general public.

C. Each commercial enterprise, nonprofit entity and public agency shall comply with these smoking prohibitions and be responsible for their implementation in the workplace, and "No Smoking" signs shall be posted in the manner prescribed by Section 8.05.200 of this chapter. (Ord. 451 § 1 (part), 1993)

8.05.190 Places where smoking is permissible.

Smoking may be permitted in all locations where smoking is not prohibited by this chapter, including the following locations:

A. A private residence, including an attached or detached garage, whether or not the residence is utilized for office or other business purposes, except when such residence is operated as a licensed or unlicensed day care facility for children or the elderly.

B. Bars.

C. Tobacco stores, whether operated as a separate business entity or as a physically separated facility within a department store or other business entity.

D. Private clubs during events attended exclusively by members of the organization and their invited guests and from which members of the general public are excluded.

E. Within conference/meeting rooms, public and private assembly rooms, banquet rooms, dining rooms or areas of restaurants, hotels and motels, while these places are occupied for private functions to which only persons specially invited are entitled to attend and from which members of the general public are excluded.

F. In any enclosed place wherein this chapter specifically permits smoking, notwithstanding the fact that such location is a workplace accessible to the general public.

It shall not constitute a violation of Section 8.05.040 of this chapter for a person to smoke in a location where smoking has been authorized in the manner prescribed by this section.

The foregoing places are not considered workplaces, subject to the provisions of Section 8.05.180 of this chapter. Employers will, however, attempt to find reasonable alternative accommodation where feasible for nonsmoking employees who do not wish to be assigned to work in a smoking permissible area.

Notwithstanding any provision in this chapter which permits smoking in a place of employment, any nonsmoking employee may object to his or her employer about smoke in his or her workplace. The employer shall attempt to reach a reasonable accommodation, insofar as possible. The area in which smoking is prohibited shall be posted by "No Smoking" signs in the manner prescribed by the provisions of Section 8.05.200 of this chapter. (Ord. 451 § 1 (part), 1993)

8.05.200 Posting requirements.

A. Each owner, operator, manager or other person having control of an establishment or facility within which smoking is regulated by this chapter shall conspicuously post in every place where smoking is prohibited "No Smoking" signs with letters not less than one inch in height (or international "No Smoking" symbol consisting of a pictorial represen-

tation of a burning cigarette enclosed in a red circle with a red bar across it).

B. An owner, operator or manager of a building wherein, pursuant to these regulations, there is no smoking permitted in any space in the building, may limit the "No Smoking" posting to first floor entrance and exits and to the elevator lobby areas of all other floors.

C. Motion picture theaters shall show upon the movie or live action screen for at least five seconds prior to the showing of each feature motion picture the message that smoking is prohibited within the audience seating and other areas as specified.

D. Hotels and motels will prominently post in the lobby a sign notifying patrons of the availability of nonsmoking accommodations. The rooms so designated will be posted as nonsmoking rooms and ashtrays removed. (Ord. 451 § 1 (part), 1993)

8.05.210 Retaliation prohibited.

It is unlawful for a commercial enterprise, non-profit entity or public agency to retaliate against any member of the general public or an employee or applicant for employment of the enterprise, entity or public agency because such member of the general public, employee or applicant seeks enforcement of the provisions of this chapter or otherwise protests smoking by others.

Violation of any of the provisions of Section 8.05.200 of this chapter shall be remedied through criminal or civil action filed in a court of competent jurisdiction for injunctive, criminal prosecutions or other appropriate relief. (Ord. 451 § 1 (part), 1993)

8.05.220 Violation of smoking or posting.

A. Any person who violates the prohibitions contained in Sections 8.05.050 through 8.05.170 of this chapter and any proprietor who violates Section 8.05.200 of this chapter by failing to post the signs or take the other actions required by this section may be prosecuted as an infraction, punishable in the manner hereinafter prescribed and/or may have his/her business license revoked.

B. Fines for the crimes made infractions by this section shall be levied in the amount prescribed. Any person, who violated any provisions of this chapter by smoking in a designated nonsmoking area, shall be guilty of an infraction, punishable by a fine of fifty dollars for the first violation, and one hundred

dollars for each subsequent violation. Any employer or proprietor, who violates any provisions of this chapter by failure to post required signs or by failure to request violation smokers to extinguish the lit object may be guilty of an infraction punishable by a fine of one hundred dollars for the first violation, and two hundred fifty dollars for each subsequent violation and/or may have his/her business license revoked. Subsequent violations may be prosecuted as misdemeanors with fines up to one thousand dollars and/or jail time of up to six months. (Ord. 451 § 1 (part), 1993)

8.05.230 Enforcement.

A. Voluntary enforcement of and mandatory compliance with this chapter shall lie with the employer or proprietor of the establishment. An individual violating this chapter shall be requested by the employer or proprietor not to smoke and shall be made aware of the posted "No Smoking" signs. If the individual continues to violate this chapter, the employer or proprietor shall inform the individual they are guilty of an infraction of a city ordinance punishable by a fifty-dollar fine for the first violation and one hundred dollars for each subsequent violation.

B. It shall be the responsibility of the public safety director to enforce, on behalf of the city, the provisions of this chapter. The public safety director shall be authorized to prosecute, in the name of the city, criminal action for the recovery of fines for violation of this chapter made infractions by Section 8.05.220 for violations of Sections 8.05.050 through 8.05.200 herein.

C. In the performance of the enforcement responsibilities assigned by this chapter, the chief of the police department shall:

1. Establish a telephone number through which all complaints by citizens relating to violation of this chapter may be directed or referred.

2. Reduce such complaints to writing, and analyze the frequency and volume thereof in relation to alleged violations of this chapter by or at particular establishments or facilities.

3. Conduct an on-site inspection of an establishment or facility with respect to which the nature and volume of complaints suggest long-standing and pronounced violations of any of the provisions of this chapter.

4. Provide to the owner, operator or manager of any such establishment or facility a copy of the provisions of this chapter and such advisory assistance to rectify future violations as may be necessary to achieve compliance with the provisions of this chapter.

5. Follow up such investigation and advice with a written directive explaining in detail the steps required in order to achieve further compliance with the provisions of this chapter.

6. If the violations do not cease following expiration of a reasonable period of time, request commencement of a criminal or civil proceeding by the city attorney pursuant to the provision of Section 8.05.250 of this chapter, or civil remedies listed below as may be appropriate to do one, some, or all of the following civil remedies:

a. **Public Nuisance.** Any continuing violation of the provisions of this chapter may be declared a public nuisance hereunder, and the city attorney may proceed to abate the same by filing a civil action on a court of competent jurisdiction.

b. **License Revocation.** Any continuing violation of the provisions of this chapter by proprietors may be punishable by the city revoking his/her business license.

c. **Injunctive Relief.** Any continuing violation of the provisions of this chapter by proprietors may be restrained by a temporary restraining order, preliminary and/or permanent injunction. (Ord. 451 § 1 (part), 1993)

8.05.240 Other applicable laws.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. (Ord. 451 § 1 (part), 1993)

Chapter 8.08

ABANDONED VEHICLES

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8.08.010 Definitions.

Except where the context otherwise requires, the following definitions shall govern the construction of this chapter:

A. "Administrative costs" means the costs to the city, and to the county when acting on behalf of the city pursuant to an agreement of performing the acts required under this chapter, except the actual removal of the vehicle. The city council may, from time to time, by resolution, determine the administrative costs for the removal of each vehicle removed by the city if the vehicle is removed without a hearing pursuant to Section 8.08.070. When the acts required by this chapter are performed by the county acting on behalf of the city, the administrative costs, if the vehicle is removed without a hearing, shall be that amount to be determined from time to time by the board of supervisors to be the administrative costs of removal of abandoned vehicles from unin-

corporated areas of the county rather than the amount determined by the city council. In those cases in which the fire marshal conducts a hearing pursuant to Section 8.08.080, he shall fix and determine the administrative costs which shall be the actual cost of performing acts pertaining to the specific vehicle which is the subject of the hearing.

B. "Cost of removal" means the actual cost to the city of having the vehicle removed. The city council may, from time to time, by resolution, determine the cost of removal.

C. "Highway" means a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. The term "highway" includes streets.

D. "Public property" does not include "highway."

E. "Vehicle" means a device by which any person or property may be propelled, moved or drawn upon a highway, except a device moved by human power or used exclusively upon stationary rails or tracks. The term "vehicle" also includes any part or portion of a vehicle which is less than a whole vehicle, and all of the provisions of this chapter apply to a part or portion of a vehicle which is less than a whole vehicle. (Ord. 365 § 2.00, 1981)

8.08.020 Nuisance declared.

In addition to and in accordance with the determination made and the authority granted by the state under Section 22660 of the Vehicle Code to remove abandoned, wrecked, dismantled or inoperative vehicles or parts thereof as public nuisances, the city council makes the following findings and declarations:

The accumulation and storage of abandoned, wrecked, dismantled or inoperative vehicles or parts thereof on private or public property not including highways is found to create a condition tending to reduce the value of private property, to promote blight and deterioration, to invite plundering, to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety of minors, to create a harborage for rodents and insects and to be injurious to the health, safety and general welfare. Therefore, the presence of an abandoned, wrecked, dismantled or inoperative vehicle or part thereof, on private or public property not including highways, except as expressly permitted in this chapter, is de-

clared to constitute a public nuisance which may be abated as such in accordance with the provisions of this chapter. (Ord. 365 § 1.00, 1981)

8.08.030 Exceptions.

A. This chapter shall not apply to:

1. A vehicle or part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property; or

2. A vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler, licensed vehicle dealer, a junk dealer, or when the storage or parking is necessary to the operation of a lawfully conducted business or commercial enterprise.

B. Nothing in this section shall authorize the maintenance of a public or private nuisance as defined under provisions of law other than Chapter 10 (commencing with Section 22650) of Division 11 of the Vehicle Code and this chapter. (Ord. 365 § 3.00, 1981)

8.08.040 Voluntary compliance.

If it appears to the fire marshal that an abandoned, wrecked, dismantled or inoperative vehicle is located on private or public property, he may follow such administrative procedures to secure voluntary removal of the vehicle as appears advisable in each individual case prior to giving a notice of intention to abate pursuant to Section 8.08.050. (Ord. 365 § 7.00, 1981)

8.08.050 Notice of intention to abate.

If the fire marshal cannot secure voluntary removal of the vehicle, pursuant to Section 8.08.040, he shall give written notice of intention to abate and remove the vehicle. The notice shall contain a statement of the hearing rights of the owner of the property on which the vehicle is located and the owner of the vehicle. The statement shall include notice to the property owner that he may appear in person at a hearing or may present a sworn written statement denying responsibility for the presence of the vehicle on the land with the reasons for such denial, in lieu of appearing. The notice of intention to abate shall be mailed, be certified mail, to the owner of the land shown on the last equalized assessment roll and to

the last registered and legal owners of record of the vehicle unless the vehicle is in such condition that identification numbers are not available to determine ownership. (Ord. 365 § 8.00, 1981)

8.08.060 Hearing—Request.

The registered or legal owner of the vehicle or the owner of the land on which the vehicle is located may request a hearing on the question of abatement and removal of the abandoned, wrecked, dismantled or inoperative vehicle and on the question of assessment of the administrative costs and cost of removal against the property on which it is located. The request for a hearing shall be in writing and shall be filed with the fire marshal not more than ten days after the date on which the notice of intention described in Section 8.08.050 was mailed by the fire marshal. If the owner of the land on which the vehicle is located files with the fire marshal a sworn statement denying responsibility for the presence of the vehicle on his land within the ten-day period, the statement shall be construed as a request for a hearing which does not require the presence of the owner submitting the request. (Ord. 365 § 9.00, 1981)

8.08.070 Failure to request hearing— Abatement.

If no hearing is requested within the time limit specified in Section 8.08.060, the fire marshal shall cause the vehicle to be removed and taken to a junkyard, automobile dismantling yard or refuse disposal site. Except as otherwise provided in Section 8.08.160, when no hearing has been requested, the owner shall be required to pay the administrative costs, as determined by the city council or the board of supervisors, and the cost of removal, as determined by the city council in accordance with Section 8.08.010. The fire marshal shall send a request for payment of the costs to the owner of the property by regular mail and if he does not pay the costs within thirty days after the date on which the letter was mailed, the procedure set forth in Section 8.08.150 shall be followed. (Ord. 365 § 10.00, 1981)

8.08.080 Hearing—Notice.

If a public hearing has been requested in accordance with the provisions of Section 8.08.060, a public hearing shall be held on the question of

abatement and removal of a vehicle as an abandoned, wrecked, dismantled or inoperative vehicle and the assessment of the administrative costs and cost of removal against the property on which it is located. The fire marshal shall cause notices of the time and place of the hearing to be sent by regular mail to the owner of the land as shown on the last equalized county assessment roll, and to the last registered and legal owners of record of the vehicle unless the vehicle is in such condition that identification numbers are not available to determine ownership. The notices shall be mailed at least ten days before the date of the hearing. (Ord. 365 § 11.00, 1981)

8.08.090 Hearing—Procedure.

The public hearings under this chapter shall be conducted by the fire marshal. The fire marshal shall hear all pertinent evidence offered by all interested persons, including testimony on the condition of the vehicle and the circumstances concerning its location on private property or public property. The technical rules of evidence shall not be applicable to the hearing. The owner of the land on which the vehicle is located may appear in person at the hearing or present a sworn written statement for consideration at the hearing. The owner of the land may deny responsibility for the presence of the vehicle on the land, with his reasons for such denial. (Ord. 365 § 12.00, 1981)

8.08.100 Hearing—Findings.

A. At the conclusion of the public hearing, the fire marshal may find that a vehicle has been abandoned, wrecked, dismantled, or is inoperative on private or public property and order it removed from the property as a public nuisance and disposed of as provided in this chapter. He may also determine the amount of the administrative costs, in accordance with Sections 8.08.010 and 8.08.160 and may determine that all or a portion of the administrative costs and the cost of removal are to be charged against the owner of the land on which the vehicle is located.

B. If it is determined by the fire marshal that the vehicle was placed on the land without the consent of the landowner and that he was not subsequently acquiesced in its presence, the fire marshal shall not assess administrative costs or the cost of removal of the vehicle against the property upon which the vehi-

cle is located or otherwise attempt to collect the costs from the landowner.

C. The fire marshal may impose such conditions and take such other action as he deems appropriate under the circumstances to carry out the purposes of this chapter. He may delay the time for removal of the vehicle if, in his opinion, the circumstances justify it. (Ord. 365 § 13.00, 1981)

8.08.110 Appeal.

Within ten days, excluding Saturdays, Sundays and legal holidays, after notice of the decision of the fire marshal has been mailed to the interested parties, any person affected by the decision may file with the city clerk a written notice of appeal from the decision. The city council shall thereafter set the matter for hearing. The city clerk shall give written notice of the hearing to all of the persons mentioned in Section 8.08.080. At the time and place set for the hearing, the city council shall hear the matter de novo and all of the provisions of Section 8.08.090 shall be applicable to the hearing. The decision of the city council after the hearing upon the appeal is final and conclusive as to all things involved in the matter. The city clerk shall give written notice of the decision of the city council to all of the persons to whom notice of the hearing was mailed. (Ord. 365 § 14.00, 1981)

8.08.120 Vehicle removal.

A. At any time after the fire marshal orders an abandoned, wrecked, dismantled or inoperative vehicle to be removed, pursuant to Section 8.08.100, any interested party may cause the vehicle to be removed. If the fire marshal has assessed administrative costs and the cost of removal against the property on which the vehicle is located, and the vehicle is voluntarily removed without cost to the city, only the administrative costs shall thereafter be collected from the owner of the land.

B. If no appeal has been filed, and the vehicle has not been removed within ten days, excluding Saturdays, Sundays and legal holidays, after the notice of the decision of the fire marshal was mailed to the interested parties, the fire marshal shall cause the vehicle to be removed and taken to a junkyard, automobile dismantling yard or refuse disposal site.

C. If an appeal has been filed, and the vehicle has not been removed within ten days, excluding Saturdays, Sundays and legal holidays, after the no-

tice of the decision of the city council was mailed to the interested parties, the fire marshal shall cause the vehicle to be removed and taken to a junkyard, automobile dismantling yard or refuse disposal site. (Ord. 365 § 15.00, 1981)

8.08.130 Reconstruction of vehicle after removal.

After a vehicle has been removed pursuant to the provisions of this chapter, it shall not thereafter be reconstructed or made operable, excepting those certain vehicles which qualify for horseless carriage or historical vehicle license plates. (Ord. 380 § 6, 1982; Ord. 365 § 16.00, 1981)

8.08.140 Notice to state.

Within five days after the date of removal of the vehicle pursuant to the provisions of this chapter, the fire marshal shall give notice of the removal to the Department of Motor Vehicles of the state identifying the vehicle removed and transmit to the department any evidence or registration available, including, but not limited to, registration certificates, certificates of title and license plates. (Ord. 365 § 17.00, 1981)

8.08.150 Collection of costs.

A. If the fire marshal has caused the vehicle to be removed from the property, and he has assessed administrative costs and the cost of removal against the owner of the property on which the vehicle is located, he shall mail a notice to the owner of the property of the total costs to be paid by the owner of the property.

B. If any interested party has caused the vehicle to be removed from the property without cost to the city, and the fire marshal has previously assessed administrative costs and the cost of removal against the owner of the property on which the vehicle is located, the fire marshal shall mail a notice to the owner of the property of the administrative costs to be paid by the owner of the property.

C. If the costs referred to in subsections A and B of this section are not paid within thirty days after the date on which the notice referred to therein is mailed to the owner of the property, the city council may direct the county auditor to place the unpaid costs on the city tax roll as a special assessment against the

property pursuant to Section 38773-5 of the Government Code of the state. (Ord. 365 § 18.00, 1981)

8.08.160 State payment of costs.

A. The city council may, from time to time, enter into agreements with the state, through the California Highway Patrol, or such other agency of the state as shall be designated by the state, providing that the state shall pay all, or any portion, of the administrative costs. The city council may, from time to time, determine by resolution whether the payment agreed upon is sufficient to pay all, or only a portion, of the costs of administration.

B. Whenever the city has entered into an agreement with the county for the performance by the county of the acts as may be delegated to the county under this chapter, the county may contract with the state for the payment to the county of the administrative costs for the removal of vehicles removed within the city. In such case if the county makes a determination whether payments received from the state for removal of abandoned vehicles are sufficient to pay all, or only a portion, of the administrative cost, that determination shall apply also to payments of administrative costs of removal of vehicles within the city.

C. Except where administrative costs are determined by the fire marshal at a hearing, the amount assessed against an owner of land pursuant to Sections 8.08.100 and 8.08.150 of this chapter shall be limited to the portion of the administrative cost found to be not covered by such an agreement with the state and the cost of removal. This limitation on the assessment shall apply to all cases assessed while such a resolution is in effect. However, the limitation shall not apply to cases in which the written notice of intention to remove was mailed prior to the effective date of the resolution and the resolution increases the amount assessable.

D. Any cost of removal incurred shall be paid by the city out of its general fund. (Ord. 365 § 19, 1981)

8.08.170 Enforcement.

Except as otherwise provided in this chapter, the provisions of this chapter shall be administered and enforced by the fire marshal and the employees in his department or other persons authorized by him to administer and enforce this chapter. The city council may by agreement transfer enforcement of this chapter to the county. The county officers to whom the

enforcement is so transferred shall enjoy the rights and perform the duties of the fire marshal created by this chapter. No such agreement shall affect the duty of the fire marshal to conduct the hearing prescribed by Section 8.08.090 of this chapter or the right to appeal to the city council pursuant to Section 8.08.100 of this chapter. (Ord. 365 § 5, 1981)

8.08.180 Entry on property authorized.

A. The fire marshal, the employees in his department and other persons authorized by him or a county officer authorized by agreement to enforce this chapter and persons authorized by him, may enter upon private or public property to examine a vehicle and to obtain information as to the ownership and identity of a vehicle when enforcing this chapter.

B. If the city enters into a contract with any person to remove or cause the removal of vehicles which have been declared to be public nuisances pursuant to this chapter, the person may enter upon private or public property to remove the vehicles.

C. Every person is guilty of a misdemeanor who in any way denies, obstructs or hampers the entrance of the persons mentioned in this section upon private or public property to carry out the aforementioned duties or who denies, obstructs or hampers the performance of such duties by such persons after they have entered the property. (Ord. 365 § 6, 1981)

8.08.190 Provisions not exclusive.

This chapter is not the exclusive regulation of abandoned, wrecked, dismantled or inoperative vehicles within the city. It shall supplement and be in addition to the other regulatory codes, statutes and ordinances heretofore or hereafter enacted by the city, the state or any other legal entity or agency having jurisdiction. (Ord. 365 § 4, 1981)

Chapter 8.12**SOLID WASTE****Sections:**

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8.12.010 Purpose.

The city, in order to more effectively promote and protect the public health and safety and reduce the danger and hazards of fires and conflagrations, reserves unto itself the exclusive right and power to collect, transport and dispose of, or to authorize, regulate, permit and control the collection, transportation and disposition of all refuse and rubble produced or found within the corporate limits of the city. (Ord. 412 (part), 1986; Ord. 336 (part), 1974; prior code § 10-1)

8.12.020 Definitions.

For the purposes of this chapter, certain words and phrases used in this chapter are defined as follows:

"Alley service" means the service where solid waste containers are placed in through alleys at the property line at designated locations.

"Applicant" means the individual, partnership, association or corporation that will operate and conduct a business for which a license is required pursuant to the provisions of this chapter.

"Association" means every club, syndicate, joint venture and every other group of individuals who are united together for some common purpose but are not organized as a partnership or corporation.

"Business" means the operation or carrying on of any activity, whether for profit or gratuitously, for which a license is required by this chapter.

"Business premises" means the office, building, location or place in which or from which a business is conducted or carried on.

"Container" or "cart" means a regulation automatic solid waste receptacle of approximately one hundred gallons capacity provided by the solid waste superintendent or city's private contractor.

"Containerized service" means service approved by the solid waste superintendent wherein the city provides a vehicle equipped for the mechanical handling of one, two or three cubic yard containers with casters. The containers shall be furnished by the city, of a type approved by the solid waste superintendent.

"Curb service" means service where the solid waste containers are picked up by the city at the front curb line of the customer's property.

"Disposition" means the removal of waste tires from the business premises or other location used by the dealer in its business.

"Garbage" means animal and vegetable waste resulting from the handling, preparation, cooking and serving of food, excluding food-processing waste from canneries, packing plants or similar industries.

"Solid waste" means all types of solid waste, including garbage, crockery, bottles, tin cans, cardboard boxes, rags, paper, straw, cold ashes, tree trimmings, brush and other waste matter.

“Solid waste collection service” means all service furnished by the city for the collection and disposal of solid waste within the city limits.

“Solid waste superintendent” means the public works director of the city, or such person designated by him to superintend the solid waste collection and disposal service for the city.

“Special haul” means the collection of solid waste in excess of the maximum amounts of solid waste to be collected by the city at a single collection, as set forth in this chapter, or any materials not defined in this section as solid waste.

“Tax collector” means the tax collector for the County of Tulare.

“Tire” means a pneumatic tire or solid tire manufactured for use on any type of motor vehicle.

“Tire dealer” means any person who engages in the business of selling, trading or dealing in tires for profit.

“Waste tire” means a tire that has been removed from the wheel of a motor vehicle and is no longer suitable for its originally intended purpose due to wear, damage or defect.

“Waste tire hauler” means any person who engages in the collection and/or transportation of waste tires for compensation.

“Waste tire hauler business license” means a license to engage in the collection and/or transportation or waste tires for compensation as required by section 6172 of the Ordinance Code of Tulare County found at article 2.6 of chapter 2, part VI of said Code. (Ord. 448 § 2, 1992; Ord. 439 § 1, 1990; Ord. 412 (part), 1986; Ord. 336A, 1977; Ord. 336 (part), 1974: prior code §10-2)

8.12.030 Collection service required.

All dwellings, apartment houses and places of business in which solid waste accumulates within the city shall be required to use the solid waste collection service of the city and to pay the charges as set forth in this chapter. (Ord. 412 (part), 1986; Ord. 336 (part), 1974: prior code § 10-3)

8.12.040 Prohibited items.

It is unlawful for any person to place or allow to be placed in any garbage or refuse containers designated for Municipal pickup any dead animals, hot ashes or coals, wearing apparel or bedding or other refuse from a place where infectious or contagious

disease has prevailed; explosive substance, radioactive materials, drugs or poisons. Upon notification to the city, such items will be disposed of in accordance with applicable health laws. (Ord. 412 (part), 1986; Ord. 336 (part), 1974: prior code § 10-4)

8.12.050 Residential collection.

A. Collection Procedures. The city, or its private contractor, shall provide one automatic refuse cart for the use of each residential unit in the city. All carts shall remain the property of the city or its private contractor. The city or its private contractor shall, once weekly, collect and dispose of garbage from each cart placed at the curbside in front of each residence, or in the alley at the designated location. Any additional space in each cart may be utilized for garden rubbish. The total solid waste placed in each cart shall not exceed two hundred twenty pounds. Once emptied, carts shall be removed from the curbside as soon as possible.

B. Responsibilities of Curb Service Customers. All residential curb service customers shall place their solid waste container at the curb not earlier than seven p.m. on the day prior to collection, and shall remove the empty containers from the curb not later than twelve midnight on the day of collection.

C. Responsibilities of Alley Service Customers. All residential alley service customers shall place their solid waste container on the side of the alley designated by the city, in order to facilitate one-trip refuse collection in the alleys.

D. Repair and Replacement of Carts. The city shall repair, at no additional cost, any cart that is damaged, when the damage, as determined by the city, is not due to customer misuse or negligence. If the damage is determined to be due to customer misuse or negligence, the customer shall reimburse the city at the current invoice cost for replacement. The city, at no additional cost, shall replace any cart that is determined to be lost or stolen.

E. Special Handling Provided for the Disabled. The city, at the request of the customer, shall wheel out and return the cart for disabled households. There will be no additional charge for this service. For the purpose of this subsection, “disabled households” means those households composed entirely of persons who, by reason of permanent disability, are unable to wheel the cart to the curbside for

weekly collection. Upon notification, a city representative will personally interview the individual to verify their disability status and determine whether there is another individual residing in the household who is capable of wheeling the toter to curbside. Once their disability has been verified and there is no other person in the household capable of wheeling the toter to curbside, a location acceptable to the customer and the city will be chosen where the toter will be picked up and returned.

F. **Additional Carts Provided.** The city, or its private contractor, upon request of the customer, shall provide an additional one hundred gallon cart for residential garbage/garden rubbish. An additional monthly fee will be assessed for extra carts. If a residence repeatedly accumulates refuse beyond the capacity of their existing service, then that customer shall be required to obtain an additional cart.

G. **Collection of Lawn Clippings, Trimmings and Limbs.** Special disposal service at special rates stated in this chapter will be offered for the collection and disposal of refuse, rubbish, tree trimmings and brush too large in size or quantity to fit into an approved container, or cut and bundled in the manner specified in this section, and for service requested at a time different from the regular established route times. Special disposal services beyond the scope of city refuse disposal capabilities will be allowed only by licensed disposal operators who have secured proper prior approval from the city. Special services may be requested by application to the finance director at City Hall and shall be furnished in the manner and at such times as may be convenient to the city. In the event that any brush or tree trimmings not conforming to the requirements set forth in this section are placed on any lot, property or premises in or adjacent to the alley serving the premises or adjacent to the public street servicing the premises, it will be presumed, unless the city is otherwise notified, that special services for removal thereof are requested, and the removal shall be made and a special charge therefor will be made as specified in this section. Special hauls shall be charged at a rate to be established by the director of public works. (Ord. 439 §§ 2, 3, 1990; Ord. 412 (part), 1986; Ord. 336 (part), 1974: prior code § 10-5)

8.12.060 Commercial collection.

Collection of solid waste from commercial establishments receiving solid waste collection service from the city or its private contractor shall be made as many times per week as the solid waste superintendent may order. Bin service shall be provided for apartment complexes consisting of five or more residential units. One-hundred-gallon automatic containers will be provided for each unit at apartment complexes consisting of four or less units. Minimum volume for multiple unit residences requiring bin service shall be one-half yard per residential unit per week. If a commercial establishment repeatedly accumulates refuse beyond the capacity of their existing service, then that establishment shall be required to obtain additional bin capacity or more frequent pickups per week. (Ord. 439 § 4, 1990; Ord. 412 (part), 1986; Ord. 336 (part), 1974: prior code § 10-6)

8.12.070 Charges—Levied.

For the purpose of providing funds for the payment of the operation and maintenance of the city collection, refuse and disposal system, or its private contractor, there are levied and assessed upon all premises having or requesting such services, or requiring special collection or services, monthly rates and charges to be payable in the respective amounts and, in order to comply with Section 5471 of the Health and Safety Code of the state, said rates shall be set forth by ordinance of the city which may be amended from time to time by the city council. (Ord. 444 § 1, 1991; Ord. 412 (part), 1986; Ord. 336 (part), 1974: prior code § 10-7)

8.12.080 Charges—Billing and collection.

A. Charges for collection and disposal of garbage, refuse, rubbish, tree trimmings and brush shall be billed to the person, business establishment, firm or premises serviced, as an additional charge to the water bill.

B. All charges for solid waste service included on utility bills shall be due and payable at the same time as other utility charges. If a bill for solid waste service is not paid within the time provided, the city may discontinue water service to the premises.

C. When the solid waste customer does not have city water service, a separate bill for solid

waste service shall be mailed to the customer who owns or controls the premises serviced.

D. All solid waste collection service bills, if not a part of the city utility bills, shall become delinquent forty days after presentation. If a bill for solid waste collection service is not paid within such time, the city may discontinue service for nonpayment of the bill, in which case service shall not be restored until the bill is paid.

E. In the event the owner, occupant or lessee of the premises having refuse service fails to pay the refuse service charges by the tenth day of the month following presentation of a bill therefor, the city may, in addition to all of the remedies it may have, discontinue furnishing refuse service and may discontinue water service, and shall not resume the water service until all delinquent charges and penalties under this chapter, together with any service charge necessitated by the resumption of refuse service, have been fully paid.

F. A ten-percent penalty charge shall be added to the total bill if payment is not made within forty days after presentation. (Ord. 412 (part), 1986: Ord. 336 (part), 1974: prior code § 10-8)

8.12.090 Accumulation prohibited.

It is unlawful for any occupant or owner of any building, lot or premises in the city to allow, or permit to collect or remain on the premises any

solid waste in such manner or quantities as is a fire or health menace to the people of the city. (Ord. 412 (part), 1986: Ord. 336 (part), 1974: prior code § 10-9)

8.12.100 Burying or dumping prohibited.

It is unlawful for any person to bury, dump or permit to be buried or dumped, any solid waste in any place within the city limits, and all solid waste in the city shall be placed in solid waste containers as defined in this chapter. (Ord. 412 (part), 1986: Ord. 336 (part), 1974: prior code § 10-10)

8.12.110 Enforcement.

The solid waste superintendent shall enforce the provisions of this chapter and shall have the power to establish rules and regulations consistent with the provisions of this chapter governing the keeping, collection, removal and disposal of solid waste. (Ord. 412 (part), 1986: Ord. 336 (part), 1974: prior code § 10-11)

8.12.120 Solid waste and refuse fees.

A. From and after the effective date of the ordinance codified in this section, the following rates and charges shall be assessed for solid waste and refuse collection services:

<u>Residential:</u>	<u>Pickup(s)</u> <u>Per Week</u>	<u>Charge</u> <u>Per Month</u>
1. One 110-gal. automatic container/residence	1	\$ 14.45*
2. Two 110-gal. automatic containers/residence	1	18.00*
3. One Additional 110-gal. automatic or 90-gal green waste container		3.55
<u>Commercial:</u>		
4. One 110-gal. Automatic Container/Commercial Unit	1	14.45
5. One-yard bin	1	38.50
6. One-yard bin	2	71.50
7. One-yard bin	3	104.50
8. One and a half-yard bin	1	47.50
9. One and a half-yard bin	2	80.00
10. One and a half-yard bin	3	112.50

* Includes one 90-gallon green waste container.

<u>Commercial (continued)</u>	<u>Pickup(s) Per Week</u>	<u>Charge Per Month</u>
11. Two-yard bin	1	\$ 57.50
12. Two-yard bin	2	98.00
13. Three-yard bin	1	78.00
14. Three-yard bin	2	135.50
15. Three-yard bin	3	192.00
16. Six-yard bin	1	156.00
17. Six-yard bin	2	271.00
18. Six-yard bin	3	384.00

B. Charges for extra one-time pickup; twenty-four-hour notice required:

19. 110-gallon automatic or 90-gal green waste container	10.00
20. One-yard bin	15.00
21. One and a half-yard bin	22.50
22. Two-yard bin	30.00
23. Three-yard bin	45.00
24. Charge for extra cleaning	35.00

C. Miscellaneous refuse collection charges for extra loads shall be established by the public works director in accordance with the solid waste collection department schedules for equipment use and labor involved. (Ord. 462 § 1, 1995; Ord. 457 § 1, 1994; Ord. 412 (part), 1986)

8.12.130 Waste tire hauler's business license required.

Any person engaging in, and any vehicle used in, the business of a waste tire hauler within the city shall have a valid waste tire hauler's business license to engage in or be used in such business. (Ord. 448 § 1, 1992)

8.12.140 Exceptions to waste tire hauler's business license requirement.

The following persons shall be exempt from the requirement to be licensed:

- A. Refuse collectors licensed by the county of Tulare or city of Lindsay.
- B. The city, its agents and employees.
- C. Any tire dealer transporting only its own waste tires. (Ord. 448 § 2 (part), 1992)

8.12.150 Display of waste tire hauler's business license.

It is unlawful for any person to violate any of the following requirements concerning business license:

A. Any vehicle used to collect and/or transport waste tires within the city must bear on both sides the name of the licensee and the words "Waste Tire Hauler License No. _____" with the applicable license number in contrasting letters not less than two inches in height.

B. The waste tire hauler's business license shall be displayed at all times in a conspicuous place near the main entrance of the business premises.

C. A waste tire hauler's business license issued for the use of a vehicle shall be carried at all times in the vehicle for which the license was issued.

D. If a waste tire hauler's business license has been issued authorizing the licensee to conduct a business independent of a fixed location, the licensee shall carry the license upon his person at all times when conducting such business.

E. A waste tire hauler's business license shall be displayed to the tax collector, any investigating officer or any peace officer on demand.

F. Any waste tire hauler's business license that has been revoked or suspended shall be surrendered to the tax collector, any investigating officer or to

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any peace officer immediately after a demand for such surrender has been made. (Ord. 448 § 2 (part), 1992)

8.12.160 Use of licensed waste tire hauler required.

It is unlawful for any tire dealer in the city to contract with or otherwise permit any person to collect and/or transport its waste tires unless that person holds a valid waste tire hauler business license or is a person excepted from the provisions of this section by Tulare County Code Section 6802. (Ord. 448 § 2 (part), 1992)

8.12.170 Report of transactions by licensee.

All licensees shall be required to file a monthly report with the community development director on a form prescribed by the director of each and every transaction in which the licensee was involved in the collection and/or transportation of waste tires within the city. (Ord. 448 § 2 (part), 1992)

8.12.180 Penalties.

Any person who violates any provision of this chapter which is declared to be unlawful, shall be guilty of a misdemeanor, subject to a penalty of imprisonment in the county jail for a term not exceeding six months, or by a fine not to exceed five hundred dollars for each violation, or both. Notwithstanding the classification of a violation of this chapter as a misdemeanor, at the time an action is commenced to enforce the provisions of this chapter, the trial court, upon recommendation of the prosecuting attorney, may reduce the charged offense from a misdemeanor to an infraction. Any person convicted of an infraction under this chapter shall be punished by: (1) a fine not exceeding fifty dollars for a first violation; (2) a fine not exceeding one hundred dollars for the second violation of this chapter within one year; and (3) a fine not to exceed two hundred fifty dollars for each additional violation of this chapter within one year. (Ord. 448 § 2 (part), 1992)

8.12.190 Conflict with other laws and regulations.

No provision of this chapter, nor any of the procedures set forth herein, nor the acceptance of an application, nor the subsequent issuance of a license under this chapter's provisions shall constitute a waiver of any of the requirements of any statutes or any provisions of this municipal code or any other ordinance of the county which are now in effect or which may hereafter be enacted. (Ord. 448 § 2 (part), 1992)

Chapter 8.14

CURBSIDE SOLID WASTE COLLECTION AND DISPOSAL FRANCHISES

Sections:

- 8.14.010 Purpose and objectives.
- 8.14.020 Exclusive franchise.
- 8.14.030 Definitions.
- 8.14.040 Franchise and contract requirement.
- 8.14.050 Proposal and fee.
- 8.14.060 Proposal procedure.
- 8.14.070 Term of franchise.
- 8.14.080 Bond requirement.
- 8.14.090 Insurance requirement.
- 8.14.100 Indemnification.
- 8.14.110 Modification of franchise.
- 8.14.120 Revocation, suspension or termination of franchise.
- 8.14.130 Duties of franchisee.
- 8.14.140 Reporting requirements.
- 8.14.150 Assignment of franchise.
- 8.14.160 Complaint process.
- 8.14.170 Possessory interest taxation.
- 8.14.180 Prohibitions and penalties.

8.14.010 Purpose and objectives.

The purpose of this chapter is to regulate the curbside collection, handling, hauling and disposition of solid wastes within the city limits of the city of Lindsay ("city"), and to regulate the amount of solid waste disposed of in landfills. Further, it is the purpose of this chapter to establish guidelines that shall be followed by applicants desiring a franchise to collect, handle, haul, transport, or otherwise dispose of solid waste generated within the city limits. The provisions of this chapter supplement and are in addition to those regulations contained in Chapter 8.12 of the municipal code, Solid Waste, and apply only to the curbside collection, handling, transportation and disposing of industrial, commercial, and residential solid wastes as defined in Section 8.14.030 of this chapter. (Ord. 465 § 1, 1996)

8.14.020 Exclusive franchise.

It is declared that in order to properly regulate, control and monitor the amount of solid waste being collected and diverted from the solid waste stream generated in the city it is in the best interest of the city and its citizens to limit the number of industrial, commercial and residential curbside solid waste collection and disposal franchises. Therefore, the number of industrial, commercial and residential curbside solid waste collection and disposal franchises issued for the collection and disposal of solid waste generated within the city limits shall be limited to a single provider who shall have the exclusive right to provide such curbside industrial, commercial and residential solid waste collection and disposal services. (Ord. 465 § 2, 1996)

8.14.030 Definitions.

For purposes of this chapter, certain words and phrases used in this chapter are defined as follows:

"Discarded" means thrown away; abandoned; worthless; lack of economic value.

"Recyclables" means materials that have value and can be diverted from landfill disposal. Those materials that by collecting, sorting, cleansing, treating and reconstituting materials would otherwise become solid waste, and by processing can be returned to the economic mainstream in the form of raw materials for new, reused, or reconstituted products.

"Solid waste" means all abandoned, discarded, thrown away putrescible and nonputrescible solid, semisolid and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, and other discarded solid and semisolid wastes. (Ord. 465 § 3, 1996)

8.14.040 Franchise and contract requirement.

A. Except as provided below no person shall engage in the curbside collection and disposition of industrial, commercial and residential solid waste without first obtaining an appropriate disposal franchise from the city as provided herein.

B. The franchisee awarded a franchise hereunder shall be the holder of a valid contract to provide such curbside collection and distribution services. Said

contract shall comply with the solid waste collection contract specifications ("specifications"), a copy of which is maintained in the city clerk's office, and shall be awarded through the city's normal competitive bidding process.

C. Any franchise awarded pursuant to these provisions shall terminate upon the expiration of said contract or upon the franchisees failure to renew said contract pursuant to Section 8.14.070(B) of this chapter. (Ord. 465 § 4, 1996)

8.14.050 Proposal and fee.

Any person desiring to obtain the solid waste disposal franchise as required by Section 8.14.040 shall pay a fee, from time to time established by resolution by the city council, to the city clerk and shall make a proposal for a franchise to the council. Said proposal shall comply with the solid waste collection contract specifications and shall include, but not be limited, to the following information:

A. The name and address of the proponent, and if the same be a corporation, partnership, association or company, the name of its principal officers, with the address of each, and the names, addresses and percentage of ownership of all owners of the business.

B. A description of each vehicle the proponent intends to operate. Such description should include the make, year of manufacture, the motor and chassis number, the California state license number, and the color scheme, insignia, name, monogram or other distinguishing characteristics used to identify such vehicle.

C. Address and telephone number of proposed place of business.

D. A distinctive color scheme, name or insignia applied to each vehicle.

E. The training and experience of the proponent and all employees of proponent who will operate vehicles in providing solid waste disposal services.

F. A statement of financial status, responsibility, and insurance in a form acceptable to the city.

G. Any other information deemed relevant by the city. (Ord. 465 § 5, 1996)

8.14.060 Proposal procedure.

Proposals for solid waste disposal franchises shall be processed in the following manner:

A. The city manager, his designee, or other franchise granting official shall make available to fran-

chise proponents a document, hereinafter referred to as the city of Lindsay, residential, commercial and industrial solid waste collection contract, instruction to bidders ("instructions"), a copy of which is maintained in the city clerk's office, setting forth the procedures to be followed in submitting bid proposals.

B. All proposals must strictly comply with the provisions contained in the instructions. Failure to comply will be grounds for rejection.

C. Proposals shall be delivered to the city clerk by a date twelve months prior to the date the existing franchise expires.

D. The following documents shall accompany the proposal:

1. Evidence that all vehicles to be used in providing solid waste disposal service have been properly licensed, inspected, and properly insured.

2. Evidence that each employee that will be providing disposal service possesses a valid certificate and/or license as required by the state of California Vehicle Code.

E. Proposals will be reviewed by the granting official within thirty days after the time period set for submission of bid proposals, who shall present recommendations for award of the requested franchise to the city council. The council shall conduct a public hearing and in the exercise of its discretion award by resolution a franchise. (Ord. 465 § 6, 1996)

8.14.070 Term of franchise.

A. Term. The award of the franchise, shall become effective on a date determined by the council, and shall be for a period of seven years, unless sooner terminated, and shall be subject to the right of the city to terminate, alter, or amend said franchise at any time as provided herein.

B. Renewal. A franchise may but is not required to be renewed if, in the exercise of its discretion the city council determines that:

1. The franchisee has substantially complied with the material terms of the existing franchise and applicable law;

2. The quality of the franchisee's service has been reasonable in light of the community needs;

3. The franchisee has the financial, legal and technical ability to provide the services, facilities and equipment set forth in the franchisee's proposal.

C. Renewal Proceeding. In any renewal proceeding, the franchisee shall be given adequate notice and

fair opportunity for full participation, including the right to present evidence, require the production of evidence, and to question witnesses. A transcript may be made of any such proceeding if requested by the franchisee.

1. A proceeding under this subsection shall be completed within a reasonable time period and the city shall issue a written decision granting or denying the proposal and the reasons therefor and transmit a copy of such decision to the franchisee.

2. Any denial of renewal proposal shall be based on one or more adverse findings made with respect to the factors described in subsection B of this section, pursuant to the record of the renewal proceedings. The city may not base a denial of renewal based on failure to substantially comply with the material terms of the franchise under subsection (B)(1) of this section unless the city has provided the franchisee an opportunity to cure the defects in his performance and his continued conduct does not thereafter substantially comply with the terms of the franchise.

3. The decision of the city council shall be final and determinative on all issues raised in the renewal process. (Ord. 465 § 7, 1996)

8.14.080 Bond requirement.

The franchisee shall, at all times during the life of the franchise, keep on file with the city council a bond running in favor of the city in the amount fixed in the franchise agreement with sureties to be approved by the city council. The bond shall be available to the city to satisfy amounts due city from franchisee which arise in accordance with the terms and conditions of the franchise agreement. (Ord. 465 § 8, 1996)

8.14.090 Insurance requirement.

Prior to the franchise being issued, the proponent to whom the franchise is awarded by the council shall deliver to the clerk a policy of insurance executed by a company duly authorized to do an insurance business within the state of California. Said policy shall be for the entire term of the franchise and shall be of the type and in amounts as listed in the specifications. (Ord. 465 § 9, 1996)

8.14.100 Indemnification.

The franchisee shall indemnify, defend, and hold harmless the city, its council, officers, officials,

agents, employees, boards and commissions from all liability, loss, damage, expense, costs (including attorneys fees and other costs and fees of litigation) of every nature (whether in contract, tort or strict liability), including personal injury, death or property damage, arising out of franchisee's or any of its employees' or agents, performance of work or failure to comply with any of the obligations under the franchise agreement, except such loss or damage caused by the sole negligence or wilful misconduct of the city, its agents, officials, or employees acting within the scope of their employment or authority. (Ord. 465 § 10, 1996)

8.14.110 Modification of franchise.

The city manager, his designee, or other franchise granting officer may modify the terms of the exclusive franchise on a temporary basis at any time, for any time not to exceed thirty days, upon any of the following occurrences:

A. The closing, bankruptcy or dissolution of the disposal company.

B. Suspension, revocation, or termination of the franchisee's license under this chapter or any other ordinance duly adopted by the city.

C. Any other circumstance which disrupts or ends solid waste disposal service in the city without proper notice to allow appropriate council action. (Ord. 465 § 11, 1996)

8.14.120 Revocation, suspension or termination of franchise.

A franchise granted hereunder may be revoked, suspended or terminated if the franchisee, any of his/her employees or agents, or any other person authorized thereunder has:

A. Violated any terms of this chapter or any of the provisions of Chapter 8.12 of the city of Lindsay Municipal Code, Solid Waste.

B. Violated any terms or conditions of the franchise or other required licenses and/or permits.

C. Misrepresented a material statement of fact in the proposal for the solid waste disposal franchise.

D. Committed any act or failed to perform any obligation which adversely affects the health, safety and welfare of the citizens of the city.

E. Deliberately provided false information to the franchise granting officials.

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F. Upon expiration of the contract entered into by the franchisee and the city to provide for the curbside collection and disposition of solid wastes.

If any term or condition of this franchise shall become invalid or unenforceable, the city council may by resolution terminate the franchise upon a finding that the invalid term or condition was material to the granting of the franchise. (Ord. 465 § 12, 1996)

8.14.130 Duties of franchisee.

The franchisee shall collect all solid waste originating in the city limits in the manner described in the specifications and in accordance with the franchise agreement. In addition to the above franchise proposal requirements the franchisee, his employees, agents, and any other person authorized under the franchise shall:

A. Obtain the requisite business licenses and permits to operate within the city and pay the appropriate business license fees.

B. Provide employees, workers, agents, and equipment with identifiable uniforms and/or insignia.

C. Conduct disposal activities in such a manner and at such times so as not to interfere with or violate any noise or similar ordinance.

D. Transport and deliver all solid waste to a designated site for further processing prior to the delivery and deposit in a properly designated land fill.

E. Maintain each vehicle used pursuant to the franchise in good working order and abide by all local, state and federal laws applicable to the performance and operation of such vehicles. (Ord. 465 § 13, 1996)

8.14.140 Reporting requirements.

To assist the city in complying with the solid waste diversion requirements as defined in California Public Resources Code Section 41780 the franchisee shall maintain and report monthly to the city the following information:

A. The description, nature, and amount of the nonrecyclable solid waste collected (e.g., refuse, garbage, rubbish, etc.).

B. The description, nature and amount of recyclable solid waste collected (e.g., plastic, cardboard, bottles, green waste or other recyclable materials).

C. Name(s) and address(es) of the site(s) where the above solid wastes were disposed.

The franchisee shall maintain such records for a period of five years and shall, upon reasonable request, make such records available for the city's inspection. (Ord. 465 § 14, 1996)

8.14.150 Assignment of franchise.

No franchise nor interest therein or duties thereunder shall be sold, assigned, delegated, transferred or otherwise disposed of without the consent of the city expressed by resolution or ordinance. (Ord. 465 § 15, 1996)

8.14.160 Complaint process.

Any person who has received services from the franchisee, his employee, agent, or any other person authorized under the provisions of the franchise and who has a complaint regarding the quality or adequacy of service or compliance with this chapter, may file a written complaint with the city clerk setting forth in detail the reasons for said complaint. Upon receiving the written complaint the city clerk or his/her designee shall do the following:

A. Investigate all allegations contained in the complaint.

B. Notify the complainant of the findings and if the allegations are verified the steps which are to be taken pursuant to this chapter.

C. Report measures regarding revocation or suspension of the franchise to the city council for its consideration. (Ord. 465 § 16, 1996)

8.14.170 Possessory interest taxation.

The city declares that as a result of this chapter and any franchise issued pursuant hereto, a possessory interest subject to property taxation may be created. The franchisee, as the party in whom the possessory interest will be vested, may be subject to the payment of property taxes so levied. (Ord. 465 § 17, 1996)

8.14.180 Prohibitions and penalties.

The curbside collection and disposition of industrial, commercial and residential solid waste, as described herein, without a duly authorized franchise is prohibited. Any person unlawfully violating any provision of this chapter shall be guilty of an infraction and is punishable as provided under the general provisions of the city of Lindsay Municipal Code. (Ord. 465 § 18, 1996)

Chapter 8.15

NONDISCARDED RECYCLABLES COLLECTION AND DISPOSAL FRANCHISES

Sections:

- 8.15.010 Purpose and objectives.**
- 8.15.020 Nonexclusive franchise licensee or permit.**
- 8.15.030 Definitions.**
- 8.15.040 Franchise, license or permit requirement.**
- 8.15.050 Application and fee.**
- 8.15.060 Term and renewal.**
- 8.15.070 Effect on other franchises, licenses or permits.**
- 8.15.080 Indemnification.**
- 8.15.090 Modification of franchise.**
- 8.15.100 Revocation or suspension.**
- 8.15.110 Duties of franchisee, licensee or permittee.**
- 8.15.120 Reporting requirements.**
- 8.15.130 Assignment of franchise.**
- 8.15.140 Possessory interest taxation.**
- 8.15.150 Prohibitions and penalties.**

8.15.010 Purpose and objectives.

The purpose of this chapter is to regulate the collection and disposition of nondiscarded recyclables within the city of Lindsay ("city") and to control the amount of such recyclables deposited into landfills. Further, it is the purpose of this chapter to establish reporting requirements and guidelines that shall be followed by franchisees, licensees or permittees in disposing of nondiscarded recyclables, thereby assuring compliance with the solid waste diversion requirements imposed by California Public Resources Code Section 41780.

The provisions of this chapter supplement those regulations contained in Chapter 8.14 and Chapter 8.12 of the city of Lindsay Municipal Code relating to the collection and disposition of solid wastes. (Ord. 466 § 1, 1996)

8.15.020 Nonexclusive franchise licensee or permit.

It is declared that in order to more effectively regulate, control and monitor the amount of nondiscarded recyclables being deposited in landfills and document the amount diverted from the solid waste stream, it is in the best interests of the city to require those persons desiring to gather, collect, transport or otherwise dispose of nondiscarded recyclables to obtain from the city a duly authorized franchise, license or permit to do so. Said franchise, license or permit to gather, collect, transport or otherwise dispose of nondiscarded recyclables shall be nonexclusive. Each franchise, license or permit awarded hereunder shall specifically describe the type of recyclable material (e.g., bottles, cans, cardboard, etc.) to be collected and disposed of. (Ord. 466 § 2, 1996)

8.15.030 Definitions.

For purposes of this chapter, certain words and phrases used in this chapter are defined as follows:

"Discarded" means thrown away; abandoned; worthless; lack of economic value.

"Recyclables" means materials that have value and can be diverted from landfill disposal. Those materials that by collecting, sorting, cleansing, treating, and reconstituting would otherwise become solid waste, and by processing can be returned to the economic mainstream in the form of raw materials for new, reused or reconstituted products. (Ord. 466 § 3, 1996)

8.15.040 Franchise, license or permit requirement.

A. Except as provided below no person shall gather, collect, transport or otherwise dispose of nondiscarded recyclables without first obtaining from the city a franchise, license or permit to do so, as provided in this chapter. Such franchise, license or permit shall allow the franchisee, licensee or permittee to gather, collect, transport and dispose of nondiscarded recyclables from any place where the same was placed by its owner or person in control.

B. The provisions of this chapter shall not apply to owners or those in control of nondiscarded recyclables who personally and lawfully transport and dispose of same at properly designated disposal sites. (Ord. 466 § 4, 1996)

8.15.050 Application and fee.

Any person desiring to obtain a franchise, license or permit to collect, gather, transport or otherwise dispose of nondiscarded recyclables as required by Section 8.15.040 shall pay a fee, established by resolution by the city council, to the city clerk and shall make application for the franchise, license or permit to the council. The application shall be in the form on file in the city clerk's office, and shall include, but not be limited to, the following information:

A. The name and address of the applicant, and if the same be a corporation, partnership, association or company, the name of its principal officers, with the address of each, and the names, addresses and percentage of ownership of all owners of the business.

B. A description of each vehicle the applicant intends to operate. Such description should include the make, year of manufacture, the motor and chassis number, the California state license number, and the color scheme, insignia, name, monogram or other distinguishing characteristics used to identify such vehicle.

C. Address and telephone number of proposed place of business.

D. Evidence that all vehicles to be used in providing the recyclable disposal service have been properly licensed, inspected and insured.

E. Evidence that each employee providing the disposal service possesses a valid certificate or drivers license as required by the state of California Vehicle Code.

F. Any other information deemed relevant by the city.

Applications for franchises, licenses or permits to collect and dispose of nondiscarded recyclables shall be processed by the granting official within thirty days after the time period set for submission of applications. The granting official shall present recommendations for award of a franchise, license or permit to the city council at a regularly scheduled meeting of the city council. The council shall conduct a public hearing and by resolution award the franchise, license or permit. (Ord. 466 § 5, 1996)

8.15.060 Term and renewal.

A. Term. The award of the franchise, license or permit shall become effective on a date determined by the council, and shall be for a period of two years, unless sooner terminated, and each franchise, license

or permit so awarded shall be subject to the right of the city to terminate, alter, or amend as provided herein.

B. Renewal. A franchise, license or permit may be renewed if:

1. The franchisee, licensee or permittee has substantially complied with the material terms of the existing franchise, license or permit and applicable law;

2. The quality of the franchisee's, licensee's or permittee's service has been reasonable in light of the community needs;

3. The franchisee, licensee or permittee has the financial, legal, and technical ability to provide the services, facilities and equipment set forth in the application;

C. Renewal Proceeding. In any renewal proceeding, the franchisee, licensee or permittee shall be given adequate notice and fair opportunity for full participation, including the right to present evidence, require the production of evidence, and to question witnesses.

1. A proceeding under this subsection shall be completed within a reasonable time period and the city shall issue a written decision granting or denying the application and the reasons therefor and transmit a copy of such decision to the franchisee, licensee or permittee.

2. Any denial of renewal application shall be based on one or more adverse findings made with respect to the factors described in subsection B of this section, pursuant to the record of the renewal proceedings.

3. The decision of the city council shall be final and conclusive. (Ord. 466 § 6, 1996)

8.15.070 Effect on other franchises, licenses or permits.

Nothing in this chapter shall modify or abrogate in any manner the following:

A. Any franchise previously granted or extended by any county or local governmental agency, or

B. Any contract, license, or any permit to collect solid waste previously granted or extended by a city, county or city and county. (Ord. 466 § 7, 1996)

8.15.080 Indemnification.

The franchisee, licensee or permittee shall indemnify, defend, and hold harmless the city, its council,

officers, officials, agents, employees, boards and commissions from all liability, loss, damage, expense, costs (including attorneys fees and other costs and fees of litigation) of every nature (whether in contract, tort or strict liability), including personal injury, death, or property damage, arising out of franchisee's, licensee's or permittee's or any of its employees' or agents, performance of work or failure to comply with any of the obligations under the franchise agreement, license or permit except such loss or damage caused by the sole negligence or wilful misconduct of the city, its agents, officials, or employees acting within the scope of their employment or authority. (Ord. 466 § 8, 1996)

8.15.090 Modification of franchise.

The city manager, his designee, or other franchise, license or permit granting officer may modify the terms of the franchise, license or permit on a temporary basis at any time, for any time not to exceed thirty days, upon any of the following occurrences:

- A. The closing, bankruptcy, or dissolution of the disposal company.
- B. Suspension, revocation, or termination of the franchisee's, licensee's or permittee's license under this chapter or any other ordinance duly adopted by the city.
- C. Any other circumstance which disrupts or ends the recyclable disposal service in the city without proper notice to allow appropriate council action. (Ord. 466 § 9, 1996)

8.15.100 Revocation or suspension.

The franchise, license or permit may be revoked or suspended if the franchisee, licensee or permittee, any of his/her employees or agents, or any other person authorized thereunder has:

- A. Violated any terms of this chapter or any of the provisions of Chapter 8.12 of the city of Lindsay Municipal Code, Solid Waste.
- B. Violated any terms or conditions of the franchise or other required licenses and/or permits.
- C. Misrepresented a material statement of fact in the application for the recyclable disposal franchise, license or permit.
- D. Committed any act or failed to perform any obligation which adversely affects the health, safety and welfare of the citizens of the city.

E. Deliberately provided false information to the franchise, license or permit granting officials.

If any term or condition of a franchise, license or permit granted hereunder shall become invalid or unenforceable, the city council may by resolution terminate the franchise, license or permit upon a finding that the invalid term or condition was material to the granting of the franchise, license or permit. (Ord. 466 § 10, 1996)

8.15.110 Duties of franchisee, licensee or permittee.

The franchisee, licensee or permittee may collect nondiscarded recyclables originating in the city limits in accordance with the franchise agreement, license or permit. In addition to the above application requirements the franchisee, licensee or permittee, his employees, agents, and any other person authorized under the franchise, license or permit shall:

- A. Obtain the requisite business licenses and permits to operate within the city and pay the appropriate business license fees.
- B. Provide employees, workers, agents, and equipment with identifiable uniforms and/or insignia.
- C. Conduct disposal activities in such a manner and at such times so as not to interfere with or violate any noise or similar ordinance.
- D. Deliver and deposit all nondiscarded recyclables to a properly designated site.
- E. Maintain each vehicle used pursuant to the franchise, license or permit in good working order and abide by all local, state and federal laws applicable to the performance and operation of such vehicles. (Ord. 466 § 11, 1996)

8.15.120 Reporting requirements.

To assist the city in complying with the solid waste diversion requirements as defined in California Public Resources Code Section 41780 the franchisee, licensee or permittee shall maintain and report monthly to the city the following information:

- A. The description and nature of the material (e.g., bottles, cardboard, etc.) collected.
- B. The amount, weight or tonnage of the nondiscarded recyclables collected and disposed of.
- C. Name(s) and address(es) of the site(s) where the above recyclables were disposed.

The franchisee, licensee or permittee shall maintain such records for a period of five years and shall,

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upon reasonable request, make such records available for the city's inspection. (Ord. 466 § 12, 1996)

8.15.130 Assignment of franchise.

No franchise, license or permit issued pursuant to this chapter nor interest therein or duties thereunder shall be sold, assigned, delegated, transferred or otherwise disposed of without the consent of the city expressed by resolution or ordinance. (Ord. 466 § 13, 1996)

8.15.140 Possessory interest taxation.

The city declares that as a result of this chapter and any franchise, license or permit issued pursuant hereto, a possessory interest subject to property taxation may be created. The franchisee, licensee or permittee as the party in whom the possessory interest will be vested, may be subject to the payment of property taxes levied upon such interest. (Ord. 466 § 14, 1996)

8.15.150 Prohibitions and penalties.

The curbside collection and disposition of nondiscarded recyclables, as described herein, without a duly authorized franchise, license or permit is prohibited. Any person unlawfully violating any provision of this chapter shall be guilty of an infraction and is punishable as provided under the general provisions of the city of Lindsay Municipal Code. (Ord. 466 § 15, 1996)

Chapter 8.16

GARAGE SALES

Sections:

- 8.16.010** **Garage sale defined.**
- 8.16.020** **Permit, application and fee requirement.**
- 8.16.030** **Rules and regulations.**
- 8.16.040** **Permit—Revocation.**
- 8.16.050** **Appeal.**
- 8.16.060** **Penalty for violation.**

8.16.010 **Garage sale defined.**

For the purposes of this chapter, a “garage sale” is defined as a sale, offer to sell, or holding for the purpose of selling, conducted by any person or persons, of household furnishings, goods or other tangible personal property, conducted in a noncommercial garage, yard, patio, driveway or on any portion of the premises in a residential zone. This definition does not include sales made on commercial premises properly licensed pursuant to Chapter 5.04 of this code. (Ord. 380 § 3, 1982; Ord. 323 § 1, 1973)

8.16.020 **Permit, application and fee requirement.**

A. Permit. No person shall conduct, promote, advertise or propose to conduct, promote or advertise a garage, yard, patio or similar sale without obtaining a permit from the city clerk.

B. Application and Fee. Any person desiring a permit to conduct, promote, propose or advertise a garage, yard, patio or similar sale as required by subsection A of this section, shall pay a fee (from time-to-time established by resolution by the city council) to the city clerk and shall make application for a permit to conduct, promote, propose, or advertise such sale. Said application for permit shall include, but not be limited to, the following information:

1. The full name and address of the applicant and/or person requesting permission to hold the sale.
2. The address of the property and general designation of the area on the premises where the actual sale will be carried out.
3. The date(s) which the proposed garage, yard, patio or similar sale will be conducted. No sale shall last for more than a three consecutive days.

4. A general description of the property proposed to be offered for sale.

5. A declaration, under penalty of perjury, that the person or persons conducting the sale are the owners or occupants of the property upon which the sale is to be conducted; that no more than two garage sale permits were issued to the applicant during the current calendar year permitting the conduction of a sale at the location of the proposed garage sale, and that none of the personal property offered for sale was purchased for resale or was supplied by anyone other than the principals listed in the permit, and that no more than one other person or family other than the owners or occupants of the premises upon which the garage sale is to be conducted will participate in the sale. (Ord. 968 § 1, 1996; Ord. 323 § 2, 1973)

8.16.030 **Rules and regulations.**

A. All garage, yard, patio or similar sales conducted within the city limits, whether for profit or nonprofit and conducted by the permit holder, his agent, employee, consignee or other person duly authorized by the permit, shall be subject to the following limitations:

1. Each sale shall be conducted only during daylight hours of any given day.

2. No sale shall exceed three consecutive days in duration.

3. No more than one sale may take place at a given address during any four-month period.

4. One additional person or family may jointly participate in a garage sale without the permit required in Section 8.16.020(A), provided the items offered for sale by such additional person or family are as defined in Section 8.16.020(B)(5) of this chapter.

5. No person shall sell or offer for sale personal property in any residential zone except personal property owned, utilized and maintained by such person in connection with the premises which they occupy, and no sale shall include personal property acquired solely for the purpose of resale or close-out of unused items.

6. Property offered for sale shall not be displayed on any sidewalk, street or other public right-of-way.

7. Advertising signs shall not be placed or otherwise displayed on any property other than the

8.16.040

property where the sale is to be conducted. Such signs shall not exceed six square feet in size.

8. Any permit issued under the provisions of the chapter shall be prominently displayed at the location of the sale.

9. The above limitations and restrictions shall not apply to the sale of personal property made pursuant to court order or other lawful judicial process. (Ord. 468 § 2, 1996: Ord. 323 § 3, 1973)

8.16.040 Permit—Revocation.

The city clerk shall revoke any permit for failure of the permittee to comply with all the provisions of this chapter. (Ord. 323 § 4, 1973)

8.16.050 Appeal.

Any person denied a permit, or having had a permit revoked, may appeal the decision of the city clerk to the city council by filing with the city clerk within five days after notice of the denial or revocation, a written request for review of the decision and stating facts supporting the request. The council shall, upon review, affirm, modify or reverse the decision of the city clerk. The action of the council shall be final. (Ord. 323 § 5, 1973)

8.16.060 Penalty for violation.

It is unlawful for any person to promote, advertise or conduct any garage, yard, patio or similar sale without a permit issued pursuant to the provisions of this chapter, or in violation of any of the conditions of the permit, or the provisions of this chapter, or after revocation of a permit, and any violation of the terms of this chapter shall be an infraction with punishment as set forth in Sections 19(C) and 19(D) of the California Penal Code. (Ord. 468 § 3, 1996: Ord. 323 § 6, 1973)

Chapter 8.18

LOST, STOLEN OR ABANDONED SHOPPING CARTS

Sections:

- 8.18.010 Purpose and declaration of nuisance.**
- 8.18.020 Definitions.**
- 8.18.030 Enforcement.**
- 8.18.040 Retrieval of shopping carts.**
- 8.18.050 Storage and disposal of shopping carts.**
- 8.18.060 Appeal of decisions of custodian.**
- 8.18.070 Fines for violations.**
- 8.18.080 City agreements with retail establishments.**

8.18.010 Purpose and declaration of nuisance.

The proliferation of lost or stolen shopping carts abandoned or discarded on public and private property causes blighting conditions in the community, results in the obstruction of free access to public and private sidewalks, streets, parking lots and other ways, and impedes emergency services. For the aforesaid reasons, such lost, stolen or abandoned shopping carts are hereby declared to be a public nuisance which shall be subject to abatement in the manner set forth in this chapter. The purpose of this chapter is to set forth reasonable regulations for the removal of lost, stolen, or abandoned shopping carts from public or private property, to complement and supplement provisions of state law, and to adopt local regulations to the extent not otherwise preempted by state statute. (Ord. 502 § 1 (part), 2001)

8.18.020 Definitions.

For the purpose of this chapter, certain terms are defined as follows:

“Enforcement personnel” means an employee of the city of Lindsay who has been designated to enforce various elements of this chapter.

“Custodian” means an employee of the city of Lindsay who has been designated to be the custodian of shopping carts as defined in this chapter.

“Laundry cart” means a basket which is mounted on wheels and used in a coin-operated laundry or dry cleaning retail establishments by a customer or an attendant for the purpose of transporting fabrics and the supplies necessary to process them.

“Police officer” means a police officer employed by the city.

“Required identification” means all of the information required pursuant to the provisions of Section 22435.1 of the Business and Professional Code of the State of California.

“Shopping cart” means a basket which is mounted on wheels or a similar device generally used in a retail establishment by a customer for the purpose of transporting goods of any kind.

The term “shopping cart” includes a laundry cart. (Ord. 502 § 1 (part), 2001)

8.18.030 Enforcement.

The provisions of this chapter shall be enforced by any enforcement personnel, including, but not limited to police officers. To the extent otherwise permitted by law, said enforcement personnel may enter onto any public or private property in the city to retrieve, remove, store and dispose of any lost, stolen or abandoned shopping cart, or any part thereof. Any act authorized to be performed by the city pursuant to any provisions of this chapter may be performed by any enforcement personnel. (Ord. 502 § 1 (part), 2001)

8.18.040 Retrieval of shopping carts.

A. The city may immediately retrieve any lost, stolen or abandoned shopping cart within the city where the location of the shopping cart will impede emergency services within the meaning of Section 22435.7(c) of the Business and Professions Code of the State of California.

B. The city may immediately retrieve any lost, stolen or abandoned shopping cart within the city which shopping cart does not have the required identification affixed thereto.

C. The city may retrieve any lost, stolen or abandoned shopping cart within the city which shopping cart has the required identification affixed thereto after providing the requisite notice to the owner of the shopping cart, or his agent, as required by Section 22435.7(b) of the Business and Professions Code of the State of California unless such notice has been voluntarily waived by the owner or his or her agent. (Ord. 502 § 1 (part), 2001)

8.18.050 Storage and disposal of shopping carts.

A. Any shopping cart retrieved by the city pursuant to Section 8.18.040 above, or pursuant to Section 22435.7 of the Business and Professions Code, shall be impounded and removed to the cart storage yard.

B. Any shopping cart which does not have the required identification affixed thereto and is impounded by the city shall be stored and disposed of as follows.

1. The enforcement personnel retrieving the shopping cart shall attach a tag thereto, or make a written report, identifying the date, time and general location from where the shopping cart was removed as well as the name of the enforcement personnel who retrieved the shopping cart.

2. The shopping cart shall be delivered and custody thereof given to the custodian at the cart storage yard.

3. If the shopping cart has the name, address, telephone number, or other identifying marks of any retail establishment or person thereon, the city shall attempt to notify such establishment or person of the retrieval and location of the shopping cart and provide an opportunity for such establishment or person to establish ownership or the right to possession of the retrieved shopping cart to the custodian. In addition, if the shopping cart was retrieved from private property, the city shall attempt to notify the owner or occupant, if any of such property and provide an opportunity for such owner or occupant to establish ownership or the right to possession of the retrieved shopping cart to the custodian.

4. The shopping cart shall be released to any establishment or person who submits evidence satisfactory to the custodian to prove ownership or the right to possession of the shopping cart. The shopping cart shall be released only upon payment of the retrieval fee and applicable storage charges as established by resolution of the city council of the city; provided, however, no fee shall be charged in any instance where the owner or person entitled to possession of the shopping cart proves to the satisfaction of the custodian that said shopping cart was not a lost, stolen or abandoned shopping cart within the meaning of this chapter.

5. If the owner or other person or establishment entitled to possession of a lost, stolen or abandoned shopping cart does not appear and present evidence satisfactory to the custodian for the release of the shopping cart within ninety calendar days following the date said cart is retrieved by the city, the shopping cart may be sold or disposed of by the custodian.

C. Any shopping cart which has the required identification affixed thereto and is impounded by the city following compliance with the applicable provisions of this chapter shall be stored and disposed of as follows:

1. The enforcement personnel retrieving the shopping cart shall attach a tag thereto, or make a written report, identifying the date, time and general location from where the shopping cart was removed as well as the name of the enforcement personnel who retrieved the shopping cart.

2. The shopping cart shall be delivered and custody thereof given to the custodian at the cart storage yard.

3. The city shall provide a written notice of violation to the retail establishment or owner as identified on the required identification informing such owner or establishment of the retrieval and location of the shopping cart. In addition, if the shopping cart was retrieved from private property, the city shall attempt to notify the owner or occupant, if any, of such property of the retrieval and location of the shopping cart and provide an opportunity for such owner or occupant to establish ownership or the right

to possession of the retrieved shopping cart to the custodian.

4. The shopping cart shall be released to any establishment or person who submits evidence satisfactory to the custodian to prove ownership or the right to possession of the shopping cart. The shopping cart shall be released only upon payment of the fine, if any, established by this chapter, the redemption fee and applicable storage charges as established by resolution of the city council of the city; provided, however, no fee or charges shall be imposed or required in any instance where the owner or person entitled to possession of the shopping cart proves to the satisfaction of the custodian that said shopping cart was not a lost, stolen or abandoned shopping cart within the meaning of this chapter.

5. If the owner or other person or establishment entitled to possession of the shopping cart does not appear and present evidence satisfactory to the custodian for the release of the shopping cart within thirty calendar days following the date of the notice of violation provided herein, the shopping cart may be sold or disposed of by the custodian. (Ord. 502 § 1 (part), 2001)

8.18.060 Appeal of decisions of custodian.

Any decision of the custodian pursuant to this chapter shall be subject to appeal to the city manager of the city by filing a written notice of appeal, and specifying the grounds therefore, with the city clerk of the city within ten calendar days following the date of said decision by the custodian. In the absence of a timely filed appeal, the decision of the custodian shall be final. If a timely appeal is filed, the city clerk shall notify the appellant of the date, time and place where such appeal will be considered by the city manager. In such instances, the decision of the city manager shall be final. (Ord. 502 § 1 (part), 2001)

8.18.070 Fines for violations.

The owner of a shopping cart shall pay a fine, and there is hereby imposed upon such owner as a debt owing to the city, the sum of fifty dollars for each occurrence in excess of three occurrences during any six-month period for failure to retrieve shopping carts

in accordance with Section 22435.7 of the Business and Professions Code of the State of California. (Ord. 502 § 1 (part), 2001)

8.18.080 City agreements with retail establishments.

Notwithstanding any other provision of this chapter to the contrary, nothing contained in this chapter shall be deemed to impose a requirement upon the city with regard to advance notice to a shopping cart owner or retail establishment prior to the retrieval and impounding of a shopping cart to the extent the city and the owner or retail establishment have entered into an agreement which waives such requirement. Nothing contained herein shall require the city and any owner or retailer to enter into any such agreement. The city manager of the city is authorized to enter into such agreements on behalf of the city. (Ord. 502 § 1 (part), 2001)



Chapter 8.20

NOISE CONTROL

Sections:

- 8.20.010 Findings.**
- 8.20.020 Disturbing noises prohibited.**
- 8.20.030 Definitions.**
- 8.20.040 Standards for determining violation.**
- 8.20.050 Excessive noise or sounds prohibited.**
- 8.20.060 Motor vehicle noise levels.**
- 8.20.070 Enclosed places of public entertainment.**
- 8.20.080 Aircrafts.**
- 8.20.090 Exemptions.**
- 8.20.100 Permit for relief from levels.**
- 8.20.110 Violation—Penalty.**
- 8.20.120 Violation—Prosecution.**
- 8.20.130 Violation—Injunctive relief.**

8.20.010 Findings.

It is found and declared that:

A. The making and creation of excessive, unnecessary or unusually loud noises within the limits of the city of Lindsay is a condition which has existed for some time and the extent and volume of such noises is increasing;

B. The making, creation or maintenance of such excessive, unnecessary, unnatural or unusually loud noises which are prolonged, unusual and unnatural in their time, place and use affect and are a detriment to public health, comfort, convenience, safety, welfare and prosperity of the residents of the city; and

C. The necessity in the public interest for the provisions and prohibitions contained and enacted are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the city of Lindsay and its inhabitants. (Ord. 521 § 1 (part), 2006; Ord. 355 § 1-101, 1978)

8.20.020 Disturbing noises prohibited.

It is unlawful for any person to make, continue, cause to be made or continued, any excessive, unnecessary or unusually loud noise, or endangers the comfort, repose, health, peace or safety of others within the limits of the city. (Ord. 521 § 1 (part), 2006; Ord. 355 § 1-102, 1978)

8.20.030 Definitions.

For the purposes of this chapter, certain words and phrases used herein are defined as follows:

“Ambient noise” means the all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources, near and far.

“Decibel” means one-tenth of a bel and is a unit of level when the base of the logarithm is the tenth root of ten, and the quantities concerned are proportional to power.

“Emergency work” means work made necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from an imminent exposure to danger.

“Fixed noise source” means a stationary device which creates sounds while fixed or motionless, including, but not limited to, residential, agricultural, industrial and commercial machinery and equipment, pumps, fans, compressors, air conditioners, and refrigeration equipment.

“Mobile noise source” means any noise source other than a fixed noise source.

“Motor vehicles” means and includes, but is not limited to, off-road vehicles, mini-bikes and go-carts.

“Prima facie” means legally sufficient to establish a fact or a case unless disproved.

“Property” means something to which a person has legal title and or use, and defines the legal boundaries.

“Sound level (noise level),” in decibels (dB), means the sound pressure level as measured with the “A” weighted and slow response by a sound meter.

“Sound level meter” means an instrument including a microphone, an amplifier, an output meter, and frequency weighted network for the measurement of noise and sound level in a specified manner.

“Sound truck” means any motor vehicle, or any other vehicle regardless of motive power, whether in motion or stationary, having mounted thereon any sound-amplifying equipment.

“Sound-amplifying equipment” means any machine or device for amplification of the human voice, music, or any other sound. Sound-amplifying equipment shall not include standard automobile radios or tape players when heard only by the occupants of the vehicle in which the automobile radio is installed. Sound-amplifying equipment, as used in this chapter, shall not include warning devices in authorized emergency vehicles or horns or other warning devices in a vehicle which is used only for traffic safety purposes. (Ord. 521 § 1 (part), 2006; Ord. 355 § 1-103(A), 1978)

8.20.040 Standards for determining violation.

The standards which shall be considered in determining whether a violation of Section 8.20.020 of this chapter exists shall include, but not limited to the following:

- A. The volume of noise;
- B. The intensity of the noise;
- C. Whether the nature of the noise is usual or unusual;
- D. Whether the origin of the noise is natural or unnatural;
- E. The volume and intensity of the background noise, if any;
- F. The proximity of the noise to residential sleeping facilities;
- G. The nature and zoning of the area within which the noise emanates;
- H. The density of inhabitation of the area within which the noise emanates;
- I. The time of the day or night the noise occurs;
- J. The duration of the noise;
- K. Whether the noise is recurrent, intermittent or constant;
- L. Whether the noise is produced by a commercial or noncommercial activity. (Ord. 521 § 1 (part), 2006; Ord. 355 § 1-103(B), 1978)

8.20.050 Excessive noise or sounds prohibited.

It is unlawful for any person to make, continue, allow or cause to be made or emanate any excessive, unnecessary, unnatural or unusually loud noise or sound, or allow or cause to be made any excessive, unnecessary, unnatural or unusually loud noise or sound from any radio, phonograph, disc player, tape deck, stereo, television or other mechanical, electrical or electronic sound amplification device or instrument which either annoys, disturbs, injures or endangers the comfort, repose, quiet, health, peace or safety of others, within the limits of the city; such act or acts being declared a public nuisance. In interpreting and applying this section, the following shall apply:

A. Emanating noise or sound shall be defined for these purposes as excessively, unnecessarily, unnaturally or unusually loud when it is plainly audible to a person at a minimum distance from the source of such noise or sound. Proof of same shall be prima facie evidence of a violation of this section.

B. Prima facie evidence that such noise or sound annoys, disturbs, injures or endangers the comfort, repose, quiet, health, peace, business or safety of other persons is shown by proof of subsections A and D of this section, or a complaint by a person or persons regarding such noise or sound.

C. The distance from the source of such noise or sound shall be measured from the actual source itself except where the source is located on private property in which case the distance shall be measured from the property line.

D. Alternative prima facie evidence that such noise or sound is as excessively, unnecessarily, unnaturally or unusually loud is shown by a sound level exceeding the ambient sound level measured at the property line or, in the case of common wall condominiums, apartments or business facilities, measured within the adjoining occupied unit.

E. Nothing in this section prohibits or declares unlawful or a nuisance:

1. The operation of warning or amplification devices by emergency, fire or law enforcement vehicles or personnel;

- 2. Lawful use of vehicle horns or backup warning devices;
- 3. Private or public warning equipment or systems;
- 4. The conduct of previously authorized or otherwise lawful public activity such as parades, speeches, lectures, ceremonies, entertainment, sports, music or recreation events; or
- 5. The usual and customary operations of bells, gongs, buzzers, or similar mechanical, electrical or electronic sound amplification devices to mark time or call to attendance for an otherwise lawful use or purpose.

F. Sound Amplification Devices (Motor Vehicle Code, Section 27007). No driver of a motor vehicle shall operate, or permit the operation of any sound amplification system which can be heard outside the vehicle from fifty or more feet when the vehicle is operated upon a highway unless that system is being operated to request assistance or warn of a hazardous situation. This shall not apply to authorized emergency vehicles or vehicles operated by gas, electric, communications, or water utilities. This section does not apply to the sound systems of vehicles used for advertising, or in parades, political or other special events, except that use of sound systems on those vehicles may be prohibited by a local authority by ordinance or resolution.

- G. Public Park/City Facilities.
 - 1. Sound or noise produced by amplification equipment used at all city parks and other city facilities shall be measured at a point not greater than one hundred forty feet from the sound source within the city parks or facilities and shall not exceed eight-five decibels.
 - 2. It should be the event sponsor's responsibility to monitor and measure the sound at regular intervals of approximately thirty minutes to insure that sound levels are below the standard decibels. The sponsor shall provide a sound level meter to accomplish this task.
 - 3. Failure of the event sponsor to enforce the sound limits may result in any or all of the following:
 - a. The forced curtailment of activities as ordered by the police department;
 - b. Citation issued by the police department under the city's nuisance ordinance;
 - c. Forfeiture of deposits placed with the city by the sponsor for use of the facility. (Ord. 521 § 1 (part), 2006; Ord. 355 § 1-103(C), 1978)

8.20.060 Motor vehicle noise levels.

A. It is unlawful to operate a motorized vehicle within the city limits which creates a noise or sound which exceeds the noise level limits set in Table II:

District	Time	Sound Level Decibels
Residential	10:00 p.m. to 7:00 a.m.	50
	7:00 a.m. to 10:00 p.m.	70
Commercial	10:00 p.m. to 7:00 a.m.	60
	7:00 a.m. to 10:00 p.m.	70
Public Parks and City Facilities	10:00 p.m. to 10:00 a.m.	60
	10:00 a.m. to 10:00 p.m.	85

TABLE II. LIMITING NOISE LEVELS FOR MOTOR VEHICLES

1. Trucks and Buses.	
Over 10,000 pounds:	
87 dB(A) measured at 50 feet	Maximum allowable limit
93 dB(A) measured at 25 feet	Maximum allowable limit

Under 10,000 pounds:	
80 dB(A) measured at 50 feet	Maximum allowable limit
86 dB(A) measured at 25 feet	Maximum allowable limit
2. Passenger Cars:	
78 dB(A) measured at 50 feet	Maximum allowable limit
86 dB(A) measured at 25 feet	Maximum allowable limit
3. Motorcycles, Including Other Vehicles.	
87 dB(A) measured at 50 feet	Maximum allowable limit
93 dB(A) measured at 25 feet	Maximum allowable limit

B. Measurement of Noise. The measurement of sound or noise shall be made with a sound level meter. The instruments shall be maintained in calibration and good working order. Octave band corrections may be employed in meeting the response specification. A calibration check shall be made of the system at the time of any noise measurement. Measurements recorded shall be taken so as to provide a proper representation of the noise source. The microphone during measurement shall be positioned so as not to create any unnatural enhancement or diminution of the measured noise. A windscreen for the microphone shall be used when required. Traffic, aircraft and other transportation noise sources and other background noise sources shall not be considered in taking measurements except where such background noise interferes with the primary noise being measured. (Ord. 521 § 1 (part), 2006; Ord. 355 § 1-103(D), 1978)

8.20.070 Enclosed places of public entertainment.

A. It is unlawful to sustain in any enclosed place of public entertainment including, but not limited to, a restaurant, bar, cafe, discotheque, dance hall, any amplitude equal to or in excess of ninety-five dB(A) sustained for more than thirty seconds.

B. Measurement of Noise. Such sound or noise is to be measured by a sound level meter from any area to which the public is invited within any enclosed place of entertainment. (Ord. 521 § 1 (part), 2006; Ord. 355 § 1-103(E), 1978)

8.20.080 Aircrafts.

It is unlawful for any person to operate or cause to be operated any type of aircraft over the city which produces noise levels exceeding eighty-seven dB(A) within the city. (Ord. 521 § 1 (part), 2006; Ord. 355 § 1-103(F), 1978)

8.20.090 Exemptions.

The following uses and activities shall be exempt from noise level regulations:

A. Noises of safety signals, warning devices, and emergency pressure relief valves;

B. Noises resulting from any authorized emergency vehicle, when responding to an emergency call or acting in time of emergency;

C. Noises resulting from emergency work as defined in Section 8.20.030 of this chapter;

D. Any other noise resulting from activities of a temporary duration permitted by law and for which a license or permit therefor has been granted in accordance with Section 8.20.100 of this chapter;

E. Any aircraft operated in conformity with, or pursuant to, federal law, federal air regulations, and air traffic control instruction used pursuant to and within the duly adopted federal air regulations shall be exempt from the provisions of Section 8.20.080 as well as the other regulations in this chapter. Any aircraft operating under technical difficulties, in any kind of distress, under emergency orders of air traffic control or being operated pursuant to and subsequent to the declaration of an emergency under federal air regulations shall also be exempt from the provisions of Section 8.20.080 as well as the other regulations of this chapter. (Ord. 521 § 1 (part), 2006; Ord. 355 § 1-103(G), 1978)

8.20.100 Permit for relief from levels.

Applications for a permit for relief from the noise level designated in this chapter on the basis of undue hardship and special events may be made to the city manager or his duly authorized representative. Any permit granted by the city manager under this section shall contain all conditions under which the permit has been granted and shall specify a reasonable time that the permit shall be effective. The city manager, or his duly authorized representative, may grant the relief applied for if he finds:

A. That additional time is necessary for the applicant to alter or modify his activity or operation to comply with this chapter; or

B. The activity, operation or noise source will be of temporary duration, and cannot be done in a manner that would comply with this chapter; and

C. That no other reasonable alternative is available to the applicant; and

D. The city manager may prescribe any conditions or requirements he deems necessary to minimize adverse effects upon the community or surrounding neighborhood. (Ord. 521 § 1 (part), 2006: Ord. 355 § 1-103(H), 1978)

8.20.110 Violation—Penalty.

Each violation of the provisions of this chapter shall be deemed a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars or both. Upon recommendation of the prosecuting attorney, the court may reduce the charged offense from misdemeanor to an infraction punishable under Chapter 1.16 of this code. (Ord. 521 § 1 (part), 2006: Ord. 355 § 1-104, 1978)

8.20.120 Violation—Prosecution.

Violations of this chapter shall be prosecuted in the same manner as other misdemeanor violations of the city's code; provided, however, that in the event of violation of Section 8.20.050 or 8.20.060 of this chapter, a written notice of intention to prosecute will be given the alleged violator not less than five calendar days prior to the issuance of the misdemeanor complaint. No complaint shall be issued in the event

the cause of the violation is removed, the condition abated or fully corrected within the five-day period. In the event the alleged violator cannot be located in order to serve the notice of intention to prosecute, the notice as required in this section shall be deemed to be given upon mailing such notice by registered or certified mail to the alleged violator at his last known address or at the place where the violation occurred, in which event the five-day period shall commence at the date of the day following the mailing of the notice. (Ord. 521 § 1 (part), 2006: Ord. 355 § 1-105, 1978)

8.20.130 Violation—Injunctive relief.

As an additional remedy, the operation or maintenance of any device, instrument, vehicle or machinery in violation of any provision hereof and which causes discomfort or annoyance to reasonable persons of normal sensitiveness or which endangers the comfort, repose, health or peace of residents in the area shall be deemed, and is declared to be, a public nuisance and may be subject to abatement summarily by a restraining order or by injunction issued by a court of competent jurisdiction. (Ord. 521 § 1 (part), 2006: Ord. 355 § 1-106, 1978)

Chapter 8.22**FIREWORKS****Sections:**

- 8.22.010** **Procedures.**
- 8.22.020** **Permit issuance.**
- 8.22.030** **Hours of operation—Sales—
Discharge.**
- 8.22.040** **Vendor liability insurance re-
quired.**
- 8.22.050** **Compliance with local, state
and federal regulations.**
- 8.22.060** **Temporary use permit.**
- 8.22.070** **Temporary sales tax permit
required.**
- 8.22.080** **Booth dimensions—
Temporary status only.**
- 8.22.090** **General requirements.**
- 8.22.100** **Operation of stand.**
- 8.22.110** **Fireworks limitations and pro-
hibitions.**
- 8.22.120** **Fire department inspection.**
- 8.22.130** **Enforcement—Penalties.**
- 8.22.140** **Violations.**

8.22.010 **Procedures.**

The director of public safety, or his designee, may, upon due application and approval of the city council, issue to properly qualified persons and organizations a permit for the retail sale of safe and sane fireworks. Applicants must be community-benefit, nonprofit associations or nonprofit corporations organized primarily for veteran, patriotic, welfare, religious, youth or eleemosynary purposes. Each such organization must have its principal and permanent meeting place within the corporate boundaries of the city of Lindsay. There shall be no more than one retail stand/booth for each permittee. (Ord. 490 § 1 (part), 1998)

8.22.020 **Permit issuance.**

Upon verification of the application by the director of public safety or his designee, the city council may authorize a permit to be issued. Such permit shall be issued or denied at the discretion of the city

council and subject to such other reasonable conditions as the city council deems necessary to protect the public health, safety and welfare. Permits shall be issued only to persons who are twenty-one years of age or older at the time of application. (Ord. 490 § 1 (part), 1998)

8.22.030 **Hours of operation—Sales—
Discharge.**

A. Safe and sane fireworks as defined by Section 12529 of the state of California Health and Safety Code may be sold within the city limits only during the period beginning at twelve noon on the twenty-ninth day of June and ending at eleven-thirty p.m. on the fourth day of July, pursuant to the provisions of this chapter and not otherwise.

B. Safe and sane fireworks may be discharged (ignited, exploded) within the city only between the hours of five p.m. and eleven p.m. on the fourth day of July. (Ord. 490 § 1 (part), 1998)

8.22.040 **Vendor liability insurance re-
quired.**

Prior to issuance of a permit, the applicant must, at his own expense, secure from a reputable insurance company permitted to do business in the state, a policy of public liability and property damage insurance, with minimum limits of one hundred thousand dollars/three hundred thousand dollars bodily injury and fifty thousand dollars property damage, and provide evidence of same to the administrative authority.

A. The policy shall name the city and its officers, agents and employees as additional insured and shall protect them from claims for damage or injury suffered by any person arising from the sale and/or use of safe and sane fireworks.

B. The insurance shall be in full force and effect on the date of issuance of the fireworks permit and shall expire not less than one year after the last date of fireworks sales established by the city council each year. (Ord. 490 § 1 (part), 1998)

8.22.050 **Compliance with local, state and
federal regulations.**

Permittees must comply with all local, state and federal regulations relating to the sale and disposition of fireworks. (Ord. 490 § 1 (part), 1998)

8.22.060 Temporary use permit.

Permittees must obtain a temporary use permit from the Lindsay planning department. Applicants for the temporary use permit must identify the proposed site and show written permission from the owner authorizing use of said site for the stated purpose. Applications for temporary use permits are limited to authorized representatives of the individual nonprofit entities. (Ord. 490 § 1 (part), 1998)

8.22.070 Temporary sales tax permit required.

Organizations selling fireworks are required to obtain a temporary sales tax permit from the State Board of Equalization. (Ord. 490 § 1 (part), 1998)

8.22.080 Booth dimensions—Temporary status only.

All retail sales of safe and sane fireworks shall be permitted only from within a temporary fireworks stand and sales from any other building, facility or structure is prohibited. Temporary stands shall be subject to the following provisions:

A. No fireworks stand shall be located within twenty-five feet of any building nor within one hundred feet of any gasoline pump or liquid propane storage area.

B. All stands shall be erected under the supervision of the Lindsay building inspector who shall require that stands be constructed in a manner to reasonably ensure the safety of attendants and customers. Strict adherence to the Lindsay building code need not apply.

C. No stand shall have a floor area in excess of four hundred square feet. The width and length of each stand shall be a maximum of ten feet by forty feet, respectively.

D. Each stand must have at least two exits located on separate walls.

E. Each stand shall keep easily accessible a minimum of one two-and-one-half gallon water pressure type fire extinguisher and one 2A10BC rated dry chemical fire extinguisher and each shall be in good working order and bear a current inspection sticker. Extinguishers must be of a type approved for such use by the Lindsay fire department. (Ord. 490 § 1 (part), 1998)

8.22.090 General requirements.

A. Each stand must be located in an area clear of all weeds and combustible materials within fifty feet in all directions.

B. "NO SMOKING" signs shall be prominently displayed on the front, back and sides of the fireworks stand.

C. Each stand must be attended at all times by a supervising adult of at least twenty-one years of age whenever fireworks are inside the stand. Remaining inside the stand for any reason between the hours of eleven p.m. to nine a.m. is strictly prohibited.

D. The sale of fireworks shall not begin before twelve noon on the twenty-ninth day of June and shall not continue beyond eleven p.m. on the fourth day of July.

E. Hours of operation shall be limited to nine a.m. to eleven p.m. daily.

F. All unsold stock and any litter shall be removed from the location by five p.m. on the fifth day of July.

G. The fireworks stand shall be removed from the temporary location by eight p.m. on the sixth day of July, and any resulting litter shall be cleared from said location by said time and date.

H. Prior to the issuance of a permit, each applicant shall deposit one hundred dollars (cash, certificate of deposit or a surety bond made payable to the city of Lindsay) with the public safety director or his designee, under the provisions of this chapter. Such deposit shall be refundable upon full compliance with the provisions and requirements of this chapter, including but not limited to the removal of the stand and cleaning of the site. In the event the permittee does not so comply in the manner required by the Lindsay building inspector, the city may do so, or cause the same to be done by other persons, and the reasonable cost thereof shall be a charge against the permittee and his deposit or surety bond. (Ord. 490 § 1 (part), 1998)

8.22.100 Operation of stand.

A. No entity other than the organization named on the permit shall operate the stand for which the permit is issued.

B. No person other than members of the organization named on the permit, or the wives or husbands or members' children at least twenty-one

years of age shall sell or otherwise participate in the sale of fireworks at such stand.

C. No person shall be paid any consideration for selling or otherwise participating in the sale of fireworks at any stand. (Ord. 490 § 1 (part), 1998)

8.22.110 Fireworks limitations and prohibitions.

A. All fireworks sold and/or discharged with the city limits must be of a type permitted by law and described as "Safe and Sane" and shall bear the caption "approved by the State Fire Marshal."

B. No person shall ignite, light or cause to be lighted any fireworks or other combustible material within the stand or within two hundred feet thereof.

C. It is unlawful for any person to ignite, explode, project or otherwise fire or use, or permit the ignition, explosion or projection of any fireworks upon, over or onto the property of another, or to ignite, explode, project or otherwise fire or make use of any fireworks within ten feet of any residence, dwelling or other structure. (Ord. 490 § 1 (part), 1998)

8.22.120 Fire department inspection.

Fireworks stands will be inspected at least twice daily during the days of operation. Each inspection and report will consist of not less than one-half hour, which time will be billed to the permittee at the time of application in accordance with fees established for said inspections. (Ord. 490 § 1 (part), 1998)

8.22.130 Enforcement—Penalties.

If, in the judgment of the director of public safety or his designee, the construction of the stand, materials offered for sale, or the conduct of the operations therein do not conform to the provisions of this chapter, said director or his designee may order the stand immediately closed. (Ord. 490 § 2, 1998)

8.22.140 Violations.

Any person or persons violating any condition of this chapter shall be punished in accordance with provisions set forth in Chapter 1.16 of the Lindsay Municipal Code. (Ord. 490 § 3, 1998)

Chapter 8.24

PUBLIC PARK HOURS

Sections:

- 8.24.010 Designated.**
- 8.24.020 Exemption permission.**

8.24.010 Designated.

The city park shall be open to the public between the hours of six a.m. to ten p.m. of each and every day; and it is unlawful for any person or persons other than city personnel conducting city business therein to occupy or be present in the park during any hours which the park is not open to the public excepting therefrom those portions of the city park which are maintained public streets which remain open for vehicular traffic, but it is unlawful to park any automobile or other means of conveyance on the streets during the hours specified in this section. (Ord. 347 (part), 1976)

8.24.020 Exemption permission.

Whenever any group, association or organization desires to use the park facilities for any particular purpose during the hours that the park is closed, a representative of the group, association or organization shall first obtain permission from the director of parks and recreation. The director of parks and recreation may adopt an application form to be used by him for such situation. The director of parks and recreation shall grant the application if it appears that the use by the group, association or organization is legal and will not cause any undue burden upon the officers of the department of public safety of the city. (Ord. 347 (part), 1976)

Chapter 8.28

WEED ABATEMENT

Sections:

- 8.28.010** Fire or health hazard prohibited.
- 8.28.020** Nuisance designated.
- 8.28.030** Notice to abate.
- 8.28.040** City abatement.
- 8.28.050** Collection of abatement charges.
- 8.28.060** Penalty for violation.

8.28.010 Fire or health hazard prohibited.

It is unlawful for any owner of real property, or lessee thereof, or occupant thereof, within the city, to allow the real property or premises to become or constitute or be deemed, within the discretion of the fire chief of the city, a fire hazard or a hazard to the health and welfare of the city, other property therein or the residents thereof, as a result of the growth of and/or the existence of noxious weeds and grasses and/or other vegetation or debris and refuse. (Ord. 324 § 1, 1973)

8.28.020 Nuisance designated.

The maintenance of real property in such condition within the city whereby noxious weeds or grasses and/or other vegetation, debris or refuse are allowed to grow, decay, gather or accumulate so as to constitute a fire hazard or a danger to the city, other property therein or the residents thereof or the general public, shall constitute a public nuisance. (Ord. 324 § 2, 1973)

8.28.030 Notice to abate.

When the hazards set forth in Section 8.28.010 or the conditions set forth in Section 8.28.020 exist, it shall be the duty of the fire chief to notify the property owner, lessee or occupant thereof to abate such condition forthwith. The notice shall be given in writing to the occupant thereof, and in the event that the occupant thereof is not the owner of record thereof as shown upon the last assessment roll of the city, or in the event that the real property is unoccupied or vacant, by giving written notice of the condition and demand to abate them by mailing a

copy of the notice by United States mail to the owner thereof of record as shown upon the last assessment roll of the city, as maintained in the office of the city clerk. The notice shall set forth in detail the conditions constituting the hazard, the legal description and location of the real property upon which the condition exists, a demand that the condition be abated within a period of not to exceed fifteen days of the mailing of the notice, together with a copy of the ordinance codified in this chapter. (Ord. 409, 1986; Ord. 324 § 3, 1973)

8.28.040 City abatement.

In the event that the hazardous condition of the real property described in this chapter is not abated pursuant to the notice, the fire chief shall immediately thereafter notify the public works department of the city, and the department shall forthwith and without further notice undertake to abate the nuisance and hazardous condition by use of fire control in cooperation with the fire department, or by discing of grasses and weeds or by removal of refuse and debris, as the case may be. The public works department may use city personnel and equipment to abate the condition or if it is deemed necessary hire outside personnel and equipment for the abatement, or contract with others for the abatement. (Ord. 324 § 4, 1973)

8.28.050 Collection of abatement charges.

In the event that the abatement of the nuisance or hazardous condition is not done by the owner or occupant or lessee thereof, but by the city in any manner set forth in Section 8.28.040, any and all charges, costs or expense thereof, paid or incurred by the city shall be billed by the city to the owner of the real property and shall become a charge and lien upon the real property upon which the abatement work was performed, and in the event it is not paid within thirty days of mailing of the billing, then and in that event the costs and expense shall become a lien upon the real property and be a charge thereon, and shall be added to the annual tax bill assessed and payable upon the real property to the city until it has been fully and completely paid. (Ord. 324 § 5, 1973)

8.28.060

8.28.060 Penalty for violation.

Any violation of this chapter shall constitute a misdemeanor and shall be punishable by a fine not to exceed two hundred dollars for the first offense of this chapter, and by fine of five hundred dollars or imprisonment for not more than six months for any subsequent violation of this chapter. (Ord. 324 § 6, 1973)

Chapter 8.32

RECYCLING AND DIVERSION OF CONSTRUCTION AND DEMOLITION DEBRIS

Sections:

8.32.010	Purpose.
8.32.020	Definitions.
8.32.030	Deconstruction and salvage and recovery.
8.32.040	Diversion requirements.
8.32.050	Projects exempt from this chapter.
8.32.060	Submission and required contents of C&D Debris Recycling and Reuse Plan.
8.32.070	Evidence of compliance with C&D Debris Recycling and Reuse Plan.
8.32.080	Diversion requirement exemption.
8.32.090	On-site practices.
8.32.100	Reporting.
8.32.110	Enforcement.
8.32.120	Violations and penalties.
8.32.130	Appeal.
8.32.140	C&D Debris Recycling and Reuse Plan.

8.32.010 Purpose.

The purpose of this chapter is to increase the recycling and reuse of construction and demolition debris, consistent with the goals of the California Integrated Waste Management Act of 1989. (Ord. 517 § 1, 2006)

8.32.020 Definitions.

For the purposes of this chapter, the following words and phrases shall have the following meanings unless the context otherwise requires:

“Accessory structure” means a structure containing no kitchen or bathroom and located upon the same lot or parcel as the principal use or structure to which it is an accessory. The structure is customary,

incidental and subordinate to the use of the principal building or the principal use of the land. All accessory structures shall be constructed with, or subsequent to, the construction of the principal structure or activation of the principal use.

“Applicant” means any individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever who applies to the city for the applicable permits to undertake any construction, demolition or renovation project within the boundaries, as defined in this section, and who is, therefore, responsible for meeting the requirements of this section.

“Building official” or “director” means the officer or other designated authority charged with the administration and enforcement of this section, or the city’s duly authorized representative.

“Construction” means all building, landscaping, remodeling, including the addition, removal or destruction of buildings and landscaping.

“Construction and demolition debris” means and includes:

1. Used or commonly discarded materials generally considered to be not water soluble and nonhazardous in nature, including, but are not limited to, steel, copper, aluminum, glass, brick, concrete, asphalt material, pipe, gypsum, wallboard and lumber from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure and/or landscaping, including rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing, landscaping and development operations for a construction project; or

2. Remnants of new materials, including, but are not limited to, cardboard, paper, plastic, wood and metal scraps from any construction, demolition and/or landscape project.

“Contractor” means any person or entity holding, or required to hold, a contractor’s license of any type under the laws of the state of California, or who performs (whether as contractor, subcontractor, owner-builder, or otherwise) any construction, demolition, remodeling, renovation or landscaping service relat-

ing to buildings or accessory structures in the city's boundaries.

"Covered project" means and includes any project which consists of one or more of the following:

1. Demolition projects that are five hundred square feet or greater;
2. Any project involving renovation of a kitchen and/or bath facility irrespective of total square footage or value;
3. The renovation, remodel or addition to an existing residential structure that is equal to or greater than five hundred square feet and/or projects that exceed twenty thousand dollars;
4. The renovation, remodel or addition to an existing commercial or multifamily residential structure that is equal to or greater than one thousand square feet and/or projects that exceed twenty thousand dollars;
5. Residential development and any new residential structure that is equal to or greater than one thousand square feet and/or projects that exceed twenty thousand dollars;
6. Commercial or multifamily residential development, and any new structure that is equal to or greater than one thousand square feet and/or projects that exceed twenty thousand dollars;
7. All city-sponsored construction, demolition and renovation projects that are equal to or greater than one thousand square feet;
8. All city services and construction projects which are awarded pursuant to the competitive bid procedures.

"Deconstruction" means a process to dismantle or remove usable materials from structures, in a manner which maximizes the recovery of building materials for reuse and recycling and minimizes the amount of waste transported for disposal in landfills and transformation facilities.

"Demolition" means the deconstructing, razing, ruining, tearing down or wrecking of any structure, wall, fence or paving, whether in whole or in part, whether interior or exterior. Demolition needs to be done by a contractor or owner-builder.

"Designated recyclable and reusable materials" means and includes:

1. Inert solids, asphalt and masonry building materials generally used in construction including, but are not limited to, concrete, rock, stone and brick;
2. Wood materials including any and all dimensional lumber, fencing or construction wood that is not chemically treated, creosoted, CCA pressure treated, contaminated or painted;
3. Vegetative materials including trees, tree parts, shrubs, stumps, logs, brush or any other type of plants that are cleared from a site for construction or other use. The following materials are excluded as the materials are not recyclable and should be land-filled: bamboo, palm fronds and yucca;
4. Metals including all metal scrap such as, but are not limited to, pipes, siding, window frames, door frames and fences;
5. Roofing materials including wood shingles and shakes as well as asphalt, stone and slate based roofing material;
6. Salvageable materials and structures including, but are not limited to, doors, windows, fixtures, hardwood flooring, sinks, bathtubs and appliances;
7. Any other materials that the building official or director determines can be diverted due to the identification of a recycling facility, reuse facility or market accessible from the county.

"Director" means the agency's director of city services or his/her authorized representative.

"Divert" and "diversion" mean to use material for any lawful purpose other than disposal in a landfill, transformation facility or alternative daily cover. Methods to divert materials from landfills include reuse, salvage and recycling. Diversion does not include illegal dumping.

"Emergency demolition" means an emergency demolition can be performed only when a facility is determined to be structurally unsound and in danger of imminent collapse and a state or local government agency has issued an immediate demolition order. The order for emergency demolition only applies to the part of the building that is unsound; attached buildings may not be demolished under this order and must be treated as a regular demolition.

"Facilities" means recycling, salvage and reuse establishments and landfills.

“Inert solids” means and includes asphalt, concrete, rock, stone, brick, sand, soil and fines.

“Noncovered projects” means construction, demolition and renovation projects within the city that do not meet the established thresholds for covered projects.

“Owner-builder.” See “Contractor.”

“Permit” means an official document or certificate issued by the building official authorizing performance of a specified activity.

“Project” means any activity involving construction, demolition or renovation, and which requires issuance of a permit from the city of Lindsay.

“Recyclables” means materials which would otherwise become solid waste but which are capable of or suitable for recycling.

“Recycling” means the process of collecting, sorting, cleansing, treating and reconstituting or converting construction and demolition debris that would otherwise become solid waste, and returning them to the economic mainstream in the form of raw materials for new, reused or reconstituted products which meet the quality standards necessary to be used in the marketplace or in the form of usable energy. Recycling does not include transformation.

“Recycling and Reuse Plan” means a form provided by the city for the purpose of compliance with this chapter that must be submitted by the applicant for any covered period.

“Renovation” means any change, addition or modification to an existing structure.

“Reuse” means further or repeated use of construction and demolition debris.

“Salvage” means the controlled removal of materials from a covered project for the purpose of recycling, reuse or storage for later reuse.

“Source separated” means recyclables that have been segregated from solid waste by or for the generator thereof on the premises at which they were generated for handling different from that of solid waste.

“Structure” means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner. (Ord. 517 § 2, 2006)

8.32.030 Deconstruction and salvage and recovery.

Recovered and salvaged designated recyclable and reusable materials from the deconstruction phase shall be counted towards the diversion requirements of this chapter. (Ord. 517 § 3, 2006)

8.32.040 Diversion requirements.

A. One hundred percent of inert solids and at least fifty percent by weight of the remaining construction and demolition debris resulting from the project shall be diverted to an approved facility or by salvage.

B. For each covered project, the diversion requirements of this chapter shall be met by submitting and following a C&D Debris and Reuse Plan that includes the following:

1. Deconstructing and salvaging all or part of the structure as practicable;
2. Directing one hundred percent of inert solids to reuse or recycling facilities approved by the city; and
3. Collecting (source separated or commingled) non-inert materials, such as cardboard and paper, wood, metals, green waste, new gypsum wallboard, tile, porcelain fixtures, and other easily recycled materials, and directing them to recycling facilities approved by the city and taking the remainder (but no more than fifty percent by weight) to a facility for disposal.

C. The applicant for any covered project shall make reasonable efforts to ensure that all construction and demolition waste diverted or landfilled are measured and recorded using the most accurate method of measurement available. To the extent practical, all construction and demolition debris shall be weighed by measurement on scales that are in compliance with all regulatory requirements for accuracy and maintenance.

D. Although it may not be an explicit condition of the building permit, contractors working on non-covered projects are encouraged to divert material from construction and demolition projects to the maximum extent practicable in accordance with this chapter. (Ord. 517 § 4, 2006)

8.32.050 Projects exempt from this chapter.

- A. Emergency demolition required to protect the public health, safety or welfare.
- B. City-sponsored demolition of a substandard structure or construction required to protect public health or safety in an emergency.
- C. Projects in any single-family residential district, which consist solely of a swimming pool.
- D. Projects for which only a plumbing permit, electrical permit or mechanical permit is required.
- E. A project for which a valid building permit has been lawfully issued by the city prior to the effective date of the ordinance codified in this chapter.
- F. A project of public construction for which the notice inviting bids has been published prior to the effective date of the ordinance codified in this chapter. (Ord. 517 § 5, 2006)

8.32.060 Submission and required contents of C&D Debris Recycling and Reuse Plan.

- A. Prior to issuance of permit, every applicant for building or demolition permits involving any covered project shall complete and submit a properly completed C&D Debris Recycling and Reuse Plan to the building official unless a C&D Debris Recycling Reuse Plan for the project is already on file with the city and within thirty days following project completion.
- B. A C&D Debris Recycling and Reuse Plan must contain all of the following information:
 - 1. The name and address of the person applying for the permit;
 - 2. Unless waived by the building official or designee, evidence that the owner or owners of the subject property acknowledge that they are aware of and understand that a violation of any provision of this chapter may result in the imposition of penalties and that any unpaid penalties imposed may be declared a lien on the subject property;
 - 3. A description of the project, including location, scope, required permit(s) and estimated timeline for completion of the project;
 - 4. The intended salvage, reuse and recycling facilities, chosen from a list of facilities approved by

the city, to use, collect or receive all construction and/or demolition debris from the project;

- 5. The names and addresses of all vendors and facilities proposed to be used to collect, receive, dispose, recycle, reuse or salvage the project C&D debris;
- 6. The recycling or reuse percentage rate, as applicable, of each vendor and facility proposed to be used to recycle or reuse the project C&D debris. (Ord. 517 § 6, 2006)

8.32.070 Evidence of compliance with C&D Debris Recycling and Reuse Plan.

- A. A C&D Debris Recycling and Reuse Plan shall be approved or denied no later than thirty days after a complete application is made.
- B. Notwithstanding any other provision of this chapter, no permit shall be issued for any covered project unless and until the C&D Debris Recycling and Reuse Plan has been approved.
 - 1. All of the information has been remitted on the C&D Debris Recycling and Reuse Plan.
 - 2. The C&D Debris Recycling and Reuse Plan establishes a mechanism such that the diversion requirement shall be met.
- C. If the director determines that the C&D Debris Recycling and Reuse Plan application is incomplete or fails to indicate that one hundred percent of inert solids and at least fifty percent by weight of all construction and demolition debris generated by the project will be reused or recycled, he or she shall either:
 - 1. Return the C&D Debris Recycling and Reuse Plan application to the building official marked "Denied," including a statement of reasons, which shall then immediately stop processing the building or demolition permit application; or
 - 2. Return the C&D Debris Recycling and Reuse Plan to the building official marked "Further Explanation Required."
- D. Within thirty days following project completion, a final compliance report containing the following information and documentation must be submitted to the building official, listing every vendor or facility that collected, transported or received any C&D debris.

1. Copies of receipts from every vendor or facility that collected, transported or received any C&D debris. Each receipt must specify the weight of any project C&D debris handled by the vendor or facility and must clearly demonstrate that all such C&D debris originated from the project site;

2. A calculation of the actual percentage, determined by weight, of the project C&D debris that was recycled or reused for each vendor or facility that collected, transported or received material;

3. A description of the manner in which the project C&D debris was recycled or reused and the names and addresses of all vendors and facilities employed in the recycling or reuse of project C&D debris including the recycling or reuse rate of each vendor or facility, as applicable.

E. Failure to accurately account for and submit the required documentation for all project C&D debris in the final compliance report constitutes a violation of this chapter. (Ord. 517 § 7, 2006)

8.32.080 Diversion requirement exemption.

A. Application. If an applicant for a covered project experiences circumstances that the applicant believes make it infeasible to comply with established diversion requirements, the applicant may request, in writing, an exemption from one or all of the waste diversion requirements during the building permit process.

B. Meeting with Director. The director, or designee, shall review all exemption request information supplied by the applicant and may meet with the applicant to assess alternative ways of meeting waste diversion requirements. Based on the information supplied by the applicant, the director, or designee, shall determine whether it is possible for the applicant to meet any or all of the diversion requirements of the project.

C. Granting of Exemption. If it is determined that it is infeasible for the applicant to meet all of the diversion requirements specified herein, the director, or designee, shall determine alternate permit conditions and the building official will inform the applicant, in writing, of any such alternative requirements. (Ord. 517 § 8, 2006)

8.32.090 On-site practices.

During the term of the covered project, the applicant shall, according to the applicant's C&D Debris Recycling and Reuse Plan, recycle, reuse or divert the required percentages of waste, and keep records of the tonnage. To the maximum extent feasible, project waste shall be source separated on-site to increase diversion. (Ord. 517 § 9, 2006)

8.32.100 Reporting.

A. Progress reports during construction may be required.

B. All documentation is subject to verification by the city.

C. It is unlawful for any person to submit documentation to the city under this chapter which that person knows to contain any false statements, including, but not limited to, false statements regarding tonnage of materials recycled or diverted. (Ord. 517 § 10, 2006)

8.32.110 Enforcement.

The director or his designee shall administer this chapter and shall enforce the requirements of this chapter, including, but not limited to, the authority to order that work be stopped where any work is being done contrary to the provisions of this chapter. (Ord. 517 § 11, 2006)

8.32.120 Violations and penalties.

Applicants must comply with all city codes prior to any permit being issued under this chapter.

In addition to any other remedy authorized by this chapter or applicable law, any of the provisions of this chapter shall be subject to an administrative penalty, enforcement, and collection proceedings, as set forth in this chapter and authorized by Section 53069.4 of the California Government Code. Each day of a continuing violation constitutes a separate violation. (Ord. 517 § 12, 2006)

8.32.130 Appeal.

A. Except as herein provided, all appeals of decisions made by the building official or the director, or designee, on matters set forth in this chapter shall

be subject to the provisions of the Lindsay Municipal Code.

B. Within ten calendar days after the date on which written notice of the decision is mailed or delivered to the owner, applicant or other interested party, the owner, applicant, other interested party or his authorized agent may appeal to the city council for review of the decision. The decision shall be final unless such an appeal is filed within ten calendar days of the mailing or delivery of notices to the applicant.

C. At the time of filing the appeal, the appellant shall pay a fee in an amount adequate to cover the cost of processing and hearing the appeal as established from time to time by resolution of the city council. (Ord. 517 § 13, 2006)

8.32.140 C&D Debris Recycling and Reuse Plan.

Applicants must comply with city ordinance code Section 8.32.060 et seq. prior to any permit being issued under this chapter. (Ord. 517 § 14, 2006)