

**AN ORDINANCE REPEALING AND REPLACING PROVISIONS CONTAINED
IN CHAPTER FOUR OF THE BEAVERTON CODE
RELATING TO SOLID WASTE AND DECLARING AN EMERGENCY**

Whereas, the City desires to provide for the efficient collection of solid waste and to help sustain the environment by promoting recycling; and,

Whereas, Oregon Revised Statutes Chapter 459 grants the City the authority to regulate solid waste collection and mandates the development of a recycling program; and

Whereas, the City Council has held a Work Session and Public Hearing on this Ordinance and at Council's direction staff has incorporated Council's direction at those sessions into the following ordinance to be enacted, now therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Section 1: Beaverton Code is amended by adding the following provisions to read as follows:

4.08.010 Short Title. BC 4.08.010 - .470 shall be known as the "Solid Waste and Recycling Ordinance" and may also be referred to as "this ordinance."

4.08.020 Purpose, Policy and Scope. It is the policy of the City of Beaverton to reduce the amount of solid waste generated and disposed per capita by undertaking aggressive source reduction and recycling activities. The City shall promote the development of environmentally sound and efficient practices regarding the collection of solid waste, recyclable material, and compostable material. In order to attain these goals and protect public health and the environment, the City shall regulate collection of solid waste, recyclable material and yard debris within the city limits. In carrying out this policy, the goals of this ordinance are:

- (1) To reduce the amount of solid waste generated, as measured on a per capita basis.
- (2) To achieve a goal of a 56% recovery rate from the solid waste stream by 2005.
- (3) To ensure the safe and sanitary collection, transportation and recovery of solid waste, recyclables, and yard debris materials.

- (4) To provide Beaverton residents and businesses the opportunity to recycle more materials through convenient on-site, curbside and depot collection programs.
- (5) To establish and enforce solid waste recyclable material and yard debris collection standards to ensure uniform, cost effective and high quality service delivery to all customers.
- (6) To establish rates, which are fair to the public, the Franchisee and the City, encourage waste reduction, and promote safe, efficient collection.
- (7) To promote community awareness in order to achieve the highest participation possible in the solid waste and recycling collection system.

4.08.030 Definitions

- (1) **Affiliated Company:** Any company which shares expenses and/or revenues with the Franchisee with respect to the services under this Agreement and is: 1) the parent company (corporation, partnership or limited liability company) of Franchisee; or, 2) any subsidiary of such parent company; or, 3) any company of which thirty percent (30%) or more of the common stock or control is owned or controlled by Franchisee; or Franchisee's share holders; Examples of such shared costs include, but are not limited to: labor, equipment, vehicles, insurance, or administrative costs.

- (2) **Allowable Expenses:** Those expenses incurred by Franchisee in the performance of this Agreement that are allowed by the City as reimbursable by the ratepayer as enumerated below. Allowable Expenses are allowable only to the extent that such expenses are known and measurable, calculated according to Generally Accepted Accounting Principles (GAAP) on an accrual basis, and when applicable, prorated or allocated to the Franchisee's operations within the City, do not exceed the fair market value of comparable goods or services, and are commercially reasonable and prudently incurred by the Franchisee solely in the course of performing its obligations under the Franchise. Allowable expenses, shall include but not be limited to the following:
 - a. The costs of complying with all laws, regulations or orders applicable to the obligations Franchisees under federal, state or local law, including this ordinance, as now or hereafter amended;
 - b. Disposal costs;
 - c. Labor costs, including operational and supervisory labor, payroll taxes, workers' compensation, and benefits;
 - d. Vehicle and equipment expenses, including vehicle registration fees, motor fuel, oil, tires, rental charges and/or operating lease payments and repairs and maintenance;
 - e. Expenses of maintaining other capital assets, including rental charges and/or operating lease payments and repair and maintenance;

- f. Performance bonds and insurance in at least the amounts and coverages required by the City;
- g. Administrative expenses related to data processing, billing and supplies, finance and accounting, Franchise administration, human resource and labor management, rate analysis, and regulatory compliance;
- h. Compensation paid to officers, up to limits set by City Rule, based upon total revenues managed by the officers;
- i. Utilities;
- j. Training and worker safety expenses;
- k. Promotion and public education costs;
- l. Depreciation and amortization of capital assets, including any necessary stand-by or back-up equipment used on a regular and ongoing basis in the provision of services under this Franchise over standardized economic useful lives of the various assets.
- m. Outside professional fees and costs, limited to two percentage points of revenue, unless an extraordinary circumstance exists;
- n. Interest expense, other than interest paid with respect to route or Franchise acquisition, that is not in excess of market rates ordinarily charged for the various types of financing required for purchases or leases;
- o. All surcharges, taxes or fees, other than state or federal income taxes or franchise fees, which are imposed upon the Franchisee or levied by federal, state or local government in connection with Franchisee's provision of collection services under this Franchise;
- p. Direct write-off charges for bad debts; and
- q. Franchise fees assessed by the City.

(3) **Automated Collection System:** A type of refuse or recycling collection system that uses roll carts and mechanically assisted collection equipment mounted on a truck such that the driver can operate the equipment from the cab of the vehicle to grasp, lift, empty and replace the roll cart at curb or road side.

(4) **Bulky Wastes:** Large items of solid waste such as appliances, furniture large auto parts, trees, branches greater than four inches in diameter and 36 inches in length, stumps and other oversized wastes whose large size precludes or complicates their handling by normal collection, processing or disposal methods.

(5) **Commercial:** Stores; offices, including manufacturing and industrial offices; restaurants; warehouses; schools; colleges, universities; hospitals; and other non-manufacturing entities; manufacturing entities, but not including multifamily or residential condominium complexes.

- (6) **Compactor:** Any self-contained, power-driven, mechanical equipment designed for the containment and compaction of solid waste or waste or recyclable materials.
- (7) **Compensation:** Includes any type of consideration paid for service, including but not limited to, rent, the sale of recyclable materials, and any other direct or indirect provisions for payment of money, goods or benefits by property owners, tenants, members, licensees, and similar persons. It shall, also, include any exchange of services, including the hauling of Solid Waste and Waste. Compensation includes the flow of consideration from the person owning or possessing the Solid Waste or Waste to the person collecting, sorting, transporting, or disposing of Solid Waste or Waste.
- (8) **Container:** A receptacle used to store solid waste or recyclable materials that is designed for on-site unloading into a closed-bodied collection vehicle in which the contents of the receptacle are mixed with the contents of other similar receptacles.
- (9) **Construction and demolition debris:** Used or discarded construction materials removed from a premise during construction, demolition or renovation of a structure.
- (10) **Curbside/Roadside:** A location within three (3) feet of public right-of-way. This does not allow the garbage or recycling receptacle to be placed on the inside of a fence or enclosure even if the receptacle is within three (3) feet of said road or roads. For residences on “Flag Lots”, private roads or driveways, “Curbside/Roadside” shall be the point where the private road or driveway intersects a City Road, Public Access Road, State Road or Federal Road.
- (11) **Customer.** The person that enters into an agreement with a franchisee for the collection of solid waste, mixed loads of solid waste and recyclable materials, source-separated recyclable materials, and/or yard debris.
- (12) **Depot:** A facility for transferring containerized solid waste, recyclable materials or yard debris from one mode of transportation to another. The term also refers to a place for receiving source-separated recyclable materials.
- (13) **Disabled Customer:** A customer in which all adult household members possess a D.M.V. issued handicapped parking sticker.
- (14) **Dispose or Disposal:** Includes accumulations, storage, collection, transportation and eventual landfilling, incineration or other treatment or neutralization that finally disposes of solid waste.

- (15) **Disposal Costs:** For the purpose of this Agreement, Disposal Costs shall mean the total Allowable Expense incurred by the Franchisee for the Disposal of solid waste collected under this agreement at a Disposal Site, permitted by the appropriate government authority.
- (16) **Disposal Site:** Land and facilities used for the disposal, handling or transfer of, or resource recovery from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, resource recovery facilities, incinerators for solid waste delivered by the public or by a solid waste collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site; Disposal site does not include the following: a facility authorized by a permit issued under ORS 466.005 to 466.385 to store, treat or dispose of both hazardous waste and solid waste; a facility subject to permit requirements of ORS 468B.050 or 468B.053; a landfill site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar non decomposable material, unless the site is used by the public either directly or through a solid waste collection service; or a site operated by a wrecker issued a certificate under ORS 822.110.
- (17) **Drop Box:** A single receptacle used to store solid waste or recyclable materials that is designed to be removed from the generator's site on the back of an open truck for unloading at a disposal site, material recovery facility, or other storage or processing facility. The contents of the receptacle are not mixed with the contents of other similar receptacles until delivery to a Disposal Site.
- (18) **Force majeure:** Acts of god, fire, landslides, lightening, storms, floods, freezing, earthquakes, epidemics, volcanic eruptions, public riots, civil disturbances, acts of the public enemy, wars, blockades, embargoes, or acts of civil or military authority, breakage, explosions or accident to machines or other materials, pipelines or materials, governmental restraint, unavailability of a disposal site and any other event which could not with reasonable diligence be controlled or prevented by the party affected by the event.
- (19) **Franchise:** A contract with the City allowing the use of public right-of-way to collect and transport solid waste.
- (20) **Generator:** A person who last uses a material and then makes it available for disposal or recycling.

- (21) **Gross Revenue:** “Gross Revenue” for any period shall mean 1.) Gross accrual-based billings by the Franchisee to customers for services provided under this Agreement; and, 2.) The allocated gain on the sale of fixed assets, the depreciation or amortization from which, was an Allowable Expense under the terms of this Ordinance, and refunds, sales proceeds or other reimbursements for any other expense that was an Allowable Expense under this Ordinance, and 3.) The accrual-based proceeds from the sales of recycled material collected within the Franchise.
- (22) **Hazardous Waste:** Solid Waste or Waste that may, by itself or in combination with other waste, be explosive, poisonous, caustic or toxic, or otherwise dangerous or injurious to human, plant or animal life, as defined by ORS 466.055.
- (23) **Household Hazardous Waste:** Any discarded, useless or unwanted chemical, material, substance, or product that is or may be hazardous or toxic to the public or the environment and is commonly used in or around households. Household hazardous waste includes, but is not limited to, some cleaners, solvents, pesticides and automotive and paint products.
- (24) **Infectious Waste:** Infectious waste mean biological waste, cultures and stocks, pathological waste, and sharps, as defined in ORS 459.386 and 459.387.
- (25) **Material Recovery Facility:** A solid waste management facility that separates material for the purpose of recycling from an incoming recoverable mix of non-putrescible waste by using manual and/or mechanical methods and achieves a verifiable minimum 25% recovery rate. It also means a facility that primarily accepts previously separated recyclables.
- (26) **Mayor:** The Mayor of the City of Beaverton or the Mayor’s designee.
- (27) **Multifamily:** Any multi-dwelling building or group of buildings that (a) contain(s) five (5) or more dwelling units on a single lot, such as apartments, condominiums, and mobile home parks and (b) receives services on a per lot or per building basis, as opposed to a per unit basis. Multifamily complex also includes certified or licensed residential care housing, such as adult foster care homes, and group homes. Multifamily accounts are determined to be a residential waste stream.
- (28) **Operating Margin:** “Operating Margin” for a period shall mean gross revenues minus allowable expenses.

- (29) **Organic Waste:** Materials that can be biologically synthesized by plants or animals from simpler substances, are no longer suited for their intended purpose, and are readily broken down by biological processes into soil constituents. Examples include, but are not limited to, food waste, yard debris, contaminated paper, and putrescible materials that are generally a source of food for bacteria.
- (30) **Per Class:** Used in reference to the imposition of an infraction. It refers to an infraction that applies to more than one customer (e.g., failure to distribute required promotional material to 2,000 customers would constitute one class infraction).
- (31) **Per Day:** Used in reference to the imposition of an infraction. It refers to an infraction that may apply to one or more customers on the day the infraction occurs (e.g., an uncovered truck would generate one infraction for each day it operated without a cover).
- (32) **Per Incident:** Used in reference to the imposition of an infraction. It refers to a Franchisee's failure to comply with the ordinance on an individual act, occurrence, or customer basis. (e.g. failure to deliver two recycling bins to a customer within seven days.)
- (33) **Processing:** An operation where collected source-separated recyclable materials are sorted, graded, cleaned, identified or otherwise prepared for end use markets.
- (34) **Putrescible Waste:** Waste, including: bones; meat and meat scraps; fat; grease; fish and fish scraps; food containers or products contaminated with food wastes, particles or residues; prepared vegetable and fruit food wastes or scraps; manure; feces; sewer sludge; dead animals or similar wastes which cause offensive odors or create a health hazard or which is capable of attracting or providing food for potential disease carriers, such as birds, rodents, flies and other vectors.
- (35) **Receptacle:** Means a can, cart, container, drop box, compactor or recycling bin or any other means of containment of Solid Waste or Waste or Recyclable Materials.
- (36) **Recyclable Material, Recyclable, Recyclables:** Means material that has or retains useful physical, chemical, or biological properties after serving its original purpose(s) or function(s), and is separated from solid waste by the generator or at a material recovery facility.
- (37) **Recycling:** means any process by which waste materials are transformed into new products in such a manner that the original products may lose their identity.

- (38) **Residence, Residential:** refers to any dwelling unit where at least 50 percent of the use of the entire building is for home use. For purposes of this ordinance, “residence” does not include “multifamily” dwellings, as defined in this section.
- (39) **Return on Revenues:** The quotient of the operating margin divided by the Gross Revenues.
- (40) **Self-Haul:** Means the collection and transportation of solid waste from a commercial, multifamily, or residential entity by the generator, owner or occupant of the property, rather than by a third party hired to perform this function.
- (41) **Solid Waste Management:** The management of the accumulation, storage, collection, transportation, treatment, processing and final disposal or utilization of Solid Waste and Waste or resource recovery from Solid Waste and facilities necessary or convenient to those activities. The Franchisee may contract with another person to provide service of any type under the Franchisee’s Service Franchise, but the Franchisee shall remain ultimately responsible for Solid Waste and Waste Management in the Franchisee’s franchised service area.
- (42) **Solid Waste or Waste:** The terms “solid waste” and “waste” are interchangeable. Solid waste shall include all putrescible and non-putrescible waste, including but not limited to, garbage; compost; organic waste; yard debris; brush and branches; land clearing debris; sewer sludge; residential, commercial and industrial building demolition or construction waste; discarded residential, commercial and industrial appliances, equipment and furniture; discarded, inoperable or abandoned vehicles or vehicle parts and vehicle tires; manure; feces; vegetable or animal solid and semi-solid waste and dead animals; and infectious waste. Waste shall mean useless, unwanted or discarded materials. The fact that materials, which would otherwise come within the definition of Solid Waste, may, from time to time, have value and thus be utilized shall not remove them from the definition. The terms Solid Waste or Waste do not include:
- a. Environmentally hazardous wastes as defined in ORS 466.055;
 - b. Materials used for fertilizer or for other productive purposes on land in agricultural operations in the growing and harvesting of crops or the raising of fowl or animals;
 - c. Septic tank and cesspool pumping or chemical toilet waste;
 - d. Source separated, principal recyclable materials as defined in ORS 459A and the Rules promulgated there under and under this Ordinance, which have been purchased or exchanged for fair market

value, unless the City declares a site of uncollected principal recyclable materials to be public nuisance;

e. Applications of industrial sludges or industrial waste by-products authorized through a Land Use Compatibility Statement or Management Plan approval and that have been applied to agricultural lands according to accepted agronomic practices or accepted method approved by the Land Use Compatibility Statement or Management Plan, but not to exceed 100 dry tons per acre annually;

f. Stabilized municipal sewage sludge applied for accepted beneficial uses on land in agricultural, non-agricultural, or silvicultural operations. Sludge-derived products applied for beneficial uses on land in landscaping projects.

(43) **Source Separated Materials:** Recyclable materials that have been separated by type of recyclable material and removed from the solid waste stream by the person who last used the recyclable materials.

(44) **Unallowable Expenses:** Shall include the following:

a. All charitable and political contributions;

b. Fines and penalties, including without limitation judgments for violation of applicable laws, incurred by a licensee;

c. Payments for services provided by individuals related by blood or marriage or by affiliated companies to a licensee to the extent that such payments exceed the reasonable cost that would be charged by an independent third party to provide the substantially equivalent service;

d. Accruals for future unknown regulatory changes;

e. Costs associated with purchase of other companies including, but not limited to, employee stock ownership plan payments, goodwill, amortization of goodwill and premiums on key-person life insurance policies;

f. Principal or interest payments on the acquisition of solid waste, recyclable materials and yard debris collection routes; the purchase of equipment and/or facilities to the extent that the price includes goodwill or a premium in excess of fair market value at the time of acquisition;

g. State and federal income taxes;

h. Fees paid to a Franchisee's Board of Directors;

i. Advertising expenses beyond basic collection and recycling promotion and education, and minimal telephone listings under "Garbage Collection" or "Recycling Collection." Display advertisements and entertainment expenses are specifically excluded;

j. Attorney's fees and related expenses resulting from:

(1) Any judicial proceeding in which the city and a licensee are adverse parties, unless the Franchisee is the prevailing party;

- (2) Any judicial proceeding in which a Franchisee is ruled to be liable due to willful misconduct or gross negligence or in violation of law or regulation;
 - k. Any other expenses defined as “unallowable” and approved by the council.
- (45) **Utilization:** The terms utilize, utilization or utilization of Solid Waste or Waste shall mean productive use through recycling, reuse, salvage, resource recovery, energy recovery, or land filling for reclamation, habitation, or rehabilitation of land.
 - (46) **Waste Evaluation:** An evaluation completed by the City or a Franchisee of a commercial entity’s waste management practices, for the purpose of providing guidance to the commercial entity on effective means to reduce waste, increase recycling, and purchase recycled products.
 - (47) **White Goods:** Kitchen or other large appliances, which are Bulky Wastes.
 - (48) **Yard Debris:** Grass clippings, leaves, tree and shrub prunings of no greater than four (4) inches in diameter or similar yard and garden vegetation. Yard debris does not include such items as: dirt, sod, stumps, logs, tree and shrub prunings greater than four (4) inches in diameter, rocks, plastic, animal waste or manure, cat litter, potting soil, prepared food wastes or nonputrescible material.

4.08.100 Non-Exclusive Franchise.

No person shall do business in the collection and transport of solid waste generated within the City without a current, valid City franchise. A Franchise to provide collection service for solid waste, recyclable materials and yard debris in a service area of the City shall be granted only after a determination of need for the service. The determination of need is the responsibility of the City Council, which will seek the best balance of the following objectives:

- (1) To insure safe, efficient, economical and comprehensive solid waste service;
- (2) To avoid duplication of service that will cause inefficiency, excessive use of fuel, increased traffic, and greater wear on streets;
- (3) To provide service in areas of marginal return;
- (4) To promote and encourage recycling and resource recovery;
- (5) To improve the likelihood of the Franchise holder making a reasonable profit and thereby encourage investment in modern equipment;
- (6) To cooperate with other governmental bodies by recognizing their service arrangements; and
- (7) To otherwise provide for the service in a manner appropriate to the public interest.

In granting a franchise renewal or a new franchise due to an annexation, termination, or revocation of a franchise, the Council shall, in addition to the above, consider the following factors in selecting a new or replacement Franchisee:

- a. The candidate's prior service record in the same or a related industry and its professional relationships with other corporate entities and local, regional and/or state jurisdictions;
- b. The candidate's financial ability to perform the obligations of a franchise holder;
- c. The candidate's equipment and personnel available to meet current and future needs of a franchise holder;
- d. The candidate's ability to provide all services to customers within the geographic boundaries of the designated franchise area, including every residential, multi-family and commercial customer;
- e. The candidate's exercise of the burden of proof demonstrating a proposed franchise area is being or has been underserved by the existing or previous franchise holder; and
- f. The candidate's good moral character as is relevant to a franchised provider's customer relations, namely any unpaid judgments against the applicant (whether doing business under the same or another name) and any judgments for civil fraud or for a crime of dishonesty.

Franchises granted by the City shall be non-exclusive, however it is understood that during the term of franchises granted under this Ordinance, the City shall not grant any other person a franchise for Solid Waste Management unless there is a showing by the applicant of the need for such additional service in the proposed service area. As to such application(s) the Council may consider whether a current Franchisee is capable of providing the additional service. In evaluating whether a need exists for additional service, the City Council may consider, among any other criteria deemed relevant by the City Council, the following items:

- (1) An increase in the population of the City;
- (2) An extension of the boundaries of the City;
- (3) Intensive residential, commercial or industrial development within the boundaries of the City;
- (4) Changes in solid waste technology and/or recycling collection technology that could substantially improve collection service or reduce collection costs to residents of the City;
- (5) The effect that an additional franchise would have on each existing Franchisee's ability to meet the City's service standards and maintain a fair return on its investment;
- (6) The number of existing Collection Franchisees or Drop Box Service Franchisees, as applicable, providing service in the area of the City in which the applicant wishes to provide service; and
- (7) Changes in federal or state laws, rules or regulations that substantially affect solid waste or recycling collection requirements.

This ordinance does not prohibit any person from self-hauling solid waste and/or recyclables. A generator may self-haul his or her own material, and a generator's contractor may haul materials that are generated as a direct result of the service-provider's activity. For example, landscapers, roofers, and remodelers may self-haul materials, but may not contract with third parties other than Franchisees for collection and transport.

4.08.110 Term of Franchise

A franchise to provide collection service for solid waste, recyclable materials and yard debris in a portion of the City shall be granted for a period of seven (7) years, beginning July 1, 2002. The determination of need is the responsibility of the Council, which will seek the best balance of the franchise objectives.

The City shall review franchises annually to evaluate rates, customer service and franchisee performance issues.

The Mayor shall report to the Council a comprehensive review of the rates, customer service, franchise performance based on criteria described in B.C. 4.08.100 and overall state of the franchise system based on the first 42 months of the franchise term. As part of that review, at the request of a Franchisee, the Mayor may make a recommendation to renew or not renew, and the Council may consider renewing that person's franchise for an additional three and one-half years to be added to the end of the existing term for a total of seven (7) years. Any such extension shall be granted only after the notice to all interested parties and a public hearing.

Nothing in this section restricts the Council from suspending, modifying or revoking the franchise for cause pursuant to Section 4.08.430 of this Ordinance.

A Franchisee who desires to terminate its rights and obligations under a franchise, shall give not less than 90 days' notice of its intent. Upon receipt of such notice the Council shall initiate proceedings to consider applications by any other person for a franchise to serve the same area.

4.08.120 Notice Request for Franchise Applications

Prior to the end of a franchise term, notice that the City intends to solicit applications for solid waste Franchises shall be published in a newspaper of general circulation within the City. Notice shall also be sent to all holders of Beaverton solid waste franchises. The Mayor may keep a list of interested persons who will also be provided notice.

The Mayor shall establish forms and deadlines.

4.08.130 Description of Franchise Areas

A City Solid Waste Franchise service area shall include single unit residential customers and any multi-family residential, commercial and industrial customers within that service area. The service areas shall be determined by Council resolution. The Franchise areas and the Franchisees serving such areas shall be indicated on a map entitled "Solid Waste

Franchise Service Areas of the City of Beaverton” (the “Map”). A copy of the Map shall be dated with the effective date of the Council resolution and maintained in the Office of the Mayor. Amendments to the map may be made by Council resolution, and copies of amendments shall be kept on file by the City Recorder.

4.08.140 Transfer of Franchise

An assignment or transfer of a Franchise shall include, but not be limited to:

- (1) A sale, exchange or other transfer of 50% or more of Franchisee’s assets dedicated to service in the City;
- (2) A sale, exchange, or other transfer of fifty percent (50%) or more of the outstanding common stock of a Franchisee;
- (3) Any reorganization, consolidation, merger, recapitalization, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which Franchisee or any of its shareholders is a party which results in a change of ownership or control of fifty (50%) or more of the value or voting rights in the stock of the Franchisee; and
- (4) Any combination of the foregoing that has the effect of a transfer or change of ownership and control.

The Franchisee shall provide no less than 60 days’ advance written notice to the City of any proposed transfer or assignment. Except as specifically authorized by the City, the Franchisee shall not assign any of its rights or delegate or otherwise transfer any of its obligations to any other person without the prior consent of the City Council. Any such assignment without the consent of City Council shall be void and any such attempted assignment shall constitute default and grounds for termination of the Franchise.

If a Franchisee requests the City’s consent to transfer the Franchise, the City shall act on such request within sixty (60) days of the receipt of the Franchisee’s written request together with all information, as set forth below, required for the City’s action on the request. The City shall not unreasonably refuse to consent to an assignment of the Franchise to a proposed assignee that has sufficient knowledge, experience, and financial resources so as to be able to meet, to the satisfaction of the City Council, in its sole discretion, all obligations of the Franchisee hereunder. An application to the City to consider a sale or other transfer of a Franchise shall include the following:

- (1) A nonrefundable application fee of two thousand dollars (\$2000) payable at the time of application to the City in advance to defray the City’s anticipated expenses and costs resulting from the Franchisee’s request;
- (2) Financial statements audited or reviewed by a Certified Public Accountant of the Proposed Assignee’s operations for the three immediately preceding operating years together with any additional evidence of financial ability to perform its Franchise obligations; and
- (3) A showing that the proposed Assignee meets all City criteria for the grant of a Franchise as are set out in section 4.08.100 of this ordinance.

4.08.200 Responsibility of City

Franchisees are subject to the exercise of the police power of the City and to such regulations as the City may provide by resolution, ordinance, rule or regulation.

4.08.210 Enforcement of Standards

The Mayor shall enforce this ordinance and pursue remedies for non-compliance as laid out within this ordinance. The Mayor shall adopt rules, including a process for notice and comment prior to adoption, for collection responsibility and customer service standards as well as procedures and forms to implement the provisions of this ordinance. These rules shall be enforceable with penalties allowed in this ordinance. Upon recommendation by the Mayor, the Council may declare a Franchisee who fails to abide by the rules to be in default.

Each Franchise provision, including rules adopted hereunder, is assigned an Enforcement Code consisting of two letters, such as (A/I). The first letter represents the severity of the infraction (A, being the most severe), and the second identifies the incident definition. Incident definitions indicate whether the infraction is measured "Per Day," referred to as D, "Per Class," referred to as C, or "Per Incident," referred to as I. Penalties are further described in section 4.08.420 of this ordinance.

4.08.220 Uniform Rate Setting

The City Council may review and set rates on an annual basis by Council resolution that considers the following goals:

- (1) Rates shall be established to the greatest extent practicable on a cost of service basis.
- (2) Rates shall be adequate to provide an Operating Margin equal to nine percent (9%) of Franchise-wide Gross Revenues; however, the City shall not be required to change rates if the expected Operating Margin in the current year falls between seven and eleven percent of Gross Revenues. The nine percent target return on Gross Revenues is considered sufficient to reflect the level of business risk assumed by the Franchisee, to allow investment in equipment, and to ensure quality collection service.

Accordingly, the City shall have the authority to commission audits, reviews, or analysis of Franchisee Annual Reports to validate hauler submissions. The expected Operating Margin in a future year would incorporate expected inflation factors, and the effect of known or expected increases or decreases in expenses or revenues.

The rates charged by Franchisees shall conform to the most current Council resolution. Prior to implementation, the Council must approve any interim rate for services not included in the current resolution.

If the haulers for the majority of the franchise areas within the City notify the Mayor in writing that they believe a material change outside the Franchisees' control has occurred, and the change will have an adverse effect on operating margins, such that current year

operating margins will be less than seven percent, a material change will be deemed to have occurred. At that time, the City may undertake any type of review it finds necessary to validate the existence of the material change and estimate its effect on the operating margin. If the results of the review are such that no rate adjustment is warranted, persons requesting the review shall reimburse the City for reasonable costs incurred during the investigation at the time the next payment of franchise fees is due.

If the City believes that a material change has occurred that will result in current year operating margins falling under seven percent or over eleven percent, the City may undertake an abbreviated rate review at its own expense.

A change in tipping fee will be evaluated by the Mayor to determine the effect upon rates and services.

4.08.230 Imposition of Franchise Fees

For the privilege of using the City's streets and other facilities and for the purpose of defraying the City's regulatory expenses, each Franchisee shall pay a Franchise Fee to the City equal to 4% percent of cash receipts on residential service and 4.5 percent on commercial and drop box service, net of material sales revenue. The Franchise Fee shall be computed and collected on a calendar quarterly basis. The fee shall be paid by the Franchisee not later than the last day of the month immediately following the end of the quarter. A Franchise fee payment shall become delinquent if not paid by the last day of the month immediately following the end of the quarter. A simple interest charge of 18% shall be charged against the entire delinquent balance until the balance is paid.

At the time of payment of the quarterly fee, each Franchisee shall file with the Mayor a verified statement of quarterly cash receipts for the period covered by the tendered fee. Such statements shall be public records. Each Franchisee shall maintain books and records disclosing the cash receipts derived from business conducted within the City, which shall be open at reasonable times for audit by the Mayor. The City may require a uniform system of bookkeeping and record keeping to be used by all Franchisees.

Material misrepresentation of cash receipts by a Franchisee constitutes cause for revocation of the Franchise.

The Franchise Fee imposed by this section is in addition to and not in lieu of any other fee, charge, or tax imposed by the City. The obligation to pay franchise fees on cash receipts generated from services performed under a City franchise shall survive termination of the franchise no matter how terminated.

The City Council by resolution may change the amount and computation of Franchise Fees from time to time. The Council by resolution may reallocate the Franchise Fee percentages for different customer groups, such as residential or commercial, if such a reallocation mitigates a cost of service disparity that is not fully corrected through the rate setting process. In order to do so, the Mayor must be able to demonstrate that overall

equity among the Franchisees is improved. Such a reallocation may not materially reduce the amount of total Franchise Fee Revenue obtained by the City.

4.08.300 Reporting Responsibilities

4.08.310 Monthly Informational Reports

Each Franchisee shall provide the Mayor by the last day of each month for the previous month:

(1) A monthly report listing the quantities or recyclable materials collected within the City during the previous calendar month, the locations to which these materials were delivered, the number of customer accounts, and other information as required by the Mayor. (E/D)

(2) A monthly report listing the names and addresses of commercial customers that were offered waste evaluations during the reported month and that received waste evaluations from the Franchisee during the reported month. (E/D)

4.08.320 Quarterly Franchise Fee Reports

Each Franchisee shall complete and remit to the City a Quarterly Franchise Fee report not later than the last day of the month immediately following the end of the quarter.

At the time of payment of the quarterly Franchise Fees, the Franchisee shall file with the Mayor a sworn and verified statement of quarterly gross revenues for the period covered by the tendered fee. Such statements shall be public records. Each Franchisee shall maintain books and records disclosing the gross receipts derived from business conducted within the City, which shall be open at reasonable times for audit by the Mayor. The City may require a uniform system of bookkeeping and record keeping to be used by all Franchisees. (D/D)

Misrepresentation of cash receipts shall be deemed material and a breach of the Franchise contract and shall be cause to initiate the process to terminate the franchise.

4.08.330 Annual Franchise Reports

An annual financial/operational report in a format approved by the Mayor that identifies revenues, expenses, and selected program data for the previous calendar year, specifically associated with or allocated to the City of Beaverton is due on or before March 15 of each year. (D/D)

Specifically, Franchisees shall report revenues and expenses (allowable and unallowable), in an income statement format, and provide a variety of information about customer counts, service levels, disposal volumes, and recycling activities. While direct charge of allowable expenses is preferred, it is understood that many Franchisees provide service in areas outside the City of Beaverton. Consequently, allocations to franchise operations within the City are necessary for most allowable expenses.

In addition to the results of operations within the City of Beaverton, Franchisees shall report totals for all operations, both within and outside the City that share significant operational, management, and administrative expenses with the Beaverton Franchise. Resources allocated from regional or corporate offices or affiliates shall be distributed to appropriate expense line items, and shall also be disclosed in a schedule describing total allocations and their distribution to individual expense line items. All allocations from Affiliated Companies must be described and must be equal to or less than the fair market value of similar goods and services purchased from a non-affiliated company.

The report will also include a synopsis of the operating year, a description of the measures each franchisee has taken in the preceding year to make its operation more efficient, a listing of the efficiency measures which each Franchisee proposes to take in the next year, a composite table showing the type and number of customer service complaints and a description of the measures that the Franchisee has taken or is planning to take to correct the cause of commonly reported complaints, and such other information as requested by the Mayor. All report information shall be presented on a calendar year basis. The report shall contain detailed information on education and promotion activities, and other information as required by the Mayor. (D/D)

Franchisees may identify information submitted to the City in the Annual Report as confidential. The City shall treat any information marked "Confidential" as such, and shall not subject the confidential information to public disclosure except as required by law. If the City receives a request for disclosure of confidential information, the Mayor shall notify the Franchisee within a reasonable time after receiving the request so as to allow the Franchisee a reasonable opportunity to defend against the requested disclosure through appropriate legal process.

4.08.340 Subcontracting Services

A Franchisee may contract with another person to provide service within the Franchisee's service area with the written approval of the Mayor, provided that the subcontract does not amount to a transfer of the collection franchise and the subcontracting party agrees to:

- (1) Abide by the conditions of this ordinance; and
- (2) In written application to the City, show how they will meet the criteria applying to the current franchise

A Franchisee may subcontract all drop box and medical/infectious waste collection, but may not otherwise subcontract more than twenty-five (25%) percent of the remaining franchised services, except during an emergency with the approval of the Mayor for a period of not more than 60 days. (A/I)

4.08.350 Access for Inspections and Delivery of Notices

Franchisees shall make all company premises, facilities and records related to their solid waste, recyclable materials and yard debris collection services (including, but not limited to: offices, storage areas, financial records, non-financial records, records pertaining to

the origin of any solid waste collected by the Franchisee, receipts for sale or delivery of collected recyclable materials, customer lists, and all records related to vehicle maintenance and safety which are required under ODOT motor carrier requirements and regulations and ORS 767) available for inspection by the Mayor within 24 hours of notice by registered mail. Such inspections are only for purposes of enforcing this ordinance, and are restricted to normal business hours. During normal business hours, the Franchisee shall make all company premises and facility accessible to City employees for delivery of any written notices. (A/I)

Collection vehicles must be accessible for inspection during the normal operating hours for collection, in addition to normal business hours. Where receptacles are stored in the public right-of-way or when the City is inspecting a situation where the Franchisee is allegedly commingling Recyclable Materials or Yard Debris with Solid Waste, the need for 24-hour notice does not apply to inspection of receptacles or vehicles. (A/I)

4.08.360 Indemnification, Bond, and Insurance

A Franchisee shall pay, save harmless and indemnify the City from any loss, damage, penalty or claim against the City on account of or in connection with any activity of the Franchisee in the operation of the Franchisee's solid waste collection business including activity by any contract hauler under BC 4.08.055 D. If such suit shall be filed against the City either independently or jointly with the Franchisee or its contract hauler to recover for any claim or damages, the Franchisee upon notice to it by the City shall defend the City against the action, and in the event of a final judgment being obtained against the City, either independently or jointly with the Franchisee or its contract hauler, the Franchisee will pay said judgment and all costs and hold the City harmless there from. (A/I)

Each Collection Franchisee and Drop Box Franchisee shall furnish a performance bond, in a form approved by the City Attorney, by an acceptable surety company in the amount of twenty-five thousand dollars (\$25,000.00), but may, in lieu of a bond, furnish an irrevocable letter of credit or assign a savings account or deposit in any federally insured financial institution in the amount of twenty-five thousand dollars (\$25,000.00) on a form approved by the City Attorney. The Security shall guarantee faithful performance of all the obligations contained herein with the premium for such bond or cost of such assignment to be paid by the Collection Franchisee or Drop Box Franchisee furnishing the bond, letter of credit or making the assignment. (A/I)

A Franchisee shall maintain commercial general liability insurance on an occurrence basis in such forms and with such companies as shall be approved by the City Attorney, which will cover the Franchisee's business operation, including each vehicle operated by it. The insurance coverage shall include not less than \$100,000.00 for one person, nor less than \$300,000.00 for bodily injury due to each occurrence, and not less than \$100,000.00 for damage to property due to each occurrence and coverage of at least \$1,000,000 in the aggregate per occurrence. All such insurance coverage shall provide a 30-day notice to the Mayor in the event of material alteration or cancellation of any coverage afforded in

the policies prior to the date the material alteration or cancellation shall become effective. Copies of all policies required hereunder shall be furnished to and filed with the Mayor prior to the commencement of operations or the expiration of prior policies, as the case may be. The Franchisee shall furnish proof annually to the Mayor that the insurance remains in effect. (A/I)

The provisions of this section, any bonds accepted by the City pursuant thereto, and any damage recovered by the City hereunder shall not be construed to excuse unfaithful performance by the Franchisee or limit the liability of the Franchisee under this ordinance or the Franchisee for damages, either to the full amount of the bond, or otherwise.

4.08.400 Enforcement Action, Suspension, or Termination of Franchise

4.08.410 Initiation of Enforcement Actions

In addition to enforcement under State law, the City may prosecute any infraction as defined in this Ordinance or the Rules issued hereunder, based on any information coming to the City, in Beaverton Municipal Court. The burden of proof is on the City to prove an infraction by a preponderance of the evidence.

4.08.420 Penalties for Infractions

Each Franchise provision, including rules adopted hereunder, is assigned an Enforcement Code consisting of two letters, such as (A/I). The first letter represents the severity of the infraction (A, being the most severe), and the second identifies the incident definition. Incident definitions indicate whether the infraction is measured “Per Day,” referred to as D, “Per Class,” referred to as C, or “Per Incident,” referred to as I. The severity of the infraction is described in the following table:

Category	First Infraction	Second Infraction	Third and Subsequent Infractions
A	\$500	\$1,000	\$1,500
B	\$400	\$800	\$1,200
C	\$300	\$600	\$900
D	\$200	\$400	\$600
E	Warning	Warning	Treat as D

In addition to monetary penalties and upon recommendation by the Mayor the City Council may terminate for default a franchise held by a person who is assessed more than \$2,000 in penalties per 1,000 customers in any 365-day period. In the event a Franchise is sold, the infraction record of the previous owner will remain with the new owner if the previous owner maintains any ownership or control of the new owner of the Franchise.

Penalties not paid within the allotted time are subject to interest charges at the statutory rate of interest.

4.08.430 Termination of Franchise for Default

In addition to default for accrued penalties, upon recommendation by the Mayor, the City Council may terminate a Franchise for the Franchise holder's default in performing any material term or condition of the Franchise. An event of default also shall include, but not be limited to entry of a judgment against the Franchise holder for material misrepresentation or deceit committed against the City or a customer or entry of a judgment of conviction (including conviction on a plea of no contest) against the Franchise holder or any principal of same for a crime involving dishonesty.

Notice to a Franchisee of default shall be delivered to the Franchisee by certified mail requiring the Franchisee to show cause in a public hearing before the City Council at a place and time to be stated in the notice, but no earlier than 14 days from the date the notice is mailed, why the Franchise should not be terminated.

At the hearing the Franchisee shall demonstrate the measures it has taken or commenced to cure the default.

4.08.440 Service Interruption

Except for the right to refuse service for nonpayment as set forth in this ordinance, Franchisees shall not interrupt service unless:

- (1) Access, roads, streets and highways necessary for collection operations are unusable or unsafe and there are no alternative routes. Franchisees shall resume service within 24 hours after access is restored.
- (2) A Force Majeure event occurs.

Upon the occurrence of a Force Majeure event that prevents or impairs a Franchisee's ability to perform any of its Franchise obligations, the Franchisee shall:

- (1) Provide immediate notice, either verbal or written to the Mayor of the nature of the event and extent and anticipated duration of Franchisee's inability to perform any obligation under this Agreement. If verbal notice is given, then written notice must be delivered to the City within 24 hours of verbal notice;
- (2) Commence immediately to develop, in communication and cooperation with the City, an interim plan for the restoration of full performance; and
- (3) Take all such other reasonable actions requested by the City to assist the City in protecting the public health and safety and to restore service as soon as practicable.

Labor unrest, including, but not limited to, strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by Franchisee employees or directed at the Franchisee is not an event of Force Majeure, and the Franchisee shall be obligated to continue to provide service notwithstanding the occurrence of any or all of events.

4.08.450 City's Right to Perform Service

In the event that a Franchisee, for any reason whatsoever, fails, refuses or is unable to collect or transport any or all solid waste for a period of more than forty eight (48) hours,

and if, as a result thereof, solid waste or recyclable materials should accumulate in the City to such an extent that the City finds that such accumulation endangers the public health, safety, or welfare, then the City shall have the right, but not the obligation, upon twenty-four (24) hour prior written notice to the Franchisee, to perform or cause to be performed collection services with its own or other personnel at the Franchisee's expense. This right shall be in addition to and not in lieu of any other remedy available to the City. If necessary, the City may take temporary possession of, and a Franchisee shall peacefully surrender, any or all the Franchisee's land, equipment, and other property used or useful in the collection of Solid Waste or Recyclable Materials until such time as the emergency is resolved.

4.08.460 Dispute Resolution with Customers

Upon receipt of any notice of dispute from a customer about any bill, charge, or service, the Franchisee shall thoroughly investigate the matter and promptly report the results of its investigation to the customer. A franchisee shall not refuse service to any customer during a time of dispute.

If the Franchisee is not able to resolve a dispute with the customer, the customer may contact the Mayor. The Mayor or delegate will act as an informal arbitrator in an attempt to resolve the matter. The Mayor may formally resolve a dispute of \$500 or on the basis of evidence presented by the Franchisee and the customer.

For matters in excess of \$500, the parties may mutually agree to abide by the City's recommended resolution, or pursue the matter in any Court with jurisdiction.

4.08.470 Dispute Resolution with City

During all disputes arising under this Franchise, the City and Franchisee shall continue performance of their respective obligations under this Franchise unless and until the Franchisee is terminated for default, in which case the Franchisee's obligation to pay a franchise fee based on cash receipts generated from services provided under the Franchise during said dispute shall survive such termination.

In addition to and without waiving any rights and remedies under civil or common law, in the event of a dispute under this Franchise, the parties may mutually agree to arbitration. Within fifteen (15) days after agreement to Arbitration has been reached, each party shall submit the name of its own arbitrator, selected from a panel of persons qualified with the Arbitration Service of Portland, Inc., or the American Arbitration Association, whichever organization is specified in the written notice of request for arbitration, and the two arbitrators shall select a third arbitrator selected from such panel within 15 days, or in case of a disagreement concerning the appointment of the third arbitrator, the third arbitrator shall be appointed from such panel by the presiding judge for the Circuit Court of the State of Oregon for Washington County. During such time that the arbitrators are being selected or appointed, the parties shall continue to negotiate in good faith to resolve their dispute in a cooperative manner.

Arbitration shall be conducted in Beaverton, Oregon in accordance with the then-effective rules of the arbitration service/association. The decision of the arbitrators in the matter shall be final and binding on the parties, and any judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof.

Section 2: BC 4.08.010 to 4.08.110, Solid Waste Control, is hereby repealed in its entirety.

Section 3: Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.


Section 4: To allow the City to accept and review applications for new solid waste franchises as provided for in this ordinance, and to expeditiously prevent the interruption of solid waste collection services and preserve the health and safety of the City, this ordinance shall take effect immediately upon its adoption by the Council and approval by the Mayor; provided, however, that the term of all existing City solid waste franchises hereby is extended to June 30, 2002.

First Reading this 29th day of April, 2002.

Passed by the Council this 6th day of May, 2002.

Approved by the Mayor this 7th day of MAY, 2002.

ATTEST:


SUE NELSON, City Recorder

APPROVED:


ROB DRAKE, Mayor