

ORDINANCE NO. 4613

**AN ORDINANCE AMENDING BEAVERTON CODE CHAPTER 4.08
AMENDING THE SOLID WASTE AND RECYCLING ORDINANCE**

WHEREAS, the City of Beaverton (City) desires to provide for the efficient collection of solid waste and help sustain the environment by promoting recycling, waste reduction and responsible materials management; 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, on November 13, 2012, the City Council participated in a Study Session to review and discuss the City of Beaverton solid waste franchise system; and,

WHEREAS, on February 19, 2013, the City Council held a Public Hearing on potential amendments to the Solid Waste Ordinance, now therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

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

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I. GENERAL PROVISIONS

4.08.010 Short Title.

BC 4.08.010 through 4.08.470 shall be known and may be cited as the "Solid Waste and Recycling Ordinance" and may also be referred to as "this ordinance." [BC 4.08.010, added by Ordinance No. 4203, 5/6/02]

4.08.020 Purpose, Policy and Scope.

A. It is the policy of the City of Beaverton to reduce the amount of solid waste generated and disposed per capita by undertaking aggressive waste prevention and recycling activities.

1. The City shall promote the development of environmentally sound and efficient practices regarding the collection of solid waste, recyclable material, and compostable material.

2. 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.

B. In carrying out this policy, the goals of this ordinance are:

1. To promote sustainability throughout the collection system, by seeking to maximize efficiency, equity and economic vitality, improve worker safety and reduce environmental and human health impacts over the entire life cycle of materials.

2. To reduce the amount of solid waste generated, as measured on a per capita basis.

3. To achieve a 75 percent recovery rate from the solid waste stream by 2020 and 90 percent by 2050.

4. To ensure the safe and sanitary collection, transportation and recovery of solid waste, recyclables, and compostable materials.

5. To provide Beaverton residents and businesses with the opportunity to recycle more materials through convenient on site, curbside and depot collection programs.

6. To establish and enforce collection standards for solid waste, recyclables and compostable materials to ensure uniform, cost effective and high quality service delivery to all customers.

7. To establish rates that are fair to the public, the franchisee and the City, encourage waste reduction, and promote safe, efficient collection.

8. To promote awareness of the waste reduction system in order to achieve the highest participation possible throughout the community.

9. To achieve reductions in toxic waste and minimize its harmful impacts and to reduce greenhouse gas emissions.

10. To reduce life cycle impacts by promoting product stewardship and producer responsibility.

[BC 4.08.020, added by Ordinance No. 4203, 5/6/02]

4.08.030 Definitions.

For the purpose of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Affiliated company – Any company that 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 the franchisee; or, 2) any subsidiary of such parent company; or, 3) any company of which 30 percent or more of the common stock or control is owned or controlled by the franchisee or the franchisee's shareholders. Examples of such shared costs include, but are not limited to: labor, equipment, vehicles, insurance, or administrative costs.

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:

1. The costs of complying with all laws, regulations or orders applicable to the obligations of franchisees under federal, state or local law, including this ordinance, as now or hereafter amended;

2. Disposal costs;

3. Labor costs, including operational and supervisory labor, payroll taxes, workers' compensation, and benefits;

4. Vehicle and equipment expenses, including vehicle registration fees, motor fuel, oil, tires, rental charges and/or operating lease payments and repairs and maintenance;

5. Expenses of maintaining other capital assets, including rental charges and/or operating lease payments and repair and maintenance;

6. Performance bonds and insurance in at least the amounts and coverages required by the City;

7. Administrative expenses related to data processing, billing and supplies, finance and accounting, franchise administration, human resource and labor management, rate analysis, and regulatory compliance;

8. Compensation paid to officers, up to limits set by City rule, based upon total revenues managed by the officers;

9. Utilities;

10. Training and worker safety expenses;

11. Promotion and public education costs;

12. 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.

13. Outside professional fees and costs, limited to two percentage points of revenue, unless an extraordinary circumstance exists;

14. 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;

15. All surcharges, taxes or fees, other than state or federal income taxes or franchise fees that 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;

16. Direct write off charges for bad debts; and

17. Franchise fees assessed by the City.

Business – Any entity of one or more persons, corporate or otherwise, engaged in commercial, professional, charitable, political, industrial, educational, or other activity that is nonresidential in nature, including public bodies, but not business activities in Residential dwellings unless they subscribe to Commercial collection services from their Franchised hauler.

Business recycling service customer – Any person who enters into a service agreement with a waste hauler or recycler for business recycling services.

Commercial – Relating to an entity that is non-Residential in nature.

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, franchisees, 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 the solid waste or waste.

Compostable Material and Compostable – Includes Yard Debris, Food Scraps and Food Soiled Paper when source separated for controlled biological decomposition.

Compostable Material shall not include Food Soiled Paper containing plastic or other materials that inhibit controlled biological decomposition.

Composting – The managed process of controlled biological decomposition of source separated Organic Waste. It does not include Composting of mixed Solid Waste. Compost is the product resulting from the Composting process.

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.

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 compostables.

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.

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.

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 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.

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.

Food Scraps – All waste from meats, fish, and vegetables, which attends or results from the storage, preparation, cooking, handling, selling, or serving of food for human consumption. Food Scraps include, but are not limited to, excess, spoiled or unusable food or dairy products, meats, vegetable and meat trimmings, grains, breads and dough, incidental amounts of edible oils, and Organic Waste from food Processing.

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 that could

not with reasonable diligence be controlled or prevented by the party affected by the event.

Franchise – A contract with the City allowing the use of public rights-of-way to collect and transport solid waste.

Generator – A person who last uses a material and then makes it available for disposal or recycling.

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.

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 466.005.

Infectious waste – Biological waste, cultures and stocks, pathological waste, and sharps, as defined in ORS 459.386.

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 percent recovery rate. It also means a facility that primarily accepts previously separated recyclables.

Mayor – The Mayor of the City of Beaverton or the Mayor's designee.

Multifamily – Any multi dwelling building or group of buildings that:

1. contain(s) five or more dwelling units on a single tax lot, such as apartments, condominiums and mobile home parks; and
2. 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 group homes and adult foster care homes.

Operating margin – For a period shall mean gross revenues minus allowable expenses.

Organic waste – Materials that:

1. can be biologically synthesized by plants or animals from simpler substances;
2. are no longer suited for their intended purpose; and
3. 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.

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).

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).

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.)

Processing – An operation where collected source-separated recyclable materials are sorted, graded, cleaned, identified or otherwise prepared for end use markets.

Putrescible waste – Solid Waste containing organic material that can be rapidly decomposed by microorganisms, and which may give rise to foul smelling, offensive products during such decomposition or which is capable of attracting or providing food for birds and potential disease vectors such as rodents and flies.

Receptacle – A can, cart, container, drop box, compactor or recycling bin or any other means of containment of solid waste, waste or recyclable materials.

Recyclable material, recyclable, recyclables – Any 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.

Recycling – Any process by which waste materials are transformed into new products in such a manner that the original products may lose their identity.

Residence, residential – A single family dwelling or any dwelling having four or fewer units on one tax lot regardless of whether it has Solid Waste collection in individual carts or Containers.

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.

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.

Solid waste or waste – All useless or discarded putrescible and nonputrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded Commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and Infectious Waste as defined in ORS 459.386. "Solid Waste" does not include:

Source Separated, principal Recyclable Materials, as defined in OAR 340-090-0070 and any others designated by the City, 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;

Hazardous Waste as defined in ORS 466.005;

Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals.

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.

Unallowable expenses – Shall include the following:

1. All charitable and political contributions;
2. Fines and penalties, including without limitation judgments incurred by a franchisee for violation of applicable laws;
3. Payments for services provided by individuals related by blood or marriage or by affiliated companies to a franchisee 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;
4. Accruals for future unknown regulatory changes;
5. 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;
6. 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;
7. State and federal income taxes;
8. Fees paid to a franchisee's board of directors;
9. 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;
10. Attorney's fees and related expenses resulting from:
 - a. Any judicial proceeding in which the City and a franchisee are adverse parties, unless the franchisee is the prevailing party;
 - b. 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;
11. Any other expenses defined as unallowable and approved by the council.

Yard debris – Grass clippings, leaves, tree and shrub prunings of no greater than four 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 inches in diameter, rocks, plastic, animal waste or manure, cat litter, potting soil, prepared food wastes or non-putrescible material. [BC 4.08.020, added by Ordinance No. 4203, 5/6/02; amended by Ordinance No. 4497, 12/15/08]

4.08.100 Non-Exclusive Franchise.

A. No person shall do business in the collection and transport of solid waste generated within the City without a current, valid city franchise.

B. A franchise to provide collection service for solid waste, recyclable, and compostable materials in a service area of the City shall be granted only after a determination of need for the service.

C. The determination of need is the responsibility of the City Council, which will seek the best balance of the following objectives:

1. To ensure 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, thereby encouraging 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.

D. 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:

1. 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;

2. The candidate's financial ability to perform the obligations of a franchise holder;

3. The candidate's equipment and personnel available to meet current and future needs of a franchise holder;

4. The candidate's ability to provide all services to customers within the geographic boundaries of the designated franchise area, including every residential, multifamily and commercial customer;

5. 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

6. 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.

E. Franchises granted by the City shall be non-exclusive.

1. 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.

2. As to such application(s), the Council may consider whether a current franchisee is capable of providing the additional service.

F. In evaluating whether a need exists for additional service, the City Council may consider, among any other criteria it deems relevant, 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.

G. A Franchise is not required of the following:

1. Any person self-hauling solid waste, recyclables or compostable materials. 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.

[BC 4.08.100, added by Ordinance No. 4203, 5/6/02]

2. Any person that collects, handles, processes, transports or markets source separated recyclable material where (a) the generator is being paid for the recyclable material, or (b) the net cost to the generator for having the recyclable material removed is zero (\$0) for all activities related to each transaction, including but not limited to collection, handling, processing, transporting, marketing, storing and rental of container.

4.08.110 Term of Franchise.

A. A franchise to provide collection service for solid waste, recyclables and compostable materials in a portion of the City shall be granted for a period of ten years.

B. At least every three years, the Mayor shall report to the Council a comprehensive review of the rates, customer service, franchise performance based on criteria described in BC 4.08.100, and overall state of the franchise system to determine if the system is achieving waste reduction, increased recycling, cost effective collection services and providing a high level of service to residents and businesses.

1. The Council may extend the franchise term by up to three years, thereby returning the remainder of the franchise term to ten years.

2. The Council has the authority to not extend a franchise for any reason. If the Council decides not to extend a franchise, it shall, prior to the expiration of the franchise, consider applications for a franchise to serve the affected area from any interested person and award a franchise for that area based on a determination of which applicant best meets the criteria stated in BC 4.08.100.

3. At the time of issuance of an extension of a franchise, the City may impose or modify conditions subject to the notification and hearing process set forth in BC 4.08.120.

4. Prior to the issuance, extension, or review of a franchise, the Council shall provide notice and opportunity for public comment as provided by BC 4.08.120.

5. If the Council determines not to extend a franchise term, then the franchisee shall continue to provide service during the years that are remaining in its franchise term. At all times the franchisee remains subject to BC.

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

1. A franchisee who desires to terminate its rights and obligations under a franchise shall give not less than 90 days' notice of its intent.

2. 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. [BC 4.08.110, added by Ordinance No. 4203, 5/6/02]

4.08.120 Notice of Franchise Review or Request for Franchise Applications.

A. Prior to a periodic franchise review, or the end of a franchise term, notice that the City intends to review the performance of franchisees or solicit applications for solid waste franchises shall be published in a newspaper of general circulation within the City.

B. Notice shall also be sent to all holders of Beaverton solid waste franchises.

C. The Mayor may keep a list of interested persons who will also be provided notice.

D. The Mayor shall establish forms and deadlines. [BC 4.08.120, added by Ordinance No. 4203, 5/6/02]

4.08.130 Description of Franchise Areas.

A city solid waste franchise service area shall include single unit residential customers and any multifamily 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. [BC 4.08.130, added by Ordinance No. 4203, 5/6/02]

4.08.140 Transfer of Franchise.

A. An assignment or transfer of a franchise shall include, but not be limited to:

1. A sale, exchange or other transfer of 50 percent or more of a franchisee's assets dedicated to service in the City;

2. A sale, exchange, or other transfer of 50 percent 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 the franchisee or any of its shareholders is a party that results in a change of ownership or control of 50 percent 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.

B. The franchisee shall provide no less than 60 days advance written notice to the City of any proposed transfer or assignment.

1. 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.

2. 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.

C. If a franchisee requests the City's consent to transfer the franchise, the City shall act on such request within 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.

D. 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.

E. 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 \$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 BC 4.08.100 of this subchapter. [BC 4.08.140, added by Ordinance No. 4203, 5/6/02]

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. [BC 4.08.200, added by Ordinance No. 4203, 5/6/02]

4.08.205 Rulemaking Authority for Administration and Enforcement.

The Mayor may promulgate such rules and regulations to promote recycling and proper disposal of solid waste as are necessary for the administration and enforcement of this ordinance, including but not limited to additional definitions, fee collection requirements, service standards, franchisee responsibilities, customer responsibilities, forms and procedures to implement the provisions of this ordinance, and a process for notice and comment regarding such rules and regulations prior to their adoption. [BC 4.08.205, added by Ordinance No. 4331, 11/16/04]

4.08.210 Enforcement of Standards: Customers.

A. A violation of a provision of this ordinance or of a rule duly promulgated under authority of this ordinance by a franchise customer shall constitute a Class I Civil Infraction and shall be processed according to the procedure set forth in BC 2.10.010 through 2.10.050.

B. Each violation of this ordinance or of a rule duly promulgated under authority of this ordinance relating to the responsibilities of a franchise customer shall constitute a separate civil infraction. Each day that a violation of a provision of this ordinance or of a

rule promulgated under authority of this ordinance is committed or is permitted to continue shall constitute a separate civil infraction.

C. Any penalty imposed pursuant to this ordinance or a rule duly promulgated under authority of this ordinance is in addition to, and not in lieu of, any other civil, criminal or administrative penalty or sanction otherwise authorized by law. [BC 4.08.210, added by Ordinance No. 4203, 5/6/02; Ordinance No. 4331, 11/16/04]

4.08.215 Enforcement of Standards: Franchisees.

A. A violation by a franchisee of a provision of this ordinance or of a rule duly promulgated under authority of this ordinance shall constitute an infraction and shall be processed according to the procedure set forth in this ordinance.

B. Infractions under this ordinance and under any rules duly promulgated under authority of this ordinance are classified by an Enforcement Code consisting of two letters.

1. The first letter identifies the severity of the infraction ("A" being the most severe, "B" being the second most severe, "C" being the third most severe and "D" being the least severe).

2. The second letter identifies whether the infraction is measured "Per Day" (referred to as D), "Per Class" (referred to as C), or "Per Incident" (referred to as I).

C. Violation of this ordinance or of a rule duly promulgated under authority of this ordinance by a franchisee is punishable as provided in BC 4.08.420.

D. Any penalty imposed pursuant to this ordinance or a rule duly promulgated under authority of this ordinance is in addition to, and not in lieu of, any other civil, criminal or administrative penalty or sanction otherwise authorized by law.

E. Upon recommendation of the Mayor, the Council may declare a franchisee who fails to abide by the rules to be in default. [BC 4.08.215, added by Ordinance No. 4331, 11/16/04]

4.08.220 Uniform Rate Setting.

A. 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 9 percent of franchise wide gross revenues.

a. However, the City shall not be required to change rates if the expected operating margin in the current year falls between 7-11 percent of gross revenues.

b. The 9 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.

B. Accordingly, the City shall have the authority to commission audits, reviews, or analysis of franchisee annual reports to validate hauler submissions.

C. 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.

1. The rates charged by franchisees shall conform to the most current Council resolution.

2. Prior to implementation, the Mayor must approve any interim rate for services not included in the current resolution.

3. If the franchisees 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 7 percent, a material change will be deemed to have occurred.

a. 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.

b. 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.

c. If the City believes that a material change has occurred that will result in current year operating margins falling under 7 percent or over 11 percent, the City may undertake an abbreviated rate review at its own expense.

4. A change in tipping fee will be evaluated by the Mayor to determine its effect upon rates and services. [BC 4.08.220, added by Ordinance No. 4203, 5/6/02]

4.08.230 Imposition of Franchise Fees.

A. 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 at a rate established by resolution of the City Council.

1. The franchise fee shall be computed and collected on a calendar quarterly basis.

2. The fee shall be paid by the franchisee not later than the last day of the month immediately following the end of the quarter.

3. A franchise fee payment shall become delinquent if not paid by the last day of the month immediately following the end of the quarter.

4. A simple interest charge of 18 percent shall be charged against the entire delinquent balance until the balance is paid.

B. 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.

1. Such statements shall be public records.

2. 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.

3. The City may require a uniform system of bookkeeping and record keeping to be used by all franchisees.

4. Material misrepresentation of cash receipts by a franchisee constitutes cause for revocation of the franchise.

C. 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.

D. 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.

E. The City Council by resolution may change the amount and computation of franchise fees from time to time.

F. 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.

1. In order to do so, the Mayor must be able to demonstrate that overall equity among the franchisees is improved.

2. Such a reallocation may not materially reduce the amount of total franchise fee revenue obtained by the City. [BC 4.08.230, added by Ordinance No. 4203, 5/6/02]

4.08.240 Clean and Efficient Fleet

The Mayor is authorized to adopt requirements leading to a clean and efficient collection fleet to protect public health and the environment. This can include requiring the use of a blend of biodiesel fuel in any collection vehicle with a diesel engine and requiring regular replacement of all collection vehicles used by Franchisees within the City.

A. For purposes of this section, "collection vehicles" are vehicles used by Franchisees for residential or commercial collection of solid waste, recycling or compostable materials for at least 50 percent of their hours or miles. "Collection vehicles" do not include back-up vehicles used less than 20 percent of full time vehicles' hours or miles.

B. Fleet Replacement

1. By December 31, 2017, all collection vehicles shall have engines that are 12 years old or newer.

2. Diesel Particulate Filter Retrofits: Collection vehicles that have been retrofitted with a diesel particulate filter through a Metro grant-funded program will be considered to have 2007 model year engines and will not be required to be replaced until December 31, 2019.

3. Franchisees shall prepare and annually update a Clean and Efficient Fleet Replacement Plan (Plan), approved by the Mayor, that complies with the following deadlines:

a. The Plan shall provide for the replacement of all collection vehicles with engines older than the 2005 model year by December 31, 2017.

b. The Plan shall provide for the replacement of no more than five vehicles between January 1, 2017 and December 31, 2017.

II. REPORTING RESPONSIBILITIES

4.08.310 Periodic Informational Reports.

Each franchisee shall respond to periodic requests for information from the Mayor about quantities of materials collected, locations where materials are delivered, customer account addresses, customer service inquiries and/or other information relevant to franchise oversight.

4.08.320 Quarterly Franchise Fee Report.

A. 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.

B. 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.

1. Such statements shall be public records.

2. 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.

3. The City may require a uniform system of bookkeeping and record keeping to be used by all franchisees. (D/D)

4. Misrepresentation of cash receipts shall be deemed:

a. Material and a breach of the franchise contract; and

b. Cause to initiate the process to terminate the franchise. [BC 4.08.320, added by Ordinance No. 4203, 5/6/02]

4.08.330 Annual Franchise Reports.

A. 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 is due on or before March 15 of each year. (D/D)

B. 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.

1. While direct charge of allowable expenses is preferred, it is understood that many franchisees provide service in areas outside the City.

2. Consequently, allocations to franchise operations within the City are necessary for most allowable expenses.

C. In addition to the results of operations within the City, 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.

1. 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.

2. 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.

D. 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 that each franchisee proposes to take in the next year, a composite table showing the type and number of customer service complaints, 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.

1. All report information shall be presented on a calendar year basis.

2. The report shall contain detailed information on education and promotion activities, and other information as required by the Mayor. (D/D)

E. Franchisees may identify information submitted to the City in the annual report as confidential.

1. 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.

2. 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. [BC 4.08.330, added by Ordinance No. 4203, 5/6/02]

4.08.340 Subcontracting Services.

A. 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:

1. The subcontract does not amount to a transfer of the collection franchise; and

2. The subcontracting party agrees to:

a. Abide by the conditions of this ordinance; and

b. In written application to the City, show how they will meet the criteria

applying to the current franchise.

B. A franchisee may subcontract all drop box and medical/infectious waste collection, but may not otherwise subcontract more than 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) [BC 4.08.340, added by Ordinance No. 4203, 5/6/02]

4.08.350 Access for Inspections and Delivery of Notices.

A. 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 vehicle maintenance and safety records 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.

1. Such inspections are only for purposes of enforcing this ordinance, and are restricted to normal business hours.

2. During normal business hours, the franchisee shall make all company premises and facilities accessible to City employees for delivery of any written notices.

(A/I)

B. 1. Collection vehicles must be accessible for inspection during the normal operating hours for collection, in addition to normal business hours.

2. 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) [BC 4.08.350, added by Ordinance No. 4203, 5/6/02]

4.08.360 Indemnification, Bond and Insurance.

A. Indemnification.

1. 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.

2. 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.

3. 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 therefrom. (A/I)

B. Bond.

1. 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 \$25,000, 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 \$25,000 on a form approved by the City Attorney.

2. 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 or letter of credit, or making the assignment. (A/I)

C. Insurance.

1. A franchisee shall maintain commercial general liability insurance on an occurrence basis, which will cover the franchisee's business operation, including each vehicle it operates, in such forms and with such companies as shall be approved by the City Attorney.

2. The insurance coverage shall include not less than \$100,000 for one person, nor less than \$300,000 for bodily injury due to each occurrence, and not less than \$100,000 for damage to property due to each occurrence, and coverage of at least \$1,000,000 in the aggregate per occurrence.

3. 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.

4. 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.

5. The franchisee shall furnish proof annually to the Mayor that the insurance remains in effect. (A/I)

D. Good Faith and Liability of Franchisee. 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. [BC 4.08.360, added by Ordinance No. 4203, 5/6/02]

III. ENFORCEMENT ACTIONS, 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. [BC 4.08.410, added by Ordinance No. 4203, 5/6/02]

4.08.420 Penalties for Infractions.

A. Each franchise provision, including rules adopted hereunder, is assigned an enforcement code consisting of two letters, such as (A/I).

1. The first letter represents the severity of the infraction (A, being the most severe), and the second identifies the incident definition.

2. 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.

B. 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

C. 1. 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.

2. 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.

D. Penalties not paid within the allotted time are subject to interest charges at the statutory rate of interest. [BC 4.08.420, added by Ordinance No. 4203, 5/6/02]

4.08.430 Termination of Franchise for Default.

A. 1. 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.

2. 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.

B. 1. 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.

2. At the hearing the franchisee shall demonstrate the measures it has taken or commenced to cure the default. [BC 4.08.430, added by Ordinance No. 4203, 5/6/02]

4.08.440 Service Interruption.

A. 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.

B. 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 the 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.

C. 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 such events. [BC 4.08.440, added by Ordinance No. 4203, 5/6/02]

4.08.450 City's Right to Perform Service.

A. 1. 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 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 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.

2. This right shall be in addition to and not in lieu of any other remedy available to the City.

B. If necessary and until such time as the emergency is resolved, 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. [BC 4.08.450, added by Ordinance No. 4203, 5/6/02]

4.08.460 Dispute Resolution with Customers.

A. 1. 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.

2. A franchisee shall not refuse service to any customer during a time of dispute.
B. If the franchisee is not able to resolve a dispute with the customer, the customer may contact the Mayor.

1. The Mayor or delegate will act as an informal arbitrator in an attempt to resolve the matter.

2. The Mayor may formally resolve a dispute of \$500 or on the basis of evidence presented by the franchisee and the customer.

C. 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. [BC 4.08.460, added by Ordinance No. 4203, 5/6/02]

4.08.470 Dispute Resolution with City.

A. 1. 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.

2. 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.

B. 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.

1. Within 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.

2. The two arbitrators shall select a third arbitrator 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.

3. 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.

4. Arbitration shall be conducted in the City in accordance with the then effective rules of the arbitration service/association.

5. 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.

IV. BUSINESS RECYCLING REQUIREMENT

4.08.505 Short Title.

This article shall be known and may be cited as the "Business Recycling Requirement Ordinance." [BC 4.08.505, added by Ordinance No. 4497, 12/15/08]

4.08.510 Purpose.

The purpose of this article is to comply with the business recycling requirement set forth in Metro Code Chapter 5.10. A significant increase in business recycling will assist

the Metro region in achieving waste reduction goals, conserving natural resources, and reducing greenhouse gas emissions. [BC 4.08.510, added by Ordinance No. 4497, 12/15/08]

4.08.520 Applicability.

This article applies to all businesses and business recycling service customers except for sites located in a residence. [BC 4.08.520, added by Ordinance No. 4497, 12/15/08]

4.08.530 Business Recycling Requirement.

A. Businesses shall source separate all recyclable paper, cardboard, glass and plastic bottles and jars, and metal cans for reuse or recycling.

B. Businesses and business recycling service customers shall ensure the provision of recycling containers for internal maintenance or work areas where recyclable materials may be collected, stored, or both.

C. Businesses and business recycling service customers shall post accurate signs that:

1. Describe the location where recyclable materials are collected, stored, or both;
2. Identify the materials that the business must source separate for reuse or recycling; and
3. Provide recycling instructions. [BC 4.08.530, added by Ordinance No. 4497, 12/15/08]

4.08.540 Compliance with Business Recycling Requirement.

A. A business or business recycling service customer that does not comply with the business recycling requirement may receive a written notice of noncompliance. The notice of noncompliance shall describe the violation, provide the business or business recycling service customer an opportunity to cure the violation within the time specified in the notice, and offer assistance with compliance.

B. A business or business recycling service customer that does not cure a violation within the time specified in the notice of noncompliance may receive a written citation. The citation shall provide an additional opportunity to cure the violation within the time specified in the citation and shall notify the business or business recycling service customer that it may be subject to a fine.

C. A business or business recycling service customer that does not cure a violation within the time specified in the citation may be subject to a fine.

D. A violation of a provision of this article or of a rule duly promulgated under authority of this article by a business or business recycling service customer shall constitute a Class 1 Civil Infraction and shall be processed according to the procedure set forth in BC 2.10.010 through 2.10.050.

E. Each violation of this article or of a rule duly promulgated under authority of this article relating to business recycling requirements shall constitute a separate civil infraction. Each day that a violation of a provision of this article or of a rule promulgated under authority of this article is committed or is permitted to continue shall constitute a separate civil infraction.

F. Any penalty imposed pursuant to this article or a rule duly promulgated under authority of this article is in addition to, and not in lieu of, any other civil, criminal or

administrative penalty or sanction otherwise authorized by law. [BC 4.08.540, added by Ordinance No. 4497, 12/15/08]

Section 2: 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.

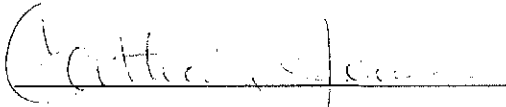
First reading this 19th day of March, 2013.

Passed by Council this 2nd day of April, 2013.

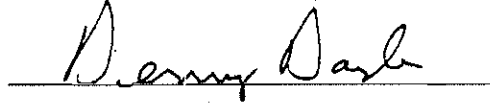
Approved by the Mayor this 3rd day of April, 2013.

ATTEST:

APPROVED:



CATHERINE JANSEN, City Recorder



DENNY DOYLE, Mayor