

**AN ORDINANCE AMENDING BEAVERTON CODE CHAPTER 4.08 BY
ADDING NEW SECTIONS RELATING TO BUSINESS FOOD
SCRAPS SEPARATION REQUIREMENT.**

WHEREAS, it is the policy of the City of Beaverton to reduce the amount of solid waste generated and disposed of per capita by undertaking aggressive source reduction and recycling activities (Beaverton Code ("BC") 4.08.020); and

WHEREAS, food represents 18 percent of the region's disposed waste, which is the largest single material sent to landfill and the largest single recoverable material sent to landfill; and

WHEREAS, businesses generate more than half of the region's food waste; and

WHEREAS, when sent to a landfill, food waste generates methane, which is 25 times more potent of a greenhouse gas than carbon dioxide; and

WHEREAS, Metro, the regional government, adopted Ordinance No. 18-1418, which amends Metro Code Chapter 5.10, Regional Solid Waste Management Plan, by adding provisions to establish a business food waste requirement.

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Section 1. Amendment. Beaverton Code Section 4.08.030, Definitions, is amended as follows:

4.08.030 Definitions.

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

"Affiliated company" means 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" means 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 chapter, 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 standby or backup 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" means 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” means any person who enters into a service agreement with a waste hauler or recycler for business recycling services.

“Commercial” means relating to an entity that is nonresidential 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” include 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” means 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” means 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” means 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” means 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” means 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” means 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” means all solid waste from **fruits; vegetables; meats; dairy products; fish; shellfish; nuts; seeds; grains; coffee grounds; and other food that results from the distribution; storage; preparation; cooking; handling; selling; or serving of food for human consumption.** Food scraps includes, but is not limited to, excess, spoiled or unusable food and includes inedible parts commonly associated with food preparation such as pits, shells, bones, and peels. Food scraps does not include liquids or large amounts of oils and meats which are collected for rendering, fuel production, or other non-disposal applications, or any food fit for human consumption that has been set aside, stored properly, and is accepted for donation by a charitable organization and any food collected to feed animals in compliance with applicable regulations. ~~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.~~

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Section 2. New Sections. Beaverton Code Sections 4.08.600 through 4.08.680 shall be added as follows:

4.08.600 Short Title.

BC 4.08.600 through 4.08.680 shall be known as and may be cited as the “Business Food Scraps Separation Requirement Ordinance” and may be referred to herein as “this chapter.”

4.08.610 Purpose.

The purpose of this chapter is to: 1) comply with the business food scraps requirement set forth in Metro Code Chapter 5.10, 2) assist the Metro region in achieving waste reduction goals, conserving natural resources, and reducing greenhouse gas emissions.

4.08.620 Applicability.

This chapter applies to all covered businesses. For purposes of this chapter, “**Covered business**” means a business that cooks, assembles, processes, serves, or sells food or does so as service providers for other enterprises. It includes, but is not limited to,

- A. cafeterias and buffets;

- B. caterers;
- C. colleges and universities with full-service restaurants or on-site food preparation or service; correctional facilities;
- D. drinking places with full-service restaurants or on-site food preparation or service;
- E. elementary and secondary schools with full service or on-site food preparation or service;
- F. food product manufacturing;
- G. food service contractors;
- H. full service restaurants;
- I. grocery retailers;
- J. grocery wholesalers;
- K. hospitals with full service or on-site food preparation or service;
- L. hotels with full service or on-site food preparation or service;
- M. limited service restaurants;
- N. nursing and residential care with full service or on-site food preparation or service;
- O. retirement and assisted living with full service or on-site food preparation or service;
- P. specialty food markets; and
- Q. warehouse clubs.

4.08.630 Food Scrap Separation Requirement.

- A. Covered businesses shall separate food scraps from all other solid waste for collection.
- B. Covered businesses shall collect food scraps that is controlled by the covered businesses, their agents, and their employees. This requirement does not apply to food scraps controlled by customers or the public. At a covered business' discretion, a covered business may also collect food scraps from customers or the public, but a covered business that does so shall ensure that the food scraps are free of non-food items. Schools that are covered businesses may also include student-generated food scraps from school cafeteria meals but shall ensure that the food scraps are free of non-food items.
- C. Covered businesses shall have correctly-labeled and easily identifiable receptacles for internal maintenance or work areas where food scraps may be collected, stored, or both.
- D. Covered businesses shall post accurate signs where food scraps are collected, stored, or both, that identify the materials that the covered business must source separate.
- E. Owners or managers of multi-tenant buildings that lease to covered businesses shall allow or otherwise enable their tenants or occupants to separate food scraps and have food scrap collection services available in compliance with this chapter.

4.08.640 Exemption.

Covered businesses that are able to demonstrate to the City that they generate less than 250 pounds of food scraps per week are exempt from the requirements described in BC 4.08.640. The City may request the updated data necessary to evaluate whether a covered business continues to be exempt at any time, but the City may not make such a request more than once per calendar year for each covered business.

4.08.650 Temporary Waiver.

- A. A covered business that demonstrates that it cannot comply with the requirements set forth in BC 4.08.640 may apply to the City for a temporary waiver from those requirements.
- B. After the covered business submits a completed application for a temporary waiver to the City, the covered business shall provide access to a recycling specialist for a site visit and demonstrate to the recycling specialist that the covered business cannot comply with the requirements set forth in BC 4.08.640.
- C. A covered business that receives approval from the City for a temporary waiver shall permit periodic site visits by the City to determine if conditions that warranted the waiver are still in place and cannot be remedied in accordance with waiver criteria set by the City.
- D. A temporary waiver issued by the City under this section lasts up to 12 months from the date of its issuance.

4.08.660 Rulemaking Authority.

The Mayor may promulgate such rules and regulations as necessary for the administration and enforcement of this chapter, including, but not limited to, setting timelines for implementation of this chapter.

4.08.670 Penalties.

- A. Covered businesses.
 - 1. A covered business that does not comply with the requirements of this chapter or any administrative rule promulgated under this chapter may receive a written notice of noncompliance from the City. The notice shall describe the violation, provide the covered business with an opportunity to remedy the violation within the time specified in the notice, and offer assistance with coming into compliance.
 - 2. A covered business that violates this chapter or an administrative rule promulgated under this chapter commits a Class 1 Civil Infraction. A Class 1 Civil Infraction shall be processed in accordance with the procedures set forth in BC 2.10.010 through 2.10.050.
- B. Owners or managers of multi-tenant buildings.
 - 1. An owner or manager of a multi-tenant building who violate this chapter or any administrative rule promulgated under this chapter may receive a written notice of noncompliance from the City. The notice shall describe the violation, provide the

owner or manager with an opportunity to remedy the violation within the time specified in the notice, and offer assistance with coming into compliance.

2. An owner or manager who violates this chapter or administrative rule promulgated under this chapter commits a Class 1 Civil Infraction. A Class 1 Civil Infraction shall be processed in accordance with the procedures set forth in BC 2.10.010 through 2.10.050.
- C. Non-exclusive penalty. The penalties described in BC 4.08.680(A) and (B) are in addition to, and not in lieu of, any other civil, criminal, or administrative penalty or sanction otherwise authorized by law.

Section 3. Severability. If any section, subsection, clause, phrase or portion of this ordinance is for any reason held unconstitutional or otherwise invalid, the remaining parts shall remain in force unless:

- A. The remaining parts are so essentially and inseparably connected with and dependent upon the unconstitutional or invalid part that it is apparent that the remaining parts would not have been enacted without the constitutional or invalid part; or
- B. The remaining parts, standing alone, are incomplete and incapable of being executed according to the legislative intent.

Section 4. Codification. Provisions of this Ordinance shall be incorporated in the Beaverton Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections [3-5]) need not be codified and the City Recorder or his/her designee is authorized to correct any cross-references and any typographical errors.

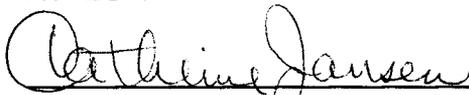
Section 5. Effective Date. This ordinance shall take effect on the 30th day after its passage.

First reading this 9th day of July, 2019.

Second reading and passage by this Council this 16th day of July, 2019.

Approved by the Mayor this 17th day of July, 2019.

ATTEST:


CATHERINE JANSEN, City Recorder

APPROVED:


DENNY DOYLE, Mayor