

**ORDINANCE NO. 801
(SOLID WASTE MANAGEMENT)**

AN ORDINANCE RELATING TO SOLID WASTE MANAGEMENT, INCLUDING RECYCLABLE MATERIAL AND YARD DEBRIS, IN THE CITY OF STAYTON, AND THE AUTHORITY TO GRANT AN EXCLUSIVE FRANCHISE TO COLLECT, TRANSPORT, AND TRANSFER SOLID WASTE OVER AND UPON THE CITY STREETS; CREATING NEW PROVISIONS; REPEALING AND REPLACING ORDINANCE NO. 578, 685, AND 698.

WHEREAS, the City of Stayton adopted Ordinance No. 578 on November 3, 1982, and amending Ordinance Nos. 685 and 698, providing for solid waste management by franchise in the City of Stayton;

WHEREAS, it is in the public interest that a comprehensive revision of the City's Solid Waste Management program be enacted to replace Ordinance Nos. 578, 685, and 698.

WHEREAS, the City of Stayton recognizes the franchise presently held by United Disposal Services, Inc., pursuant to Ordinance No. 685, and the rate increases adopted pursuant to Ordinance No. 698;

WHEREAS, the rights, interests, and respective obligations of the City and United Disposal Services, Inc. shall continue as committed under the terms of Ordinance Nos. 685 and 698;

WHEREAS, Ordinance Nos. 578, 685, and 698 shall be repealed and replaced by this Ordinance No. 801, subject to the rights, interests, and respective obligations of the affected parties.

WHEREAS, Ordinance No. 801, Appendix A, is hereby added to the Municipal Code of Stayton, Chapter 4.08.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF STAYTON THAT:

SECTION 1 REPEAL OF EXISTING ORDINANCES, RESOLUTIONS, AND FRANCHISES

Ordinance Nos. 578, 685, and 698 are hereby repealed subject to the rights, interests, and respective obligations of the City and the current Franchisee, United Disposal Services, Inc.

SECTION 2 SOLID WASTE MANAGEMENT

There is hereby added to the Municipal Code of the City of Stayton, Chapter 4.08, the text of which is provided in attached Appendix A, which by this reference is made a part of this Ordinance.

PASSED BY THE STAYTON CITY COUNCIL this 6th day of July, 1999.

CITY OF STAYTON

DATE: July 7th 1999

By: Henry A. Porter
HENRY A. PORTER, Mayor

DATE: 7-7-99

Attest: [Signature]
THOMAS L. BARTHEL, City Administrator

APPROVED AS TO FORM:

DATE: JUL 13 1999

[Signature]
DAVID A. RHOTEN, City Attorney

TITLE 4. FRANCHISES

CHAPTER 4.08

SOLID WASTE MANAGEMENT

SECTIONS

4.08.010	General Provisions
4.08.020	Franchise and Exemptions
4.08.030	Rate Regulation
4.08.040	Public Responsibility
4.08.050	Administration and Enforcement

4.08.010 GENERAL PROVISIONS

1. Short Title. This Chapter shall be known as "Solid Waste Management " and cited herein as "Chapter."
2. Purposes, Policy and Scope. In the interest of the public health, safety and welfare and in order to conserve energy and natural resources, it is the policy of the City of Stayton (hereinafter "City") to establish a comprehensive program for and to regulate solid waste management by way of an exclusive franchise. The exclusive franchise shall be granted for the purposes of establishing and maintaining:
 - a. safe, efficient, economical and comprehensive solid waste service.
 - b. fair and equitable consumer rates and to prohibit rate preferences or other practices that might be discriminatory.
 - c. energy and material resources conservation, reduction of solid wastes and promotion of material and energy recovery in all forms.
 - d. the education, promotion, planning, development and operation of programs to reduce, reuse, and recycle.
 - e. the elimination or prevention of overlapping service thus increasing efficiency and decreasing truck noise, street wear, energy waste, air pollution and public inconvenience.

TITLE 4. FRANCHISES

- f. public health and environment.
 - g. adequate public service standards.
 - h. procedures for proper handling of solid, yard debris, hazardous, and infectious wastes.
 - i. a basis and incentive for investment in solid waste equipment, facilities, sites and technology.
3. Ownership of Solid Waste. Solid waste, including but not limited to; source separated solid waste placed out for collection as recyclable material, or yard debris, is the property of the Franchisee or a person exempted by action of the Council under the provisions of this Chapter.
4. Definitions.
- a. City is the City of Stayton, Oregon:
 - i. A legal entity.
 - ii. A geographical area, including any area hereafter annexed to the City.
 - b. City Council or Council: The City Council of the City of Stayton.
 - c. Department of Environmental Quality (DEQ): The State of Oregon governmental agency known by that name or an agency established to accomplish the same purposes or function.
 - d. Franchisee: A person granted a franchise by resolution as authorized by Section 4.08.020(1) and that person's employees, agents, designees and assigns.
 - e. Franchise Agreement: The agreement entered into between the City and the Franchisee in accordance with this Chapter.
 - f. Hazardous Waste: Any waste defined as hazardous waste by or pursuant to local, state or federal laws, and as amended; or defined as hazardous waste

TITLE 4. FRANCHISES

by another governmental unit having jurisdiction; or found to be hazardous to service workers, to service equipment, or to the public by the Franchisee.

- g. Infectious Waste: Includes
 - i. "Biological waste," which includes blood and blood products, excretions, exudates, secretions, suctionings and other body fluids that cannot be directly discarded into a municipal sewer system, and waste materials saturated with blood or body fluids, but does not include diapers soiled with urine or feces.
 - ii. "Cultures and stocks," which includes etiologic agents and associated biologicals, including specimen cultures and dishes and devices used to transfer, inoculate and mix cultures, wastes from production of biologicals, and serums and discarded live and attenuated vaccines. "Cultures" does not include throat and urine cultures.
 - iii. "Pathological waste," which includes biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures and animal carcasses exposed to pathogens in research and the bedding and other waste from such animals. "Pathological waste" does not include teeth or formaldehyde or other preservative agents.
 - iv. "Sharps," which includes needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes that have been removed from their original sterile containers.
- h. Person: Any individual, partnership, association, cooperative, corporation, company, limited liability company, trust, firm, estate, joint venture or other private legal entity or any public agency or entity.
- i. Resource Recovery: The process of obtaining useful material or energy resources from solid waste, including reuse, recycling and other materials recovery or energy recovery of or from solid waste.
- j. Route: Any freeway, highway, road, roadway, street, avenue, drive, alley,

TITLE 4. FRANCHISES

cul-de-sac, thoroughfare, boulevard, parkway, or way of whatever sort, whether public or private.

- k. Service: The collection, transportation, transfer or disposal of or resource recovery of or from solid waste, recyclable material or yard debris, including solid waste management.
- l. Service Area: The geographical area in which a Franchisee is authorized to provide service.
- m. Solid Waste: All useless or discarded putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge; source separated materials (including recyclable material); yard debris; useless or discarded commercial, industrial, demolition and construction wastes; discarded or abandoned vehicles or parts thereof; discarded home and industrial appliances; manure, vegetable or animal solid and semisolid wastes, dead animals, infectious waste as defined by local, state and federal law, and other wastes; but the term does not include:
 - i. Hazardous wastes as defined by local, state and federal law.
 - ii. 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.
- n. Solid Waste Management: The prevention of or reduction of solid waste, management of the storage, collection, transportation, treatment, utilization, processing and disposal of solid waste, recycling, reuse and material or energy recovered from solid waste and the use and maintenance of facilities and equipment necessary or convenient to such activities.
- o. Source Separated Materials (including recyclable material): Any solid waste from which use can be extracted including but not limited to paper, cardboard, metal, rubber, glass, or plastic, and as may be defined by Council Resolution.

TITLE 4. FRANCHISES

- p. Yard Debris: Grass clippings, leaves, trees, and shrubs, pruning, and similar vegetative material.

4.08.020 FRANCHISE AND EXEMPTIONS

1. Authority to Grant Exclusive Franchise. The Council may grant to a person or persons the exclusive right, privilege and franchise to provide service to the City subject to and in compliance with this Chapter and all applicable local, state and federal laws.
 - a. Resolution. A franchise authorized by this Chapter shall be granted upon resolution of the Council. The resolution shall include the following:
 - b. Franchise Agreement. Based upon the resolution (provided for in Section 4.08.020(1)(a)), the City and the Franchisee shall enter into a written franchise agreement which shall declare the obligations of the parties, including but not limited to compliance with this Chapter, and allowance of attorneys' fees and costs to the prevailing party, in the event of a dispute. The rates for services, as amended from time to time, shall be determined as provided by Section 4.08.030 of this Chapter and included as a part of the Franchise Agreement.
 - c. Considerations. In granting a franchise, the Council may consider the following, to include but not be limited to: the applicant's demonstrated knowledge of the service, ability to furnish all required and necessary equipment and personnel; financial responsibility; capacity to indemnify the City, persons or property against its failure to fulfill the terms of the franchise or against injuries occurring to the City, persons or property in its performance of such franchise; and, prior experience, if applicable, in maintaining adequate service to the City.
2. Applications for Franchises. Applications for franchises shall be on forms the Council may prescribe. In addition to information required on the forms, the Council may require the filing of any additional information it deems necessary to insure compliance with this Chapter.
3. Requirements for Collection Franchises.

TITLE 4. FRANCHISES

- a. Any person applying for an original franchise (or a Franchisee transferring a Franchise Agreement) may, upon meeting the requirements listed below, be granted a franchise. The applicant must show, to the satisfaction of the Council, that the applicant:
 - i. Has a majority of the service accounts in the service area for which the applicant has applied, which the City Administrator may require be evidenced by a list of customers served.
 - ii. Has available collection vehicles, equipment, facilities, and personnel sufficient to meet the standards of equipment and service established by or pursuant to this Chapter. If the applicant proposes to serve a service area or portion thereof which is under franchise to another person or to replace that person upon expiration of the existing franchise, the applicant shall have available on the beginning date of the proposed franchise term collection vehicles, containers, and other equipment equal to that presently used in service.
 - iii. Has letters of recommendation as may be required by the Council.
 - iv. Has sufficient experience to insure compliance with this Chapter. If the applicant does not have sufficient experience, the Council may require the applicant to submit a corporate surety bond, in the amount of not less than \$25,000 nor more than \$100,000, guaranteeing full and faithful performance by the applicant of the duties and obligations of a Franchisee under the provisions of this Chapter, the Franchise Agreement, and applicable federal, state, and local laws and rules or regulations.
 - v. Has in force, or provides a letter of intent for coverage upon the franchise grant, combined public liability and property damage insurance in the amount of not less than \$1,000,000 which shall be evidenced by a certificate of insurance or the letter of intent. Upon award of or transfer of a franchise, any applicant providing only a letter of intent with the application shall provide a copy of a certificate of insurance prior to the effective date of the franchise or transfer.

TITLE 4. FRANCHISES

- vi. When requesting a transfer of franchise, the applicant must submit, as part of the application, a letter from the current Franchisee requesting the transfer.
- b. If the applicant is not already serving the area proposed to be served, the applicant shall show that:
 - i. The defined service area has not been franchised to another person, or
 - ii. The defined service area is not being currently served by the Franchisee therefor pursuant to any schedule established as part of the franchise in accordance with this Chapter, or
 - iii. The defined service area is not being adequately served by the Franchisee and there is a substantial demand from customers within the area for a change of service.
- 4. Issuance of Franchise.
 - a. Applications shall be reviewed by the City Administrator, who shall make all investigations deemed appropriate. The City Administrator shall give written notice of any application to any Franchisee who holds a franchise that includes any part of the area for which the application is made.
 - b. On the basis of the application, evidence submitted, and results of the investigation, the City Administrator shall make a finding on the qualifications of the applicant and shall determine whether additional areas should be included or additional service or equipment should be provided. On the basis of the findings, the City Administrator shall recommend to the Council whether the application should be granted, denied, or modified.
 - c. The Council shall issue an order by resolution granting, denying, or amending the application. Upon receipt of the order granting a franchise, the applicant shall enter into a Franchise Agreement with the City.
 - d. The Franchise Agreement may be amended upon the agreement of the parties.

TITLE 4. FRANCHISES

5. Franchise Term. The period of the franchise shall be for a five-year term commencing on the effective date of the Franchise Agreement.
 - a. Renewals. On the first day of each calendar year after the effective date of the Franchise Agreement, the franchise shall be renewed for a full five-year term unless prior to the expiration of the annual renewal of the franchise term, the Council notifies the Franchisee in writing of its intent to terminate the franchise renewals. Such renewals shall be conditioned upon the Franchisee's continued compliance with the terms of Section 4.08.020(8).
 - b. Termination. The termination of franchise renewal may be with or without cause.
 - i. Expiration. Upon Council's notice of termination of renewal, the Franchisee shall continue the service to its termination, five years after the date of the notice of termination. The Council may later extend the term or reinstate the continuing renewal upon mutual agreement.
 - ii. Termination for Cause. The Council may suspend, modify or revoke the franchise for cause pursuant to Section 4.08.020(10). The City's exercise of its rights under this Section shall not restrict the City from pursuing any other remedy available under local, state or federal law.
6. Subcontracting and Transfers of Interest.
 - a. Subcontracting. A Franchisee shall not subcontract with others to provide service under this Chapter or the Franchise Agreement, in whole or in part, unless:
 - i. Written approval as to the subcontractor and the subcontract agreement is granted by the Council prior to the effective date of any subcontract agreement, provided, however, where emergency circumstances require the services of a subcontractor prior to receipt of Council's written approval, such written approval shall be sought not later than thirty (30) days from the effective date of the subcontract agreement, otherwise such subcontract shall be of no force or effect; and,

TITLE 4. FRANCHISES

- ii. The agreement between the Franchisee and the subcontractor is in writing and such agreement binds the subcontractor to the provisions of this Chapter and the terms of the Franchise Agreement between the City and the Franchisee; and,
 - iii. The Franchisee agrees to forever defend, indemnify and hold the City, its Councilors, employees and agents harmless from any claim, loss or liability, including attorneys' fees, costs and disbursements arising out of, in any way connected with, or resulting from the subcontractor's service, this Chapter, the subcontract agreement, and any other matter relating thereto. In the event of any action, judicial or otherwise, arising from allegations, claims, controversy, or litigation brought against the City and arising out of or in any way connected with any of the above events or claims, against which Franchisee agrees to defend the City, Franchisee shall, upon notice from the City, vigorously resist and defend such actions or proceedings, including any appeal thereon and post-judgment collection action, through legal counsel reasonably satisfactory to the City at Franchisee's sole expense. If the City expends funds or services relating to the controversy, the Franchisee agrees to reimburse the City for such expenditures, including attorney's fees and costs.
 - iv. Notwithstanding Council approval of a subcontract, the Franchisee shall not be relieved of the responsibility for providing and maintaining service as required by this Chapter and the Franchise Agreement and shall remain obligated for compliance with this Chapter and performance of the Franchise Agreement.
- b. Permitted Subcontracts. Notwithstanding the provisions of Section 4.08.020(6)(a) of this Chapter, a Franchisee may subcontract with others to provide service under this Chapter or the Franchise Agreement, in whole or in part, without prior approval of the Council in the following circumstances:
- i. The subcontract is on a one-time, short-term basis lasting not more than a total of six (6) consecutive or non-consecutive months; or,

TITLE 4. FRANCHISES

- ii. The subcontract is with an affiliate of the Franchisee. As used in this subsection: an "affiliate" is a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Franchisee; and "control", including the terms "controlled by" and "controlled with", means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, including Franchisee, through direct, indirect, or common ownership.
 - iii. In each of the foregoing circumstances, Section 4.08.020(a)(ii) and 4.08.020(a)(iii) will apply, and the Franchisee shall notify the City Administrator in writing (together with a copy of the subcontract) within ten (10) days after making any such subcontract.
- c. Transfers.
- i. Financial: Assignments, Mortgages and Leases. The Franchisee shall not transfer, assign, mortgage, lease or pledge the franchise or any portion thereof to other persons without prior written approval of the Council, which consent the Council may refuse to grant. A pledge of the franchise as financial security shall be considered as a transfer for purposes of this subsection. If written approval is granted, the Council may attach whatever conditions it deems necessary to assure continuation of service and compliance with this Chapter and the Franchise Agreement.
 - ii. Ownership, Control or Interest. Prior Council approval is required for any transaction which transfers a substantial or controlling interest in the Franchisee's business or the assets held thereunder; approval shall not be unreasonably withheld.
7. Franchise Fee. The Franchisee shall pay a fee, declared by Council resolution, based upon its gross receipts from the franchised service as provided in the Franchise Agreement. This fee shall be in lieu of any other business license fee or other fees charged by the City but not in lieu of any ad valorem taxation.
8. Franchisee Responsibility and Authority.
- a. A Franchisee shall:

TITLE 4. FRANCHISES

- i. Dispose of solid waste at a DEQ approved disposal site or resource recovery for such wastes, subject to and in compliance with this Chapter and all applicable local, state and federal laws.
- ii. Conduct its activities under this Chapter, whether in or outside the City, in compliance with the provisions of this Chapter, the terms of the Franchise Agreement and all applicable local, state and federal laws.
- iii. Contract with a solid waste disposal site for the disposal of wastes collected.
- iv. Collect and recycle residential recyclable material, including yard debris, as follows:
 - (a) The Franchisee shall provide collection for recyclable materials, a list of which the City Council shall determine, from time to time, by resolution. Participation by residential customers shall be voluntary.
 - (b) Subject to the City's discretion, collection shall be weekly at residences, except that recyclable materials shall be collected as determined by the City Council by Resolution. This material shall be disposed of in a manner which promotes its reuse.
 - (c) Customers shall receive information on how to separate each recyclable material to be collected. A Franchisee may refuse to collect materials not properly separated. If materials are refused, the Franchisee shall leave notice with the customer why the material was not collected.
 - (d) Unless the Franchisee and customer agree otherwise, recycling receptacles, provided by the Franchisee, shall be placed for collection near the solid waste receptacles.
 - (e) Publicity. The Franchisee shall cooperate with the City in an ongoing publicity campaign promoting recycling and the

TITLE 4. FRANCHISES

recycling program.

- (f) Review. Compliance review of the Franchisee for the collection of recyclable materials, under the terms of this Chapter shall be conducted as provided by Section 4.08.020(10). If the Council determines that the collection of recyclable materials is not functioning to the benefit of the public, or has become unpractical, the Council may discontinue collection.
- v. Provide and keep in force public liability insurance issued by an insurer authorized to conduct business in Oregon in the amounts declared by Council resolution and as provided in the Franchise Agreement, as reasonably appropriate for that which is required of the Franchisee's indemnity obligations under the terms of this Chapter. Proof of such insurance shall be evidenced by a certificate of insurance filed with the City Administrator. The policy of such insurance shall:
 - (a) name the City of Stayton as additional insured and
 - (b) provide that such policy not be canceled, terminated, amended or permitted to expire without not less than ten (10) days' prior written notice to the City. The City shall have the option to purchase insurance and charge the Franchisee for the cost thereof.
- vi. Within 30 days or a time otherwise fixed by the Council's resolution granting a franchise authorized by this Chapter, execute and file with the City Administrator the Franchise Agreement.
- vii. Provide sufficient collection vehicles, containers, facilities, personnel, finances and resources to provide all types of necessary service, or subcontract with others to provide such service, in accordance with this Chapter; provided, however, where a customer generates or creates a large volume of waste and the providing of service to such customer shall require the Franchisee to substantially invest in new equipment not otherwise necessary to service the franchised service

TITLE 4. FRANCHISES

area, the Franchisee may require a contract with such customer. The terms of such contract shall include the duration and rates for providing such service. The rates charged shall be reflective of current rates charged and shall be calculated to allow the Franchisee to defray the cost of investment in the new equipment while not imposing undue expense or burden on the customer. A contract entered into pursuant to this section is subject to Council approval and, in any event, shall not extend the franchise term. The Franchisee enters into a contract under this Section at the Franchisee's own risk.

- viii. Respond to any complaint on service and provide copies of the complaints and responses to the City Administrator.
- ix. Make its services available to the City, its persons and property without discrimination as to cost, frequency of service, or type of service, except the Franchisee shall have the right to make reasonable rules and regulations relating to the service performed by the Franchisee, subject to both the prior approval of the Council and the provisions of this Chapter. Specified City of Stayton government properties shall be provided service at no cost. A list of the specific government properties to be serviced shall be determined by Council resolution. If directed by the City Administrator, the Franchisee will provide annually, service for two "Clean-Up Days" for yard debris at the Franchisee's cost.
- x. Franchisee shall forever defend, indemnify and hold the City, its Councilors, employees and agents harmless, upon prompt tender of the complete defense thereof, from any claim, loss or liability, including attorneys' fees, costs and disbursements arising out of, in any way connected with, or resulting from the Franchisee's operation of the service business, or from the Franchisee's responsibilities and obligations set forth in this Chapter, or in the Franchise Agreement, and any other matter relating thereto. In the event of any action, judicial or otherwise, arising from allegations, claims, controversy, or litigation brought against the City and arising out of or in any way connected with any of the above events or claims, against which Franchisee agrees to defend the City, Franchisee shall, upon notice from the City and prompt tender of the complete defense thereof,

TITLE 4. FRANCHISES

settle or if necessary, vigorously defend such actions or proceedings, including any appeal thereon and post-judgment collection action, through legal counsel reasonably satisfactory to the City at Franchisee's sole expense. Any settlement shall be subject to City approval. If the City expends funds or services, the Franchisee agrees to defray the costs or services the City incurs or employs relating to the controversy and reimburse the City thereof.

- xi. Maintain collection vehicles in a reasonably clean and sanitary condition and in a good and safe operating condition. If any collection vehicle becomes unsuitable for the purpose for which it is intended by reason of its becoming unsafe, dilapidated, unsightly, unsanitary or obsolete, the Council may direct the Franchisee to remove the vehicle from service until the objections are corrected or to replace it within a reasonable time.
 - xii. Conduct its service at all times in compliance with and subject to this Chapter and all applicable local, state and federal laws.
 - xiii. Provide the opportunity to recycle in compliance with and subject to this Chapter and all applicable local, state and federal laws.
- b. A Franchisee is not required to store, collect, transport, transfer, dispose of or resource recover any hazardous wastes unless otherwise provided for in this Chapter, by agreement, or by applicable local, state or federal law.
 - c. A Franchisee may utilize whatever routes necessary to accomplish the purposes, policy and scope of this Chapter.
 - d. A Franchisee may engage in those activities necessary and incidental to fulfilling its responsibilities and the purposes, policy and scope of this Chapter.
 - e. A Franchisee shall not give any rate preference to any person, locality or type of solid waste stored, collected, transported, disposed of or resource recovered. This paragraph shall not prohibit uniform classes of rates based upon length of haul, type or quality of solid waste handled and location of customers so long as such rates are reasonably based upon cost of the

TITLE 4. FRANCHISES

particular service and are approved of in advance by the Council; provided, however, the Franchisee may volunteer services at a reduced cost for a charitable, community, civic or benevolent purpose.

9. Oversight. The City Administrator shall oversee the Franchisee's compliance with this Chapter and the Franchise Agreement. With prior notice, the City Administrator, Council, or its designee may review and inspect the Franchisee's books and records without restriction and its facilities, equipment, and other resources utilized in providing the franchise service.-
10. Compliance Review.
 - a. The City Administrator may review the Franchisee's compliance with this Chapter and the Franchise Agreement annually or more frequently at the discretion of the City Administrator or Council. If the City Administrator reviews the Franchisee's compliance, a report shall be provided to the Council and the Franchisee. The Franchisee shall have the same rights as provided in Section 4.08.020(11).
 - b. In the event of an identified lack of compliance, the Franchisee shall have 90 days from the date of the report, or a time otherwise specified by the City Administrator or the Council, to comply with the Chapter and the Franchise Agreement.
 - c. At the expiration of the 90-day period, or other time specified by the Council, the City Administrator shall advise the Council as to whether the Franchisee has come into compliance with the Chapter and the Franchise Agreement.
 - d. If the Franchisee fails to correct its noncompliance within the 90-day period, the City may proceed under the provisions of Section 4.08.020(10) of this Chapter for the suspension, modification, or revocation of the franchise. Council's failure to proceed under Section 4.08.020(11) shall not constitute a waiver of any of the City's rights or remedies.
 - e. The Council, in its sole discretion, may or may not conduct a compliance review at the end of the fourth year of the franchise term.
 - f. Nothing in this section is intended to limit or act as a prerequisite to the

TITLE 4. FRANCHISES

application of any other provisions of this Chapter.

11. Dispute Resolution.

- a. Any dispute or controversy between the City and the Franchisee arising under this Chapter or the Franchise Agreement shall first be heard and resolved by the City Administrator.
- b. If the City or the Franchisee are dissatisfied with the determination of the City Administrator, either party may seek alternative dispute resolution (negotiation, mediation, or arbitration). If unresolved, then binding arbitration shall be the sole and exclusive forum to determine the rights of the parties involved.

12. Suspension, Modification or Revocation of Franchise. The provisions in this section are in addition to and not in lieu of any other remedy of the City.

- a. Failure to provide necessary service or otherwise comply with any provision of this Chapter after written notice and a reasonable opportunity to comply shall be grounds for suspension, modification, or revocation of the franchise.
- b. After written notice from the City Administrator that such grounds exist, the Franchisee shall have 20 days from the date of mailing of the notice in which to comply or request a public hearing before the Council.
- c. If a public hearing is requested, the Franchisee and other interested persons shall have an opportunity to present oral, written or documentary evidence of compliance to the Council.
- d. If the Franchisee fails to comply within the time specified or upon an order of the Council based upon its findings at the public hearing, the Council may suspend, modify or revoke the franchise or make such action contingent upon continued noncompliance.
- e. In the event the Council finds an immediate and serious danger to the public through creation of a health hazard or serious public nuisance, it may take corrective action within a time specified in the notice to the Franchisee and without a public hearing prior to taking such action.

TITLE 4. FRANCHISES

- f. The waiver by the City of one or more defaults or breaches in the Franchisee's observance of the terms and conditions of this Chapter and the Franchise Agreement shall not constitute a waiver of such default or breach of any subsequent default or breach thereafter.
13. Preventing Interruption of Service. In the event that an interruption of the Franchisee's service creates a health hazard or public nuisance, the City Administrator or Council, after actual notice to the Franchisee, may authorize another person to provide interim or corrective service. The City or its designee may utilize any of the Franchisee's, or City's, real property, facilities, or equipment to provide the interim or corrective service. The City shall return any property used by the City or its designee for the interim or corrective service.
14. Termination of Service. The Franchisee may terminate service to all or a portion of its customers if:
- a. Access is blocked and there is no alternate route. In such case, the City shall not be liable to the Franchisee or Franchisee's customers for such blocking of access, or
 - b. Excessive weather conditions render providing service unduly hazardous to persons providing service or such termination is caused by accidents or casualties caused by an act of God, public enemy or vandalism, or
 - c. A customer has not complied with section 4.08.040 of this Chapter or has not paid for service provided after a regular billing and after a 15-day written notice to pay, or
 - d. Ninety days' written notice of intent to terminate is given to the Council and written approval is obtained from the Council, or,
 - e. Ordered by a legislative, administrative or judicial body having jurisdiction.
15. Practices Prohibited Without a Franchise. Unless exempted by Section 4.08.020(15) or 4.08.020(16) or franchised pursuant to Section 4.08.020 of this Chapter, no person shall solicit customers for service, or advertise the providing of service, or provide service in the City.

TITLE 4. FRANCHISES

16. Persons and Practices Exempt from Franchise. Nothing in this Chapter requires a franchise agreement under this Chapter from the following persons for the following businesses or practices:
- a. The collection, transportation and reuse of repairable or cleanable discards by a private charitable organization regularly engaged in such business or activity including, but not limited to, Salvation Army, St. Vincent de Paul, Goodwill and similar nonprofit organizations.
 - b. The collection, transportation and reuse or recycling of totally source separated materials or operation of a collection center for totally source separated materials, on an irregular basis, by a religious, educational, charitable, benevolent or fraternal nonprofit organization, which organization was not organized nor is operated for any solid-waste management purpose and which nonprofit organization is using the activity for fund raising.
 - c. The collection, transportation or redemption of returnable beverage containers under Oregon laws, and amendments, including provisions commonly known as the "Bottle Bill."
 - d. The generator or producer who transports and disposes of waste created as an incidental part of regularly carrying on the business or service of auto wrecking, to the extent licensed by the State of Oregon; demolition, land clearing or construction; janitorial service, gardening, park maintenance or landscaping service; street sweeping; auto body recovery; or septic tank pumping or sludge collection. "Generation" or "production" shall not include acts constituting cleanup or collection of accumulated or stored wastes generated or produced by other persons.
 - e. The transportation by a person of solid waste generated or produced by such person to a disposal site, resource recovery site, or market provided such person complies with Section 4.08.040(1) of this Chapter and all applicable local, state, and federal laws. Solid waste generated or produced by a tenant, lessee, occupant, licensee, invitee, or similarly situated person is deemed produced by such person for purposes of this Chapter and not by the landlord, lessor, manager, or property owner with whom such relationship exists.

TITLE 4. FRANCHISES

- f. The providing of service for hazardous wastes; provided, however, that the Franchisee may engage in management of hazardous wastes subject to and in compliance with all applicable local, state and federal laws.
 - g. Any other practice, business or activity exempted by resolution of the Council pursuant to Section 4.08.020(16) of this Chapter.
 - h. The sale or exchange by the generator for fair market value of source separated recyclable material to any person for recycling or reuse. Fair market value, as used in this paragraph h, means at a minimum, the generator or service customer shall pay nothing for collection, transportation or disposal service for the recyclable material. This paragraph h shall not apply if the generator makes any payment to the person providing collection, transportation or disposal service for the recyclable material.
17. Exemptions by Resolution. The City Council may, in its sole discretion, authorize by resolution exemptions to provisions of this Chapter.
- a. Criteria. In making its decision, the Council shall consider:
 - i. Whether the exception carries out the purposes and policy stated in Section 4.08.010(2) of this Chapter;
 - ii. Whether there is a need for the proposed service;
 - iii. Whether the applicant can show there are enough customers for the proposed service to make it a practicable business at a reasonable profit, considering rates in effect at the time;
 - iv. Whether the existing Franchisee is able to provide the proposed service so as to make the exemption unnecessary;
 - v. Whether unnecessary or unreasonable hardships or practical difficulties exist which cannot be solved by the existing Franchisee without unreasonable expenditure of funds and can only be relieved by the granting of an exemption;
 - vi. Whether exceptional or extraordinary circumstances or conditions,

TITLE 4. FRANCHISES

not created by the Franchisee, which cannot be remedied without the unreasonable expenditure of funds or resources, and which may involve solid waste disposal facilities, including land, sanitary landfill, buildings, transfer stations, or similar facilities;

- vii. Whether the granting of the exemption will not be materially detrimental or have a substantial impact on service, consumer rates, or the Franchisee in the particular service area where the exemption is proposed;
- viii. Whether the applicant has the necessary equipment, experience, finances, personnel and resources to provide adequate service; or,
- ix. Any other factors.

b. The Application for Exemption.

- i. The application for exemption shall be filed with the City at least twenty (20) days prior to the regular Council meeting at which the exemption will be considered. The applicant shall pay a fee for the exemption.
- ii. The applicant shall provide notice as follows:
 - (a) The applicant shall post copies of the application for exemption in three (3) public places within the City, not less than five (5) days prior to the Council meeting at which the exemption will be considered.
 - (b) The applicant shall provide notice of the exemption application to the affected franchise operator. Such notice shall be accomplished by First Class, Registered or Certified Mail.
 - (c) The applicant shall cause to be published notice of the exemption application twice consecutively in a newspaper of general circulation in the City, with each publication being a minimum of two (2) days apart. The applicant shall bear the

TITLE 4. FRANCHISES

cost(s) of such published notice.

- c. Hearing. The Council shall consider the exemption after public hearing, at which testimony from the applicant, the Franchisee, or any interested person may be heard. The Council shall grant or deny the application for exemption based upon the application, provisions of this Chapter, testimony and evidence, applicable local, state, and federal laws, and any other factors. The applicant shall have the burden of proving the need for exemption by substantial evidence.

4.08.030 RATE REGULATION

1. Rate Determination.

- a. Rates for service shall be set by resolution of the Council, after public hearing. The rate schedule shall be included as a part of the Franchise Agreement.
- b. The Council shall, as considered necessary from time to time, change rates by resolution. In determining the appropriate rate to be charged by the Franchisee, the Council shall give consideration to the following:
 - i. The cost of performing the service provided by the Franchisee, including public education and promotion;
 - ii. The anticipated increase in the cost of providing the service, including any increase in the cost of disposal;
 - iii. The need for equipment replacement and the need for additional equipment to meet service needs; compliance with federal, state, local law, ordinances and regulations; or technological change;
 - iv. The investment of the Franchisee and the value of the business and the necessity that the Franchisee have reasonable operating margin for providing service under the Franchise Agreement;
 - v. The rates charged in other cities of similar size within the area for similar service;

TITLE 4. FRANCHISES

- vi. The public interest in assuring reasonable rates to enable the Franchisee to provide efficient and beneficial service to the users of the service;
 - vii. The local wage scales, cost of management facilities and disposal fees or charges;
 - viii. Any profit or cost savings resulting from recycling, and any additional current or projected costs resulting from recycling, reuse, and resource recovery services;
 - ix. Location of can, cart, or container in relation to a public road; haul distance; and concentration of dwelling units; and,
 - x. Such other factors as the Council deems relevant.
- c. On all but emergency or interim rates, the Franchisee shall provide 30 days' written notice of the proposed rate change together with accompanying justification. An emergency or interim rate for a new or altered service may be adopted by written order of the City Administrator and is valid for a stated period not to exceed six months.
 - d. Rates charged shall be reflected in the Council's resolution. If the Council imposes increases in the cost or requirements on the Franchisee, including but not limited to an increased franchise fee or increased insurance coverage, upon consent of the Council, the Franchisee may raise its rates, but on a pro rata basis to customers for the amount of those increases only, and without a net revenue increase to the Franchisee. Nonscheduled service may be provided at the reasonable cost of providing the service, giving due consideration to the standards addressed in this Chapter.
 - e. Franchisee may require payment for residential service and multifamily residential service up to two months in advance. Franchisee may bill up to two months in advance, arrears or any combination thereof. Where billed in advance the Franchisee will refund a prorata portion of the payment for any complete month in which service is not to be provided.

TITLE 4. FRANCHISES

- f. The following systems may be used by the Franchisee to reduce bad debts which would otherwise become a charge against legitimate paying customers:
 - i. The Franchisee may require payment at the time service is provided to drop box or roll-off box customers or for any other customer that has not previously established credit with the Franchisee. In determining credit, the Franchisee may take into consideration nonpayment for, service by other service providers in other areas and any other relevant information.
 - ii. Subject to the amount or rate being approved in the rate schedule, the Franchisee may charge:
 - (a) A starting charge for a new service;
 - (b) A restart charge or advance deposit or both for any customer who has previously been terminated for failure to pay for service; and
 - (c) Interest on past due accounts, not to exceed legal maximums.
 - iii. In addition to the other provisions of this section and not in lieu thereof, the Franchisee may collect the entire cost of billing and collecting bad debts including, but not limited to, the cost of professional debt collection.
- 2. Business Practices. Except as modified by this Chapter the Franchisee may use normally accepted business practices.
- 3. Accounting, Records and Audit. The Franchisee shall keep a complete and accurate set of books which shall reflect the gross receipts from services under the Franchise rendered within the City, which books shall be balanced at least annually. Books and records shall be kept using normally accepted accounting practices as modified to provide the information required for rate determination under Section 4.08.030(1) of this Chapter. The frequency, detail and disposition of records and the costs of such record keeping shall be reviewed by and with the City Administrator who shall make a final determination, subject to any direction by the Council. The City Administrator or a qualified designee shall have the right to inspect and audit the

TITLE 4. FRANCHISES

books and records of the Franchisee at reasonable times and places.

4.08.040 PUBLIC RESPONSIBILITY

1. Public Responsibility. In addition to and not in lieu of compliance with all applicable local, state and federal laws:
 - a. No person shall place any hazardous waste out for collection or disposal by the Franchisee nor place it into any solid waste container or drop box supplied by the Franchisee or the City without prior notice to and prior written approval from the Franchisee or the City, respectively. A person placing such wastes for collection shall, prior to notice to the Franchisee or to the City, obtain approval of the waste disposal site to be used for disposal of such wastes. Where required, an additional approval shall be obtained from the local government unit having jurisdiction over the disposal site. This disposal approval shall be in writing, signed by the person designated by the disposal site or the local government unit affected. Either Franchisee, the City of the disposal site or the local government unit having jurisdiction of the disposal site may require written, authorization from the Oregon Department of Environmental Quality for handling of such hazardous wastes.
 - b. Pursuant to applicable local, state and federal laws, producers of infectious waste shall comply with the following provisions:
 - i. Infectious waste shall be segregated from other wastes by separate containment at the point of generation. Enclosures used for storage of infectious waste shall be secured to prevent access by unauthorized persons and shall be marked with prominent warning signs.
 - ii. Infectious waste, except for sharps, shall be contained in disposable red plastic bags or containers made of other materials impervious to moisture and strong enough to prevent ripping, tearing or bursting under normal conditions of use. The bags or containers shall be closed to prevent leakage or expulsion of solid or liquid wastes during storage, collection, or transportation.
 - iii. Sharps shall be contained for storage, collection, transportation and

TITLE 4. FRANCHISES

disposal in leakproof, rigid, puncture-resistant red containers that are taped closed or tightly lidded to prevent loss of the contents. Sharps may be stored in such containers for more than seven days.

- iv. All bags, boxes or other containers for infectious waste and rigid containers of discarded sharps shall be clearly identified as containing infectious waste.
- v. Infectious waste shall be stored at temperatures and only for times established by rules of the Health Division of the Oregon Department of Human Resources.
- vi. Infectious waste shall not be compacted before treatment and shall not be placed for collection, storage or transportation in a portable or mobile trash compactor.
- vii. Infectious waste contained in disposable bags as specified in this section shall be placed for collection, storage, handling or transportation in a disposable or reusable pail, carton, box, drum, dumpster, portable bin or similar container. The container shall have a tight-fitting cover and be kept clean and in good repair. The container may be of any color and shall be conspicuously labeled with the international biohazard symbol and the words "Biomedical Waste" on the sides so as to be readily visible from any lateral direction when the container is upright.
- viii. Each time a reusable container for infectious waste is emptied, the container shall be thoroughly washed and decontaminated unless the surfaces of the container have been protected from contamination by a disposable red liner, bag or other device removed with the waste.
- vix. Trash chutes shall not be used to transfer infectious waste between locations where it is contained or stored.
- x. Generators that produce 50 pounds or less of infectious waste in any calendar month shall be exempt from the specific requirements of subsections (e), (g), and (i) of this Section.

TITLE 4. FRANCHISES

- c. The requirements of Section 4.08.040(1)(b) shall not apply to waste, other than sharps, as defined in Section 4.08.040(1)(b)(ii), that is:
 - i. Generated in the practice of veterinary medicine; and,
 - ii. Not capable of being communicated by invasion and multiplication in body tissues and capable of causing disease or adverse health impacts in humans.
- d. No unauthorized person shall place material in or remove material from a solid waste collection container without permission of the owner of the container. For the purpose of this section, the Franchisee is the "owner" of containers supplied by Franchisee.
- e. No unauthorized person shall remove solid waste placed out for collection and resource recovery by the Franchisee or a person exempted by Section 2A of this Chapter and operating solely within the exemption. Such solid waste belongs to the Franchisee or exempted person, respectively.
- f. Unless permitted by the Franchisee, no person shall install or use any container of one-half cubic yard or greater in capacity for pickup by Franchisee other than those supplied by Franchisee. The purpose of this subsection is to insure safe equipment, sizes and weights and facilitate Franchisee utilizing the most efficient collection equipment and methods. Rates for use of Franchisee's containers and drop boxes shall be included in the adopted rate schedule.
- g. No person shall install an underground solid waste container for storage and collection. The Franchisee is not required to service an underground container unless the person responsible for it places the can above ground prior to time of collection.
- h. At the time designated for pickup, no can for residential service shall be located behind any locked or latched door, gate or inside of any building or structure, but shall be placed at the location designated for pickup. In designating the location for pickup, consideration will be given to any handicaps, disabilities, and to the age of the customer.

TITLE 4. FRANCHISES

- i. Each customer shall provide safe access to the solid waste container or wastes without risk or hazard to Franchisee's employees, the public or Franchisee.
- j. No container designed for mechanical pickup shall exceed safe loading weights or volumes as established by the Franchisee to protect service workers, the customer, the public and the collection equipment.
- k. No container designed for manual pickup shall exceed 32 gallons in size or 60 pounds in loaded weight. Such containers shall be rigid, fireproof, rodentproof and not subject to cracking or splitting. Cans shall be round, tapered from top to bottom and have proper handholds and bales.
- l. Unless special service or service equipment is provided by the Franchisee for handling unconfined waste, materials such as rubbish and refuse, brush, leaves, tree cuttings and other debris for manual pickup and collection shall be in securely tied bundles or in any box, sack or other receptacles; and, solid waste so bundled, tied or contained shall not exceed 60 pounds in weight.
- m. Where a customer requires an unusual volume of service or a special type of service requiring substantial investment in equipment, the Franchisee may require a contract with the customer as necessary to finance and assure amortization of such equipment. The purpose of this provision is to assure that such equipment does not become a charge against other rate payers who are not benefited.
- n. Stationary compacting devices for solid wastes shall comply with federal and state safety standards and provide adequate protection to the user.
- o. Any vehicle used by a person to transport solid waste shall be so loaded and operated as to prevent the waste from dropping, sifting, leaking, blowing or otherwise escaping from the vehicle onto the public right-of-ways or adjacent lands.
- p. No person shall block access to any container or drop box or roll-off box supplied by Franchisee. Franchisee may charge extra for return service to such blocked container or drop box or roll-off box.
- q. Every person who generates or produces wastes shall remove or have

TITLE 4. FRANCHISES

removed all putrescible wastes at least every seven days. More frequent removal may be required where the facility, activity or use involves the public health. All wastes shall be removed at sufficient frequency as to prevent health hazards, nuisances or pollution.

- r. All garbage and putrescible materials shall be stored in cans supplied by the generator or producer or in containers supplied by the Franchisee. When cans are used, they shall be covered except during loading and emptying.
 - s. The producer or generator of waste shall bear the primary responsibility for maintaining waste cans and containers and the area around such cans and containers in a clean, sanitary and odor-free condition. In the event, however, the producer or generator of waste, in the opinion of the City, fails, refuses or neglects to keep such cans and containers clean, the Franchisee shall, at the request of the City Administrator, clean said cans or containers and impose its costs incurred in cleaning such can or container and in picking up, transporting and returning said can or container against the producer or generator of the waste which is accumulated in said cans or containers. The Franchisee shall provide periodic maintenance to containers supplied by Franchisee.
 - t. No person shall place or cause to be placed any solid waste in any street, alley or other public place, or upon any private property, whether owned by such person or not, within the City, except it being in proper containers for collection, or on the express approval granted by the City. Nor shall any person throw or deposit or cause to be thrown or deposited any solid waste into any stream or other body of water.
 - u. No person shall burn garbage or putrescible solid waste within the City.
- 2. Payment for Service. Any person who received service from the Franchisee shall be responsible for payment for service. The owner of a rental or lease facility shall be liable for payment for services provided to a tenant of such dwelling if the tenant fails to make timely payment for such service.
 - 3. Health, Safety, and Welfare of the Community. All decisions about enforcement of this Chapter to protect the health, safety, and welfare of the community shall be made by the Council, which shall be responsible for enforcement of this Chapter for all

TITLE 4. FRANCHISES

such matters. In all proceedings for any such enforcement, the Franchisee shall cooperate with the Council and the City.

4.08.050 ADMINISTRATION AND ENFORCEMENT

1. Customer Relations. The Franchisee shall respond to any customer complaints as provided in Section 4.08.020(8)(a)(viii) of this Chapter.
 - a. Any action or determination by Franchisee under or pursuant to this Subsection may be appealed to the City Administrator.
 - b. Any party not satisfied with the City Administrator's resolution of the dispute or controversy under this Subsection may request a public hearing before the Council; provided, however, that the City Administrator's resolution shall be binding upon the parties until such time as the Council may order otherwise. The Council may grant or deny a hearing request in its sole discretion.
2. City Enforcement. The City may enforce the provisions of this Chapter by administrative, civil or criminal action or any combination as necessary to obtain compliance with this Chapter. The Council shall take such legislative action as is necessary to support the Chapter and the franchise granted.
 - a. The Franchisee shall enforce payment or protect its rights as to third parties by appropriate civil action. The City shall have no obligation to enforce payment or protect the Franchisee's rights.
 - b. If the Franchisee requests the City to enforce any provision this Chapter with respect to any matter not within the scope of Section 4.08.040(3), the City shall do so through appropriate actions or proceedings, so long as the Franchisee agrees to defray all costs and expenses (including attorney fees) of such actions or proceedings, including any appeal thereon, the City incurs and to reimburse the City therefor.
3. Attorneys' Fees. If arbitration is initiated by the City, Franchisee, or a third party relating to any provision of this Chapter, the prevailing party(s) in the arbitration proceeding may be awarded reasonably attorneys' fees as fixed by the presiding authority; in the arbitration proceeding.

TITLE 4. FRANCHISES

4. Penalties. Violation by any person of the provisions of Section 4.08.020(14) or Subsections (a), (b), (l), (m), (n), (o), (p), (q), (r), (s), (t), or (u) of Section 4.08.040(1) shall be deemed a misdemeanor and upon conviction, shall be punished by a fine of not more than \$500. Each day in violation is a separate offense; provided, however, that two or more such continuing offenses may be joined in the same action.
5. Construction. Any finding by any court of competent jurisdiction that any portion of this Chapter is unconstitutional or invalid shall not invalidate any other provision of this Chapter.