

# Council Business Meeting

May 3, 2022

<b>Agenda Item</b>	Resolution No 2022-08 Relating to the 2022 Recology Ashland Solid Waste and Recycling Service Rate Adjustment and Repealing Resolution No. 2020-04	
<b>From</b>	Katrina L. Brown	City Attorney
<b>Contact</b>	<a href="mailto:katrina.brown@ashland.or.us">katrina.brown@ashland.or.us</a>	

## **SUMMARY**

Pursuant to the current Franchise Agreement with Recology Ashland for Solid Waste Management granted by the City Council in 2013 (Franchise Agreement), rates for solid waste management services shall be adjusted annually by a resolution of the City Council. As set forth in the Franchise Agreement, such rate adjustments shall be based on the consumer price index (CPI). Recology Ashland is requesting a rate increase of 6.5% based on the CPI for 2021. This increase would become effective July 1, 2022, for all customer classes. This rate adjustment amounts to an increase of \$1.38 (one dollar and thirty-eight cents) per month for the typical residential customer.

## **PREVIOUS COUNCIL ACTION**

No rate increase was proposed by Recology Ashland for the 2021 rate period. The City Council did approve a rate adjustment of the contractually agreed upon CPI of 2.6 % in March of 2020.

## **BACKGROUND AND ADDITIONAL INFORMATION**

A component of the current Franchise Agreement with Recology Ashland is a rate adjustment methodology intended to provide Recology with an annual operating margin range of between eight percent (8%) and twelve percent (12%). Pursuant to the Franchise Agreement, the mandated rate adjustment is to be equal to “the percentage change in the January to January Consumer Price Index for All Urban Consumers (CPI-U) but not to exceed the twelve percent operating margin cap.” (See page Section 5.8 on page 15 of the attached Franchise Agreement.)

## **FISCAL IMPACT**

Recology Ashland estimates that the mandated rate adjustment will result in an increase of \$1.38 (one dollar and thirty-eight cents) per month on a typical residential customer’s bill, with total bill increases for commercial customers varying by size and frequency of service.

## **STAFF RECOMMENDATION**

Staff recommends approval of Resolution No. 2022-08 related the 2022 Recology Ashland Solid Waste and Recycling Service Rate Adjustment. This rate adjustment is consistent with the process and calculation prescribed in the Franchise Agreement.

## **ACTIONS AND POTENTIAL MOTIONS**

I move to approve Resolution No. 2022-08 relating to the 2022 Recology Ashland Solid Waste and Recycling Service Rate Adjustment and repealing Resolution No. 2020-04.

**REFERENCES AND ATTACHMENTS**

Attachment No. 1: Resolution No. 2022-08

Attachment No. 2: Recology Rate Adjustment Request

Attachment No. 3: Franchise Agreement with Recology (Ordinance No. 3090)

1 **RESOLUTION NO. 2022-08**

2 A RESOLUTION RELATING TO SOLID WASTE MANAGEMENT SERVICE RATES AND  
3 REPEALING RESOLUTION NO. 2020-04

4 **RECITALS:**

5  
6 A. The Franchise Agreement for Solid Waste Management and Collection Services adopted by  
7 the City Council as Ordinance No. 3090 in 2013 and the associated Administrative Operations  
8 Standards and Rules most recently adopted by Resolution No. 2014-23 provide a methodology  
9 for annual service rates and fees adjustments for solid waste management and collection; and

10 B. The City concurs with the documentation provided by Recology Ashland (Franchisee) that  
11 the service rates modification provisions of Ordinance No. 3090 and Resolution No. 2014-23  
12 mandate the approval of a service rate increase of six and one-half percent (6.5%) based on the  
13 Consumer Price Index for All Urban Consumers, as determined by the U.S. Bureau of Labor  
14 Statistics.

15 **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ASHLAND, OREGON,**  
16 **RESOLVES AS FOLLOWS:**

17 SECTION 1. Solid Waste Management Service rates and fees are hereby increased by six and  
18 one-half percent (6.5%) as detailed in the rate table attached hereto as “Exhibit A” and  
19 incorporated herein by this reference.

20 SECTION 2. Resolution No. 2020-04 is hereby repealed in its entirety.

21 SECTION 3. This resolution is effective July 1, 2022.

22 ADOPTED by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

23 ATTEST:

24 \_\_\_\_\_  
25 Melissa Huhtala, City Recorder

26  
27 SIGNED and APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

28  
29 \_\_\_\_\_  
30 Julie Akins, Mayor

Recology Ashland  
City of Ashland Rates  
Effective July 1, 2022 (CPI = 6.5%)

<b>Residential Rates</b>	<b>July 1, 2022</b>
32 Gallon Cart	\$ 22.67
32 Gallon Bear Cart	\$ 28.55
Additional 32 Gallon Trash Cart	\$ 25.84
64 Gallon Cart	\$ 47.33
64 Gallon Bear Cart	\$ 53.21
96 Gallon Cart	\$ 71.98
32 Gallon Trash On-Call per Setout	\$ 10.31
96 Gallon Green Waste Cart	\$ 8.70
Additional Green Waste Cart	\$ 2.48
32 Gallon Recycle Only Cart	\$ 6.21
64 Gallon Recycle Only Cart	\$ 6.21
96 Gallon Recycle Only Cart	\$ 7.44
Recycling On-Call per Setout	\$ 4.92
Additional Recycling Cart	\$ 2.48
Not on Service 1st Can	\$ 16.81
Additional No-Service Can	\$ 7.48
Extra - 1 Can/Large Bag Each	\$ 7.48
Extra - 1 Small Bag Each	\$ 3.73
Extra Service - Green Waste Cart	\$ 5.46

<b>Go-in Rates</b>	<b>July 1, 2022</b>
Off curb up to 40 Yards	\$ 7.44
40 yards to 1/2 mile	\$ 20.01
1/2 Mile to 1 Mile	\$ 39.99
Beyond 1 Mile	\$ 66.57

**NOTE: Lifeline customers qualify for a 30% discount from residential rates.**

1 Reviewed as to form:

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Katrina L. Brown, City Attorney

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Joe Lessard, City Manager  
City of Ashland  
20 East Main Street  
Ashland, OR 97520

February 15, 2022

Dear Joe:

Pursuant to Ashland Municipal Code 9.50.050, Section H.2, we are formally submitting our annual request for a CPI based rate increase of 6.5%, to be applied equally across all rate structures. This request is based on the Consumer Price Index—All Urban Consumers—All Items—Pacific Division, West Region (CPI-U), published in January. A copy of the index, along with our accompanying financial statement and projections for 2022, is enclosed with this letter.

The proposed CPI increase has an effective date April 1, 2022. This rate increase amounts to an increase of \$1.38 (one dollar thirty-eight cents) per month for the typical residential customer.

Despite some cost increases that are major components of our operation increasing greater than the rate of inflation (disposal increase 7/1/2021 of 18%), we're hopeful and will be working hard to find other areas of savings and efficiencies so that customers this year aren't burdened with an increase greater than the rate of inflation.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads 'Gary Blake'.

Gary Blake, General Manager  
Recology Ashland Inc.

Cc: Dave Larmouth, Steve Brum

Bureau of Labor Statistics

**CPI for All Urban Consumers (CPI-U)  
Original Data Value**

**Series Id:** CUUR0490SA0  
**Not Seasonally Adjusted**  
**Series Title:** All items in Pacific, all urban consumers, not seasonally  
**Area:** Pacific  
**Item:** All items  
**Base Period:** DECEMBER 2017=100  
**Years:** 2017 to 2021

<u>Year</u>	<u>Dec</u>	
2017	100.000	
2018	103.083	3.1%
2019	105.744	2.6%
2020	107.471	1.6%
2021	114.454	6.5%

ORDINANCE NO. 3090

**AN ORDINANCE CREATING A FRANCHISE AGREEMENT FOR SOLID WASTE MANAGEMENT & COLLECTION WITHIN THE CITY OF ASHLAND AND REPEALING ORDINANCES 2829 and 2582 RELATING TO PREVIOUS SOLID WASTE FRANCHISE AGREEMENTS AND TERMS**

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

**WHEREAS**, the City desires to insure efficient and comprehensive materials waste management and collection services are available to all residents, businesses and organizations in the City

**THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:**

**SECTION 1: Title.** This ordinance shall be titled and referred to as the “Solid Waste Management Franchise Ordinance”.

**SECTION 2: Purpose.** It is the policy and purpose of the City of Ashland to protect the health, safety and welfare of the citizens and physical environment of Ashland through the regulation of solid waste management. This regulation will:

- a) Insure safe, economical, efficient and comprehensive solid waste management services (SWMS) as further defined in this Ordinance;
- b) Assist the community in reaching and surpassing recycling and waste diversion rates of the Jackson County waste shed;
- c) Insure fair and equitable service rates and charges across all customer classes to achieve safe and efficient collection, transportation and recover of solid waste, recyclables and compostable materials;
- d) Meet or exceed all applicable Oregon Revised Statutes (ORS) 459 regulations relating to Solid Waste Management prescribed to local jurisdictions and their authorized franchisee; and
- e) Insure consistent and responsive service and communication with citizens regarding solid waste management operations, education and requirements including waste prevention, product life cycle impacts, waste diversion opportunities, recycling best practices and standards and general waste shed stewardship.



**SECTION 3: Scope.** Services defined, regulated and authorized in this ordinance are applicable only within the city limits of the City of Ashland and all future urban growth boundary annexations occurring during the term of this ordinance.

**SECTION 4: Definitions.** Except where the context clearly indicates a different meaning, or where a term is defined below, definitions contained within ORS 459.005 at the time of adoption or as further amended in the future, and regulations promulgated under state law are applicable to this ordinance.

**Administrative Operations Standards and Rules**

All standards and rules approved by resolution of Council defining specific operating rules and procedures that support and insure compliance with this Ordinance.

**Affiliated Company**

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

**Allowable Expenses**

Those expenses incurred by Franchisee in the performance of this Franchise 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 comply with the cost allocation methodology contained within this ordinance to the Franchisee's operations within the City, do not exceed the fair market value of comparable goods or services, and are commercially reasonable and prudently incurred by the Franchisee solely in the course of performing its obligations under the Franchise. Allowable expenses shall include but not be limited to the following:

- a. The costs of complying with all laws, regulations or orders applicable to the obligations Franchisees under federal, state or local law, including this ordinance, as well as costs for financial reporting, accounting and regulatory processes associated with or required by this franchise or under law; as now or hereafter amended;
- b. Disposal costs;
- c. Labor costs, including operational and supervisory labor, payroll taxes, workers' compensation, and benefits, as well as third party transportation costs;
- d. Vehicle and equipment expenses, including vehicle registration fees, motor fuel, oil, tires, rental charges and/or operating lease payments and repairs and maintenance;
- e. Expenses of maintaining other capital assets, including rental charges and/or operating lease payments and repair and maintenance, to include container maintenance and repair costs;
- f. Performance bonds and insurance in at least the amounts and coverage's required by the City;

- g. All administrative and management costs and expenses reasonably allocated for the services required under this Franchise, including, but not limited to compensation, management fees, and benefits for officers and employees, payroll taxes, data processing, billing, equipment or facility rental or lease costs, supplies, finance and accounting, administration, human resource and labor management, rate analysis, and regulatory compliance;
- h. Utilities;
- i. Training, worker safety and employee development expenses;
- j. Promotion and public education costs;
- k. 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;
- l. Outside professional fees and costs, limited to two percentage points of revenue, unless an extraordinary circumstance exists;
- m. 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;
- n. All surcharges, taxes or fees, other than state or federal income taxes or franchise fees, which are imposed upon the Franchisee or levied by federal, state or local government in connection with Franchisee's provision of collection services under this Franchise;
- o. Direct write-off charges for bad debts; and
- p. Franchise fees assessed by the City.

Allowable expenses as defined above shall be reasonable if they are comparable with the expenses incurred by similarly situated solid waste and recycling collection companies on the West Coast of the United States.

**Automated Collection System**

A type of collection system that utilizes standardized roll carts and mechanically assisted collection equipment designed to minimize direct human handling of customer waste set out for collection.

**Bulky Wastes**

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

**City**

The existing city limits and future annexations of the City of Ashland, OR.

**City Council or Council**

The City Council of the City of Ashland.

**Commercial**

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

**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.

**Construction and demolition debris**

Used or discarded construction materials removed from a premise during construction, demolition or renovation of a structure.

**Cost Allocation**

The following allocation methodology shall be used to determine expenses attributable to services rendered for City of Ashland solid waste management services franchise operations.

- 1) Residential and commercial labor hours  
The Franchisee will perform two annual surveys to estimate the time spent in each jurisdiction by residential and commercial route. Total annual hours will be estimated by jurisdiction for residential and commercial routes based on the two annual surveys. The annual total hours will be used to allocate labor and benefits, fuel, oil, maintenance, vehicle and container leases, vehicle licenses, and route costs by jurisdiction for residential and commercial services.
- 2) Debris box labor hours  
The Franchisee will estimate the average time spent per load by jurisdiction. This average will be applied to the actual annual load count by jurisdiction to calculate an annual total for each jurisdiction. The annual total hours will be used to allocate labor and benefits, fuel, oil, maintenance, vehicle and debris box leases, vehicle licenses, and route costs by jurisdiction for debris box.
- 3) Yardage  
Yardage by jurisdiction will be estimated by subscribed volumes for residential and commercial services and by box size for debris box service. This yardage will be used to allocate disposal costs by jurisdiction.
- 4) Residential and commercial weekly lifts  
The Franchisee will use two surveys to estimate the number of weekly services by jurisdiction. This measure will be used to allocate all other costs by jurisdiction.
- 5) Direct cost  
Franchise fees and other costs directly related to a specific jurisdiction will be applied to the appropriate jurisdiction.

**Curbside/Roadside**

A location within three (3) feet of public right-of-way. This does not allow the garbage or recycling receptacle to be placed on the inside of a fence or enclosure even if the receptacle is within three (3) feet of said road or roads. For residences on "Flag Lots", private roads or driveways, "Curbside/Roadside" shall be the point where the private road or driveway intersects a City Road, Public Access Road, State Road or Federal Road.

**Customer**

Individuals, groups, businesses, corporations or other recognized entity receiving solid waste management services from the franchisee within the City of Ashland.

**Customer Classification**

List and definition of the different groupings utilized for rate making; i.e. residential, commercial, municipal, etc.

**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.

**Disabled Customer**

A subscription customer in which all adult household members possess a DMV issued handicapped parking sticker/placard.

**Disposal Site**

Land and facilities used for the disposal, handling or transfer of, or resource recovery from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, resource recovery facilities, incinerators for solid waste delivered by the public or by a solid waste collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site; Disposal site does not include the following: a facility authorized by a permit issued under ORS 466.005 to 466.385 to store, treat or dispose of both hazardous waste and solid waste; a facility subject to permit requirements of ORS 468B.050 or 468B.053; a landfill site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar non decomposable material, unless the site is used by the public either directly or through a solid waste collection service; or a site operated by a wrecker issued a certificate under ORS 822.110.

**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 a roll-off 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.

**Force majeure**

Acts of god, fire, landslides, lightening, storms, floods, freezing, earthquakes, epidemics, volcanic eruptions, public riots, civil disturbances, acts of the public enemy, wars, blockades, embargoes, or acts of civil or military authority, breakage, explosions or accident to machines or other materials, pipelines or materials, governmental restraint, unavailability of a disposal site and any other event which could not with reasonable diligence be controlled or prevented by the party affected by the event.

**Franchise**

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

**Franchisee**

A person, persons, business or corporation who has been granted a franchise to operate within the City of Ashland pursuant to this Ordinance.

**Generator**

A person, who by virtue of ownership, management or control, is responsible for causing or allowing to be caused the creation of Solid Waste or Recyclable Materials..

**Gross Revenue**

“Gross Revenue” for any period shall mean:

- 1) Gross accrual-based billings by the Franchisee to customers for services provided under this Franchise;
- 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.

**Household Hazardous Waste**

Any discarded useless or unwanted chemical, material, substance, or product that is or may be hazardous or toxic to the public or the environment and is commonly used in or around households. Household hazardous waste includes, but is not limited to, some cleaners, solvents, pesticides, and automotive and paint products.

**Infectious Waste**

Infectious waste mean biological waste, cultures and stocks, pathological waste, and sharps, as defined in ORS 459.386

**Multifamily**

Any multi-dwelling building or group of buildings that (a) contain(s) five (5) or more dwelling units on a single lot, such as apartments, condominiums, and mobile home parks and (b) receives services on a per lot or per building basis, as opposed to a per unit basis. Multifamily complex also includes certified or licensed residential care housing, such as adult foster care homes, and group homes. Multifamily accounts are determined to be a residential waste stream.

**Material Recovery**

Any process of obtaining from solid waste, by pre-segregation or otherwise, materials that still have useful physical or chemical properties and can be reused or recycled for some purpose.

**Material Recovery Facility**

A solid waste management facility that separates or stores materials for the purposes of recycling from incoming, non-putrescible solid waste by using manual and/or mechanical methods. It also means a facility that primarily accepts previously separated recyclables.

**Operating Margin**

Gross revenues minus allowable expenses within a given period.

**Organic Waste**

Materials that can be biologically synthesized by plants or animals from simpler substances, are no longer suited for their intended purpose, and are readily broken down by biological processes into soil constituents. Examples include, but are not limited to, food waste, yard debris, contaminated paper, and putrescible materials that are generally a source of food for bacteria.

**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 or Waste or Recyclable Materials.

**Recyclable Material, Recyclable, Recyclables**

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**

Any dwelling unit where at least 50 percent of the use of the entire building is for home use.

**Self-Haul**

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.

**Senior Discount Rate**

A discounted collection rate provided to customers that meet the discounted utility rate provision of resolution 92-22 or future related amendments.

**Solid Waste or Waste**

The terms “solid waste” and “waste” are interchangeable. Solid waste shall include all putrescible and non-putrescible waste, including but not limited to, garbage; compost; organic waste; yard debris; brush and branches; land clearing debris; sewer sludge; residential, commercial and industrial building demolition or construction waste; discarded residential, commercial and industrial appliances, equipment and furniture; discarded, inoperable or abandoned vehicles or vehicle parts and vehicle tires; manure; feces; vegetable or animal solid and semi-solid waste and dead animals; and infectious waste. Waste shall mean useless, unwanted or discarded materials. The fact that materials, which would otherwise come within the definition of Solid Waste, may, from time to time, have value and thus be utilized shall not remove them from the definition. The terms Solid Waste or Waste do not include:

- 1) Recyclable materials or yard debris separated from solid waste and properly prepared for collection;
- 2) Hazardous wastes as defined in ORS 466.005;
- 3) Materials used for fertilizer or for other productive purposes on land in agricultural operations in the growing and harvesting of crops or the raising of fowl or animals;
- 4) Septic tank and cesspool pumping or chemical toilet waste;
- 5) Source separated, principal recyclable materials as defined in ORS 459A and the Rules promulgated there under and under this Ordinance, which have been purchased or exchanged for fair market value, unless the City declares a site of uncollected principal recyclable materials to be public nuisance;
- 6) Applications of industrial sludge or industrial waste by-products authorized through a Land Use Compatibility Statement or Management Plan approval and that have been applied to agricultural lands according to accepted agronomic practices or accepted method approved by the Land Use Compatibility Statement or Management Plan, but not to exceed 100 dry tons per acre annually; and
- 7) Stabilized municipal sewage sludge applied for accepted beneficial uses on land in agricultural, non-agricultural, or silvicultural operations. Sludge-derived products applied for beneficial uses on land in landscaping projects.

### **Solid Waste Management and Collection Services**

Prevention, reduction, management of the storage, collection, transportation, treatment, utilization, processing and final disposal of solid waste; or recycling, reuse and material recovery from solid waste; and facilities necessary or convenient to such activities.

### **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.

### **Transfer Station**

A fixed or mobile facility, other than a transportation vehicle, where solid waste is deposited temporarily after being removed from the site of generation but before being transported to a final disposal location.

### **Unallowable Expenses**

Shall include the following:

- 1) All charitable and political contributions;
- 2) Fines and penalties, including without limitation judgments for violation of applicable laws, incurred by a licensee;
- 3) Payments for services provided by individuals related by blood or marriage or by affiliated companies to a licensee to the extent that such payments exceed the reasonable cost that would be charged by an independent third party to provide the substantially equivalent service;
- 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; State and federal income taxes;
- 7) Fees paid to a Franchisee's Board of Directors;
- 8) 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, excluding judicial proceedings involving traffic accidents;
- 9) Operation of community access recycling depot not physically located or operated in conjunction with the Franchisee's transfer station
- 10) Recycling operations expenses already calculated and incorporated into Franchisee's tipping fees
- 11) Any other expenses defined as "unallowable" and approved by mutual consent of the Franchisee and the council.



**Utilization**

The terms utilize, utilization, or utilization of Solid Waste or Waste shall mean productive use through recycling, reuse, salvage, resource recovery, energy recovery, or land filling for reclamation, habitation, or rehabilitation of land.

**Waste Evaluation**

An evaluation completed by the City or a Franchisee of a commercial entity's waste management practices, for the purpose of providing guidance to a multi-family or commercial customer on effective means to reduce waste, increase recycling, and purchase recycled products.

**Yard Debris**

Grass clippings, leaves, tree and shrub pruning of no greater than four (4) inches in diameter or similar yard and garden vegetation. Yard debris does not include such items as: dirt, sod, stumps, logs, tree and shrub pruning greater than four (4) inches in diameter, rocks, plastic, animal waste or manure, cat litter, potting soil, prepared food wastes or nonputrescible material.

**SECTION 5: Franchise Agreement.****5.1 Franchise Award**

No person shall do business in the collection and transport of solid waste generated within the City without a current, valid City franchise. A Franchise to provide solid waste management and collection services, including recyclable materials and yard debris in the service area of the City shall be granted only after a determination of need for the service.

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

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

**5.2 Renewal of Franchises**

In granting a franchise renewal, the Council may, in addition to the above, consider the following:

- 1) Volumes of solid waste collection and disposal;

- 2) (2) Volumes of recyclable materials and rate of participation in recycling;
- 3) Customer satisfaction, including but not limited to customer complaints;
- 4) Analysis of solid waste collection and recycling programs in other cities as compared to those of the City, including but not limited to program costs, funding mechanisms and overall rates of participation in recycling;
- 5) Franchisee performance of its obligations under the franchise, including a Franchisee's technical and financial capabilities;
- 6) Franchisee ability to provide evidence of required insurance; and
- 7) Franchisee responsiveness to customer or City complaints.

Franchises granted by the City shall be non-exclusive, however it is understood that during the term of franchises granted under this Ordinance, the City shall not grant any other person a franchise for Solid Waste Management Services unless there is a showing by the applicant of the need for such additional service in the proposed service area. As to such application(s) the existing Franchisee shall have first right of refusal to provide such services.

In evaluating whether a need exists for additional service, the City Council may consider, among any other criteria deemed relevant by the City Council, the following items:

- 1) An increase in the population of the City;
- 2) An extension of the boundaries of the City;
- 3) Intensive residential, commercial or industrial development within the boundaries of the City;
- 4) Changes in solid waste technology and/or recycling collection technology that could substantially improve collection service or reduce collection costs to residents of the City;
- 5) The effect that an additional franchise would have on each existing Franchisee's ability to meet the City's service standards and maintain a fair return on its investment;
- 6) Changes in federal or state laws, rules or regulations that substantially affect solid waste or recycling collection requirements.
- 7) The Franchisee cannot or will not perform or subcontract the proposed service.

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

### **5.3 Franchise Terms**

A franchise to provide solid waste management and collection services shall be granted for a period of ten (10) years, beginning December 1, 2013 with subsequent seven year terms renewing annually, unless prior notice of request to terminate is submitted by either the City or the Franchisee a minimum of 90 days prior to the renewal date.

### **5.4 Franchise Fee**

- 1) Annual Fee. In consideration of the rights and benefits of the terms of this franchise, Franchisee shall pay to the City each year during the life of this franchise beginning February 1, 2014 an annual fee derived from revenue received by that franchisee from Solid Waste Management and Collection Service boundaries of the City. The franchise fee shall be five percent (5%) of gross revenues.
- 2) Quarterly Payments. The franchise fee required in 7(a) above shall be paid quarterly, and shall be due and payable within thirty (30) days of the end of the calendar quarter. Accompanying the payments described above, Franchisee shall file with the City Administrator or designee, a statement showing the amount of the gross revenues received by that company within the City for the calendar quarter immediately preceding the calendar quarter in which such statement is filed. There will be a reconciliation of final gross revenues on the quarterly report ending September 30<sup>th</sup> of each year for the prior fiscal period, which is October 1<sup>st</sup> through September 30<sup>th</sup>.
- 3) Review of Records; Annual Audit. Franchisee shall make available for inspection, copying and review by the City Administrator or designee at any time during normal work hours all records in the Franchisees' possession that the City Administrator or designee deems relevant to verifying the accuracy of fees paid to the City, to regulating rates or to carrying out any responsibility that the Franchisees or the City has under this Ordinance.

No more often than once during any twelve (12) month period, City may request an audit of the books, records and accounts of Franchisee by a certified public accountant or such other professional chosen by the City to verify accuracy of fees paid to the City, subject to the approval of the audited Franchisee; provided, however, that such approval shall not be unreasonably withheld. Franchisee agrees to have their books, records and accounts audited and further agree to pay for such auditing services. The report of the certified public accountant or other professional shall be conclusive and final. In the event such audit report discloses any difference of payment due either to the City or Franchisee through error or otherwise, such payment shall be due and payable within thirty (30) days of discovery or determination of the error. If payment is owed by the City to Franchisee, the City shall reimburse the Franchisee for payment for the portion of the services attributable to the audit of the Franchisee receiving such payment from the City.

If payment is owed by Franchisee to the City, and the difference of payment due is more than the greater of five hundred dollars (\$500) or two and one-half percent (2½ %) of the Franchisee franchise fee, or if the Franchisee is found to have violated any other term or condition of the franchise then, notwithstanding any other provision of this Section or the franchise, the City may request an additional audit during the next twelve (12) month period with all expenses of such additional audit paid by such Franchisee.

- 4) Late Payments; Interest. Should Franchisee fail or neglect, for thirty (30) days after any quarterly payment shall become due and payable, to make the quarterly payment, the City shall provide written notice of failure of payment to Franchisee. Upon notification of failure to pay, Franchisee will have thirty (30) days to remit payment to the City. If

Franchisee fails to pay within said thirty (30) day period, the City may charge interest retroactive to the due date, at a rate of nine percent (9%) per annum, and may at its option either continue the franchise in force and proceed by suit or action to collect the payment, or declare a forfeiture of the franchise because of the failure to make payment, but without waiving its right to collect earned franchise payments and interest.

### **5.5 Franchise Administrative Operations Standards and Rules**

The Solid waste management and collections franchisee will operate within operations standards set by resolution of Council. Standards and rules will be developed across all customer classifications including, but not limited to, the following:

#### Service Rates and Fees

- a. Rate and fee schedule for all collection services, programs by customer classification

#### Collections

- a. Regular, holiday and hazardous weather schedules
- b. Procedures for missed, bulky waste, vacation hold, etc collections
- c. Collection receptacle standards and requirements
- d. Receptacle location requirements for pick-up
- e. Private property access rights and limitations
- f. Responsibilities of the customer
- g. Vehicle minimum equipment, maintenance standards, identification/signage and standards

#### Customer Service & Communications

- a. Billing standards and frequency
- b. Billing/collection procedures for past due/non-pay accounts
- c. Descriptions, objectives and targets for all services provided across all customer classifications
- d. Solid waste related programs, education and event promotion
- e. Complaint/dispute resolution procedures
- f. Community Communications and outreach plan coordination with City outlining roles and responsibilities of City and Franchisee.

#### Reporting (in addition to Ordinance required reporting)

- a. Efficiency analysis reports for routes, billing/collections, etc
- b. Revenue and subscription volume reports by solid waste category (trash, recycle, yard waste) for various customer classifications (residential, and commercial,). Debris box volumes will be measured by dump and return and/or pull activities.
- c. Customer counts and trends over time for residential and commercial customer classifications: Debris box load counts will be reported in lieu of debris box customer counts.

### **5.6 Subcontracting Services**

A Franchisee may contract with another person to provide specific components of solid waste management and collection services within the Franchisee's service area with the written

approval of the City Administrator or designee, provided that the subcontract does not amount to a transfer of the collection franchise and the subcontracting party agrees to:

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

### **5.7 Transfer of Franchise**

A proposed assignment or transfer of a Franchise must be requested by the Franchisee if the following occur, but shall not be limited to:

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

The Franchisee shall provide no less than 90 days' advance written notice to the City of any proposed transfer or assignment. Except as specifically authorized by the City, the Franchisee shall not assign any of its rights or delegate or otherwise transfer any of its obligations to any other person without the prior consent of the City Council. Any such assignment without the consent of City Council shall be void and any such attempted assignment shall constitute default and grounds for termination of the Franchise.

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

- 1) A nonrefundable application fee of two thousand dollars (\$2,000) 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 enumerated in this Ordinance.

### **5.8 Establishment and Modification of Service Rates and Fees**

Except as set forth herein, 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 based on the ordinance established cost allocation methodology.
- 2) Rates shall be adjusted annually by Council resolution equal to the percentage change in the January to January Consumer Price Index for All Urban Consumers (CPI-U) but not to exceed the twelve percent operating margin cap. The City Administrator or designee shall certify the CPI-U rate in writing to Franchisee by March 1 of each year to initiate the rate resolution.
- 3) Rates shall be adequate to provide an Operating Margin equal to ten percent (10%) of Franchise-wide Gross Revenues; however, the City shall not be required to change rates if the expected Operating Margin in the next future year falls between eight and twelve percent of Gross Revenues. The ten percent target return on Gross Revenues is considered sufficient to reflect the level of business risk assumed by the Franchisee, to allow investment in equipment, and to ensure quality collection service.

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

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

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

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

**SECTION 6: Franchise Reporting Requirements.**

**6.1 Informational Reports**

Each Franchisee shall provide the City Administrator or designee by the last day of each quarter for the previous quarter:

- 1) A quarterly report listing the quantities of solid waste, yard waste and recyclable materials by customer classification collected within the City during the previous calendar quarter, the locations to which these materials were delivered, the number of customer accounts, and other information requested by the City Administrator or designee and mutually agreed upon with Franchisee.
- 2) A quarterly report listing the names and addresses of multi-family and commercial customers that received waste evaluations during the reported quarter.
- 3) A summary of communication, marketing and educational outreach conducted by Franchisee during the reported quarter.

**6.2 Quarterly Franchise Fee Reports**

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

At the time of payment of the quarterly Franchise Fees, the Franchisee shall file with the City Administrator or designee, a verified statement of quarterly gross revenues for the period covered by the tendered fee. Such statements shall be public records. 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 City Administrator or designee.

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

**6.3 Annual Franchise Reports**

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 for all customer classifications and for all programs identified in the Administrative Operations Standards and Rules resolution adopted by Council.

Franchisees shall report totals for all operations necessary to adequately verify compliance with the cost allocation methodology as defined in this for expenses that share significant operational, management, and administrative expenses with the City of Ashland Franchise. Resources allocated from regional or corporate offices or affiliates shall be distributed to appropriate expense line items, and shall also be disclosed in a schedule describing total allocations and their distribution to individual expense line items. All allocations from Affiliated Companies must be described and must be equal to or less than the fair market value of similar goods and services purchased from a non-affiliated company.

The report will also include a synopsis of the operating year, a description of the measures each franchisee has taken in the preceding year to make its operation more efficient, a listing of the efficiency measures which each Franchisee proposes to take in the next year, a composite table

showing the type and number of customer service complaints and a description of the measures that the Franchisee has taken or is planning to take to correct the cause of commonly reported complaints, and such other information as requested by the City Administrator or designee. The report shall also describe and quantify communication, outreach and educational activities as described in the Administrative Operations Standards and Rules resolution.

Franchisees may identify specific information submitted to the City in the Annual Report as confidential. The City shall treat any information marked "Confidential" as such, and shall not subject the confidential information to public disclosure except as required by law. If the City receives a request for disclosure of confidential information, the City Administrator or designee 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.

## **SECTION 7: Franchise Responsibilities and Requirements.**

### **7.1 Access for Inspections and Delivery of Notices**

Franchisees shall make all company premises, facilities and records related to their solid waste, recyclable materials and yard debris collection services (including, but not limited to: offices, storage areas, financial records, non-financial records, records pertaining to the origin of any solid waste collected by the Franchisee, receipts for sale or delivery of collected recyclable materials, customer lists, and all records related to vehicle maintenance and safety which are required under ODOT motor carrier requirements and regulations and ORS 767) available for inspection by the City Administrator or designee within 24 hours of notice by registered mail. Such inspections are only for purposes of enforcing this ordinance, and are restricted to normal business hours. During normal business hours, the Franchisee shall make all company premises and facility accessible to City employees for delivery of any written notices.

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

### **7.2 Indemnification, Bond, and Insurance**

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

Franchisee shall furnish a performance bond, in a form approved by the City Attorney, by an acceptable surety company in the amount of twenty-five thousand dollars (\$25,000.00), but may,



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

A Franchisee shall maintain commercial general liability insurance on an occurrence basis in such forms and with such companies as shall be approved by the City Attorney, which will cover the Franchisee's business operation, including each vehicle operated by it. The insurance coverage shall include not less than \$1,000,000.00 for one person, nor less than \$5,000,000.00 for bodily injury due to each occurrence, and not less than \$1,000,000.00 for damage to property due to each occurrence and coverage of at least \$5,000,000 in the aggregate per occurrence. All such insurance coverage shall provide a 30-day notice to the City Administrator or designee in the event of material alteration or cancellation of any coverage afforded in the policies prior to the date the material alteration or cancellation shall become effective. Copies of all policies required hereunder shall be furnished to and filed with the City Administrator or designee prior to the commencement of operations or the expiration of prior policies, as the case may be. The Franchisee shall furnish proof annually to the City Administrator or designee that the insurance remains in effect.

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.

## **SECTION 8: Enforcement, Suspension, or Termination of Franchise.**

### **8.1 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.

### **8.2 Enforcement of Standards**

The City Administrator or designee shall administer and enforce this ordinance and pursue remedies for non-compliance as laid out within this ordinance. The City Administrator or designee shall also administer and enforce Administrative Operations Standards and Rules as adopted by Council. These standards and rules shall be enforceable with penalties allowed in section 1.08 of the Ashland Municipal Code. Upon recommendation by the City Administrator or designee, the Council may declare a Franchisee who fails to abide by the rules to be in default.

### **8.3 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 Ashland Municipal Court. The burden of proof is on the City to prove an infraction by a preponderance of the evidence.

### **8.4 Penalties for Infractions**

Each Franchise provision, including rules adopted hereunder, is subject to penalties as described in section 1.08 of the Ashland Municipal Code for each day from the initial citation of the offense that the offense continues to violate the terms of this ordinance or associated resolutions.

### **8.5 Termination of Franchise for Default**

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

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

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

### **8.6 Service Interruption**

Except for the right to refuse service for nonpayment or if Customer has attempted to improperly dispose of Hazardous Waste in violation of the City's Standards and Rules as set forth in this ordinance,, Franchisees shall not interrupt service unless:

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

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

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

Labor unrest, including, but not limited to, strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by Franchisee employees or directed at the

Franchisee is not an event of Force Majeure, and the Franchisee shall be obligated to continue to provide service notwithstanding the occurrence of any or all of events.

### **8.7 City's Right to Perform Service**

Except as provided under Section 8.6, in the event that a Franchisee, for any reason whatsoever, fails, refuses or is unable to collect or transport any or all solid waste for a period of more than forty eight (48) hours, and if, as a result thereof, solid waste or recyclable materials should accumulate in the City to such an extent that the City finds that such accumulation endangers the public health, safety, or welfare, then the City shall have the right, but not the obligation, upon twenty-four (24) hour prior written notice to the Franchisee, to perform or cause to be performed collection services with its own or other personnel at the Franchisee's expense. This right shall be in addition to and not in lieu of any other remedy available to the City. If necessary, the City may take temporary possession of, and a Franchisee shall peacefully surrender, any or all the Franchisee's land, equipment, and other property used or useful in the collection of Solid Waste or Recyclable Materials until such time as the emergency is resolved. If such possession occurs, the City assumes all responsibility and liability for the equipment and land used to perform such temporary collection services.

### **8.8 Dispute Resolution with Customers**

Upon receipt of any notice of dispute from a customer about any bill, charge, or service, the Franchisee shall thoroughly investigate the matter and promptly report the results of its investigation to the customer. Except in the event a Customer has attempted to improperly dispose of Hazardous Waste in violation of the City's Standards and Rules, a Franchisee shall not refuse service to any customer during a time of dispute.

If the Franchisee is not able to resolve a dispute with the customer, the customer may contact the City Administrator or designee who will act as an informal arbitrator in an attempt to resolve the matter. Should the dispute remain unresolved, the Franchisee or customer may then pursue the matter in any Court with jurisdiction.

### **8.9 Dispute Resolution with City**

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

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

The decision of the arbitrators in the matter shall be final and binding on the parties, and any judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof.

**SECTION 9. Severability.** The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

**SECTION 10. Repeal of Ordinances. Upon approval of this Ordinance, Ordinances 2582 and 2829 are hereby repealed in their entirety**

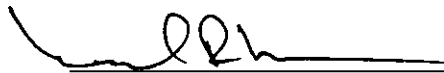
**SECTION 11. Codification.** Provisions of this Ordinance shall be incorporated in the City Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections 1-3) need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors.

The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C) of the City Charter on the 17 day of September, 2013, and duly PASSED and ADOPTED this 1 day of October, 2013.



Barbara M. Christensen, City Recorder

SIGNED and APPROVED this 3 day of October, 2013.



Mike Morris, Council Chair

Reviewed as to form:



David H. Lohman, City Attorney