

ORDINANCE NO. 1955

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON AMENDING CHAPTER 13.24 OF THE MILWAUKIE MUNICIPAL CODE REGARDING MANAGEMENT AND COLLECTION OF SOLID WASTE AND RECYCLING AND DECLARING AN EMERGENCY.

WHEREAS, the current language in Chapter 13.24 was adopted in 1993 by ordinance number 1752 and has not been amended significantly since that time; and,

WHEREAS, the terms of the franchises for the solid waste providers lapse on December 31, 2005 and renewal of those franchises will take place before that date; and

WHEREAS, the City and the solid waste management providers wish to update code language regarding the rules and regulations in this area; and

WHEREAS, the City and the solid waste management providers worked together to develop the amendments to Chapter 13.24 and approve of the substance thereof; and

WHEREAS, this Ordinance enables continued provision of solid waste services and protects public health, which would be at risk if solid waste services are interrupted;

NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 13.24 of the Milwaukie Municipal Code is hereby amended as shown in attachment A.

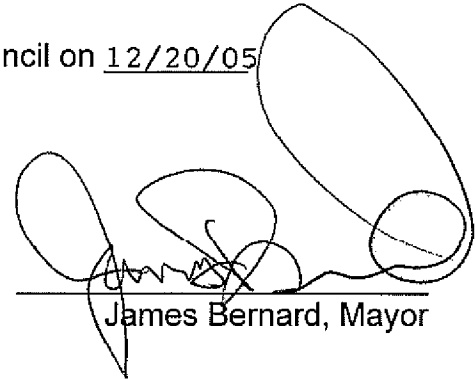
Section 2. All solid waste management service providers granted franchises by the City of Milwaukie shall comply with Milwaukie Municipal Code Chapter 13.24.

Section 3. Because this ordinance is needed to protect public health and safety, an emergency is declared and this ordinance is effective upon passage.

Read the first time on 12/20/05, and moved to second reading by 4-0 vote of the City Council.

Read the second time and adopted by the City Council on 12/20/05

Signed by the Mayor on 12/21/05.



James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:
Ramis, Crew and Corrigan, LLP

Pat DuVal
Pat DuVal, City Recorder

[Signature]
City Attorney

ATTACHMENT A

Section 13.24.010 Policy.

It is declared to be the public policy of the city of Milwaukie to regulate solid waste management service by:

- A. Insuring safe, economical, and comprehensive solid waste management service;
- B. Insuring service rates and charges that are just and reasonable and adequate to provide necessary public service;
- C. Prohibiting rate preferences and other discriminatory practices; and
- D. Providing technologically and economically feasible resource recovery by and through the franchisees. (Ord. 1752 § 1, 1993)

Section 13.24.020 Definitions.

The following definitions shall apply to this chapter:

"City" means the city of Milwaukie, Clackamas County, Oregon.

"City council" or "council" means city council of Milwaukie, Oregon.

In addition, for the purpose of this chapter, the following definitions shall be applicable:

"Allowable Expenses" means those expenses that are known and measurable, calculated in accordance with Generally Accepted Accounting Principles (GAAP), not in excess of the fair market value of like services, and are reasonably and prudently incurred by the Franchisee in the course of performing its obligations under this Franchise. A narrative of allowable expenses shall be established by the City in its Administrative Rules.

"Bulky wastes" means large items of solid waste such as appliances, furniture, large auto parts, trees, branches greater than four inches in diameter and thirty-six inches in length, stumps and other oversize wastes whose large size precludes or complicates their handling by normal collection, processing or disposal methods.

"Commission" means the State of Oregon Environmental Quality Commission (EQC).

"Compensation" includes any type of consideration paid for service, including but not limited to, rent, the sale of recyclable materials, and any other direct or indirect provisions for payment of money, goods or benefits by property owners, tenants, members, licensees, and similar persons. It shall, also, include any exchange of services, including the hauling of Solid

Waste and Waste. Compensation includes the flow of consideration from the person owning or possessing the Solid Waste or Waste to the person collecting, sorting, transporting, or disposing of Solid Waste or Waste.

"Curbside," as defined here, may also be called **"curbside/roadside"** means 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.

"Department" means the State of Oregon Department of Environmental Quality (DEQ).

"Disposal site" means land and facilities used for the disposal, handling or transfer of, or resource recovery from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, resource recovery facilities, incinerators for solid waste delivered by the public or by a solid waste collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site; but the term does not include a facility subject to the permit requirements of ORS 468B.050; 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.

"Franchisee" means the person to whom a franchise is granted by the city council pursuant to this chapter. Such franchise shall grant exclusive rights to provide service and solid waste management service for compensation.

"Infectious waste" means biological waste, cultures and stocks, pathological wastes, and sharps, as defined in ORS 459.386 and 459.387.

"Person" means the state or a public or private corporation, cooperative, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.

"Placed for collection" means solid waste or recyclable material that has been placed by the customer for service by a franchisee under the requirements contained herein.

"Processing" means an operation where collected, source separated, recyclable materials are sorted, graded, cleaned, densified or otherwise prepared for end use markets.

"Recyclable material" means any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

"Resource recovery" means the process of obtaining useful material or energy resources from solid waste and includes:

1. "Energy recovery," which means recovery in which all or a part of the solid waste materials are processed to utilize the heat content, or other forms of energy, of or from the material;
2. "Material recovery," which means any process of obtaining from solid waste, by presegregation or otherwise, materials which still have useful physical or chemical properties and can be reused or recycled for some purpose;
3. "Recycling," which means any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity;
4. "Reuse," which means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

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

- a. Environmentally hazardous wastes as defined in ORS 466.055;
- b. Materials used for fertilizer or for other productive purposes on land in agricultural operations in the growing and harvesting of crops or the raising of fowl or animals;
- c. Septic tank and cesspool pumping or chemical toilet waste;
- d. Source separated, principal recyclable materials as defined in ORS 459A and the Rules promulgated there under and under this Ordinance, which have been purchased or exchanged for fair market value, unless the City declares a site of uncollected principal recyclable materials to be public nuisance;

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

"Solid waste management" means the management of the accumulation, storage, collection, transfer, handling, compaction, transfer, handling, compaction, -transportation, treatment, processing and final disposal or utilization of Solid Waste and Waste or resource recovery from Solid Waste and facilities necessary or convenient to those activities. The Franchisee may contract with another person to provide service of any type under the Franchisee's Service Franchise, but the Franchisee shall remain ultimately responsible for Solid Waste and Waste Management in the Franchisee's franchised service area.

"Source separate" means that the person who last uses recyclable material separates the recyclable material from solid waste.

"Special wastes" shall have the meaning given to them in the METRO code as now referenced at METRO Code Section 5.02.015(s), or as hereafter amended, or as provided in the City's administrative rules. The collection of "special wastes" shall be controlled by this Chapter and any rules adopted hereunder.

"Transfer station" means a fixed or mobile facility normally used as an adjunct of a solid waste collection and disposal system or resource recovery station between a collection route and a disposal site.

"Unallowable Expenses" means any expenses not included in the definition of allowable expenses and:

1. Interest and amortization on the purchase of franchise routes or other routes or business opportunities.
2. Political and charitable contributions.
3. Federal, state, and local income taxes.
4. Loss on sale of assets.
5. Officers' life insurance premiums.

6. Director fees.

7. Interest on the purchase of equipment or facilities to the extent that the purchase price exceeds the fair market value of the asset at the time of purchase.

8. Penalties and fines.

"Waste" means material that is no longer usable or wanted by the source of the material, which material is to be utilized or disposed by another person. For the purposes of this paragraph, "utilized" means the productive use of wastes through recycling, reuse, salvage, resource recovery, energy recovery or landfilling for reclamation, habilitation or rehabilitation of land.

"White goods" means kitchen or other large appliances which are bulky wastes.

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

Section 13.24.030 Enforcement officers--Access to and review of books and records.

A. The city manager shall enforce the provisions of this chapter, and his agents, including police officers and employees of the public works department, may enter any premises for the purpose of determining compliance with the provisions and terms of this chapter. Such entry shall be upon permission of the occupant or upon warrant.

B. In order for the franchisees to perform services under this chapter, it may be necessary for a franchisee to disclose to city or city may otherwise acquire, a franchisee's confidential business or technical information. The city may make an inspection for such purposes upon at least twenty-four hours' notice, during normal business hours, at an office of the franchisee located in the local metropolitan area. The city will receive and maintain in confidence all information and will prevent the disclosure of information to others except as required by law in connection with litigation. The city will not use information for any purpose other than in connection with the performance of services pursuant to this chapter.

The above shall not apply to any portion of information: (1) which was developed by the city and is in the city's possession prior to the city's first

receipt thereof directly or indirectly from a franchisee; (2) which is now or hereafter becomes through no act or failure to act on the city's part generally available on a nonconfidential basis; (3) which was heretofore or hereafter furnished to a franchisee by others as a matter of right without restriction on disclosure; or (4) which is required by law to be publicly disclosed by the city. Information shall not be deemed to be within one of the foregoing exceptions if it is merely embraced by more general information available on a nonconfidential basis.

The city agrees that each of its employees, agents and subcontractors who participates in the performance of services or who has access to information is obligated in a manner consistent with this section. The obligations of this section shall survive the termination of any request for services and the termination of this chapter.

Section 13.24.040 Franchise required and exceptions thereto.

A. Except as otherwise provided in this chapter, it is unlawful for any person other than the franchise holders under the provisions of this chapter, to provide or offer to provide solid waste management or collection service in the city for compensation.

B. Nothing in this franchise shall:

1. Prohibit a federal or state agency that collects, stores, transports or disposes of waste, solid waste or recyclable materials, or those who contract with such agencies to perform the service, but only insofar as the service is performed by or for the federal or state agency;

2. Prohibit any person in the city from hauling that person's own waste, solid waste or recyclable materials in a lawful manner; provided, however, that no person will be permitted to haul such waste, solid waste or recyclable material for any other person or firm. In the case of a residential dwelling unit (whether individually owned, nonowner occupied or grouped through an association or cooperative of property owners) any waste generated or produced is owned by the individual owner or occupant and not by the landlord, property owner, cooperative or association or property manager or agent of such person;

3. Prohibit a generator of source separated recyclable material from selling or exchanging such material to any person for fair market value for recycling or reuse;

4. Prohibit any person from transporting, disposing of or resource recovering, sewage sludge, septic pumpings and cesspool pumpings;

5. Prohibit any person licensed as a motor vehicle wrecker under ORS 822.110 et seq. from collecting, transporting, disposing of or utilizing motor vehicles or motor vehicle parts;

6. Prohibit any person transporting solid waste through the city that is not collected within the city;

7. Prohibit a contractor registered under ORS Chapter 701 from hauling waste created in connection with the demolition, construction or remodeling of a building or structure or in connection with land clearing and development. Such waste shall be hauled in equipment owned by the contractor and operated by the contractor's employees;

8. Prohibit the collection, transportation and reuse of repairable or cleanable discards by private charitable organizations regularly engaged in such business or activity including, without limitation, Salvation Army, Goodwill, St. Vincent De Paul, and similar organizations;

9. Prohibit a person from conducting an activity determined by the city manager to be a civic, community, benevolent or charitable program, providing that such activity does not include the collection of putrescible solid waste. The organization conducting such program shall comply with all applicable provisions of this chapter;

10. Prohibit a person from transporting or disposing of waste that is produced as an incidental part of the regular carrying on of the business but a person shall not provide collection service for any accumulated waste generated by a customer of that business.

11. Require franchisee to store, collect, transport, dispose of or resource recover any hazardous waste as defined by or pursuant to ORS Chapter 466; provided, however, that franchisee may engage in a separate business of handling such wastes separate and apart from this franchise and chapter. (Ord. 1752 § 4, 1993)

Section 13.24.050 Adoption and Revision of Rules

a. Under authority of the City Code, the City Manager is authorized to adopt rules, procedures and forms to implement provisions of this Chapter that regulate the collection and disposal of Solid Waste, Recycling and Yard Debris within the City of Milwaukie.

b. Any rule adopted or revised according to the authority of the City Code shall require a public review process. Not less than ten nor more than thirty days before such public review process, notice shall be given by publication in a newspaper of general local circulation. Such notice shall include the place, time and purpose of the public review process and the location at which copies of the full set of the proposed rules may be obtained.

c. During the public review, the Solid Waste Coordinator shall hear testimony or receive written comment concerning the proposed rules. The City Manager shall review the recommendations; taking into consideration the comments received during the public review process and shall either adopt the proposal, modify or reject it.

d. An interim rule may be adopted by the City Manager or his designee without prior notice upon a finding that failure to act promptly will result in serious prejudice of the public interest of the affected parties, including the specific

reasons for such prejudice. Any rule adopted pursuant to this paragraph shall be effective for a period of not longer than 180 days.

Section 13.24.060 Sanitary and safety regulations.

Each franchisee shall comply with all state, federal, regional and city laws, rules and regulations relating to solid waste management service, as now or hereafter constituted. Violation shall be an offense against the city. (Ord. 1752 § 6, 1993) Where enforcement action is not taken by any other agency, the City may exercise this authority in order to cure the violation.

Section 13.24.070 Standards for collection and storage of solid wastes and recyclable materials.

A. Storage and collection of solid waste and recyclable materials shall not create vector production and sustenance, conditions for transmission of disease to man or animals, fire hazards or hazards to service or disposal workers or to the public. All solid wastes placed for collection shall be stored by the customer in a can (metal or heavy-duty plastic), cart, metal container or drop box, and such receptacles, other than drop boxes, must have tight-fitting covers and hand or mechanical bales to facilitate pickup. Extra volumes of solid waste that are in addition to the subscribed service, may be in heavy plastic bags that are securely tied at the top and which will accommodate the weight and volume of waste contained in them so that they do not break open upon being collected. The cleanliness of the grounds surrounding the solid waste and recyclable materials storage area and of the receptacle for such materials shall be the responsibility of the customer. Solid waste containing putrescible materials shall be stored in closed containers.

B. Recyclable materials and yard debris shall be prepared by customers and placed at curbside for collection by a franchisee in accordance with rules and standards adopted under this chapter.

C. Customers shall provide a space for all cans, carts, containers or drop boxes, whether used for garbage or recycling, that has adequate and safe access for collection personnel and equipment. The space provided must also comply with the city development code.

D. Placement of receptacles for collection by a franchisee and requirements pertaining to weight limitations, type and quality, and contents of receptacles placed for collection by a franchisee shall be in accordance with rules and standards adopted under this chapter.

E. The temporary storage of solid waste is permitted without compliance with the requirements for solid waste disposal sites if the temporary storage is provided under safe and sanitary conditions.

Temporary storage must comply with all relevant codes and chapters of the city. (Ord. 1752 § 7, 1993)

Section 13.24.080 Franchise requirements.

A. Each franchisee shall make available, for subscription, all levels of solid waste collection service for which the city sets rates, to every customer in its franchised geographic area, subject to the limitations in Section 13.24.150 for refusal of service. Collection of bulky wastes shall be made by special arrangement between franchisee and a customer. Each franchisee shall provide each of their new customers with city-approved written information on all solid waste and recycling collection services that are available and the rates for these services. The franchisee shall not intentionally provide solid waste collection service to customers in another franchisee's geographic area within the Milwaukie city limits except by arrangement with another franchisee under a subcontract. Customers shall be given written notice of any changes in service.

B. Each franchisee shall use proper and suitable equipment for the hauling, removal and transportation of solid waste. All equipment for transporting solid waste on public roadways within the city shall be covered and all equipment for handling said waste material shall be equipped with a metal body, watertight and drip proof to the greatest extent practicable. All equipment shall be kept clean at all times and sufficient equipment shall be kept on hand to properly and adequately remove all solid waste, subject to the terms of this chapter, together with rules and standards adopted under this chapter.

C. Each franchisee shall make available solid waste management and collection service as defined in Section 13.24.020 of this chapter to customers in the city not less than once per week.

D. Each franchisee may subcontract with others to provide a portion of the service where the franchisee does not have the necessary equipment or service capability. Such a subcontract shall not relieve the franchisee of total responsibility for providing and maintaining service and from compliance with this chapter. Said franchisee shall provide written notice to the city of its intention to subcontract any portion of the service prior to entering into such agreement, and provide the city with a copy of the agreement, which shall require city approval prior to the agreement becoming effective. The subcontractor shall comply with all provisions of this chapter.

E. Each franchisee shall provide the opportunity to recycle in accordance with Chapter 459A of Oregon Revised Statutes, together with the rules and regulations promulgated thereunder by the EQC, DEQ, METRO and the city.

F. Each franchisee shall permit inspection by the city of said franchisee's facilities, equipment and personnel at reasonable times.

G. Each franchisee shall comply with all laws relating to solid waste management service and shall not have a record of violations of law or chapters that would indicate an inability to satisfactorily perform the service being franchised.

H. Each franchisee shall submit a certificate of public liability insurance with a thirty-day notice of cancellation clause, acceptable to the city, which will cover its business operation including each vehicle operated by said franchisee. This coverage shall include Contractual Liability insurance. Coverage will include \$1,000,000 per occurrence and \$2,000,000 general annual aggregate. Said insurance shall name City as an additional insured and shall require written notice to City thirty (30) days in advance of cancellation. If Contractor hires a carrier to make delivery, Contractor shall ensure that said carrier complies with this paragraph. The insurance shall indemnify and save the city harmless against liability or damage which may arise or occur from an injury to persons or property as a result of said franchisee's operation of the solid waste business.

I. Each franchisee shall comply with the hours of collection which may be set by rules and regulations under this chapter.

J. Each franchisee shall provide staff, equipment, transportation and disposal for waste collected at one annual collection event in the City. Expenses from this event shall be reported in annual financial reports as allowable expenses for services provided within the City of Milwaukie.

Section 13.24.090 Non-Exclusive Franchise.

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

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

(7) To otherwise provide for the service in a manner appropriate to the public interest.

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

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

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

- (1) An increase in the population of the City;
- (2) An extension of the boundaries of the City;
- (3) Intensive residential, commercial or industrial development within the boundaries of the City;
- (4) Changes in solid waste technology and/or recycling collection technology that could substantially improve collection service or reduce collection costs to residents of the City;
- (5) The effect that an additional franchise would have on each existing Franchisee's ability to meet the City's service standards and maintain a fair return on its investment;

- (6) The number of existing Collection Franchisees or Drop Box Service Franchisees, as applicable, providing service in the area of the City in which the applicant wishes to provide service; and
- (7) Changes in federal or state laws, rules or regulations that substantially affect solid waste or recycling collection requirements.

Section 13.24.100 Term of Franchise

A franchise to provide collection service for solid waste, recyclable materials and yard debris in a portion of the City shall be granted for a period of ten (10) years, beginning December 21, 2005.

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

Staff shall report to the Council a comprehensive review of the rates. As part of this review, the City may review customer service, franchise performance and overall state of the franchise system based on the first 60 months of the franchise term. As part of that review, at the request of a Franchisee, staff may make a recommendation to renew or not renew, and the Council may consider renewing that person's franchise for an additional five years to be added to the end of the existing term for a total of ten (10) years. Any such extension shall be granted only after the notice to all interested parties and a public hearing.

Nothing in this section restricts the Council from suspending, modifying or revoking the franchise for cause pursuant to Section 13.24.140 of this Code.

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

Section 13.24.110 Notice Request for Franchise Applications

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

The City Manager shall establish forms and deadlines.

Section 13.24.120 Description of Franchise Areas

A City Solid Waste Franchise service area shall include single unit residential customers and any multi-family residential, commercial and industrial customers within that service area. The service areas shall be determined by Council

resolution. The Franchise areas and the Franchisees serving such areas shall be indicated on a map entitled "Solid Waste Franchise Service Areas of the City of Milwaukie" (the "Map"). A copy of the Map shall be dated with the effective date of the Council resolution and maintained in the Office of the City Manager. Amendments to the map may be made by Council resolution, and copies of amendments shall be kept on file by the City Recorder.

Section 13.24.130 Transfer of Franchise

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

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

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

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

- (1) A nonrefundable application fee of two thousand dollars (\$2000) payable at the time of application to the City in advance to defray the City's anticipated expenses and costs resulting from the Franchisee's request;
- (2) Financial statements audited or reviewed by a Certified Public Accountant of the Proposed Assignee's operations for the three immediately preceding operating years together with any additional evidence of financial ability to perform its Franchise obligations; and

(3) A showing that the proposed Assignee meets all City criteria for the grant of a Franchise as are set out in section 12.24.090 of this ordinance.

Section 13.24.140 Suspension, modifications or revocation of franchise.

A. The city council may suspend, modify or revoke the contract of a franchisee upon finding that the holder thereof has violated this chapter or ORS Chapter 459 or Chapter 459A, or any rule or regulation promulgated there under.

B. When the city receives information indicating a violation of this chapter, a written notice of such violation shall be provided to said franchisee. Such notice shall provide a description of the alleged violation, and shall provide a reasonable opportunity to correct the violation.

C. Upon receipt of the written notice, referred to in subsection B of this section, said franchisee shall have thirty days from the date of mailing of the notice in which to comply or to request a public hearing before the city council. A request for a public hearing before the city council shall be made in writing and in the event a public hearing is held, said franchisee and other interested persons shall have a reasonable opportunity to present information and testimony in oral or written form.

D. The council shall adopt findings of fact and conclusions which will support or deny the alleged violation. The council may, on the basis of such findings, suspend, modify or revoke the franchise of said franchisee or condition such action upon continued compliance with this code. Said franchisee shall comply with the time specified in the notice or with the order of the city council. (Ord. 1752 § 10, 1993)

Section 13.24.150 Interruption of service.

Each franchisee agrees, as a condition of their franchise, that whenever the city council finds that the failure of service or threatened failure of service would result in creation of an immediate and serious health hazard or serious public nuisance, the city council may, after a minimum of twenty-four hours' actual notice to the franchisee and a public hearing if the franchisee requests it, provide or authorize another person to temporarily provide the service or to use and operate the land, facilities and equipment of the franchisee to provide emergency service. If a public hearing is requested by the franchisee, it may be held immediately by the city council after compliance with the minimum notice requirements for such meetings established by the Oregon Public Meetings Law. The city council shall return any seized property and business upon abatement of the actual or threatened interruption of service, and after payment to the city for any net cost incurred in the operation of the solid waste service. (Ord. 1752 § 11, 1993)

Section 13.24.160 Rates under this chapter

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

- (1) Rates shall be established to the greatest extent practicable on a cost of service basis.
- (2) Rates shall be adequate to provide an expected Operating Margin for the subsequent rate year equal to ten percent (10%) of composite Franchise-wide Gross Revenues; however, the City shall not be required to change rates if the expected Operating Margin in the current year falls between eight and twelve percent of Gross Revenues.-The 10% target, and the 8% - 12% range of 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 analyses of Franchisee Annual Reports to validate hauler submissions. The expected Operating Margin for the subsequent rate year shall incorporate projected and expected inflation factors, and the effect of known or expected increases or decreases in expenses or revenues prepared on a composite basis.

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

If the haulers for the majority of the franchise areas within the City notify the City Manager in writing that they believe a material change outside the Franchisees' control has occurred, and the change will have an adverse effect on operating margins, such that current year operating margins will be less than seven percent, a material change will be deemed to have occurred. At that time, the City may undertake any type of review it finds necessary to validate the existence of the material change and estimate its effect on the operating margin. If the results of the review are such that no rate adjustment is warranted, persons requesting the review shall reimburse the City for reasonable costs incurred during the investigation at the time the next payment of franchise fees is due.

If the City believes that a material change has occurred that will result in a current year operating margins falling under 8% percent or over 12% percent, the City may undertake a supplementary rate review at its own expense.

A change in tipping fee at disposal facilities will be evaluated by the City to determine the effect upon rates and services.

Section 13.24.170 Franchise fee.

For the privilege of using the City's streets and other facilities and for the purpose of defraying the City's regulatory expenses, each Franchisee shall pay a Franchise Fee to the City equal to 5% percent of cash receipts on residential service, commercial and drop box service, net of material sales revenue. For drop box service, disposal costs will be considered a pass through cost.- The Franchise Fee shall be computed and collected on a calendar quarterly basis. The fee shall be paid by the Franchisee not later than the last day of the month immediately following the end of the quarter. A Franchise fee payment shall become delinquent if not paid by the last day of the month immediately following the end of the quarter. A simple interest charge of 18% shall be charged against the entire delinquent balance until the balance is paid.

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

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

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

The City Council by resolution may change the amount and computation of Franchise Fees from time to time. The Council, by resolution, may reallocate the Franchise Fee percentages for different customer groups, such as residential or commercial, if such a reallocation mitigates a cost of service disparity that is not fully corrected through the rate setting process. In order to do so, the City Manager must be able to demonstrate that the composite rate of return among the Franchisees is improved. Such a reallocation may not materially reduce the amount of total Franchise Fee Revenue obtained by the City.

Section 13.24.180 Payment for services and interruption or discontinuance of service.

A. Rules and regulations pertaining to billing sequences may be adopted pursuant to this chapter. Solid waste management service may be discontinued by any franchisee when payment for such service is delinquent for a period of thirty days, and after giving ten days' written notice of

delinquency to the occupant of the premises. Said franchisee shall not be required to resume service until the delinquency is paid and until a deposit equal to two months' service is paid in advance. In the event service is discontinued for delinquency, the city shall be given a copy of the written notice of delinquency given by a franchisee to the occupant of the premises.

B. No franchisee shall terminate service to any or all of its customers under this chapter except in accordance with the provisions of this chapter. Service may be interrupted or terminated when:

1. The street or road access is unavoidably blocked through no fault of the franchisee or if there is no reasonable alternative route or routes to serve all or a portion of its customers; but in either event, the city of Milwaukie shall not be liable for any such blocking of access; or

2. Adverse weather conditions render providing service unduly hazardous to persons or equipment providing such service or if such interruption or termination is caused by an "act of God" or a public enemy.

C. A franchisee shall have the right to establish, by agreement with individual customers in the city, the time or times when solid waste shall be gathered and collected, but such agreement shall not conflict with any rules adopted by the city. (Ord. 1752 § 15, 1993)

Section 13.24.190 Annexation of property to city.

If property is annexed by the city, the city and the franchisee shall comply with ORS 459.085(3). (Ord. 1752 § 16, 1993)

Section 13.24.200 Violations.

A. Without the consent of the owner or lessee, it is unlawful for any person to dispose of, place or deposit any waste, solid waste or recyclable materials in a container, drop box or other receptacle owned or leased by another person.

B. No unauthorized person shall take or remove any solid waste or recyclable materials placed for collection by a franchisee.

C. No person shall provide nor offer to provide solid waste management service in the city unless they are exempted under Section 13.24.040 of this chapter or unless they are a franchisee under this chapter.

D. No person shall violate any other provisions of this chapter or rules and regulations promulgated thereunder.

These violations shall be subject to the penalties set forth in Section 13.24.180 of this chapter. (Ord. 1752 § 17, 1993)

Section 13.24.210 Process for Determining Penalties.

Any person deemed to be in violation of any of the provisions of this Chapter, shall be charged with a civil infraction and cited into municipal

court using the civil infraction procedures of Title1 of the Milwaukie Municipal Code.

Any person violating any of the provisions of this chapter shall be deemed guilty of a civil infraction, and upon conviction thereof, shall be fined according to rules established under Chapter 1.12.010 of this Milwaukie code. Any non-franchised person engaging in any of the activities franchised under this chapter for compensation, shall in addition be guilty of a civil infraction for each day of violation of the chapter and subject to an additional fine not exceeding one hundred dollars for each and every day after the first day of said violation. (Ord. 1752 § 18, 1993)