

TIGARD MUNICIPAL CODE

**Chapter 11.04 SOLID WASTE
MANAGEMENT**

Sections:

- 11.04.010 Title for Citation**
- 11.04.020 Purpose, Policy and Scope of Chapter Provisions**
- 11.04.030 Definitions**
- 11.04.040 Franchise—Granted to Certain Persons—Scope of Regulations**
- 11.04.050 Franchise—Term—Automatic Renewal When**
- 11.04.060 Franchise—Fees**
- 11.04.065 Franchises Records**
- 11.04.070 Responsibility of Franchisee**
- 11.04.080 Franchise—Transfer, Suspension, Modification or Revocation—Conditions**
- 11.04.090 Rates for Service**
- 11.04.100 Container Requirements and Collection Limitations**
- 11.04.105 Stationary Solid Waste Compactors**
- 11.04.110 Offensive Wastes Prohibited**
- 11.04.120 Unauthorized Deposits Prohibited**
- 11.04.130 Interruption of Franchisee’s Service**
- 11.04.140 Termination of Service by Franchisee**
- 11.04.150 Subcontracts**
- 11.04.155 Business Recycling Requirement**
- 11.04.160 Rules and Regulations Applicable to Franchisees**
- 11.04.165 Administrative Rules Applicable to Business Pursuant to Business Recycling Requirement**
- 11.04.170 Enforcement**
- 11.04.180 Penalty**

11.04.010 Title for Citation

The ordinance codified in this chapter shall be known as the “City of Tigard solid waste management ordinance,” and may be so cited and pleaded, and shall be cited herein as “this chapter.” (Ord. 91-36 §1; Ord. 78-64 §1)

11.04.020 Purpose, Policy and Scope of Chapter Provisions

A. It is declared to be in the public interest for the City of Tigard to establish this policy relative to the matters of solid waste management to:

1. Provide sufficient waste volume to sustain solid waste management facilities necessary to achieve resource recovery goals established by the city, county, State Department of Environmental Quality, and metropolitan service district;
2. Provide the basis for agreements with other governmental units and persons for regional flow control to such facilities;
3. Insure safe accumulation, storage, and collection, transportation, disposal or resource recovery of solid waste;
4. Insure maintenance of a financially stable, reliable solid waste collection and disposal service;
5. Insure rates that are just, fair, reasonable and adequate to provide necessary service to the public;
6. Prohibit rate preference and other discriminatory practices which benefit one customer at the expense of other customers of the service or the general public;

TIGARD MUNICIPAL CODE

7. Conserve energy and material resources;

8. Eliminate overlapping service to reduce truck traffic, street wear, air pollution and noise;

9. Provide standards for solid waste service and public responsibilities;

10. Provide technologically and economically feasible recycling by and through solid waste collectors; and

11. Comply with the business recycling requirement set forth in Metro Regional Government Code Chapter 5.10.330.

B. No person shall:

1. Provide service, offer to provide service or advertise for the performance of service without having obtained a franchise from the city;

2. Accumulate, store, collect, transport, dispose of or resource recover solid waste except in compliance with this chapter, other city codes, and Chapter 459, Oregon Revised Statutes, dealing with solid waste management and regulations and amendments promulgated under any of the foregoing. (Ord. 09-05 §1; Ord. 91-36 §1; Ord. 78-64 §2)

11.04.030 Definitions

A. “Business” means any entity of one or more persons, corporate or otherwise, engaged in commercial, professional, charitable, political, industrial, educational, or other activity that is non-residential in nature, including public bodies.

B. “Business recycling service customer” means a person who enters into a service agreement with a waste hauler or recycler for business recycling services.

C. “Council” means the City Council of the City of Tigard.

D. “Compactor” means a stationary or self-contained powered machine which remains stationary when in operation with operating controls designed to compact solid waste from multifamily residential, industrial or commercial customers into either a detachable or integral container. The term “compactor” does not include a household, mechanical device located within a residential dwelling, which is used exclusively by the occupants of that dwelling. The term “compactor” does not include any mechanical device used by a franchisee which is attached to the franchisers mobile collection vehicle.

E. “Curbside” means solid waste receptacles placed by the customer for pickup within five feet of a public roadway or at a location approved by the franchisee.

F. “Customer” means any person who receives service from a franchisee or permittee.

G. “Franchise” means the right to provide service granted to a person pursuant to this chapter.

H. “Person” means any individual, partnership, association, corporation, business, trust, firm, estate, joint venture or other public or private legal entity.

I. “Placed out for collection” means solid waste has been placed by the customer for service by the franchisee under the requirements of this chapter.

J. “Putrescible material” means organic materials that can decompose and may give rise to foul-smelling, offensive odors or products.

K. “Resource recovery” means the process of obtaining useful material or energy resources

TIGARD MUNICIPAL CODE

from solid waste and including energy recovery, materials recovery, recycling and reuse of or from solid waste.

L. “Recycling” means any process by which solid waste materials are transformed into new products in such a manner that the original products lose their identity.

M. “Reuse” means the return of a commodity into the economic stream for use in the same kind of application as before without a change in its identity.

N. “Service” means the collection, transportation, storage, transfer, disposal of or resource recovery of solid waste, including solid waste management.

O. “Solid waste” means all putrescible and nonputrescible wastes, including, but not limited to, garbage, rubbish, refuse, ashes, wastepaper and cardboard; residential, commercial, industrial, demolition and construction wastes; discarded home and industrial appliances; vegetable or animal solid and semisolid wastes; dead animals, infectious wastes as defined in ORS 459.387, and other wastes.

1. For the purpose of this subsection, “waste” means any material that is no longer wanted by or is no longer usable by the generator, producer or source of the material, which material is to be disposed of or to be resource-recovered by another person. The fact that materials, which would otherwise come within the definition of “waste,” may from time to time have value and thus be resource-recovered does not remove them from this definition. Source-separated wastes are “wastes” within this subsection.

2. The term “solid waste” does not include any “hazardous waste” as defined by or pursuant to ORS Chapter 466.

P. “Solid waste management” means the prevention or reduction of solid waste; management of the storage, transfer, collection, transportation, treatment, utilization, processing and final disposal of solid waste; or resource recovery from solid waste; and facilities used for those activities.

Q. “Source separate” means the customer separates recyclable material from solid waste. (Ord. 09-05 §1; Ord. 91-36 §1; Ord. 78-64 §3)

11.04.040 Franchise—Granted to Certain Persons—Scope of Regulations

A. Subject to the provisions of this section, this chapter, the City Charter, and any amendments to these documents, there is hereby granted to the following persons an exclusive franchise to provide service within the exclusive area shown within a map of existing franchised areas on the effective date of the ordinance codified in this chapter, which map is attached hereto, marked “Exhibit A,” and by reference is incorporated in this section.

B. The franchisees are:

1. Area I. Pride Disposal Company, P.O. Box 820, Sherwood, OR 97140.

2. Area II. Waste Management, 7227 NE 55th Avenue, Portland, Oregon 97218.

3. Area III. Pride Disposal Company, P.O. Box 820, Sherwood, OR 97140.

C. Where any area is annexed to the City of Tigard and the area had been franchised by Washington County for solid waste collection service prior to annexation, the county franchise shall be recognized as to the area; but service, term and other requirements shall be those of this chapter. If the area was franchised to any of those listed in subsection B of this section, the area shall

TIGARD MUNICIPAL CODE

be added by the City Manager by amendment to "Exhibit A." For persons other than those listed in subsection B of this section, an acceptance of franchise must be signed and recorded as provided in Section 11.04.070 of this chapter.

D. Nothing in this franchise or this section shall:

1. Prohibit any person from collecting or transporting any waste, produced by that person, from the site at which it is produced, in a vehicle with a gross vehicle axle weight rating of no more than ten thousand pounds directly to an authorized disposal or recycling or resource recovery facility or resource recovering waste produced by that person, so long as that person complies with this chapter, other city ordinances, and Chapter 459 Oregon Revised Statutes, dealing with solid waste management, and regulations promulgated under any of the foregoing. For purposes of this subsection, solid waste produced by a tenant, licensee, occupant or similar person is produced by such person and not by the landlord, property owner or agent of either the landlord or property owner, and except as provided in this section, no person shall provide services to any tenant, lessee or occupant of any property of such person, and the landlord or property owner shall provide service through the franchisee. The vehicle weight limitation in this paragraph does not apply to the transportation of any material authorized by another subdivision of this subsection D.

a. As of the effective date of the ordinance codified in this chapter, any person collecting or transporting any waste, produced by that person, using a vehicle rated at more than 10,000 gross vehicle axle weight will be using a nonconforming vehicle. In order to avoid undue hardship, any person using a nonconforming vehicle for collection and transport of any waste produced by that person at the time of enactment of the ordinance codified in this chapter, may be

allowed continued use of the vehicle under the following conditions:

i. A person must provide the following information to the city no later than January 31, 1992:

(A) Owner's name, address and phone number;

(B) Each vehicle identification number;

(C) Site(s) at which waste is collected; and

(D) Type of operation(s) which is producing the waste.

ii. The City Manager, or designee, shall grant the request for nonconforming use status based on the following criteria:

(A) The information was postmarked no later than January 31, 1992; and

(B) Vehicle, location and type of operation was in operation on January 16, 1992.

b. It is the purpose and intent of this subparagraph to permit the nonconforming use status to continue until January 31, 1999, after which time use of a vehicle with a gross vehicle axle weight rating of more than 10,000 pounds for the collection and transport of any waste produced by that person shall be prohibited. The site where the waste is produced may be changed; however, the vehicle(s) and the type of operation(s) must remain the same or the exemption provided in this subparagraph shall not apply. There shall be no transfer or expansion of the exemption to use a vehicle with a gross vehicle axle weight rating of more than 10,000 pounds.

TIGARD MUNICIPAL CODE

2. 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.

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

4. Prohibit any person licensed as a motor vehicle wrecker under ORS 481.345 et seq., from collecting, transporting, disposing of or utilizing motor vehicles or motor vehicle parts.

5. Prohibit the City Council from withdrawing certain solid waste services by amendment to this chapter on the basis of a finding that such regulation is not necessary for the implementation of the purposes of this chapter or a city, county or metropolitan service district solid waste management plan.

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 the operation of a fixed location where the generator, producer, source or franchised collector of solid waste brings that waste to a fixed location for transfer, disposal or resource recovery; provided, however, that the establishment or maintenance of any such location brought into being after April 1, 1978, shall be only by permit issued by the City Manager.

10. Prohibit the collection, transportation or redemption of beverage containers under ORS Chapter 459.

11. Prohibit a person from transporting or disposing of waste that is produced as an incidental part of the regular carrying on of the business of janitorial service; gardening or landscaping service; or rendering. (These sources do not include the collection, transportation or disposal of accumulated or stored wastes generated or produced by other persons.)

12. 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.

13. Prohibit a nonprofit charitable, benevolent or civic organization from recycling solid waste; provided, that such collection is not a regular or periodic business of such organization. The organizations shall comply with all applicable provisions of this chapter.

14. Prohibit any municipal corporation, special district, state or federal governmental entity from accumulating, storing, collecting, transporting, disposing or resource recovering solid waste generated from or by the operations of those entities as long as the entity complies with this chapter, other city ordinances, and Chapter 459 Oregon Revised Statutes, dealing with solid

TIGARD MUNICIPAL CODE

waste management, and regulations promulgated under any of the foregoing.

E. Where a permit is required from the City Manager, it shall be issued only upon a finding that the service is needed, has not been provided by the franchisee or, in the case of fixed base facilities, by other persons. The City Manager shall give due consideration to the purposes of this chapter. He or she may attach such conditions as he/she determines are necessary to obtain compliance with this chapter and may restrict the term of such permit. The permittee will comply with all applicable provisions of this chapter.

F. Solid waste placed out for collection, whether or not source-separated, belongs to the franchisee when so placed; or, where placed out for collection by a permittee, belongs to the permittee.

G. No person shall deposit material in or remove material from any drop box or container supplied by a franchisee without permission of franchisee.

H. No person shall take or remove any solid waste placed out for collection by a franchisee or permittee under this chapter.

I. Notwithstanding other provisions of this section, if the council finds that on-route recycling is technologically and economically feasible and directs that it be instituted:

1. Franchisees shall be given advance notice of a hearing on the subject and an opportunity to be heard.

2. If, after the hearing and on the basis of written findings, the council directs the service be provided, the franchisees shall be given a reasonable opportunity to provide the service or subcontract with other persons to provide it.

3. If franchisees do not provide the service within the specified reasonable time, the council may issue a franchise or franchises for that service and limited to on-route recycling. A franchisee under this subsection I shall comply with all applicable requirements of this chapter.

4. Nothing in this subsection shall prevent the franchisees from instituting on-route recycling prior neither to a council determination nor from including income and expense in the rate justification section.

5. Section 11.04.070.A.10 requires franchisees to provide the opportunity to recycle, to include on-route recycling, in accordance with applicable law. This subsection is intended to provide a process by which the council may create on-route recycling requirements in addition to those found in other applicable law. (Ord. 15-10 §1; Ord. 03-08; Ord. 99-18; Ord. 99-03; Ord. 91-36 §1; Ord. 86-66 §§1, 2; Ord. 78-64 §4)

11.04.050 Franchise—Term—Automatic Renewal When

A. The rights, privileges and initial-franchise granted herein shall continue and be in full force to and including the 31st day of December, 1988, subject to terms, conditions and payment of franchise fees to the city as set forth in this chapter.

B. Unless the council acts to terminate further renewals of the franchises herein granted: each January 1st, the franchises are automatically renewed for a term of 10 years from the January 1st renewal; on January 1, 1993, the franchises are automatically renewed for term of nine years; on January 1, 1994, the franchises are automatically renewed for a term of eight years; and, on January 1, 1995, and on each January 1st thereafter, the franchises are automatically renewed for a term of seven years from the January 1st renewal. (Ord. 92-36 §1; Ord. 91-36 §1; Ord. 78-64 §5)

TIGARD MUNICIPAL CODE

11.04.060 Franchise—Fees

A. As compensation for the franchise granted to each franchisee and for the use of city streets, the franchisee shall pay to the city a fee, the amount of which is contained in the master fee resolution in effect at the time the franchise agreement is adopted. Such fees shall be computed on a quarterly basis and paid within 30 days following the end of each quarter calendar year period. Each franchisee shall maintain an adequate bookkeeping system showing the gross cash receipts resulting from the solid waste services conducted under the franchise. Records shall be open at all times for audit by authorized personnel designated by the City Manager.

B. Willful misrepresentation of gross cash receipts by a franchisee shall constitute cause for immediate revocation of the franchise, pursuant to Section 11.04.080 of this chapter.

C. The franchise fee shall be in lieu of any business license or regulatory fee or tax, but shall not be in lieu of any ad valorem tax, imposed by the City of Tigard. (Ord. 03-08; Ord. 02-05; Ord. 78-64 §6)

11.04.065 Franchises Records

A. Franchisee shall keep accurate books and records related to all solid waste activities. Such books and records shall be open to inspection by the city, its attorney, or other authorized agent at any time during the franchisee's business hours.

B. The city may audit or review the books and records as it deems necessary. Information obtained from such audits or reviews may be used to determine the amounts due to the city under the provisions of this franchise agreement. Such information may also be used by the city to determine costs of particular services, to determine changes to the schedule of solid waste

rates, or for any other regulatory purpose related to the administration of this chapter. The city shall maintain the confidentiality of such records to the extent allowed by the Oregon Public Records Law. However, the city may provide information obtained pursuant to this franchise to other governmental agencies involved in the regulation of the provision of solid waste services. If such information is shared, the city shall, prior to delivery of the information, receive a written assurance from the receiving agency that the confidentiality of the information shall be maintained to the extent allowed by the Oregon Public Records Law. (Ord. 91-36 §1)

11.04.070 Responsibility of Franchisee

A. The franchisees shall:

1. Resource-recover or dispose of wastes collected at sites approved by the city that are in compliance with Chapter 459, Oregon Revised Statutes and regulations promulgated thereunder.

2. Provide and keep in force public liability insurance, with a 30-day cancellation clause, with a combined single limit of \$1 million, relating to a single occurrence, which shall be evidenced by a certificate of insurance filed with the City Recorder. The city shall be named as an additional named insured on the policy. The insurance shall indemnify and save the city harmless against liability or damage which may arise or occur from any claim resulting from the franchisee's operation under this chapter. In addition, the policy shall provide for the defense of the city for any such claims.

3. Furnish sufficient collection vehicles, containers, facilities, personnel, finances and scheduled days for collections in each area of the city necessary to provide all types of service required under this chapter or subcontract with

TIGARD MUNICIPAL CODE

others to provide such service pursuant to this chapter.

4. Provide a cash security deposit or a performance bond in the amount of \$5,000 to guarantee payment to the city or other affected person of a judgment secured against the franchise holder because of work performed that does not conform to the requirements of this chapter or other ordinances of the city. The deposit or bond shall continue until one year after expiration of the franchise, or until all claims or demands made against the franchisee have been settled or secured.

5. Collect no single-family residential solid waste before 5 a.m. or after 7 p.m. unless this condition is waived by the City Manager or designee.

6. Provide collection and disposal of solid waste from all city facilities, city parks, city sidewalk containers and city activity areas at no cost to the city on a regular schedule.

7. Make collection no less often than once each week, except for will-call collections and drop box operations, and except as provided in Section 11.04.140.

8. Permit inspection by the city of the franchisee's facilities, equipment and personnel at reasonable times.

9. Respond to all calls for special hauling requiring equipment regularly supplied by franchisee within 96 hours of receiving said call unless a later pickup is agreeable to the customer. Special hauling of containers or drop boxes supplied by franchisee is dependent upon availability of those containers or boxes.

10. Provide the opportunity to recycle to all residential, commercial and industrial sources of recyclable material in compliance with

state and local laws and regulations including, without limitation, this chapter, other provisions of the city code, applicable metropolitan service district and State Department of Environmental Quality rules and regulations and the Oregon Recycling Opportunity Act (Chapter 729, Oregon Laws 1983). The opportunity to recycle shall include on-route or depot collection of source-separated recyclable material, a public education and promotion program that encourages participation in recycling, and notification to all customers of the opportunity and terms of recycling service. In addition, the franchisee shall provide regular opportunities for disposal of nonputrescible waste, yard debris, discarded appliances and other waste and shall comply with state and local laws and regulations adopted from time to time for the specific waste materials.

B. A franchisee may require a contract from a customer who requires an unusual service involving added or specialized equipment solely to provide that service. The purpose of this subsection is to prevent the added cost from being assessed against other ratepayers if the customer later withdraws from service. (Ord. 03-08; Ord. 91-36 §1; Ord. 78-64 §7)

11.04.080 Franchise—Transfer, Suspension, Modification or Revocation—Conditions

A. The franchisees shall not transfer this franchise or any portion thereof to other persons without 60 days' prior written notice of intent and the subsequent written approval of City Council, which consent shall not be unreasonably withheld. The City Council shall approve the transfer if the transferee meets all applicable requirements met by the original franchisees. A pledge of this franchise as financial security shall be considered as a transfer for the purposes of this subsection. The City Council may attach whatever conditions it deems appropriate to guarantee maintenance of service and compliance with this chapter.

TIGARD MUNICIPAL CODE

B. Failure to comply with a written notice to provide the services required by this chapter or to otherwise comply with the provisions of this chapter after written notice and a reasonable opportunity to comply shall be grounds for modification, revocation or suspension of franchise.

1. After written notice from the City Council that such grounds exist, franchisee shall have 30 days from the date of mailing of the notice in which to comply or to request a public hearing before the City Council.

2. If franchisee fails to comply within the specific time or fails to comply with the order of the City Council entered upon the basis of written findings at the public hearing, the City Council may suspend, modify or revoke the franchise or make such action contingent upon continued noncompliance.

3. At a public hearing, franchisee and other interested persons shall have an opportunity to present oral, written or documentary evidence to the City Council. The finding of the City Council thereon shall be conclusive; provided, however, that such action may be reviewed by a court on a writ of review.

4. In the event that the City Council finds an immediate and serious danger to the public through creation of a health or safety hazard, it may take action to alleviate such condition within a time specified in the notice to the franchisee and without a public hearing prior to taking such action.

C. The city or any one of the franchisees may propose amendments to this franchise. Proposed amendments shall be in writing and delivered to the City Manager and the franchisees. The City Manager shall present the proposed amendments to the solid waste advisory committee (“committee”) or a similar committee

approved by the City Council. The committee shall review the proposed amendments and make a recommendation to the City Council. The committee may hold public hearings, obtain additional information, negotiate and undertake other activities to prepare a recommendation to the City Council. Both the City Manager, or designee, and the franchisees shall be invited to attend meetings of the committee to comment on the proposed amendments and be otherwise available as resources to the committee. After review of the proposed amendments to the franchise, the City Council may, after public hearing, adopt the amendments. After adoption by the City Council, the franchisees may sign an acceptance of the amendments; however, when the amendment is adopted pursuant to subsections 11.04.020.A.1, A.2, A.9, and B.2, 11.04.040.D.5 and I, and 11.04.080.A and B, the franchisees shall sign an acceptance of the amendment. The franchise shall be amended upon acceptance of the amendments by the franchisees. (Ord. 03-08; Ord. 91-36 §1; Ord. 78-64 §9)

11.04.090 Rates for Service

A. The rates to be charged to all persons by the franchisee shall be reasonable, uniform, and based upon the level of service rendered or required by state or local laws or regulations, haul distance, concentration of dwelling units and other factors which the City Council considers to justify variations in rates that outweigh the benefits of having a single rate structure unless otherwise noted in this chapter.

B. Nothing in this section is intended to prevent:

1. The reasonable establishment of uniform classes of rates based upon length of haul; type of waste stored, collected, transported, disposed of, salvaged or utilized; or the number, type and location of customer’s service, or the type of services; the service required by laws and

TIGARD MUNICIPAL CODE

regulations; or upon other factors as long as such rates are reasonably based upon the cost of the particular service and are approved by the City Council in the same manner as other rates;

2. The franchisee from volunteering service at reduced cost for a civic, community, benevolent or charitable program.

C. Rates to be charged by the franchisees under this chapter shall be set by the City Council by resolution as deemed necessary by the council; except, changes in charges to the franchisees for solid waste disposal site fees and other similar charges directly related to the transportation and disposal of solid waste, imposed by a governmental agency shall be included in the rates, provided such changes are evenly distributed among the rates. The franchisees shall provide 60 days' written notice with accompanying justification for all other proposed rate changes. The council shall give due consideration to the purposes of this chapter and the annual report filed by the franchisees in evaluating the proposed rate changes.

D. The franchisee shall be provided with 30-day prior written notice with accompanying justification for a city-initiated reduction in rate schedule.

E. Unless a governmental unit or legislative body has raised or lowered the cost of providing service or there is a substantial increase in the cost of doing business that was not provided for in the previous rate adjustment, rate adjustments shall be made annually on the following schedule:

1. On or before March 15th, the franchisee shall file an annual report, in a form required by administrative rule, with the City Recorder for the year ending the previous December 31st.

2. The City Manager shall report to the council by April 15th on the franchisee reports and propose rate adjustments, if any. The City Manager may make such recommendations as appropriate to the rate determination. A copy shall be delivered to each franchisee.

3. The council may set a hearing on any proposed rate adjustment.

4. Unless there is good cause shown and recorded in the minutes of the council, the council shall act upon any rate adjustment during consideration of the master fees and charges as part of the annual budget process. Adjustment of the rates can fall under the following categories:

a. If the aggregate profit for all waste haulers is less than eight percent or more than 12% then the city will undertake a rate study to recommend new rates. The new rates will be effective on July 1st and will be intended to produce an aggregate rate of return of 10% for the following calendar year. When rates are set in the middle of a calendar year, the expected aggregate rate of return for the haulers during that calendar year shall be reported to the haulers. So long as the actual aggregate rate of return for that calendar year is within two percent more or less than the reported aggregate rate of return, no rate study will be needed based on that calendar year's report.

b. If the aggregate profit for all waste haulers is between eight and 12%, the rates will be adjusted annually with a start date of January 1st indexed to the U.S. Department of Labor, Bureau of Labor Statistics CPI-U Over-the-Year Percent Change Annual Average for Portland-Salem. If the aggregate profit is between eight to nine percent, then 1.25 times the index will be applied. If the aggregate profit is from nine to 11%, then the index will be applied. If the aggregate profit is between 11% to 12%, then 0.75 times the index will be applied.

TIGARD MUNICIPAL CODE

5. The reports are required from each franchisee regardless of whether or not a rate adjustment is requested.

6. Cost of service studies will be conducted at a minimum of every six years.

F. Emergency rates or an interim rate for a new or altered service may be set by the City Manager; provided, however, that an emergency or interim rate is not valid for more than six months from the effective date. The City Manager shall report any emergency or interim rate adopted together with justification to the council for action by resolution and order, if the rate is to continue for more than six months.

G. Rates established by the council are fixed rates and the franchisee shall not charge more or less than the fixed rate unless pursuant to subsection B.2 of this section.

H. Nonscheduled services shall be charged at the reasonable cost of providing the service taking into consideration the factors in subsections B and C of this section and as determined by franchisee.

I. In establishing rates, the council may set uniform rates, uniform rates by zone and different rates for collectors where there is a service and cost justification.

J. Until changed by the council, rates to be charged are those in effect on the effective date of the ordinance codified in this chapter.

K. If approved in a rate schedule, a “start charge” for new service and a “restart charge” for reinstated service may be added.

L. Franchisees may request and the council shall schedule a public hearing on the application for adjustment or action of the council where no

public hearing has been held prior to rate determination.

M. Franchisee may require payment for residential and multifamily residential service up to three months in advance, and may bill up to three months in advance, arrears or any combination. Where billed in advance, franchisee will refund a prorated portion of the payment for any complete months in which service is not to be provided. Where billed in advance, no rate adjustment shall be effective until the end of the advance payment.

N. Any person who receives solid waste service from the franchisees shall be responsible for payment for such service.

O. Franchisee may charge at time of service for drop box service or for any customer who has not established credit with franchisee. (Ord. 15-10 §1; Ord. 09-05 §1; Ord. 03-08; Ord. 91-36 §1; Ord. 86-66 §§3—6; Ord. 83-19 §1; Ord. 78-64 §8)

11.04.100 Container Requirements and Collection Limitations

A. In addition to compliance with ORS Chapter 459 and regulations promulgated in it and in this section:

To achieve the purposes of this chapter, to prevent recurring back and other injuries to collectors and other persons, to comply with safety instructions to collectors from the State Accident Insurance Fund, and to comply with safety, health and environmental safeguards:

1. Solid waste receptacles designed for manual pickup shall have sides tapering outward to the opening at the top that provide for unobstructed dumping of the contents, two handles on opposite sides, a close-fitting lid with handle, not to exceed 32 gallons’ capacity, and be

TIGARD MUNICIPAL CODE

watertight in construction; shall be made of metal or some rigid material that will not crack or break in freezing weather; and shall be waterproof, rodent-resistant and easily cleanable; and shall not exceed the gross loaded weight established by state law or regulation.

2. Sunken refuse receptacles or containers shall not be used, unless they are placed aboveground by the owner for service.

3. On the scheduled collection day, the customer shall provide safe access to the pickup point which does not jeopardize the safety of the driver of a collection vehicle or the motoring public or create a hazard or risk to the person providing service. Receptacles must be in a visible (from the street or alley) location which may be serviced and driven to by satellite vehicles where practical. Access must not require the collector to pass behind an automobile or other vehicle or to pass under low-hanging obstructions such as eaves, tree branches, clotheslines or electrical wires which obstruct safe passage to and from receptacles. Receptacles must be at ground level, outside of garages, fences and other enclosures, and within 100 feet of the street right-of-way or curb. Where the City Manager finds that a private bridge, culvert or other structure or road is incapable of safely carrying the weight of the collection vehicle, the collector shall not enter onto such structure or road. The customer shall provide a safe alternative access point or system.

4. All solid waste receptacles located at single-family residences shall be placed together in one authorized location on the regularly scheduled collection day.

5. All solid waste receptacles, including, but not limited to, cans, containers and drop boxes, shall be maintained in a safe and sanitary condition by the customer.

6. Solid waste service customers shall place items not intended for pickup at least three feet from solid waste receptacles.

7. No person shall block the access to a solid waste container or drop box.

8. No person shall place any hazardous waste, as defined by or pursuant to ORS Chapter 466, out for collection by another person, franchisee or permittee or place it in any container supplied by such a person, franchisee or permittee without prior written notification and acceptance by the person, franchisee or permittee, and also upon compliance with any requirements of ORS Chapter 466 and any rules or regulations thereunder. Franchisee may decline to provide service for hazardous waste. A container for hazardous or other special waste shall be appropriately labeled and placed in a location inaccessible to the public. If the container is reusable, it shall be suitable for cleaning and be cleaned. (See also requirements of ORS Chapter 466 and rules and regulations thereunder.)

9. All putrescible solid wastes shall be removed from any premises at least once every seven days, regardless of whether or not confined in any container, compactor, drop box or other receptacle.

10. If for other than manual pickup, no customer shall use any solid waste collection container unless it is supplied by the franchisee or is approved by the franchisee on the basis of safety, equipment compatibility, availability of equipment and the purposes of this chapter.

11. Containers (and drop boxes) shall be cleaned by the customer; provided, however, that the franchisee shall paint the exterior and provide normal maintenance. The customer shall be liable for damage beyond reasonable wear and tear.

TIGARD MUNICIPAL CODE

12. Container customers shall supply a location and properly maintain containers so as to meet standards of this chapter.

B. If a customer does not comply with any of the provisions of subsection A of this section, the franchisee shall not be obligated to provide service to that customer. Franchisee shall immediately notify the customer and the city of the noncompliance. Customer may be charged as if the service had been rendered.

C. No stationary compactor or other container for commercial or industrial use shall exceed the safe-loading design limit or operation of the collection vehicles provided by the franchisee serving the area. Upon petition of a group of customers reasonably requiring special service, the City Council may require the franchisee to provide vehicles capable of handling specialized loads, including, but not limited to, front-loading collection vehicles and drop-box vehicles and systems.

D. Any vehicle used by any person to transport wastes shall be so loaded and operated as to prevent the wastes from dripping, dropping, sifting, blowing or otherwise escaping from the vehicle onto any public right-of-way or lands adjacent thereto. (Ord. 09-05 §1; Ord. 03-08; Ord. 91-36 §1; Ord. 78-64 §15)

11.04.105 Stationary Solid Waste Compactors

A. To achieve the purpose of this chapter to comply with safety, health and environmental requirements, stationary solid waste compactors are subject to the following requirements:

B. Franchisee Approval. A customer should obtain franchisee's approval for compatibility with the franchisee's hauling equipment prior to installation of a stationary solid waste compactor.

C. Operational Standards. At all times the customer and the compactor must remain in compliance with the following requirements:

1. Compliance with any applicable federal, state and local health, safety and environmental regulations including, but not limited to, OAR 437-002-0242 and this section.

2. The compactor and surrounding area will be kept clean at all times.

3. The compactor will undergo regular preventive maintenance and adequate emergency maintenance will be available.

4. There will be no operation of the compactor between the hours of 9 p.m. and 7 a.m.

D. Safety. No stationary compactor or other container for multifamily residential, commercial or industrial use may exceed the safe-loading design limit or operation of the collection vehicles provided by the franchisee serving the area.

E. Health. Compactors containing putrescible waste will be emptied at least weekly.

F. Reimbursement for Fines. Customer will reimburse the franchisee for any fines incurred by the franchisee for weight or environmental violations, or any other violations caused by the ownership, operation or use of the compactor.

G. Signing. Each container will be clearly labeled with the name, address and telephone number of the customer and the name of an individual to contact.

H. Violations. Franchisee will not be obligated to transport a compactor that violates the provisions of this section. On notice from franchisee to customer and the city, customer will immediately correct the violation. If customer does not correct the violation, franchisee will give

TIGARD MUNICIPAL CODE

notice of such to the city. (Ord. 18-07 §1; Ord. 09-05 §1; Ord. 03-08; Ord. 91-36 §1)

11.04.110 Offensive Wastes Prohibited

No person shall have waste on property that is offensive or hazardous to the health or safety of others or which creates offensive odors or a condition of unsightliness. (Ord. 91-36 §1; Ord. 78-64 §16)

11.04.120 Unauthorized Deposits Prohibited

No person shall, without authorization and compliance with the disposal site requirements of this chapter, deposit waste on public property or the private property of another. Streets and other public places are not authorized as places to deposit waste except as specific provisions for containers have been made. (Ord. 91-36 §1; Ord. 78-62 §17)

11.04.130 Interruption of Franchisee's Service

The franchisee agrees, as a condition of a 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 24 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 a 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. 91-36 §1; Ord. 78-64 §10)

11.04.140 Termination of Service by Franchisee

The franchisee shall not terminate service to all or a portion of the customers unless:

A. The street or road access is blocked and there is no alternate route and provided that the franchisee shall restore service not later than 24 hours after street or road access is opened;

B. As determined by the franchisee, excessive weather conditions render providing service unduly hazardous to persons providing service or to the public or such termination is caused by accidents or casualties caused by an act of God, a public enemy, or a vandal, or road access is blocked;

C. A customer has not paid for provided service after a regular billing and after a seven-day written notice from the date of mailing, which notice shall be sent not less than 15 days after the first regular billing; or

D. Ninety days' written notice is given to the City Council and to affected customers and written approval is obtained from the City Council;

E. The customer does not comply with the service standards of Section 11.04.100 of this chapter. (Ord. 91-36 §1; Ord. 78-64 §11)

11.04.150 Subcontracts

The franchisees may subcontract with others to provide a portion of the service where the franchisees do not have the necessary equipment or service capability. Such a subcontract shall not relieve the franchisees of total responsibility for

TIGARD MUNICIPAL CODE

providing and maintaining service and from compliance with this chapter. Franchisee shall provide written notice to the city of the franchisee's intention to subcontract any portion of the service prior to entering into such agreement. (Ord. 91-36 §1; Ord. 78-64 §12)

11.04.155 Business Recycling Requirement

Unless otherwise exempt, all businesses and business recycling service customers shall comply with the business recycling requirement performance standard set forth in Metro Regional Government Code Section 5.10.330 and the administrative rules adopted pursuant to TMC Section 11.04.165. (Ord. 11-06 §1; Ord. 09-05 §1)

11.04.160 Rules and Regulations Applicable to Franchisees

The City Manager or designee may propose and prepare rules and regulations applicable to franchisees that pertain to this chapter. The rules and regulations shall be printed or typewritten, and be maintained for inspection in the office of the City Recorder. All proposed rules and regulations promulgated under the authority of this section, and all amendments thereto, shall be immediately forwarded to the franchisee operating under this chapter for response. The franchisee shall have 30 days to respond in writing to such proposed rules and regulations. If the franchisee has objections or revisions to the proposed rules, the franchisee shall meet and confer with the City Manager regarding the franchisees concerns. If the concerns are not resolved through consultation with the City Manager, then the City Manager shall forward the proposed rule, with the franchisees comments, to the City Council for its consideration. The franchisee may request that the City Council hold a public hearing on a proposed rule. The council may approve the proposed rule as submitted, modify the rule, or reject the rule. The City Manager shall enact all rules pursuant to

this subsection by written order. (Ord. 11-06 §1; Ord. 09-05 §1; Ord. 03-08; Ord. 91-36 §1; Ord. 78-64 §14)

11.04.165 Administrative Rules Applicable to Businesses Pursuant to Business Recycling Requirement

Adoption of Administrative Rules. The City Manager or designee is authorized to adopt administrative rules related to the provisions of the business recycling requirement. Such administrative rules shall be adopted pursuant with the provisions of TMC Chapter 2.04. (Ord. 11-06 §1; Ord. 09-05 §1)

11.04.170 Enforcement

A. The City Manager shall enforce the provisions of this chapter, and the rules and regulations adopted pursuant thereto; city's agents, including police officers and other employees so designated, may enter affected premises at reasonable times for the purpose of determining compliance with the provisions and terms of this chapter. However, no premises shall be entered without first attempting to obtain the consent of the owner or person in control of the premises if other than the owner. If consent cannot be obtained, the city representative shall secure a search warrant from the city's municipal court before further attempts to gain entry, and the city shall have recourse to every other remedy provided by law to secure entry.

B. A franchisee shall have a cause of action in Washington County Circuit Court against any person providing service in the Tigard city limits without having a franchise in violation of Section 11.04.040. The cause of action includes any appropriate relief, including injunctive relief.

1. Notice to City Manager. Before a franchisee may commence a civil action, the

TIGARD MUNICIPAL CODE

franchisee must provide 30 days' written notice to the City Manager. The City Manager may elect either to enforce the provisions of this chapter in accordance with Section 11.04.170, or allow the franchisee to commence a civil action in Washington County Circuit Court against the person in violation of Section 11.04.040. If the City Manager fails to respond to the notice, the franchisee may proceed with the civil action. A franchisee may not commence a civil action if the City Manager is pursuing enforcement actions.

2. Damages. Any person providing service in the Tigard city limits without having a franchise pursuant to Section 11.04.040 will be subject to the following damages: lost customer revenue to be paid to the franchisee; unpaid franchise fees owed to the city pursuant to Section 11.04.060, which shall be paid to the City of Tigard; liquidated damages in the amount of \$500 for each violation to be paid to the City of Tigard in lieu of imposition of the civil penalty; and any other legal remedies available. The court shall award reasonable attorney fees to the prevailing party.

3. Violations. For purposes of liquidated damages in paragraph 2 of this subsection B, each incident of service provided without a franchise shall be a separate violation. Incident of service means each and every individual act of service, as defined by Section 11.04.030.N, performed by the violator. For example, providing service without a franchise by hauling a drop box for a person on six occasions is six violations.

4. Indemnity. The City of Tigard shall have no liability for the franchisee's attorney fees and costs incurred for electing to pursue enforcement under these provisions. Any franchisee who elects to act under this provision shall indemnify the City of Tigard in the event of any claims filed against the city arising out of the franchisee's enforcement actions brought under

the provisions of this chapter. (Ord. 09-05 §1; Ord. 07-01)

11.04.180 Penalty

Violation by any person of the provisions of this chapter or the rules and regulations adopted pursuant to Section 11.04.160 or 11.04.165 will be deemed a Class 1 civil infraction, punishable according to the provisions set forth in Chapter 1.16 of this code. (Ord. 18-07 §1; Ord. 09-05 §1; Ord. 91-36 §1; Ord. 78-64 §19) ■