CITY OF DURHAM,
COUNTY OF WASHINGTON, STATE OF OREGON

ORDINANCE 276-26

AN ORDINANCE ESTABLISHING THE SOLID WASTE MANAGEMENT ORDINANCE PLAN, STANDARDS AND RESPONSIBILITIES AND REPEALING ORDINANCES 269-25 AND DECLARING AN EMERGENCY

WHEREAS, the Durham City Council established an exclusive franchise agreement with Pride Disposal Company for solid waste services by way of Ordinance 269-25; and,

WHEREAS, the Durham City Council has determined that it is in the best interests of the City of Durham and Pride Disposal Company to update the Solid Waste Management Ordinance as set forth in, Exhibit "A", attached hereto to align with regional requirements brought forth by the Recycling Modernization Act and Washington County.

NOW, THEREFORE, THE CITY OF DURHAM, OREGON, ORDAINS AS FOLLOWS:

Section 1. The regulations regarding solid waste management, and the collection and transport of waste and recyclable materials set forth in Exhibit "A" are hereby adopted and incorporated into this Ordinance by reference. The City Administrator is directed to codify Exhibit "A" and correct any scrivener's errors that may be found during codification.

Section 2. Ordinance 269-25 is hereby repealed in its entirety.

Section 3. If any provision, section, phrase, or word of this Ordinance or its application to any person, or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

Section 4. This Ordinance being necessary to protect the public's health and safety an emergency is declared, and the Ordinance shall take effect immediately upon being passed and adopted by the City Council.

PASSED AND ADOPTED by the City of Durham, Oregon, this 27th day of October 2026.

First Reading: September 22, 2026
Second Reading: October 27, 2026

CITY OF DURHAM

By: _____

Joshua Drake, Mayor

ATTEST:

_____

Jordan Parente, City Administrator/Recorder

City of Durham
Ordinance 276-26 Exhibit "A"
Solid Waste Management Ordinance

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1. Title for citation.

A. The ordinance codified herein shall be known as the City of Durham "solid waste management ordinance," and may so be cited and pleaded, and shall be cited herein as "this ordinance."

2. Purpose, policy, and scope of ordinance provisions.

A. It is declared to be in the public interest for the City of Durham 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, collection, transportation, disposal, or resource recovery of solid waste;

4. Insurance maintenance of a financially stable, reliable solid waste collection and disposal service;
5. Ensure 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;
7. Conserve energy and material resources;
8. Eliminate overlapping service to reduce truck traffic, street wear, air pollution, and noise;
9. Provided standards for solid waste service and public responsibilities; and
10. Provide technologically and economically feasible recycling by and through solid waste collectors.

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 of Durham;
    2. Accumulate, store, collect, transport, dispose of, or resource recover solid waste except in compliance with this ordinance, other city codes, and Chapter 459, Oregon Revised Statutes, dealing with solid waste management and regulations and amendments promulgated under any of the foregoing.

3. Definitions.

A. "Acceptable Recyclable Materials" as defined by Local Government Recycling Acceptance List in OAR 340-090-0630(2) and materials approved by the Department of Environmental Quality pursuant to ORS 459A.914(4) or OAR 340-090-0630(7).
B. "Bulky Waste" common items, central to home life, that do not fit inside a garbage can or recycling bin, such as old mattresses, sofas, refrigerators, or as otherwise defined in Oregon Metro's Administrative Rules.
C. "Business food waste" means solid waste consisting of food waste removed from the food supply chain that is not fit for human or animal consumption.
D. "Business recycling service customer" means a person who enters into a service agreement with the franchisee for business recycling services.
E. "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 franchisee's mobile collection vehicle.
F. "Council" or "City Council" means the City Council of the City of Durham.
G. "Curbside" means solid waste receptacles placed by the Customer for pickup within five (5) feet of a public roadway or at a location approved by the franchisee.

H. “Customer” means any person who receives service from a franchisee or permittee.
I. “City Administrator” means the City of Durham City Administrator.
J. “Franchise” means the right to provide service granted to a person pursuant to this ordinance.
K. “Franchisee” means any person awarded a franchise pursuant to Section 4 of this Ordinance.
L. “Person” means any individual, partnership, association, corporation, business, trust, firm, estate, joint venture, or other public or private legal entity.
M. “Placed out for collection” means solid waste has been placed by the customer for service by the franchisee under the requirements of this ordinance.
N. “Putrescible material” means organic materials that can decompose and may give rise to foul-smelling, offensive odors or products.
O. “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.
P. “Resource recovery” means the process of obtaining useful material or energy resources from solid waste and including energy recovery, materials recovery, recycling and reuse of or from solid waste.
Q. "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.
R. “Service” means the collection, transportation, storage, transfer, disposal of, or resource recovery of solid waste, including solid waste management.
S. “Solid waste” means all putrescible and non-putrescible waste, including but not limited to garbage, rubbish, refuse, ashes, wastepaper and cardboard; residential, commercial, industrial, demolition, and construction waste; discarded home and industrial appliances; vegetable or animal solid and semisolid waste; dead animals, infectious waste as defined in ORS 459.387, and other waste.
    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 pursuant to ORS Chapter 466.
T. “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.
U. “Source separate” means the customer separates recyclable material from other solid waste.

4. Franchise – Granting to Certain Persons.

A. Subject to provisions of this section, this ordinance, the City charter, and any amendments to these documents, the Council may, by resolution, grant exclusive or nonexclusive franchises, with or without competitive bidding, to provide Service within the City. Each entity that is granted a franchise under this section shall sign a form created by the City Administrator, accepting the franchise and agreeing to abide by the terms of this Ordinance and the awarding resolution. Nonperformance of the terms and conditions of the franchise requirements in this Ordinance may result in financial and operating penalties to the franchisee, and may result in the loss or limitation of the franchisee's right to provide services. No person may provide Service within the corporate limits of the City without a valid franchise awarded pursuant to this subsection.

B. The rights, privileges, responsibilities, and franchise granted by a resolution adopted pursuant to subsection (A) of this section shall be effective for a five (5) year term. The initial term of a franchise granted by a resolution adopted on or before July 1, 2026 shall commence on July 1, 2026. Any other franchise granted by a resolution adopted pursuant to subsection (A) shall commence on the date set forth in such resolution. Unless the council acts to terminate further renewals of any franchise granted herein, each franchise is automatically renewed for a term of five (5) years on the annual anniversary date of the franchise commencement date. By way of example, for a franchise granted with a term beginning July 1, 2026, the franchise shall automatically renew for a term of five (5) years on every July 1 unless the council acts to terminate further renewals.

C. Where any area is annexed into the City of Durham and the area had been franchised by Washington County for solid waste collection services prior to annexation, the county franchise shall be recognized as to the area; but service, term and other requirements shall be those of this ordinance. If the area was previously franchised by the County to a current franchisee of the City, the area shall remain with such franchisee. An acceptance of franchise must be signed and recorded as required by the City Administrator.

5. Scope of Regulations.

A. No person may provide Services within the corporate limits of the City or take any other action in violation of the requirements of this Ordinance.
B. Nothing in this Ordinance 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 10,000 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 ordinance, 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 of property owner, and except as provided herein, 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 subsection 1 does not apply to the transportation of any material authorized by any other subsection of this subsection D.

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 license 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 ordinance on the basis of a finding that such regulation is not necessary for the implementation of the purposes of this ordinance 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 City Administrator;
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 a regular carrying on of the business such as gardening or landscaping service, or rendering (These sources do not include the

collection, transportation, or disposal of accumulated or stored waste 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 waste separate and apart from this franchise and ordinance;
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 ordinance.
14. Prohibit any municipal corporation, special district, state, or federal governmental entity from accumulating, storing, collecting, transporting, disposing or, or resource recovering solid waste generated from or by the operations of those entities as long as the entity complies with this ordinance, or other city ordinances, and Chapter 459 Oregon Revised Statutes, dealing with solid waste management, and regulations promulgated under any of the foregoing.

C. Where a permit is required from the City Administrator, it shall be issued only upon the Administrator finding that the service is needed, has not been provided by a franchisee or, in the case of fixed base facilities, by other persons. The City Administrator shall give due consideration to the purposes of this ordinance. They may attach such conditions as they determine are necessary to obtain compliance with this ordinance and may restrict the term of such a permit. The permittee will comply with all applicable provisions of this ordinance.
D. 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.
E. No person shall deposit material in or remove material from any drop box or container supplied by a franchisee without permission of franchisee.
F. No person shall take or remove any solid waste placed out for collection by a franchisee or permittee under this ordinance.
G. 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. Franchisee shall be given advance notice of a hearing on the subject an opportunity to be heard;
    2. If, after the hearing and on the basis of written findings, the Council directs the service to be provided, the franchisee shall be given a reasonable opportunity to provide the service or subcontract with other persons to provide it;
    3. If the franchisee does 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 shall comply with all applicable requirements of this ordinance;

4. Nothing in this subsection shall prevent the franchisee from instituting on-route recycling prior to a Council determination nor from including income and expenses in the rate justification section;
5. Section 8 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.

6. Franchise-Fees.

A. Effective January 1, 1996, as partial compensation for the rights granted to each franchisee and for the use of city streets, the franchisee shall pay to the City a fee equal to four percent (4%) of gross income accruing to it from any source from its business operations within the city limits, including but not limited to all solid waste services and from the sale or other disposal of recyclable materials collected within the City limits no matter where that matter is sold or otherwise disposed. Such fees shall be computed on a quarterly basis and paid within thirty (30) days following the end of each quarter calendar year period.
B. Willful misrepresentation of gross cash receipts by a franchisee shall constitute cause for immediate revocation of the franchise, pursuant to Section 9 of this ordinance.
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 Durham.

7. Franchisee Records.

A. The franchisee shall maintain records of income and expenses each calendar year according to generally accepted accounting principles for not less than three (3) years after the end of that year.
B. The City may audit or review said 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 ordinance. 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 service. 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 Oregon Public Records Law.

8. Responsibility of Franchisee.

A. Every Franchisee 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 thirty-day cancellation clause, with a combined single limit of two million dollars, relating to a single occurrence, which shall be evidenced by 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 ordinance. 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 services required under this ordinance or subcontract with others to provide such service pursuant to this ordinance;
4. Provide a cash security deposit or a performance bond in the amount of five thousand dollars to guarantee payment to the city or other affected person of a judgement secured against the franchise holder because of work performed that does not conform with the requirements of this ordinance 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 six a.m. or after six p.m. unless this condition is waived by the City Administrator or duly authorized representative;
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, drop box operations, bi-weekly recycling program, and glass and motor oil collection and except as provided in Section 8.A.12.
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 ninety-six 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 ordinance, 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 non-putrescible 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;

11. On an annual basis, franchisee shall provide at least one day of bulky waste removal to all residents of the City at no charge. The franchisee and City Administrator will work together to determine a date for the "no charge" bulky waste removal day, including a comprehensive list of items to be collected;
12. Adhere to the following multi-family dwelling service standards:
    a. The franchisee shall provide the following minimum collection service volumes:
        1) Twenty (20) gallons per unit per week for garbage.
        2) Twenty (20) gallons per unit per week for mixed recycling.
        3) One (1) gallon per unit per week for source-separated glass.
        4) Ensure all material streams are collected at least weekly. On call services are exempt from collection frequency and minimum service volume requirements.
    b. All multi-family plastic receptacles for garbage, acceptable recyclable materials, and yard debris and/or food scraps ordered after July 1, 2022, must contain at least 30% post-consumer recycled content.
    c. All multi-family receptacles ordered after July 1, 2022, must comply with the following color standards. However, the requirements of this section do not apply when service is provided by drop box or compactor:
        1) Garbage receptacles shall be gray or black.
        2) Mixed recycling receptacles shall be blue.
        3) Compostable materials receptacles shall be green.
        4) Source-separated glass receptacles shall be orange.
    d. The franchisee shall provide appropriately colored receptacles by no later than July 1, 2028.
    e. The franchisee shall ensure that all receptacles are labeled with County-approved decals for acceptable recycling materials, glass, compostable materials, and garbage no later than December 31, 2023. Existing decals or stickers must be removed and replaced with the appropriate decal.
    f. Ensure provision of regularly occurring bulky waste collection service. Bulky waste collection will be available within two weeks from request. Rates for service must be upfront and transparent.
    g. On an annual basis the franchisee shall provide to a property manager information regarding the County's multi-family assistance program and a description of services and rates, recycling guidelines, resources and options, and franchisee contact information that shall include the

business address, telephone number, and e-mail address. The franchisee must provide the County with verification annually that the required information has been provided to property managers;

13. Annually provide comprehensive education and assistance for waste, recycling, and reuse services to all customers, including single-family, multifamily, and business customers.
    a. Comprehensive education and assistance includes:
        1) Information about waste prevention, reuse, recycling, yard debris, bulky waste and food waste.
        2) Instructions about the proper preparation of materials for recycling, composting, and disposal.
        3) Contact information for customers to receive additional information or assistance.
    b. All information provided by the franchisee under this section must be accurate, culturally-responsive, and reflect local conditions. Culturally-responsive means adapted to maximize the respect and relevance to the beliefs, practices, culture, and linguistic needs of diverse consumer populations and communities.
    c. As part of the education and assistance required by this Section, franchisee must provide direct performance feedback to individual customers regarding any contamination of acceptable recyclable materials.
    d. Franchisees must provide timely inclement weather notifications in multiple languages and through a variety of media.

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 the service.

In accordance with the Oregon Pollution Prevention and Recycling Modernization Act (ORS 459A.929) and related administrative rules, the City must adhere to contamination reduction requirements established by the Oregon Department of Environmental Quality ("DEQ"). The franchisee shall perform the specific duties assigned as outlined in the contamination reduction work plan, as reviewed and approved by the City, prior to each respective fiscal year. The franchisee shall provide the City with information required, as determined by the DEQ, to be included in the annual Opportunity to Recycle reports completed on behalf of the City by Washington County. Each calendar year, the franchisee shall provide such data from the prior calendar year by January 15th.

9. Franchise-Transfer, suspension, modification, or revocation-Conditions.

A. No franchisee shall transfer a franchise or any portion thereof to other persons without sixty 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 franchisee. 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 ordinance.

B. Failure to comply with a written notice to provide the services required by this ordinance or to otherwise comply with the provisions of this ordinance 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, the 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.
    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 findings 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. If 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 franchisee may propose amendments to this franchise. Proposed amendments shall be in writing and delivered to the City Administrator and the franchisee. The City Administrator shall present the proposed amendments to the City Council or Franchisee, respectfully. 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 franchisee may sign an acceptance of the amendments. The franchise shall be amended upon acceptance of the amendments by the franchisee.

10. 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 ordinance;
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 regulations; or upon other factor 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 franchisee under this ordinance shall be set by the City Council by resolution as deemed necessary by the Council. Changes in charges to the franchisee 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 must be evenly distributed among the rates. The franchisee shall provide sixty days written notice in advance of the proposed rate change, with accompanying justification for all other proposed rate changes. The Council shall give due consideration to the purposes of this ordinance and the annual report filed by the franchisee in evaluating the proposed rate changes.

D. The franchisee shall be provided with thirty-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 approved by the City Administrator, with the City Administrator for the year ending the previous December 31st.
2. The City Administrator shall report to the council by April 1st on the franchisee reports and proposed rate adjustments, if any. The City Administrator may make such recommendations as appropriate to the rate determination. A copy shall be delivered to the 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 by May 31st, and the adjustment shall take effect June 1st. Rate adjustments shall be by resolution of the Council.
5. The reports are required from the franchisee regardless of a rate adjustment request.

F. Emergency rates or an interim rate for a new or altered service may be set by the City Administrator; provided, however, that an emergency interim rate is not valid for more than six months from the effective date. The City Administrator 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 the provisions of this section.

H. Nonscheduled services shall be charged at the reasonable cost of providing the service taking into consideration the factors in subsection B.1 and C of this section and as determined by the 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.
K. If approved in a rate schedule, a "start charge" for new service and a "restart charge" for re-instituted service may be added.
L. Franchisee 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 service up to three months in advance, and may bill up to three months in advance, arrears, or any combination. Where billed in advance, the franchisee will refund a prorated portion of the payment for any period of time in which service is not to be provided.
N. Any person who receives solid waste service from the franchisee 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.

11. Container requirements and collection limitations.

A. In addition to compliance with ORS Chapter 459 and regulations promulgated pursuant thereto and in Section 11:
    1. To achieve the purposes of this ordinance, 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.
        a. Solid waste receptacles designed for manual pickup shall have sides tapering outward to the opening at the top that provides for unobstructed dumping of the contents, two handles on opposite sides, a close-fitting lid with handle, not to exceed thirty-two gallons' capacity, and be watertight in construction; shall be made of metal or some rigid material that will not crack or break in freezing weather, shall be water-proof, rodent-resistant, and easily cleanable; and shall not exceed the gross loaded weight established by state law or regulation. Manual receptacles are only to be used for extra material, after a customer has first used the franchisee provided receptacle.
        b. Sunken refuse cans, receptacles, or containers shall not be used.
        c. 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 be satellite vehicles when 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 one hundred feet of the street right-of-way or curb. Where the City Administrator finds that a private bridge, culvert, or other structured 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.

d. All solid waste receptacles located at single-family residences shall be placed together in one authorized location on the regularly scheduled collection day.
e. 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.
f. Solid waste service customers shall place items not intended for picking up at least ten feet from solid waste receptacles.
g. No person shall block access to a solid waste container or drop box.
h. 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 and 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).
i. 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.
j. 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 franchisee on a basis of safety, equipment compatibility, availability of equipment, and the purposes of this ordinance.
k. 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.
l. Customers shall supply a container location and properly maintain containers so as to meet the standards of this ordinance.

B. If a customer does not comply with any of the provisions of section 11 A. 1, the franchisee shall not be obligated to provide service to that customer. Franchisee shall immediately notify the customer and the City of Durham 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 waste from dripping, dropping, sifting, blowing, or otherwise escaping from the vehicle onto any public right-of-way or lands adjacent thereto.

12. Stationary Solid Waste Compactors.

A. To achieve the purpose of this Ordinance to make stationary waste compaction compatible with the equipment of franchisees, and to comply with safety, health, and environmental requirements, stationary solid waste compactors are subject to the following requirements:
B. Franchisee Approval. A customer shall obtain franchisee's approval for compatibility with the franchisee's hauling equipment prior to purchase and 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 preventative maintenance and adequate emergency maintenance will be available.
    4. There will be no operation of the compactor between the hours of 9pm and 6am.
D. Safety. No stationary compactor or other container for multifamily residential, commercial, or industrial use may exceed 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 the 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 notice of such to the city.

13. Offensive wastes prohibited.

A. No person shall have wastes on property that is offensive or hazardous to the health or safety of others or which creates offensive odors or a condition of unsightliness.

14. Unauthorized deposits prohibited.

A. No person shall, without authorization and compliance with the disposal site requirements of this ordinance, deposit waste on public property or 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.

15. Interruption of franchisee's service.

A. 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 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 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.

16. Termination of service by franchisee.

A. The franchisee shall not terminate service to all or a portion of the customers unless:
    1. The street or road access is blocked and there is no alternate route and provided that the franchisee shall restore service not later than twenty-four hours after street or road access is opened;
    2. As reasonably 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;

3. 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 fifteen days after the first regular billing;
4. Ninety-day written notice is given to the City Council and to affected customers and written approval is obtained from the City Council; or
5. The customer does not comply with the service standards of Section 11 of this ordinance.

17. Subcontracts.

A. The 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 the service and from compliance with this ordinance. Franchisee shall provide written notice to the City of its intention to subcontract any portion of the service prior to entering into such an agreement. All subcontractors shall comply with the terms of this Ordinance.

18. Business Recycling Requirement.

A. Unless otherwise exempt, all business 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.

19. Rules and regulations.

A. The City Administrator or duly authorized representative may propose and prepare rules and regulations pertaining to this ordinance. 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 ordinance for response. The franchisee shall have thirty 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 Administrator regarding the franchisee's concerns. If the concerns are not resolved through consultation with the City Administrator, then the City Administrator shall forward the proposed rules, with the franchisee's comments, to the City Council for 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 Administrator shall enact all rules by written order.

20. Enforcement officers.

A. The City Administrator or duly authorized representative shall enforce the provisions of this ordinance, and the 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 ordinance. 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 a court of competent jurisdiction 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 any court of competent jurisdiction against any person providing Service in the Durham city limits without having a franchise in violation of Section 4 of this ordinance. The cause of action includes any appropriate relief, including injunctive relief.

    1. Notice to City Administrator. Before a franchisee may commence a civil action, the franchisee must provide 30 days' written notice to the City Administrator. The City Administrator may elect either to enforce the provisions of this chapter in accordance with Section 21A or allow the franchisee to commence a civil action in any court of competent jurisdiction against the person in violation of Section 4. If the City Administrator 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 Administrator is pursuing enforcement actions.
    2. Damages. Any person providing service in the Durham city limits without having a franchise pursuant to Section 4, will be subject to the following damages: lost customer revenue to be paid to the franchisee; unpaid franchise fees owed to the City pursuance to Section 6, which shall be paid to the City of Durham; liquidated damages in the amount of $500 for each violation to be paid to the City of Durham 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 every individual act of service, as defined by Section 3, 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 Durham shall have no liability for the franchisee's attorney fees and costs incurred for electing to pursue enforcement under these provisions. If the franchisee elects to act under this provision, the franchisee shall indemnify the City of Durham in the event of any claims filed against the City arising out of the franchisee's enforcement actions brought under the provisions of this section.

21. Penalty.

A. Violation by any person of the provisions of this ordinance, or of rules adopted pursuant to Section 19 shall be deemed a Municipal Violation, punishable by a fine not to exceed $1,000 and each calendar day of violation shall constitute a separate violation for the purposes of imposing a penalty.