

**ORDINANCE No. 3358**

**AN ORDINANCE REGULATING SOLID WASTE DISPOSAL, SOLID WASTE COLLECTION, SOLID WASTE RECYCLABLE MATERIALS AND DISPOSAL SITES; ENABLING THE GRANTING OF FRANCHISES; PROVIDING FOR INSPECTION; PROVIDING FOR PENALTIES; REPEALING ORDINANCES No. 2646, 2709, 2776, 2794, 2976, 2989, 3085, SECTIONS 14 AND 22 OF 3088, 3089, 3125, SECTIONS 16 AND 25 OF 3156, 3159, 3215, 3299, AND 3352; AND DECLARING AN EFFECTIVE DATE AFTER JUNE 30, 1986.** (As amended by Ordinance No. 3457, 3479, 3501, 3512, 3554, 3582, 3854.)

**THE CITY OF PENDLETON ORDAINS AS FOLLOWS:**

**SECTION 1.** **Title.** This Ordinance shall be known as the “SOLID WASTE ORDINANCE.”

**SECTION 2.** **Purpose, Policy and Scope.**

A. It is declared to be the public policy of the City of Pendleton to regulate as allowed pursuant to ORS 459 Solid Waste Management and ORS 459A Recycling, which will allow the City to do the following:

- (1) Provide safe, economical and comprehensive solid waste collection, disposal site regulation and recycling service.
- (2) Provide the lowest economically feasible rates that are just, fair, reasonable and adequate to the public using the service.
- (3) Provide for technologically and economically feasible collection, resource recovery, and disposal site(s).

**SECTION 3.** **Solid Waste Advisory Board.** There is hereby created a “Solid Waste Advisory Board” which Board shall be composed of one (1) member of the City Council and four (4) citizens of the City representing a variety of the franchise customer base appointed annually by the Mayor and confirmed by the City Council. The Solid Waste Advisory Board shall meet, at a minimum, annually in the first calendar quarter and review all matters referred to it concerning rates, service, and policy, and report its recommendations to the City Council. Any determination of the Council shall be final.

Mission statement: It is the mission of the Solid Waste Advisory Board to be educated and knowledgeable on regulations and issues related to solid waste and recycling on behalf of the residents and businesses of the City of Pendleton.

(Section 3, as amended by Ordinance No. 3457, passed March 5, 1991, and Ordinance No. 3854 passed October 21, 2014.)

**SECTION 4.** **Definitions.** Definitions in ORS 459.005 are incorporated by reference. As used in this Ordinance:

**City.** The City of Pendleton, Oregon.

**Collection Vehicle.** Any vehicle regularly used to collect or transport solid waste, or recyclable material or used for that purpose for compensation.

**Collector, Franchise Collector, or Franchise Holder.** May be used interchangeably. Any person holding a franchise issued by the City and thereby authorized and designated by the City to collect, handle, and transport any solid waste or recyclable material.

**Compensation** includes:

- (1) Any type of consideration paid for service, including, but not limited to, rent, the proceeds from resource recovery, and any direct or indirect provision for payment of money, goods, services, or benefits by tenants, lessees, occupants or similar persons;
- (2) The exchange of service(s) between persons; and
- (3) The flow of consideration from the person owning or possessing the solid waste to the person providing service to the person owning or possessing the same.

**Council.** The City Council of the City of Pendleton, Umatilla County, Oregon.

**Disposal Franchise.** A franchise to create, maintain or operate a disposal site.

Disposal site means land and facilities used for the disposal, handling or transfer of, or energy recovery, material recovery and recycling from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, energy recovery facilities, incinerators for solid waste delivered by the public or by a collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site.

Disposal site does not include:

- (A) A facility authorized by a permit issued under ORS 466.005 (Definitions for ORS 453.635 and 466.005 to 466.385) to 466.385 (Amendment of comprehensive plan and land use regulations) to store, treat or dispose of both hazardous waste and solid waste;
- (B) A facility subject to the permit requirements of ORS 468B.050 (Water quality permit) or 468B.053 (Alternatives to obtaining water quality permit);
- (C) A site used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar nondecomposable material, unless the site is used by the public either directly or through a collection service; or
- (D) A site operated by a dismantler issued a certificate under ORS 822.110 (Dismantler certificate).

Dispose or Disposal. Accumulation, storage, collection, transportation and final disposal of solid wastes.

Dwelling, Duplex. A detached residential building under one ownership that is designed for the occupancy of two (2) families.

Dwelling, multi-family. A residential building under one ownership that is designed for the occupancy by four or more families.

Dwelling, single family. A detached, conventional or prefabricated residential building designed to be occupied by one family.

Dwelling, tri-plex. A detached residential building under one ownership that is designed for the occupancy of three families.

Franchise includes a franchise, certificate, contract or license issued by a local government unit authorizing a person to provide solid waste management services.

Franchisee. The person granted a franchise issued by the City.

Garbage. Solid waste as defined herein.

Hazardous Waste "Hazardous waste" does not include radioactive material or the radioactively contaminated containers and receptacles used in the transportation, storage, use or application of radioactive waste, unless the material, container or receptacle is classified as hazardous waste under paragraph (a), (b) or (c) of this subsection on some basis other than the radioactivity of the material, container or receptacle. Hazardous waste does include all of the following which are not declassified by the commission under ORS 466.015 (3):

(a) Discarded, useless or unwanted materials or residues resulting from any substance or combination of substances intended for the purpose of defoliating plants or for the preventing, destroying, repelling or mitigating of insects, fungi, weeds, rodents or predatory animals, including but not limited to defoliants, desiccants, fungicides, herbicides, insecticides, nematocides and rodenticides.

(b) Residues resulting from any process of industry, manufacturing, trade or business or government or from the development or recovery of any natural resources, if such residues are classified as hazardous by order of the commission, after notice and public hearing. For purposes of classification, the commission must find that the residue, because of its quantity, concentration, or physical, chemical or infectious characteristics may:

(A) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(B) Pose a substantial present or potential hazard to human health or the environment when improperly treated,

stored, transported, or disposed of, or otherwise managed.

(c) Discarded, useless or unwanted containers and receptacles used in the transportation, storage, use or application of the substances described in paragraphs (a) and (b) of this subsection.

Landfill means a facility for the disposal of solid waste involving the placement of solid waste on or beneath the land surface.

Manufactured Home Park. Any place where seven (7) or more manufactured homes are located within five hundred (500) feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee paid or to be paid for the rental or use of facilities or to offer space free in connection with securing the trade or patronage of such person.

Owner, Occupant or Tenant. May be used interchangeably. Every person in possession, charge or in control of any dwelling, flat, rooming house, or any eating place, shop, place of business, manufacturing or business establishment, or other place, where solid waste is created or accumulated.

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

Putrescible Material. Organic material that can decompose and that may give rise to foul smelling products.

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

Resource Recovery. The process of obtaining useful material or energy resources from solid waste.

Rubbish Solid waste as defined herein

Sanitary Landfill. A disposal site operated by means of compacting and covering solid waste at least once each business day.

Service. The collection, transportation or disposal of or resource recovery from solid waste for compensation.

Solid waste means all useless or discarded putrescible and nonputrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386 (Definitions for ORS 459.386 to 459.405). Solid waste does not include:

(a) Hazardous waste as defined in ORS 466.005 (Definitions for ORS 453.635 and 466.005 to 466.385).

(b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals.

(c) Woody biomass that is combusted as a fuel by a facility that has obtained a permit described in ORS 468A.040 (Permits).

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

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

Waste. Material that is no longer usable by or that is no longer wanted by the source of the material. Waste material is to be disposed of or to be resource recovered..

Woody biomass means material from trees and woody plants, including limbs, tops, needles, leaves and other woody parts, grown in a forest, woodland, farm, rangeland or wildland-urban interface environment that is the by-product of forest management, ecosystem restoration or hazardous fuel reduction treatment.

Yard debris includes grass clippings, leaves, hedge trimmings and similar vegetative waste generated from residential property or landscaping activities, but does not include stumps or similar bulky wood materials.

(Section 4, as amended by Ordinance No. 3501, passed March 15, 1994; and Ordinance No. 3554, passed January 7, 1997 and Ordinance No. 3854 passed October 21, 2014.)

## **SECTION 5. Franchises.**

A. Franchises may be granted by the City Council of the City of Pendleton for a term not to exceed ten (10) years. Such franchise shall renew annually for ten (10) years on July 1 of that current year unless the City or Franchisee gives notice by July 1 of that year to terminate the franchise ten (10) years hence or unless said franchise is terminated earlier as provided in this Ordinance. Such franchise shall not be transferable without written permission of the City Council which permission shall not be unreasonably withheld. The franchise holder shall keep proper books and records covering the franchise operations, which books and records shall be open during normal business hours to the inspection of the City. The City may grant an exclusive right to operate under this Ordinance for the purpose of accommodating residential and commercial solid waste collection with all rights and privileges afforded the Franchisee pursuant to this Ordinance. The appointment of a franchise holder shall be by separate resolution.

B. Except as provided for in this Section, only those persons granted a franchise by the City shall:

(1) Provide solid waste collection, solid waste disposal, solid waste recycling or disposal site service(s) for compensation or offer to provide or advertise for the performance of such solid waste collection, solid waste recycling, or solid waste disposal service.

(2) Provide solid waste collection, solid waste disposal, solid waste recycling or solid waste disposal service(s) for compensation to any tenant, lessee or occupant of any real property of such person.

C. A Franchise is not required of the following:

1. Any person self-hauling solid waste, recyclables and/or yard debris. A generator may self- haul his or her own material, but may not contract with third parties other than franchisees for collection and transport. [BC 4.08.100, added by Ordinance No. 4203, 5/6/02]

2. Any person collecting, handling, processing, transporting or marketing recyclable material when the recyclable material is source-separated by the generator and is purchased from or exchanged by the generator for fair market value for recycling or reuse. "Purchased from or exchanged by the generator for fair market value" means:

(1) The generator of the recyclable material is being paid for the recyclable material; or

(2) The generator is having the recyclable material removed at no net cost to the generator. "No net cost" means the cost to the generator for having the recyclable material removed is zero (\$0), for all activities related to each transaction, including but not limited to collection, handling, processing, transporting, marketing, storing, sorting and rental of container.

D. Franchise collectors shall provide collection service to any resident of the City who requests and pays for service.

(Section 5, as amended by Ordinance No. 3554, passed January 7, 1997 and Ordinance No. 3854 passed October 21, 2014.)

## **SECTION 6. Public/Customer Responsibilities.**

A. Garbage Containers.

(1) Every person producing solid waste shall contract with a franchised collector for a suitable collection container. In the containers shall be placed all solid waste which has been drained of all excess liquids and the solids wrapped in paper or other material so as to prevent the seepage of liquids.

(2) On collection day each person receiving solid waste collection service shall place collection containers up to ninety-six (96) gallon size (Handy Carts) at the curb, facing the street, with four feet (4') of clearance all the way around the container.

(3) On collection day, all containers, drop boxes and compactors exceeding ninety (96) gallon capacity must be easily accessible.

(4) The customer shall provide safe access to the pickup point so as not to jeopardize the safety of the driver of a collection vehicle or the motoring public or to create a hazard or risk to the person providing service. Whenever the City 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 on such structure or road. The customer shall provide a safe alternative access point or system.

B. Stationary Compactors. No stationary compactor or other container for commercial or industrial use shall exceed the safe loading design limit or operation limit of the collection vehicles provided by the Franchisee serving the service area.

Upon petition of a group of customers reasonably requiring any service not presently provided by Franchisee, the City Council may require Franchisee to provide such service. Rates for such service will be established by resolution prior to the implementation of said service by Franchisee.

C. Vehicles Transport Solid Wastes. Any vehicle used by any person to transport solid wastes shall be so loaded and operated as to prevent wastes from dropping, sifting, leaking, blowing, or other escapement from the vehicle onto any public right-of-way or adjacent lands.

D. Payment for Services. Any person who receives service shall be responsible for payment for such service. When the property owner of a single or multiple dwelling unit or mobile home or trailer space has been previously notified in writing by the Franchisee of the property owner's contingent liability, the property owner shall be responsible for service provided to the occupant of such unit if the occupant does not pay for the service.

E. Container Collection. Franchised collectors shall collect only that solid waste which has been placed in a container as specified herein. The collector shall notify the City of accumulations of solid waste not being stored in approved containers.

F. Bulk materials. Collectors shall pick up such solid waste as tree limbs, brush, building materials and other hard to handle items provided the same are cut into lengths not to exceed six (6) feet and placed at the curb.

G. Weeds. Weeds, grass clippings, and other bulk materials shall be placed in containers as specified in this section.

H. Removal of Solid Waste.

(1) All solid waste shall be removed from private residences not less than once a week. Multi-family developments of four or more units may be required by the City Sanitation Inspector to have their solid waste removed at least two (2) times per week. Hotels, motels, places of public accommodation, restaurants, grocery stores, hospitals, boarding houses and other similar establishments, shall have their solid waste removed no less than weekly and immediately following the Pendleton Round-Up, except Saturdays, Sundays and the following legal holidays: New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day.

(2) Every owner, occupant, or tenant of a single family dwelling within the City having or accumulating solid waste which may create a nuisance shall remove or have the same removed by a franchised collector. Every owner, occupant or tenant shall arrange for collection of such solid waste with the franchised collector or provide such service personally as scheduled herein. Disposal of solid waste shall be made only at a site approved by state regulatory authorities.

(3) Except as a variance may be granted pursuant to Section 6 H (4) of this ordinance, the property owner of each duplex, tri-plex or multi-family dwelling and of each manufactured home park shall provide appropriate receptacles for solid waste in clean condition and shall be responsible, by direct contract with a franchised collector for removal by the franchised collector at least once a week of containers that allow for 30 gallons of accumulation a week for each dwelling unit.

(4) The City Manager shall grant variances from the requirement for service equivalent to 30 gallons of accumulation per week for each dwelling unit of Section 6 H (3) of this Ordinance if it finds that the property is free of accumulations of solid waste and the average occupancy of the units is less than 2.5 persons.

A variance may be revoked by the Sanitary Regulatory Board after notice of proposed revocation with at least fourteen days notice of hearing before the Board.

Any person denied a variance by the City Manager may appeal the denial or revocation to the Sanitary Regulatory Board. The appeal must be filed within thirty days after notice of denial or revocation, by written appeal filed with the City Recorder. The Sanitary Regulatory Board shall hear the appeal within 14 days of Appeal.

I. Burning of Garbage and Rubbish.

Burning shall be permitted only in conformance with City of Pendleton Air Quality Ordinance #3766 and OAR 340-264-0060(3). In all other instances burning of garbage within the City limits is prohibited.

(Section 6, as amended by Ordinance No. 3501, passed March 15, 1994; Ordinance No. 3512, passed June 6, 1995; Ordinance No. 3582, passed April 20, 1999 and Ordinance No. 3854 passed October 21, 2014.)

## **SECTION 7. Franchisee Duties/Responsibilities.**

### **A. Solid Waste Collection and Recycling.**

(1) Franchisee(s) shall within thirty (30) days after the effective date of the ordinance and within thirty (30) days of any franchise granted, file with the City Recorder a written acceptance of the franchise

(2) Franchisee(s) shall dispose of solid wastes collected at a site permitted by state regulatory authorities or in a way consistent with State Law or recover resources from the solid wastes in compliance with the Oregon Revised Statutes and Oregon Administrative Rules.

(3) Franchisee(s) shall provide sufficient collection vehicles, containers, facilities, personnel and finances to provide all types of necessary service or subcontract with written approval of the City Manager with others to provide such service.

(4) Franchisee(s) shall respond to any written complaint on service.

(5) Franchisee(s) shall provide within the City recycling service in compliance with Federal, State and City laws, regulations and resolutions.

(6) Franchisee(s) shall inform solid waste collection and disposal site customers of the opportunity to recycle by a printed notice appearing upon its billing invoice. The notice shall state that the opportunity to recycle is available to the customer at no additional charge and shall notify the customer of the means by which further information may be obtained from Franchisee. Franchisee(s) will comply with all Federal, State and local regulations for education and promotion.

### **B. Disposal Sites.**

(1) All solid waste, other than recyclable materials, shall be delivered to a State of Oregon approved disposal site.

(2) The disposal site shall be maintained and operated in a safe and sanitary condition and in compliance with the minimum functional standards of the State of Oregon and in accordance with rules and regulations established by the City and its specifications.

(3) The franchise holder may make reasonable charges for depositing solid waste by other persons at the disposal site, which charges shall be subject to approval of the City Council; provided that the City may dump any solid waste at the disposal site without charge. The franchise collector shall give receipts to those depositing solid waste at the disposal site for the amount charged and shall make report of the same to the City. Rates may be changed during the term of the franchise if approved by the City Council, and shall be on file at the City Recorder's office for public inspection.

Rates charged for deposit of waste from collection services operating exclusively outside the city limits of Pendleton will reflect:

(a) City of Pendleton Franchise fees not charged for revenue generated by these customers

(4) Any person arriving at the disposal site with solid waste for deposit which is not adequately covered to prevent any portion of the load from falling or blowing off the vehicle will be required to pay a surcharge.

### **C. Rate Preference**

Franchisee(s) shall not give any rate preference to any person, locality or type of solid waste stored, collected, transported, disposed of or resource recovered. This paragraph shall not prohibit uniform classes of rates based upon length of haul, type or quantity of solid waste handled and location of customers so long as such rates are reasonably based upon the costs of the particular service and are approved by the City Council in the same manner as other rates, nor shall it prevent any person from volunteering at no charge for a charitable, community, civic or benevolent purpose.

D. Franchise Transfer(s). Franchisee(s) shall not transfer its franchise or any portion thereof to other persons without the prior written approval of the City Council, which approval shall not be unreasonably withheld. The City Council may approve the transfer if the transferee meets all applicable requirements. A pledge of a franchise as financial security shall be considered as a transfer for the purposes of this subsection. The City Council may attach appropriate conditions to guarantee maintenance of service and to comply with this Ordinance.

### **E. Insurance and Bond.**

(1) Bond. Each franchise holder shall furnish to the City a surety bond acceptable to the City Attorney as defined by separate resolution conditioned upon the faithful performance of the duties imposed by this Ordinance and their franchise.

(2) Insurance: At all times during the term of this Franchise, franchise holder, at its own cost, shall carry, with an

insurance company acceptable to the City Attorney, public liability insurance for its franchise operation as follows:

- (a) (1) General liability insurance in an amount not less than:
  - \$1,000,000 - Property Damage
  - \$1,000,000 - For death or injury to any one person in any one occurrence
  - \$1,000,000 - For death or injury to two or more persons in any one occurrence;
- (2) But in no case less than the City's exposure under the Oregon Tort Claims Act as it now exists or subsequently may be amended.
- (3) This insurance coverage shall include contractual liability coverage for the indemnity provided under this contract, and shall name the City, its officials, officers, employees and agents as additional insureds with respect to Franchisee's activities pursuant to this Franchise.
- (b) Workers' compensation insurance for all subject workers in compliance with ORS 656.017;

(3) Franchisee shall hold the City harmless and indemnify the City from any liability or claim arising from any operation allowed by its franchise.

(4) Vehicles. Franchisee shall keep all its vehicles fully insured with public liability and property damage insurance satisfactory to the City, with limits as stated above and naming the City as co-insured on each policy. Certificates of such coverage must be kept current and filed with the City as a condition of any franchise and shall provide for thirty (30) days written notice to City prior to cancellation of the required coverage. Franchisee shall maintain the public liability insurance required herein at the maximum exposure level established by State and Federal laws for the City and shall increase said public liability insurance whenever the maximum level established by State or Federal law is increased.

F. Collector Vehicles.

(1) No Franchisee shall remove any solid waste or carry it through the streets except in City approved collector vehicles. Any person who shall carry solid waste through the City or to the disposal site shall protect such solid waste from inclement weather, including snow, wind and rain, and shall load it in such a manner that none of it shall drop or spill, and shall provide the vehicle carrying such solid waste with a suitable cover, securely fastened or the load sufficiently bound so as to prevent scattering or dropping of the solid waste or dust in or upon public streets, public ways or private property.

(2) Every collector vehicle used in the collection and disposal of solid waste within the City shall be of a type approved by the City. When a collection vehicle becomes unsuitable for service (i.e. unsafe, dilapidated, unsightly, obsolete, etc.), the City may order that the vehicle be repaired to resolve the condition, or if repair is an inadequate remedy, replacement. Collection vehicles shall at all times be kept in good and safe operating condition, and shall be kept clean and neatly painted. Franchise collectors shall at all times operate adequate equipment to maintain efficient collection service to the citizens of Pendleton.

G. Dumpsters. Every dumpster used in the collection and disposal of solid waste within the City shall be of a type approved by the City. When a dumpster becomes unsuitable for service (i.e. unsafe, dilapidated, unsightly, obsolete, etc.), the City may order the dumpster to be repaired, or if repair is an inadequate remedy, replacement. Dumpsters shall at all times be kept in good and safe operating condition, and shall be kept clean and neatly painted. Franchise collectors licensed or under franchise by the City shall at all times operate adequate equipment to maintain efficient collection service to the citizens of Pendleton.

(Section 7, as amended by Ordinance No. 3479, passed October 6, 1992; Ordinance No. 3501, passed March 15, 1994; and Ordinance No. 3512, passed June 6, 1995; and Ordinance No. 3854 passed October 21, 2014.)

### **SECTION 8. Rates/Recycling Costs and Schedules.**

A. All rates, fees, or charges of Franchisee shall be subject to the approval of the City Council and established by resolution of the City Council. Said rates shall be on file at the City Recorder's office for public inspection. The City reserves the right, at any time during the period of this franchise, to examine the rate structure of the Franchisee and to direct any rate changes which in the discretion of the City Council are reasonable in view of the following considerations:

(1) The Franchisee shall have the right to charge and collect reasonable compensation from persons and groups to whom it shall furnish franchised services; and the term "reasonable compensation" may be defined at the discretion of the City after a study and consideration of franchisee's costs of service, local conditions in the area, and to earn a reasonable rate of return.

(2) To facilitate considerations as in this section provided, the Franchisee shall furnish to the City a copy of the published rate schedule, which rate schedule shall contain the rates and charges made for all its operations. Said rate schedule, having been filed as herein provided, shall be kept current; and Franchisee shall file with the City, at least ninety (90) days prior to any contemplated change, a new and revised rate schedule which shall be examined by City in

an appropriate public proceeding affording due process and unless approved by the City as requested or approved by the City in a modified form prior to thirty (30) days before the effective thereof shall be disapproved.

(3) Notification of approval, approval as modified, or disapproval shall be made to Franchisee by certified mail or its equivalent.

(4) In event of disapproval, or in event of non-acceptance of the City's modifications by Franchisee within ten (10) days of the notification of City's written modification, Franchisee shall not put the new rate schedule into effect and may file with the City, either on its own motion or in compliance with the City's request, further information to justify the rate schedule changes. Negotiations shall be had in good faith between the parties and the process described in Section 8 (A), (2), (3) and (4) shall be repeated. The City has the right to require annual financial statements and other records to be furnished to carry out the intentions of this section.

(5) In the event of approval of a new revised schedule the new rates shall not apply to persons and groups who have an advance payment agreement with Franchisee until expiration of any such agreement.

(6) The City bases its rights reserved hereunder upon the inherent and statutory right of the City to perform in the best interests of the people of the City and to prevent any possible misuse of the rights granted hereunder. Conflicts or disputes arising under this Ordinance shall be subject to judicial review.

(7) The maximum rates in effect at the time this Ordinance takes effect and thereafter shall be subject to review and change only one time in a calendar year, however, an additional application for supplemental adjustment may be made when the cost of collection is increased by governmental regulation or compliance costs.

B. In no case shall the Franchisee levy a fee or charge upon a customer for recycling that causes the bill of the customer to be in excess of charges to a similarly situated customer who does not recycle.

C. Franchisee under this Ordinance shall file at least annually with the City Recorder any schedule it establishes to collect recyclable materials showing different areas of the City and the days for collection of recyclable material will be made in each area.

(Section 8, as amended by Ordinance No. 3854 passed October 21, 2014.)

### **SECTION 9. Franchise Fee.**

A. Collection Franchise. In consideration of the solid waste collection franchise granted to any person under this Ordinance, the Franchisee shall pay to the City an annual franchise fee as established by resolution of the City Council. The franchise fee shall be paid quarterly. Payment shall be made by the 20th day following the end of each quarter. The City of Pendleton shall have the right to inspect the books and records of the Franchisee for the purpose of confirming the number of customers and the gross receipts.

B. Disposal Site Franchise. In consideration of the disposal site franchise granted to any person under this Ordinance, the Franchisee shall pay to the City an annual franchise fee as established by resolution of the City Council. The franchise fee shall be paid quarterly. Payment shall be made by the 20th day following the end of each quarter. The City shall have the right to inspect the books and records of the Franchisee for the purpose of confirming the number of customers and the gross receipts. The funds from the disposal site franchise fee shall be used exclusively for the purpose of surveying, preserving, studying, retaining and replacing disposal sites.

**SECTION 10. Service.** Service provided under the franchise shall be subject to review and approval of the City Manager and City Council. The Franchisee shall at reasonable times permit inspection of its facilities, equipment and personnel providing service.

(Section 10, as amended by Ordinance No. 3854 passed October 21, 2014.)

**SECTION 11. Customer Service - Termination.** The Franchisee shall not terminate service to all or a portion of its customers unless:

A. The street or road access is blocked and there is no alternate route; provided that the City shall not be liable for any such blocking of access.

B. Excessive weather conditions render providing service unduly hazardous to persons providing service or such termination is caused by accidents or casualties caused by an act of God or a public enemy.

C. A customer has not paid for service provided after a regular billing and after a ten (10) day written notice to pay.

D. Sixty (60) days written notice is given to the City and to affected customers and written approval is obtained from the City.

E. After written notice, and opportunity for a hearing before the City, a customer continues to violate this Ordinance.

**SECTION 12. Franchise Service - Interruption.**

The Franchisee agrees as a condition to its franchise that whenever the City Council determines 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 (24) hours actual notice to the Franchisee and a public hearing after a minimum of twenty-four (24) additional hours notice if the Franchisee requests it, the City shall have the right to temporarily provide the service or use and operate the land, facilities or equipment of the Franchisee to provide emergency service. The Council shall return any seized property and business upon abatement of the actual or threatened interruption of service. The Franchisee shall be reasonably compensated by the City for the use by the City of the Franchisee's land, facilities and equipment. If the parties cannot agree on reasonable compensation, the parties shall submit the matter to arbitration. The compensation shall be determined by three (3) arbitrators. After notice by either party to the other party requesting arbitration, one (1) arbitrator shall be appointed by each party. Notice of the appointment shall be given by each party to the other when made. If they fail to select a third arbitrator or upon application by either party, the third arbitrator shall be promptly appointed by the presiding judge of the Circuit Court of the State of Oregon for Umatilla County, acting in their individual capacity. Each party shall bear the total expense of its own appointed arbitrator and shall bear all other expenses equally. The reasonable compensation shall be the decision of not less than two (2) of the three (3) arbitrators. The compensation determined by the arbitrators shall be effective and retroactive to the first day that the City begins using Franchisee's land, facilities and equipment. The resolution by the arbitrators of the dispute shall be completed within sixty (60) days of the date that is initially submitted to the first two (2) arbitrators chosen.

**SECTION 13. Franchise Violations.** If the Franchisee does not comply with the terms of the franchise or this Ordinance, the City Manager shall give the Franchisee written notice setting forth the default or defaults and directing the correction thereof within fifteen (15) days. Failure of the Franchisee to correct such default or defaults within the fifteen (15) day period shall be grounds for termination of the franchise at the option of the City Council. If the default is of such nature that it cannot be completely remedied within the fifteen (15) day period, this provision shall be complied with if Franchisee begins corrections of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. Failure of the Franchisee to maintain or replace collection vehicles as required by this Ordinance is hereby declared to be a violation. The continued use of such vehicle for more than one hundred eighty (180) days after the order for repair or replacement shall be cause for cancellation of the franchise rights at the option of the City.

(Section 13, as amended by Ordinance No. 3854 passed October 21, 2014.)

**SECTION 14. Suspension, Modification or Revocation.**

A. Failure to comply with a written notice to provide necessary service or 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 the franchise.

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

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

D. At a public hearing, the Franchisee and other interested persons shall have an opportunity to present oral, written or documentary evidence to the City Council.

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

F. In the event a franchise is revoked or suspended as provided herein City may temporarily provide the service or use and operate the land, facilities or equipment of the Franchisee to provide franchise service. The Franchisee shall be reasonably compensated by the City for the use by the City of Franchisee's land, facilities and equipment. If the parties cannot agree on reasonable compensation, the parties shall submit the matter to arbitration. The compensation shall be determined by three (3) arbitrators. After notice by either party to the other party requesting arbitration, one (1) arbitrator shall be appointed by each party. Notice of the appointment shall be given by each party to the other when made. If they fail to select a third arbitrator or upon application by either party, the third arbitrator shall be promptly appointed by the presiding judge of the Circuit Court of the State of Oregon for Umatilla County, acting in his individual capacity. Each party shall bear the total expense of its own appointed arbitrator and shall bear all other expenses equally. The reasonable compensation shall

be the decision of not less than two (2) of the three (3) arbitrators. The compensation determined by the arbitrators shall be effective and retroactive to the first day that the City begins using Franchisee's land, facilities and equipment. The resolution by the arbitrators of the dispute shall be completed within sixty (60) days of the date that is initially submitted to the first two (2) arbitrators chosen.

**SECTION 15. Violations and Penalties.**

A. A violation of this Ordinance shall be punishable by a fine not to exceed Five Hundred and No/100 (\$500.00) Dollars.

B. Every full day during which an activity continues to be conducted in violation of this Ordinance shall be considered a separate offense.

C. Offenses under this Section shall be tried in the Municipal Court as a violation and not as a crime. As a violation there is no right to jury trial or court appointed counsel.

D. Additional Remedies.

(1) In addition the penalties provided in this Ordinance, the City may sue in a court of competent jurisdiction to obtain a judgment for a fee due under this Ordinance and to enforce collection of the judgment by execution.

(2) In an action authorized by this Section each party shall bear the costs of its own attorney fees.

(3) Whenever a fee required by this Ordinance is not paid when due, the City Recorder shall add as a penalty to the fee an amount equal to ten (10%) percent of the fee for each month or part thereof during which the fee and accumulated penalty amounts remain unpaid. The total amount of penalties shall not exceed one hundred (100%) percent of the original fee.

(Section 15, as amended by Ordinance No. 3854 passed October 21, 2014.)

**SECTION 16. Severability.** The sections of this Ordinance are severable. The invalidity of a section or part of a section of this Ordinance shall not affect the validity of the remaining sections or parts of sections.

**SECTION 17. Effective Date.** This Ordinance shall become effective upon passage.

**PASSED** and approved October 21, 2014.