

## ORDINANCE NO. 785

AN ORDINANCE RELATING TO SOLID WASTE MANAGEMENT AND COLLECTION WITHIN THE CITY OF SCAPPOOSE AND GRANTING AN EXCLUSIVE FRANCHISE THEREFORE; DEFINING THE TERMS THEREOF; ESTABLISHING PENALTIES FOR VIOLATIONS OF THIS ORDINANCE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH.

THE CITY OF SCAPPOOSE DOES ORDAIN AS FOLLOWS:

Section 1. Title. This ordinance shall be known as the “Solid Waste Management Ordinance” and may be referred to herein as “this Ordinance.”

Section 2. Purpose, Policy and Scope. It is declared to be the public policy of the City of Scappoose to protect the health, safety and welfare of the citizens of the City of Scappoose and to regulate Solid Waste Management and collection by:

- (a) Ensuring safe, economical, efficient and comprehensive solid waste service.
- (b) Ensuring service rates and charges that are just and reasonable and adequate to provide necessary public service;
- (c) Prohibiting rate preference and other discriminatory practices;
- (d) Providing technologically and economically feasible collection services by and through franchisees;
- (e) Prohibiting any person or persons from providing solid waste collection services or recycling services for compensation within the City of Scappoose, except as provided in this Ordinance, on or after January 1, 2006.

Section 3. Definitions. Except where the context clearly indicates a different meaning, or where a term is defined below, the definitions appearing in ORS 459.005 and regulations promulgated under state law are applicable to this Ordinance. The singular includes the plural and vice versa. As used in this Ordinance, the following words shall be defined as follows:

- (a) Adjustment Date. The date which occurs annually on each anniversary of the Effective Date.
- (b) Bulky wastes. Means large items of solid waste such as appliances, furniture, large auto parts, trees, branches greater than four inches in diameter and thirty-six inches in length, stumps and other oversize wastes whose large size precludes or complicates their handling by normal collection, processing or disposal methods.
- (c) Call-back Charge. A flat rate charge which may be assessed to a customer when, due to no fault whatsoever of the Franchisee, a customer has requested a collection truck to return on the regular service day to pick up refuse remaining at the premise after

the regular pick up time of that customer. Call-back fees do not apply to missed containers that were at the appointed location at the designated time, or to clean up refuse spilled or strewn by the employees or equipment of the Franchisee.

(d) City. The City of Scappoose. Where the city limits are extended, the City shall include such extended geographic boundaries, even where this extension occurs after the effective date of this Ordinance.

(e) City Council or Council. The City Council of the City of Scappoose.

(f) Collection Service. The collection, transportation or disposal of solid waste or recyclables or both, excepting the collection, transportation or disposal of materials for which a certificate is required under ORS 822.110.

(g) Commercial. Stores, offices including manufacturing and industry offices, restaurants, warehouses, schools, colleges, universities, hospitals and other non-manufacturing entities, manufacturing entities, and entities, which occupy more than fifty percent (50%) of the floor area of a residence, but not including multifamily or condominium complexes.

(h) Compensation. Compensation includes:

(1) Any type of compensation paid for service including the payment of money, goods, services or benefits by tenants, lessees, occupants or similarly situated persons to the property owner or landlord of the property being rented or leased; and

(2) The exchange of service between persons, except that compensation does not include the benefits, incidental advantages or tax advantages resulting from the donation of services or any form of solid waste.

(i) County. Columbia County, a political subdivision of the State of Oregon.

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

(k) Disposal Site. 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; but the term does not include a facility authorized

by a permit issued under ORS 466.005 to 466.385 to store, treat or dispose of both hazardous waste and solid waste; a facility subject to permit requirements of ORS 468B.050 or 468B.053; a site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar non decomposable material, unless the site is used by the public either directly or through a collection service; or a site operated by a wrecker issued a certificate under ORS 822.110.

(l) Drop Box Service. Service of containers that are collected by roll-off truck and transported directly to a disposal site.

(m) Effective Date. The date this Ordinance becomes effective.

(n) Extra Garbage Fee. A variable rate charge which may be assessed to a residential or commercial customer for refuse in addition to that contained in the roll cart associated with the type and class of service requested by the customer, pursuant to Attachments A and B.

(o) Force Majeure. Shall mean acts of God, natural disaster, landslides, lightning, forest fires, storms, floods, freezing, earthquakes, epidemics, volcanic eruptions, civil disturbances, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, public riots, embargoes, or acts of civil or military authority, breakage, explosions, or accident to machines or other materials or equipment shortage, governmental restraint, unavailability of a disposal site or damage to or destruction of the property, equipment, or vehicles of Franchisee as a result of events which are not reasonably within the control of Franchisee.

(p) Franchise Area. (i) The entire territory included within the City limits as of the Effective Date of this Ordinance; and (ii) such additional area as may thereafter become included with the City limits from time to time due to annexation, incorporation or other means but only from and after the time as the Franchisee is able to provide collection services in such additional area.

(q) Franchisee. As a capitalized term, the person or persons to whom a franchise is granted by the City Council pursuant to this Ordinance.

(r) Generator. The Person at a given site address who generates, produces, or creates solid waste, source separated recyclables and/or mixed loads.

(s) Infectious Waste. Biological waste, cultures and stocks, pathological waste, and sharps, as defined in ORS 459.386.

(t) Landfill. A facility for the disposal of solid waste involving the placement of solid waste on or beneath the land surface.

(u) Manufacturer. A business that makes or assembles a product from raw materials.

- (v) Material Recovery Facility. A solid waste management facility that separates materials for the purposes of recycling from an incoming highly recoverable mix of non-putrescible waste by using manual and/or mechanical methods. It also means a facility that primarily accepts previously separated recyclables.
- (w) Mixed Load. A load containing both (i) non-recyclable solid waste; and (ii) recyclable material, with no more than a trivial amount of putrescible waste.
- (x) Mixed Scrap Paper. This class of recyclable paper includes junk mail copy and FAX paper, colored and white writing paper, computer paper, tablet and note paper, construction paper, file folders, greyboard (e.g., cereal, cracker and potato chip boxes), shoe and gift boxes, paper towel and toilet paper tubes, paper egg cartons, envelopes, greeting cards, all-paper gift wrap, coupons, brochures bill inserts, Post-it Notes, paper labels from tin cans or bottles, non-craft paper bags, and other household paper products that may from time to time be administratively added to this class.
- (y) Motor Carrier. As defined in 49 U.S.C. §13102 (12).
- (z) Motor Private Carrier. As defined in 49 U.S.C. §13102 (13).
- (aa) Multi-family Complex. Any multi-dwelling building or group of buildings that (i) contain(s) five (5) dwelling units or more on a single lot, such as apartments, condominiums, or mobile home parks; and (ii) receives services on a per lot or per building, as opposed to per unit, basis. Multi-family complex also includes certified or licensed residential care housing, such as adult foster care homes, and group homes. Multi-family accounts are determined to be a residential wastestream.
- (bb) Non-Putrescible Waste. Any solid waste that contains no more than trivial amounts of putrescible materials, or minor amounts of putrescible materials contained in such a way that they can easily be separated from the remainder of the load without causing contamination of the load. This category includes construction demolition debris and land-clearing debris; but excludes hazardous waste as defined in ORS 466.005 and source separated recyclables whether or not sorted into individual material categories by the generator.
- (cc) Person. An individual, partnership, association, corporation, trust, firm, estate or other private legal entity, other than a non-profit organization.
- (dd) Plastic Bottles and Milk Jugs. All plastic bottles and milk jugs with necks that are smaller than bases, made from Type #1 to #7 plastic and collected without lids.
- (ee) Putrescible Waste. Solid waste containing organic material that can be rapidly decomposed by microorganisms, and which may give rise to foul smelling, offensive products during such decomposition or which is capable of attracting or providing food for birds and potential disease vectors such as rodents and flies.
- (ff) Recyclable. Any material that still has or retains useful physical, chemical, or biological properties after serving its original purpose(s) or function(s), and is

separated from solid waste that will be transported to a transfer station or landfill, either by the generator or at the material recovery facility.

(gg) Recycling Facility. A facility that only accepts source separated recyclables and is permitted by the appropriate agency.

(hh) Residence or Residential. Any dwelling unit where at least fifty percent (50%) of the use of the entire building is for home use. For purposes of this Ordinance, residence shall include Multi-family Complexes.

(ii) Residual. The solid waste that remains after material recovery has taken place and is destined for a transfer station or landfill.

(ii) Resource Recovery. Means the process of obtaining useful material or energy resources from solid waste and includes:

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

(jj) Roll Cart. A type of refuse or recycling container used in an automated collection system.

(kk) Solid Waste. All useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, commercial, industrial, nonrecyclable demolition and construction wastes; discarded or abandoned vehicles or parts thereof; discarded home or industrial appliances; manure, vegetable or animal solid and semi-solid wastes; dead animals and infectious wastes; and other wastes but the term does not include:

- (1) Hazardous waste as defined in ORS 466.005;
- (2) Materials used for fertilizer, soil conditioning, humus restoration 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 fowls or animals, provided the materials are used at or below agronomic applications rates.

(ll) Solid Waste Management and Collection Services. The prevention or reduction of solid waste; management of the storage, collection, transportation, treatment, utilization, processing and final disposal of solid waste; or recycling, reuse and material recovery from solid waste; and facilities necessary or convenient to such activities.

(mm) Source Separate or Source Separated. The person who last uses recyclable material separates the recyclable material from solid waste.

(nn) Source Separated Recyclables. Recyclables that contain less than 5% residual by weight.

(oo) Special Waste. Shall mean acceptable waste resulting from an industrial, agricultural, manufacturing, demolition or construction operation or process; or waste which requires special handling or extraordinary management, including, without limitation, asbestos, contaminated soil, non-hazardous contaminated material, batteries, sewage sludge, septic tank and cesspool pumpings or other sludge, containerized ash, box springs, mattresses, stumps, wire, tires; or bulk tanker waste, waste from pollution control processes, waste containing free liquids; or any other waste of a character that is significantly different from general mixed residential Solid Waste and that is produced by the commercial, industrial or agricultural operations of a single generator in sufficient quantities to be handled or disposed of by a Franchisee under a specially negotiated contract.

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

(qq) Transport, Transportation or Transporter. Carry, haul, convey, or move.

(rr) Yard Debris. Any vegetable matter, other than putrescible prepared food waste, commonly found in a yard or residence, including leaves, weeds, grass clippings, plants, seasonal ornamental greenery, branches or other woody materials no greater than four inches in diameter and thirty-six inches in length, and other similar vegetation, whether or not such materials were grown on the premises. Yard debris does not include dirt, potting soil, sod, rocks, stumps, ashes, metal, plastic, lumber, food waste, house-hold garbage or animal waste.

Section 4. Granting of Franchise. There is hereby granted to Waste Management of Oregon, Inc., hereinafter called the "Franchisee," the exclusive right, franchise and privilege to provide Solid Waste Management and Collection Services and to use the public streets of the City for transportation necessary to provide those services. The Franchisee is also granted the exclusive right, franchise and privilege to provide Drop Box Service and to use the public streets of the City for transportation necessary to provide such Drop Box Service. No person other than Franchisee shall provide, offer to provide or solicit customers for providing Solid Waste Management and Collection Services for compensation.

(a) Effective Date. Franchisee shall provide Solid Waste Management and Collection Service and Drop Box Service within the city limits effective January 1, 2006.

(b) Franchise Required. Unless as otherwise provided by this section, no person shall do business in the collection, reloading, processing, compacting, sorting or transport of solid waste generated within the City without a current, valid city franchise.

(c) Restriction on Sorting and Transfer. Unless as otherwise provided by this Ordinance, no person without a current, valid City franchise shall take, process, sort, transfer, compact or remove, whether for recycling, reuse, or otherwise, waste or solid waste materials placed out for collection.

(d) No Interference. Unless as otherwise provided by this Ordinance, no person without a current, valid city franchise, other than the person producing the materials contained therein, shall enter or interfere with any solid waste container, or remove any such container or its contents from the location where the same has been placed by the person producing the contents of such container without first obtaining written consent from the Franchisee.

(e) Private Claim. Any person with a current valid city franchise, shall in addition to all other legal rights and remedies he or she might otherwise possess, have a cause of action for violations of Section 4 in any court of competent jurisdiction, including a claim for injunctive relief. The prevailing party in any such action shall be entitled to recover his or her reasonable costs, including any attorneys' fees and expert witness fees at the trial court level and on appeal.

(f) Annexation of Area Subject to County Franchise; Cooperative Agreement. In the event of annexation of property by the City, and such annexed property lies in a service area previously franchised by Columbia County, the County, City and persons providing Solid Waste Management and Collection Services within the County and the City shall attempt to reach an agreement to protect the extent and quality of service in areas remaining outside the City, to protect the quality of service within the City and to protect the rights of affected persons providing such services.

Section 5. Franchise Term. The rights, privilege and franchise hereby granted shall be for a period of ten (10) years from the effective date of this Ordinance unless revoked sooner as provided herein.

Section 6. Renewal of Franchise.

(a) Within 6 months of the expiration of the original 10 year franchise period the Council will review the franchise. Unless the Council acts to terminate further renewals of the franchise herein granted, the Franchisee shall be extended for five (5) years following the initial ten year term. If the Council gives written notification of termination of further renewals, which may be with or without cause, the Franchisee shall have a franchise, which will terminate in four (4) years following the five (five) year renewal. Such termination shall be by certified mail, return receipt requested. The Council may later extend the term or reinstate the continuing renewal provision upon

mutual agreement with the Franchisee. Nothing in this section restricts the Council from suspending, modifying or terminating the franchise for cause pursuant to Section 19. The review process may include the following criteria, among others identified by the City Council:

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

(b) After concluding its review of this Franchise, the City Council may decide whether or not to renew this franchise upon such terms and conditions as it deems appropriate. In the event the City Council decides to renew the franchise, the City Council may approve an amendment to this Ordinance within one hundred eighty (180) days after initiating the review process. If the franchise is not renewed, it shall continue for the balance of the initial ten (10) year period unless revoked sooner as provided herein.

#### Section 7. Franchisee Responsibilities.

(a) Service. The Franchisee shall provide service to any customer within the City upon request, in compliance with Attachments A and B. Residential service shall be provided as mutually agreed upon by the City and Franchisee. Except for the right to terminate service because of nonpayment pursuant to this Ordinance, the Franchisee shall not interrupt service unless access, roads, streets or highways necessary for collection operations are unusable or unsafe and there are no alternative routes. Service shall be resumed within twenty-four (24) hours after access is restored or at such other time as prescribed by the City.

(b) Containers; Roll Carts. The Franchisee shall provide, and retain ownership of, drop boxes and roll carts to be used for service. To protect against injury to employees of the Franchisee and to protect against rodent and fire danger, all containers, including roll carts and drop boxes, shall be rigid and composed of materials that resist splitting or cracking from changes in weather conditions. The Franchisee may require that the roll cart be placed at the curb or roadside in such a fashion so as to



enhance efficiency of the collection system, unless such customer has notified the Franchisee in writing that the customer is medically or otherwise physically unable to do so according to Section 12(b) of this Ordinance, in which case no extra fee may be assessed and the Franchisee must arrange for a mutually convenient system for refuse, yard debris and recycling collection. The City reserves the right to monitor and require modification of drop box locations in order to ensure safe and efficient operation of services within the City. The City may also limit the amount of time a drop box is provided at a particular location.

(c) Frequency of Collection; Holidays. Putrescible solid waste shall be removed from the premises of a customer at regular intervals not to exceed seven (7) days. The Franchisee shall make collections of solid waste and recyclables throughout the business areas of the City in accordance with Attachment A and as required by the City Council. The Franchisee shall provide collections and other services listed in Attachment B, as requested by customers in all of the residential districts of the City at least once each week. The collection of putrescibles, recyclable materials or yard debris in predominately residential and multifamily neighborhoods shall occur between the hours of 6:00 a.m. and 6:00 p.m., unless weather or holiday schedules require extended hours of collection. In the event the normal collection day falls on a holiday, the Franchisee shall have the option to collect the solid waste on the holiday, or on the next business day following the holiday. In addition to the foregoing, the Franchisee shall respond to all calls for special hauling within three (3) days from the date of receiving the call.

(d) Disposal. The Franchisee shall dispose of solid waste at an approved Disposal Site or sites approved by the local government unit having jurisdiction over such disposal site, and provide the opportunity to recycle in compliance with ORS Chapter 459 and any rules or regulations, adopted pursuant to such statutes.

(e) Separation of Wastes; Permitted Collection and Transport. Each Generator shall be responsible for placing in separate containers infectious wastes, sharps and putrescible wastes. The Franchisee may collect and transport mixed loads within the City so long as the load is from a single, non-residential generator; and it is transported to a manufacturer, recycling facility, or material recovery facility. The Franchisee shall not collect or transport any load for disposal at a transfer station or landfill or collect and/or combine mixed loads from more than a single non-residential Generator into one transportation vehicle.

(f) Sufficiency of Collection Vehicles, Containers and Personnel. The Franchisee shall provide sufficient collection vehicles, containers, facilities, personnel and finances to provide all types of necessary service and solid waste management and collection service; but where necessary the Franchisee may subcontract with others to provide certain types of specialized service in accordance with the provisions of this Ordinance. In order to ensure adequate service for all customers, the Franchisee shall, whenever feasible and practical, provide service in the form requested by the customer as provided in Attachment A or B. The Franchisee shall provide adequate and practical container sizes considering the nature of the community served and considering the importance of increasing the efficiency of service. Whenever it is not feasible or

practical to provide the service requested by the customer, the Franchisee shall state clearly in writing to the customer the reasons that the service in that form cannot be provided and shall suggest an alternative level of service.

(g) Collection Vehicles; Responsibility for Clean-Up. Except as otherwise provided, all vehicles used by the Franchisee in the collection and/or transportation of solid waste, including recyclables, shall be constructed, loaded, operated and maintained in a manner so as to reduce to the greatest extent practicable dropping, leaking, blowing, sifting or escaping of solid waste or recyclables or liquids from such solid waste or recyclables or from the vehicles (including hydraulic fluid or lubricants from the vehicles) onto private or public property while the vehicles are stationary or in transit. All open-body collection vehicles shall have a cover. The cover shall be used at all times the vehicle is in transit unless and only so long as use of the cover is impractical during transport of large items such as appliances and furniture. All vehicles shall be operated in conformity with all applicable federal, state and local laws and regulations. The Franchisee shall be responsible for cleaning up any spills, leaks, or refuse emanating from Franchisee's vehicles.

(h) Complaints. The Franchisee shall maintain a record or log of all complaints made to the Franchisee regarding service within the City. This record or complaint log shall include, at a minimum, the following information: the name, address, and phone number of the complainant, if known; the date of receipt of the complaint; the manner of receipt of the complaint, i.e., telephone, letter, etc.; the subject matter of the complaint, the disposition of the complaint; the date of disposition of the complaint, the date and method of notification to the complainant of the disposition. The complaint records or log shall be available to the City for inspection at any time during the normal business hours. A copy of the complaint log for the calendar quarter shall be submitted to the City with the franchise payment for that calendar quarter.

(i) Compliance with Laws. The Franchisee and the City shall comply with the applicable provisions of state law, including but not limited to ORS Chapter 459, ORS Chapter 654 (Employment Safety and Health), and ORS 656 (Workers Compensation) as well as the regulations promulgated pursuant thereto by the Oregon Department of Environmental Quality (DEQ), the Workers' Compensation Department, and the State Accident Insurance Fund, and shall comply with the rules for the administration of the Oregon Safe Employment Act and the Oregon Occupational Safety and Health Code. In addition to the requirements in this Ordinance, the City Council may adopt regulations from time to time setting forth conditions for recycling services to be provided by the Franchisee. The Franchisee shall perform all solid waste management and collection service and drop box service, respectively, under the supervision and to the satisfaction of the City, and in compliance with all City ordinances and regulations, including but not limited to City ordinances and regulations relating to noise. The Franchisee further agrees, represents and warrants that it will comply with all applicable federal, state and local solid waste laws and regulations.

Section 8. Franchise Fee.

(a) Annual Fee. In consideration of such privilege, right and exclusive franchise, the Franchisee shall pay to the City each year during the life of this franchise beginning January 1, 2006, an annual fee derived from revenue received from Solid Waste Management and Collection Service within the boundaries of the City. The franchise fee associated with drop box customers within the City boundaries will be paid by the customer in addition to disposal fees. The franchise fee shall be five percent (5%) of gross revenues, and shall exclude any revenue derived from recycling. This franchise fee shall be paid as set forth below in item (b) (b) Quarterly Payments. The franchise fee required in this Section shall be paid quarterly, and shall be due and payable within thirty (30) days of the end of the calendar quarter. Accompanying the payments described above, the Franchisee shall file with the City Recorder a statement showing the amount of the gross revenues and the amount of recycled revenues received within the City for the calendar quarter immediately preceding the calendar quarter in which such statement is filed. Upon receipt of the quarterly payment, the City Recorder shall notify the Franchisee, in writing, that the City has received payment.

(c) Review of Records; Annual Audit. The Franchisee shall make available for inspection, copying and review by the City Manager or designee at any time during normal work hours all records in the Franchisee's possession that the City Manager or designee deems relevant to verifying the accuracy of fees paid to the City, to regulating rates or to carrying out any responsibility that the Franchisee or the City has under this Ordinance. No more often than once during any twelve (12) month period, the City may request an audit of the books, records and accounts of the Franchisee by a certified public accountant or such other professional chosen by the City and subject to the approval of the Franchisee; provided, however, that such approval shall not be unreasonably withheld. The Franchisee agrees to have its books, records and accounts audited and further agrees to pay for such auditing services. The report of the certified public accountant or other professional shall be conclusive and final. In the event such audit report discloses any difference of payment due either to the City or to the Franchisee through error or otherwise, such payment shall be due and payable within fifteen (15) days of discovery or determination of the error. If the City owes payment to the Franchisee, the City shall reimburse the Franchisee for payment for the portion of the services attributable to the audit of the Franchisee receiving such payment from the City. If payment is owed by the Franchisee to the City, and the difference of payment due is more than the greater of five hundred dollars (\$500) or two and one-half percent (2-1/2 %) of the franchise fee, or if the Franchisee is found to have violated any other term or condition of the franchise then, notwithstanding any other provision of this Section or the franchise, the City may request additional audit(s) during the next twelve (12) month period with all expenses of such additional audit(s) paid by such Franchisee.

(d) Late Payments; Interest. Should Franchisee fail or neglect, for thirty (30) days after any quarterly payment shall become due and payable, to make the quarterly payment, the City may charge interest retroactive to the due date, at a rate of nine percent (9%) per annum, and may at its option either continue the franchise in force and proceed by suit or action to collect the payment, or declare a forfeiture of the franchise because of the failure to make payment, but without waiving its right to collect earned franchise payments and interest.

Section 9. Franchise Exceptions; Collection and Transportation Requirements.

(a) Nothing in this Ordinance is to be construed to prevent any person from hauling that person's own solid waste in a lawful manner. Any person hauling solid waste over the streets of the City shall be required to convey the same in a manner that prevents littering of the same upon the streets of the City, and in the event that putrescible waste or liquids are transported, they shall be transported in containers and in a manner that will prevent them from spilling, leaking or dropping upon the streets of the City.

(b) No person will be permitted to haul solid waste for another person for compensation, with the following exceptions:

(1) Private Charitable Organizations; Collection of Discarded Materials. The collection, transportation and reuse of repairable or cleanable discards by private charitable organizations regularly engaged in such business or activity, including but not limited to Salvation Army and Goodwill Industries.

(2) Non-profits; Collection of Recyclable Materials. The collection of recyclable materials for fund raising purposes by local non-profit organizations that are qualified as tax-exempt organizations under the Internal Revenue Code.

(3) Landlord; Removal of Solid Waste. The occasional removal of solid waste by a landlord from a residence when a tenant has moved from the residential premises and abandoned such solid waste.

(4) Transporter of Source Separated Loads. A person transporting non-putrescible source separated loads of recyclable materials and mixed loads for single-generator, non-residential accounts from, in and through the City to manufacturers, recycling facilities or material recovery facilities pursuant to the terms of this Ordinance.

Section 10. Recycling Requirements. Franchisee shall provide the following recycling services within the City of Scappoose:

(a) Bi-Weekly curbside collection of recyclables for residential customers, including but not limited to: aluminum cans, corrugated cardboard and kraft (brown) paper bags, glass bottles and jars, magazines, motor oil, newspapers, plastic bottles #1 through and including #7, gable top packaging and aseptic packaging, scrap metal, mixed scrap paper and "tin" (steel) and aerosol cans. The Franchisee shall not be required to collect source-separated recyclable materials, which have not been correctly prepared.

(b) Written notice of the opportunity to recycle to all citizens that includes recycling information and clear instructions on preparation of recyclables for curbside collection and a telephone number to call for information regarding recycling collection service. Reminder notices shall be given to all solid waste collection service customers every six (6) months.

(c) Necessary equipment and labor to collect and market all recyclables designated by the City.

(d) On-call collection of appliances and bulk quantities of recyclables. However, citizens will be encouraged to bring appliances to established recycling collection drop-off centers rather than to use the on-call system of collection for appliances.

(e) Cooperate with the City and with other governmental agencies in educational and promotional activities to increase public participation in recycling.

(f) Provide information requested by the City for reporting to the State of Oregon and other governmental agencies.

(g) Provide annual reports to the City with operational data needed to report recycling volumes to the County.

#### Section 11. Yard Debris.

(a) The Franchisee shall implement an optional residential yard debris subscription collection program, at rates established in Attachment B to this Ordinance. Roll carts designed for automated collection shall be supplied as provided in Attachment B.

(b) In addition to the yard debris subscription collection program described in Section 11(a) above, the Franchisee shall provide leaf disposal and collection services during the months of September and October of each calendar year, as part of its regular collection service. Franchisee may establish reasonable terms and requirements for such leaf collection, but leaf collection service under this Section shall be provided at no additional charge to Franchisee's customers within the City.

#### Section 12. Collection Location.

(a) Access to Containers. It shall be the responsibility of the customer to provide safe access to the pickup point so as not to jeopardize the persons or equipment supplying service or the motoring public. Unless the customer is exempt under Section 12(b) of this Ordinance, such cart shall, on the appointed collection day, be placed at the curb or roadside in such a fashion to allow for proper mechanical collection. To protect the privacy, safety, pets and security of the customers, and to prevent unnecessary physical and legal risk to the Franchisee and its employees, Nothing contained herein shall prevent or discourage the use of site-obscuring waste receptacle screening for commercial or industrial containers or drop boxes.

(b) Alternative Collection Location. The Franchisee shall provide an alternative to curb or roadside service to residential customers who are physically incapable of placing a cart and recycling collection container at the curb or roadside. Customers eligible for this alternative service shall either have or be eligible to receive a Handicap Parking Permit from the Department of Motor Vehicles under the definitions of eligibility contained in ORS 801.235 or shall certify in writing to the Franchisee that they are either permanently

or temporarily physically incapable of placing a loaded cart and recycling collection container at the curb or roadside. Customers receiving such alternative service shall negotiate with the Franchisee and mutually agree upon an alternative location, consistent with the provisions of this Ordinance, where the cart and container are to be placed on collection day. Should the parties fail to reach agreement on such location, the matter shall be submitted to the City Council. The findings and decisions of the City Council shall be conclusive and final.

Section 13. Rates.

(a) Rate Structure. The rates to be charged to all customers by the Franchisee shall be reasonable and uniform, taking into consideration the service rendered, and shall be in substantial compliance with and not in excess of those set forth in Attachments A and B, which are hereby made a part of this Ordinance.

(b) Rate Review Process. The rates established in Attachments A and B will be reviewed annually by the City Council or designee. The City Council or designee may also review the rates at such times as the City Council deems appropriate. In addition, the Franchisee may request a rate review when substantial costs beyond their control are passed on to them by third parties. If a rate change is recommended, a public hearing on the proposed change will be held before the City Council. The Council may, by separate resolution, modify the rates in Attachments A and B.

(c) Rate Review Criteria. In determining whether a change in rates is appropriate, the City Council will consider the following and any other pertinent factors:

- (1) Substantial fulfillment of all material requirements of the franchise by the Franchisee;
- (2) Quality of service with the number and type of service complaints, and responses to these complaints serving as an indicator of quality of service;
- (3) Prevailing rates for comparable services in Columbia County and in other comparable cities;
- (4) Franchisee's operating margin, financial investment and equity, as compared to businesses of equivalent risk. The Franchisee, upon request from the City, shall provide all information necessary to accurately determine revenues and costs;
- (5) Increases in efficiency in the performance of services under the Franchise; and
- (6) Net cost of providing recycling services, including educational and promotional costs for such services.

(d) CPI Increase. In lieu of a formal rate review, the Franchisee may request once each year an increase in its rates equal to the percentage increase in the Consumer Price

Index All Urban Areas since its last rate increase. The City may grant the request without conducting a rate review. If the Franchisee does not request an increase under this subsection (c) by June 1 of a subject year, then the Parties shall conduct a formal rate review as provided in subsections (a) and (b) of this Section.

Section 14. Termination of Services; Customer Appeal.

(a) Refusal of Service; Termination of Service; Customer Appeal. Except as otherwise expressly provided in this Ordinance, any person who receives service shall be responsible for payment for such service. The Franchisee may refuse to provide service or may terminate service to those customers who have failed to make full payment of amount billed within forty-five (45) days of the billing date. The Franchisee shall send any refusal to provide service to the customer in written form, stating the reason for the refusal. Any termination of service shall be preceded by a written notice to the customer mailed at least fifteen (15) days prior to actual termination of service. The customer may appeal to the City the amount billed as not conforming to Attachment A or B. Such appeal shall be considered by the City Council and shall delay termination of service until twenty (20) days after determination by City Council of whether the amount does conform to Attachment A or B. The findings and decisions of the City Council shall be conclusive and final.

(b) Service Payment Late Fees. The Franchisee may charge late penalties for non-payment after thirty (30) days from the billing date and may collect a fee for checks returned from a bank or other financial institution for reason of insufficient funds. A schedule of proposed late penalties must be submitted to and receive approval from the City Council before such penalties may be charged by the Franchisee.

Section 15. Assignment.

(a) Characterization of Assignment. Assignment of a Franchise shall include but not be limited to (i) a sale or other transfer of fifty percent (50%) or more of a Franchisee's assets dedicated to service in the City; (ii) a sale or other transfer of fifty percent (50%) or more of the outstanding common stock of a Franchisee; (iii) any reorganization, consolidation, merger, recapitalization, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which a Franchisee or any of its shareholders is a party which results in a change of ownership or control of fifty percent (50%) or more of the Franchisee or voting rights in the stock of the Franchisee; and (iv) any combination of the foregoing that has the effect of any such transfer or change of ownership and control. Any such assignment without the prior written consent of the City shall be void.

(b) City Approval Required. The franchise granted under this Ordinance shall not be assignable to any other person without the prior written consent of the City Council. The City's consent shall be based upon the financial responsibility, experience, technical responsibility and legal qualifications of the party to whom the Franchisee is proposing an assignment. The proposed assignee must further provide to the City Recorder written acceptance and agreement to abide by the terms of this Ordinance.

- (c) Notice of Proposed Assignment. The Franchisee shall provide no less than sixty (60) days' prior written notice of any proposed assignment.

Section 16. Insurance; Indemnification.

(a) Insurance Requirements. The Franchisee shall maintain general commercial liability, business interruption and automobile insurance policies in such forms and with such companies as shall be approved by the City Manager or designee. The insurance policies shall provide protection for the Franchisee and the City, by naming the City, its elected and appointed officials, officers, agents, employees and volunteers as additional insured. The policies shall be primary policies and provide single limit general liability coverage of two million dollars (\$2,000,000) and separate automobile coverage of one million dollars (\$1,000,000) or the limit of liability contained in ORS 30.260 to 30.300, whichever is greater. The certificates shall provide that City will receive thirty (30) days' written notice of cancellation or material change to each policy.

(b) Indemnification. The Franchisee shall indemnify, defend, save and hold harmless the City, its elected and appointed officials, officers, agents, employees and volunteers against all liability, claims, suits or actions of whatsoever nature, loss or expenses, including attorney fees, and against all claims, actions, judgments based upon or arising out of damage or injury or death to persons or property, but only to the extent caused by a negligent act or omission by the Franchisee and anyone acting on behalf of such Franchisee, or in connection with, or incidental to, the franchise or the service to be performed hereunder; provided, however, that nothing herein shall be construed to require indemnification of the City attributable to its own negligence.

Section 17. General Offenses; Franchise Violations; Enforcement.

(a) General Offenses. A person may not:

- (1) Without the permission of the owner or generator of recyclable material, take recyclable materials set out to be collected, except in accordance with this Ordinance.
- (2) Except as permitted under this Ordinance, mix source separated recyclable material with solid waste in any vehicle, box container, or receptacle used in solid waste collection or disposal.
- (3) Conduct solid waste management or collection and transportation without a franchise in accordance with the terms of this Ordinance, unless that person is exempt under Section 9.

(b) Penalty; General Offenses. It shall be unlawful for any person to violate any of the provisions of this Ordinance. Any person who violates this Ordinance may be subject to a civil penalty of not more than five hundred dollars (\$500.00) for each offense. Each day that a violation continues to exist shall constitute a separate offense.



(c) Issuance of Notice of Violation. If the City becomes aware of a potential violation of this Ordinance, the City shall conduct an investigation of the alleged violation. If the City determines that a violation has occurred, the City shall issue a notice of an alleged violation of this Ordinance and shall deliver such notice to the alleged violator in person or in any other manner reasonably calculated to give notice of the alleged violation, including but not limited to, posting of the notice in a prominent location on the property or by United States first-class mail, postage prepaid. Any notice of violation issued pursuant to this Section may be issued to and in the name of a corporation, company, partnership, or person employed by the corporation, company, or partnership. The only service requirement shall be whether the City provided reasonable notice to the entity cited.

(d) Written Decision. The City shall issue a written decision containing findings of fact addressing the allegations contained in the notice of violation. The decision shall clearly state the City Council's or designee's conclusion and the reasoning based on the finding of fact, as well as the penalty assessed.

(e) Penalties. In all proceedings under this Section, the City Council shall have discretion to order conditions or restrictions, and may consider mitigating circumstances on behalf of a party. In addition, the City Council or designee may do the following:

- (1) Suspend, for a specified period of time, and not to exceed five (5) years, the Franchisee's franchise; and
- (2) Require the person to make restitution to any person who has suffered economic loss in connection with a violation of the franchise or this Ordinance.

#### Section 18. Right of Appeal.

(a) Violation Cure Period; Deadline for Filing of Appeal. Any person receiving a notice of violation pursuant to Section 17 of this Ordinance, within fifteen (15) calendar days of the issuance of the notice, take all actions necessary to cure the violation as set forth and in accordance with the notice of violation, or submit a written request to the City Manager for an administrative appeal hearing.

(b) Administrative Hearing; Authority of City. The City shall have the authority to schedule and conduct administrative appeal hearings in accordance with the requirements of this Section, or to contract for administrative hearings services by intergovernmental agreement with another unit of local government having procedures substantially as set forth herein.

(c) Appeal; Hearings Authority; Procedures. The City Council shall hold a hearing on any timely appeal from the issuance of the notice of violation, and shall have the authority to administer oaths and take the testimony of witnesses. The City Council may prescribe procedures for the conduct of such hearings in conformity with those procedures set forth in ORS Chapter 183. The appealing party or any other person

having relevant evidence concerning the nature of the violation shall be allowed to present testimony and documentary evidence at the hearing.

(d) Decision of City Council Final. The decision of the City Council shall be conclusive and final and any appeal from such a decision shall be upon writ of review to circuit court.

(e) Waiver of Appeal. Failure of a person to appeal the notice of violation or the unexcused failure to appear at a duly scheduled hearing shall constitute a waiver by the party of any further appeal. Upon the entry of waiver in the record, the decision of the City Council shall become final.

Section 19. Franchise Violations; Revocation of Franchise or Registration. The City may revoke or deny renewal of the Franchise granted under this Ordinance for failure to pay franchise fees by the deadlines provided in the applicable sections of this Ordinance or in administrative rules, if any, adopted pursuant to this Ordinance. The City may also revoke or deny renewal of this Franchise if the Franchisee has materially violated any provision of this Ordinance and has failed to cure such violation within a reasonable time of being requested by the City to do so; been found to have practiced any fraud or deceit upon the City; has had any required registration or license or motor carrier permit revoked or not renewed; or in any other way has failed to maintain its status as a Motor Carrier or Private Motor Carrier under federal or state law.

Section 20. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 21. Authority to Adopt Rules. Under authority of the Scappoose Municipal Code and City Charter, the City is authorized to adopt rules, procedures, and forms to implement provisions of this Ordinance. Such rules may include, but are not limited to: record keeping and documentation requirements to ensure compliance; and fees.

(a) Public Hearing Required. Any rule adopted or revised according to the authority of this Ordinance shall require a public hearing process.

(b) Notice of Hearing. The City shall give notice of the public hearing to all current Franchisees and Registrants. At least thirty (30) days in advance of the anticipated public hearing date, City shall notify those interested parties of the proposed rules and invite those parties to comment.

(c) Council Consideration of Recommendations; Written Comments and Oral Testimony. During the public hearing, the City Council shall consider the recommendation of the staff and hear testimony or receive written comment concerning the proposed rules. The City Council shall consider the recommendations, testimony and any written comments and shall either adopt, modify, continue or reject the proposed rules.

(d) Continuation of Hearing. If a substantial modification is made, the public hearing shall be continued for additional testimony, but no additional notice shall be required if the time and date of the hearing is announced at the meeting at which the modification is made. Unless otherwise stated, all rules shall be effective upon adoption by the City Council.

(e) Interim Rules. Notwithstanding Subsections (a) through and including (d), an interim rule may be adopted by the city manager without prior notice upon a finding that failure to act promptly will result in serious prejudice to the public interest or the interest of the affected parties, including the specific reasons for such prejudice. Any rule adopted pursuant to this Section shall be effective for a period of not longer than one hundred eighty (180) days. Notice of the rule shall be sent to the persons specified in Subsection (b) and the City Council.

(f) Adoption of Additional Procedures. The City Council may adopt procedures governing the conduct of the hearing, time limits for testimony and related matters.

Section 22. Repealing Clause. Ordinance No. 06-01 is hereby repealed.

Section 23. Effective Date. This Ordinance shall become effective upon passage by the City Council and approval by the Mayor.

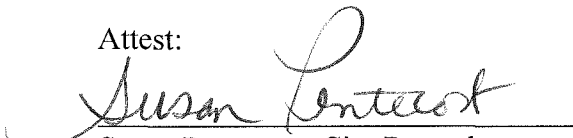
**PASSED AND ADOPTED** by the City Council this 6<sup>th</sup> day of November, 2006, and signed by me in authentication of its passage.

**CITY OF SCAPPOOSE, OREGON**

  
\_\_\_\_\_  
Glenn E. Dorschler, Mayor

First Reading: October 16, 2006  
Second Reading: November 6, 2006

Attest:

  
\_\_\_\_\_  
Susan Pentecost, City Recorder

## Attachment A

## City of Scappoose Residential Rates Rates as of February 1, 2006

WEEKLY GARBAGE SERVICE	Monthly Rate
One - 32gal can - weekly	\$ 18.69
Two - 32gal cans - weekly	\$ 26.24
Three - 32gal can - weekly	\$ 33.80
One - 32gal can - EOW	\$ 13.06
Each Additional 32gal can	\$ 7.95
<b>ROLLCART SERVICE - Hauler provides initial delivery of rollcart at no charge</b>	
20 Gallon	\$ 18.08
Additional 20 Gallon Roll Cart (no addition recycling)	\$ 15.37
35 Gallon	\$ 19.98
Additional 35 Gallon Roll Cart (no addition recycling)	\$ 16.98
64 Gallon	\$ 27.73
Additional 64 Gallon Roll Cart (no addition recycling)	\$ 23.57
96 Gallon	\$ 35.39
Additional 96 Gallon Roll Cart (no addition recycling)	\$ 30.08
<b>WILL CALL SERVICE</b>	
Will call billed - 32gal per can	\$ 6.75
<b>EXTRAS</b>	
Garbage - can or bag - 1st Extra	\$ 7.95
Garbage - can or bag - Each additional Extra	\$ 6.75
<b>YARD DEBRIS</b>	
Subscription Service (64 Gallon Roll Cart Provided)	\$ 7.25
<b>MISCELLANEOUS</b>	
Call Back Charge	\$ 10.00
Delivery Charge for Rollcart (Charged on Change in Service after initial set up)	\$ 10.00
EOW - Every Other Week	
Monthly Rate includes every other week recycling that includes a 64 gallon roll cart provided by Waste Management.	

Attachment B

City of Scappoose Commercial Rates

Rates as of February 1, 2006

**Commercial Container Service - Garbage**

Monthly Container Rates

Container Size	Number of Stops Per Week				
	1	2	3	Extra Pickup	
1F_ - 1 Yard Container	1F1	1F2	1F3	1 Yard	\$ 23.50
	\$ 85.50	\$ 171.00	\$ 256.50		
2F_ - 2 Yard Container	2F1	2F2	2F3	2 Yard	\$ 47.00
	\$ 126.00	\$ 252.00	\$ 378.00		
3F_ - 3 Yard Container	3F1	3F2	3F3	3 Yard	\$ 70.50
	\$ 184.60	\$ 369.20	\$ 553.80		
4F_ - 4 Yard Container	4F1	4F2	4F3	4 Yard	\$ 94.00
	\$ 269.25	\$ 538.50	\$ 807.75		

**Commercial Container Service - Recycling**

Fee for Rental of Recycling Containers - Based on once per week service - Thursday Pickup

60 Gal Cart	C64	\$ 9.75
2nd 60 Gal Cart		\$ 8.30
90 Gal Cart	C90	\$ 11.75
2nd 90 Gal Cart		\$ 10.05
2 Yard	2FY	\$ 21.55
3 Yard	3FY	\$ 29.95
4 Yard	4FY	\$ 38.70

*Comingle recycling only with a very small amount of cardboard is permitted in the roll carts. Front end load containers are for cardboard only. If a customer would like to recycle glass, we will provide an additional curbside recycling bin for glass at no extra charge.*

**Commercial Container Service - Will Call**

	(RFL)	Rental Fee	Dump Fee
		Per Month	Per Pull
1 Yard	1F0	\$ 15.75	\$ 26.25
1.5 Yard	5F0	\$ 15.75	\$ 31.50
2 Yard	2F0	\$ 16.40	\$ 36.75
3 Yard	3F0	\$ 26.25	\$ 70.55

**Commercial Rollcart Service**

	Monthly
1 - 60 gal rollcart - 1 pickup Weekly	F61 \$ 36.50
1 - 90 gal rollcart - 1 pickup Weekly	F91 \$ 39.55

**Drop Box Service**

\*\*Rent: 3 days no charge. Delivery/Pick up days not included.

Size	Haul	Delivery	Rent-day**	Mileage
10 Yard Drop Box	\$125.00	\$62.50	\$4.20	\$1.65
20 Yard Drop Box	\$131.00	\$65.50	\$4.20	\$1.65
30 Yard Drop Box	\$138.00	\$69.00	\$4.20	\$1.65
Compactors	\$250.00	\$0.00	N/A	\$1.65

Rent not to exceed \$84 per Month

Mileage to be charged for hauls in excess of 14 miles round trip.