ORDINANCE NO. 1992

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING CHAPTER 13.24 OF THE MILWAUKIE MUNICIPAL CODE TO ESTABLISH A BUSINESS RECYCLING REQUIREMENT PROGRAM.

WHEREAS, the City of Milwaukie historically has shown support for reduction of the amount of solid waste generated and disposed per capita by implementing source separation and recycling programs; and

WHEREAS, businesses annually generate almost half the region's garbage and dispose of more than 100,000 tons of paper and containers each year that could otherwise be recycled; and

WHEREAS, Metro, the regional government has adopted Ordinance No.08 1200, which amends Metro Code Chapter 5.10, Regional Solid Waste Management Plan, by adding provisions to implement a business recycling requirement;

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

Section 1. Section 13.24.020 is amended to insert the following definition:

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

Section 2. A new section 13.24.045 Business Recycling Requirement is added which reads:

____. **13.24.045 Business Recycling Requirement**

All businesses within the City shall comply with waste prevention, recycling and composting requirements as set forth in this Chapter and the regulations promulgated hereunder.

A. Businesses shall source separate all recyclable paper, cardboard, glass and plastic bottles and jars, and metal cans for reuse or recycling;
B. Businesses shall ensure the provision of recycling receptacles for internal and/or external maintenance or work areas where recyclable materials are collected, stored, or both.
C. Businesses shall post accurate signs that:
    a. Describe the location where recyclable materials are collected, stored, or both;
    b. Identify the materials the Business must source separate for reuse or recycling; and,
    c. Provide recycling instructions.
D. Persons providing garbage collection service to business tenants as part of their rental/lease, shall provide recycling collection systems enabling the business tenants to recycle in compliance with this chapter and any regulations promulgated hereunder.

Section 3. These amendments will take effect on April 1, 2009.

Read the first time on February 3, 2009, and moved to second reading by 3:2 vote of the City Council.

Read the second time and adopted by the City Council on February 17, 2009.

Signed by the Mayor on February 17, 2009.

Jeremy Ferguson, Mayor

ATTEST:

Pat DuVal, City Recorder

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

City Attorney

Chapter 13.24 SOLID WASTE MANAGEMENT

Note:
* Prior ordinance history: Ords. 1752 and 1760.

13.24.010 Policy.

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

A. Insuring safe, economical, and comprehensive solid waste management service;

B. Insuring service rates and charges that are just and reasonable and adequate to provide necessary public service;

C. Prohibiting rate preferences and other discriminatory practices; and

D. Providing technologically and economically feasible resource recovery by and through the franchisees. (Ord. 1955 § 1 (part), 2005)

13.24.020 Definitions.

The following definitions shall apply to this chapter:

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

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

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

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

"Bulky wastes" means large items of solid waste such as appliances, furniture, large auto parts, trees, branches greater than four (4) inches in diameter and thirty-six (36) inches in length, stumps and other oversize wastes

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

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

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

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

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

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

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

1. "Energy recovery," which means recovery in which all or a part of the solid waste materials are processed to utilize the heat content, or other forms of energy, of or from the material;

2. "Material recovery," which means any process of obtaining from solid waste, by presegregation or otherwise, materials which still have useful physical or chemical properties and can be reused or recycled for some purpose;

3. "Recycling," which means any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity;

4. "Reuse," which means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

"Solid waste" and "waste" are interchangeable. "Solid waste" means and includes all putrescible and nonputrescible waste, including but not limited to, garbage; compost; organic waste; yard debris; brush and branches; land clearing debris; sewer sludge; residential, commercial and industrial building demolition or

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

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

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

1. Interest and amortization on the purchase of franchise routes or other routes or business opportunities;

2. Political and charitable contributions;

3. Federal, state, and local income taxes;

4. Loss on sale of assets;

5. Officer's life insurance premiums;

6. Director fees;

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

8. Penalties and fines.

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

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

"Yard debris" means and includes grass clippings, leaves, tree and shrub prunings of no greater than four (4) inches in diameter or similar yard and garden vegetation. Yard debris does not include such items as: dirt, sod, stumps, logs, tree and shrub prunings greater than four (4) inches in diameter, rocks, plastic,

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

B. Nothing in this franchise shall:

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

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

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

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

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

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

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

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

B. Any rule adopted or revised according to the authority of the municipal code shall require a public review process. Not less than ten (10) nor more than thirty (30) days before such public review process, notice shall be given by publication in a newspaper of general local circulation. Such notice shall include the place, time and purpose of the public review process and the location at which copies of the full set of the proposed rules may be obtained.

C. During the public review, the solid waste coordinator shall hear testimony or receive written comment concerning the proposed rules. The city manager shall review the recommendations; taking into consideration the comments received during the public review process and shall either adopt the proposal, modify or reject it.

D. An interim rule may be adopted by the city manager or his designee without prior notice upon a finding that failure to act promptly will result in serious prejudice of the public interest of the affected parties, including the specific reasons for such prejudice. Any rule adopted pursuant to this subsection shall be effective for a period of not longer than one hundred eighty (180) days. (Ord. 1955 § 1 (part), 2005)

13.24.060 Sanitary and safety regulations.

Each franchisee shall comply with all state, federal, regional and city laws, rules and regulations relating to solid waste management service, as now or hereafter constituted. Violation shall be an offense against the city. Where enforcement action is not taken by any other agency, the city may exercise this authority in order to cure the violation. (Ord. 1955 § 1 (part), 2005)

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

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

adequately remove all solid waste, subject to the terms of this chapter, together with rules and standards adopted under this chapter.

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

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

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

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

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

H. Each franchisee shall submit a certificate of public liability insurance with a thirty (30) day notice of cancellation clause, acceptable to the city, which will cover its business operation including each vehicle operated by the franchisee. This coverage shall include contractual liability insurance. Coverage will include one million dollars ($1,000,000.00) per occurrence and two million dollars ($2,000,000.00) general annual aggregate. The insurance shall name city as an additional insured and shall require written notice to city thirty (30) days in advance of cancellation. If contractor hires a carrier

to make delivery, contractor shall ensure that the carrier complies with this subsection. The insurance shall indemnify and save the city harmless against liability or damage which may arise or occur from an injury to persons or property as a result of the franchisee's operation of the solid waste business.

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

3. The candidate's equipment and personnel available to meet current and future needs of a franchise holder;

4. The candidate's ability to provide all services to customers within the geographic boundaries of the designated franchise area, including every residential, multi-family and commercial customer;

5. The candidate's exercise of the burden of proof demonstrating a proposed franchise area is being or has been underserved by the existing or previous franchise holder; and

6. The candidate's good moral character as is relevant to a franchised provider's customer relations, namely any unpaid judgments against the applicant (whether doing business under the same or another name) and any judgments for civil fraud or for a crime of dishonesty.

C. Franchises granted by the city shall be nonexclusive, however it is understood that during the term of franchises granted under this chapter, the city shall not grant any other person a franchise for solid waste management unless there is a showing by the applicant of the need for such additional service in the proposed service area. As to such application(s) the council may consider whether a current franchisee is capable of providing the additional service. In evaluating whether a need exists for additional service, the city council may consider, among any other criteria deemed relevant by the city council, the following items:

1. An increase in the population of the city;

2. An extension of the boundaries of the city;

3. Intensive residential, commercial or industrial development within the boundaries of the city;

4. Changes in solid waste technology and/or recycling collection technology that could substantially improve collection service or reduce collection costs to residents of the city;

5. The effect that an additional franchise would have on each existing franchisee's ability to meet the city's service standards and maintain a fair return on its investment;

6. The number of existing collection franchisees or drop box service franchisees, as applicable, providing service in the area of the city in which the applicant wishes to provide service; and

B. The city manager shall establish forms and deadlines. (Ord. 1955 § 1 (part), 2005)

13.24.120 Description of franchise areas.

A city solid waste franchise service area shall include single unit residential customers and any multifamily residential, commercial and industrial customers within that service area. The service areas shall be determined by council resolution. The franchise areas and the franchisees serving such areas shall be indicated on a map entitled "Solid Waste Franchise Service Areas of the City of Milwaukie" (the "map"). A copy of the map shall be dated with the effective date of the council resolution and maintained in the office of the city manager. Amendments to the map may be made by council resolution, and copies of amendments shall be kept on file by the city recorder. (Ord. 1955 § 1 (part), 2005)

13.24.130 Transfer of franchise.

A. An assignment or transfer of a franchise shall include, but not be limited to:

1. A sale, exchange or other transfer of fifty (50) percent or more of franchisee's assets dedicated to service in the city;

2. A sale, exchange, or other transfer of fifty (50) percent or more of the outstanding common stock of a franchisee;

3. Any reorganization, consolidation, merger, recapitalization, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which franchisee or any of its shareholders is a party which results in a change of ownership or control of fifty (50) percent or more of the value or voting rights in the stock of the franchisee; and

4. Any combination of the foregoing that has the effect of a transfer or change of ownership and control.

B. The franchisee shall provide no less than sixty (60) days' advance written notice to the city of any proposed transfer or assignment. Except as specifically authorized by the city, the franchisee shall not assign any of its rights or delegate or otherwise transfer any of its obligations to any other person without the prior consent of the city council. Any such assignment without the

D. The council shall adopt findings of fact and conclusions which will support or deny the alleged violation. The council may, on the basis of such findings, suspend, modify or revoke the franchise of said franchisee or condition such action upon continued compliance with this code. The franchisee shall comply with the time specified in the notice or with the order of the city council. (Ord. 1955 § 1 (part), 2005)

13.24.150 Interruption of service.

Each franchisee agrees, as a condition of their franchise, that whenever the city council finds that the failure of service or threatened failure of service would result in creation of an immediate and serious health hazard or serious public nuisance, the city council may, after a minimum of twenty-four (24) hours' actual notice to the franchisee and a public hearing if the franchisee requests it, provide or authorize another person to temporarily provide the service or to use and operate the land, facilities and equipment of the franchisee to provide emergency service. If a public hearing is requested by the franchisee, it may be held immediately by the city council after compliance with the minimum notice requirements for such meetings established by the Oregon Public Meetings Law. The city council shall return any seized property and business upon abatement of the actual or threatened interruption of service, and after payment to the city for any net cost incurred in the operation of the solid waste service. (Ord. 1955 § 1 (part), 2005)

13.24.160 Rates under this chapter.

A. The city council shall review and set rates on an annual basis by council resolution that considers the following goals:

1. Rates shall be established to the greatest extent practicable on a cost of service basis.

2. Rates shall be adequate to provide an expected operating margin for the subsequent rate year equal to ten (10) percent of composite franchise-wide gross revenues; however, the city shall not be required to change rates if the expected operating margin in the current year falls between eight (8) and twelve (12) percent of gross revenues. The ten (10) percent target, and the eight (8) to twelve (12) percent range of return on gross revenues is considered sufficient to reflect the level of business risk assumed by the franchisee, to allow investment in equipment, and to ensure quality collection service.

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

C. Material misrepresentation of cash receipts by a franchisee constitutes cause for revocation of the franchise.

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

E. The city council by resolution may change the amount and computation of franchise fees from time to time. The council, by resolution, may reallocate the franchise fee percentages for different customer groups, such as residential or commercial, if such a reallocation mitigates a cost of service disparity that is not fully corrected through the rate setting process. In order to do so, the city manager must be able to demonstrate that the composite rate of return among the franchisees is improved. Such a reallocation may not materially reduce the amount of total franchise fee revenue obtained by the city. (Ord. 1955 § 1 (part), 2005)

13.24.180 Payment for services and interruption or discontinuance of service.

A. Rules and regulations pertaining to billing sequences may be adopted pursuant to this chapter. Solid waste management service may be discontinued by any franchisee when payment for such service is delinquent for a period of thirty (30) days, and after giving ten (10) days' written notice of delinquency to the occupant of the premises. The franchisee shall not be required to resume service until the delinquency is paid and until a deposit equal to two (2) months' service is paid in advance. In the event service is discontinued for delinquency, the city shall be given a copy of the written notice of delinquency given by a franchisee to the occupant of the premises.

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

A. Any person deemed to be in violation of any of the provisions of this Chapter, shall be charged with a civil infraction and cited into municipal court using the civil infraction procedures of Title I of the Milwaukie Municipal Code.

B. Any person violating any of the provisions of this chapter shall be deemed guilty of a civil infraction, and upon conviction thereof, shall be fined according to rules established under Chapter 1.12.010 of this code. Any nonfranchised person engaging in any of the activities franchised under this chapter for compensation, shall in addition be guilty of a civil infraction for each day of violation of the chapter and subject to an additional fine not exceeding one hundred ($100.00) dollars for each and every day after the first day of such violation. (Ord. 1955 § 1 (part), 2005)