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47.010. Short Title. This chapter shall be known and may be cited as the Solid Waste Management Ordinance of the City of Salem. (Ord No. 54-65; Ord No. 244-79; Ord No. 51-96)

47.015. Purpose. To protect the public health, safety, and welfare, it is the policy of the City of Salem to regulate collection, disposal, recycling and resource recovery of solid waste, and to establish a process for the grant of solid waste management franchises in order to:

- (a) Provide for safe and sanitary collection, transportation, and disposal of solid waste; and provide for recycling and resource recovery.
- (b) Provide a coordinated city-wide program for the control of solid wastes in cooperation with federal, state, and other local agencies.
- (c) Provide for, and encourage research, studies, surveys, and demonstration projects to promote the development of more sanitary, efficient, and economical solid waste management, recycling and resource recovery.
- (d) Insure rates for solid waste management are just, fair, reasonable, and adequate to provide necessary solid waste management, recycling and resource recovery and prohibit rate preferences and other discriminatory practices.
- (e) Provide technologically and economically feasible recycling and resource recovery.
- (f) Fulfill the purposes set forth in ORS 459A.085(4). (Ord No. 244-79; Ord 126-07)

47.020. Definitions. Except where the context otherwise clearly requires, as used in this Chapter:

- (a) City Manager means the City Manager for the City of Salem; or the City Manager's designee.
- (b) Compact and compaction means the process of, or to engage in, the shredding of material; or the manual or mechanical compression of material.
- (c) Compensation means consideration of any kind paid for solid waste management service, including, but not limited to, the direct or indirect payment of money, including the proceeds from resource recovery, or the provision of goods, services or other benefits to tenants, lessees, occupants or other persons as part of rent.
- (d) Compost or composting means the controlled biological decomposition of compostable material or the product resulting from such process.
- (e) Compostable material means yard debris, food waste and food soiled paper when source separated for composting but does not include food soiled paper containing plastic or any other material that inhibits controlled biological decomposition.
- (f) Dispose or disposal means the accumulation, storage, discarding, collection, removal, transportation, recycling, or resource recovery of waste.
- (g) Fire Code Official means the Fire Chief for the City of Salem or the Fire Chief's designee.
- (h) Food soiled paper means paper products that have been in contact with food or food waste to the degree that they would not be able to be recycled into new paper products. Food soiled paper includes, but is not limited to, used paper table covers, used napkins, pizza boxes, coffee filters and waxy corrugated cardboard. Food soiled paper does not include unsoiled cardboard, paperboard, newspaper or office paper.
 - (i) Food waste means all waste from meats, fish, shellfish, grains, fruits and vegetables, which attends or results from the storage, preparation, cooking, handling, selling or serving of food for human consumption. Food waste includes, but is not limited to, excess, spoiled or unusable food or dairy products, meats, fish, shellfish, grains, fruits, vegetables, breads and dough, incidental amounts of edible oils, and organic waste from food processing. Food waste does not include large amounts of oils and meats which are collected for rendering, fuel production or other reuse applications. Food waste does not include dead animals not intended for human consumption or animal excrement.
- (j) Franchise means a franchise that authorizes a person to provide solid waste management service as provided in this Chapter.
- (k) Franchisee means a person holding a franchise.
- (l) Generator means the person who produces solid waste, compostable material or recyclable material to be placed, or that is placed, out for disposal. As used in this Chapter, "generator" does not include any person who manages an intermediate function resulting in the alteration or compaction of the solid waste, compostable material or recyclable material

after it has been produced by the generator and placed out for disposal.

(m) Hazardous waste has the meaning given in ORS 466.005.

(n) Mixed compostables means the process where two or more types of compostable materials are collected together (i.e., not separated) in a combination allowed by the City Manager.

(o) Mixed recycling means the process where two or more types of recyclable materials are collected together (i.e., not separated) in a combination allowed by the City Manager.

(p) Owner means the person holding legal or equitable title to a premises or who is purchasing a premises under a trust deed or land sales contract, or any agent or other person employed to manage or maintain such premises.

(q) Person means an individual, corporation, limited liability company, sole proprietorship, association, partnership, trust, cooperative, governmental unit, estate, or any other entity in law or fact.

(r) Premises means a lot, parcel or tract of land, and includes any buildings or structures located thereon.

(s) Public way means any public right-of-way or other area located within the corporate limits of the City of Salem designated by the federal government, the State of Oregon, the City of Salem, or another local government for the use or enjoyment by the general public including, but not limited to, roads, streets, alleys, lanes, bridges, sidewalks, trails, beaches, navigable waterways, squares, plazas, parks and any recreational facilities.

(t) Public Transportation Facility means any property, structure, or equipment used for, or in connection with, the transportation of persons for hire by rail, air or bus, including any railroad cars, buses or airplanes used to carry out such transportation.

(u) Receptacle means a trash can, cart, bin, container, drop box or other vessel used for the disposal of solid waste that has been approved by the City Manager and into which solid waste, compostable material, mixed compostables, recyclable material or mixed recycling may be placed for such disposal.

(v) 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.

(w) Recycling means any process by which solid waste is transformed into new or different products in such a manner that the original products may lose their original identity.

(x) Resource recovery means any process of obtaining from solid waste, by pre-segregation or otherwise, materials that have useful physical or chemical properties, that can be reused or recycled for some purpose, including, but not limited to energy production or materials recovery.

(y) Reuse means the return of waste into the economic stream, to the same or to a similar use or application, without change in the waste's identity.

(z) Service means the collection, storage, transportation, transfer or disposal of solid waste by a franchisee, including such activities that result in recycling or resource recovery.

(aa) Service area means the geographic area in which solid waste management service is provided by a franchisee. As used in this Chapter, "service area" does not include a disposal site.

(bb) Solid waste means all waste, in solid, semisolid, or liquid form, including, but not limited to, garbage, rubbish, trash, ashes, street refuse, compostable material, demolition and construction debris, dead animals, and infectious waste as defined in ORS 459.386(2), but excluding sewage, sewage sludge, or sewage hauled as an incidental part of a septic tank or cesspool cleaning service; or materials used by a generator for fertilizer, for compost or composting, or for other productive agricultural or horticultural purposes.

(cc) Solid waste management means the business of collection, transportation, storage, treatment, utilization, processing, disposal, recycling and resource recovery of solid waste.

(dd) Source separation means the separation or setting aside of waste by the generator or producer of the waste for composting, recycling or reuse.

(ee) Total source separation means the complete separation by the generator, of waste by type or kind of waste from all other types or kinds of waste. Total source separation requires each type or kind of recyclable material to be distinctly separated into a separate package, receptacle, or stack in preparation for collection. By way of example, but not limitation, source separation means newspaper, cardboard, glass, ferrous cans and waste wood are each placed in a separate receptacle and not mixed in the same receptacle.

(ff) Waste means any material, substance, or object that is no longer wanted by or usable by the generator and which is to be disposed of, or is to be subject to recycling or resource recovery by another person, and includes both source separated material and nonsource separated material.

(gg) Yard debris means all vegetative waste generated from property maintenance and/or landscaping activities, including, but not limited to, grass clippings, leaves, hedge trimmings, and small tree branches, but excluding tree stumps and other similar bulky woody materials. (Ord No. 72-74; Ord No. 244-79; Ord No. 75-88; Ord No. 91-88; Ord No. 51-96; Ord No. 30-97; Ord No. 53-97; Ord No. 8-2000; Ord No. 45-2002; Ord No. 31-06; Ord No. 72-07; Ord No. 126-07; Ord No. 9-10)

47.025. Construction Consistent with Rules Adopted by Environmental Quality Commission.

The provisions of this Chapter, any rules adopted pursuant to SRC 47.030, and any franchise granted hereunder, shall be construed so as to be consistent with any rules adopted by the Oregon Environmental Quality Commission under ORS 459.045 and ORS 459A.025, and with any solid waste management plan or program adopted by any metropolitan service district that has been approved by the Oregon Department of Environmental Quality and to which the City of Salem is a party, and, in the event of any conflict between the provisions of this Chapter any such rules, plan or program, the rules, plan or program shall control. (Ord No. 126-07)

47.030. Administration; Rulemaking. The City Manager shall administer and enforce the provisions of this Chapter, and shall have the authority to render written and oral interpretations, to adopt administrative rules and procedures necessary for its proper administration and enforcement, and to arbitrate or to provide for arbitration of any and all disputes arising between a franchisee and the citizens of the City. (Ord No. 54-65; Ord No. 72-74; Ord No. 244-79; Ord No. 51-96; Ord No. 8-2000; Ord No. 126-07)

47.035. Disposal of Solid Waste. All solid waste generated in the City shall be disposed of in compliance with this Chapter, and with all other applicable federal, state and local laws. (Ord No. 54-65; Ord No. 72-74; Ord No. 244-79; Ord No. 53-97; Ord No. 126-07)

47.080. Franchise Required to Provide Solid Waste Management Services. Except as otherwise provided in this Chapter, it shall be unlawful for any person to offer or to advertise to provide, or to provide, solid waste management service to another for compensation, unless the person has a valid, current franchise from the City; provided, however, solid waste management service for any City operation or facility may be provided by the City through the use of City personnel or resources, or pursuant to a public contract. (Ord No. 54-65; Ord No. 39-78; Ord No. 244-79; Ord No. 64-84; Ord No. 8-2000; Ord No. 126-07)

47.081. Exemptions from Requirement of a Solid Waste Franchise.

(a) The following persons and activities are exempt from the franchise requirement under SRC 47.080:

- (1) The collection, transportation, and reuse or sale of repairable or cleanable discards by charitable organizations regularly engaged in such activity, including, but not limited to, the Salvation Army, St. Vincent de Paul, and Goodwill.
- (2) The collection, transportation, and reuse or recycling of totally source separated solid waste materials, or the operation of a collection center for totally source separated solid waste materials, by a religious, benevolent, or fraternal organization, that was not organized, and is not operated, for any solid waste management purpose, including, but not limited to scouting organizations and churches, and which is using the activity for fund raising.
- (3) The collection, transportation, or redemption of returnable beverage containers under ORS Chapter 459A.700-459A.740, and amendments adopted thereto by 2006 Or. Laws Chapter 303, commonly known as "the Bottle Bill."
- (4) A generator, producer, or source that transports and disposes of solid waste created as an incidental part of regularly carrying on the business of auto dismantling, to the extent licensed by the State of Oregon.
- (5) A person that transports and disposes of solid waste accumulated or created as an incidental part of regularly carrying on the business of janitorial services. As used in this subsection, "the business of janitorial services" does not include a business that primarily or solely transports and disposes of solid waste accumulated, created, generated, or produced by a property owner or occupant.
- (6) A person that transports and disposes of solid waste created as an incidental part of regularly carrying on the business of gardening or landscaping services.
- (7) The transportation by a homeowner of solid waste generated or produced at the homeowner's place of residence to a lawful disposal site, resource recovery facility, or market. As used in this subsection, "homeowner" means a person owning and occupying residential property, or renting or leasing and occupying residential real property. In the case of a residential property not occupied by the owner, the solid waste is generated or produced by the occupant and not by the owner.
- (8) An owner of a mobile home park, a condominium development or a residential care facility may collect solid waste from the occupants and deposit the solid waste in an approved receptacle or receptacles provided by a franchisee and located upon the premises, provided such solid waste is prepared for collection as provided by SRC 47.145 and SRC 47.155, and the owner does not transport the solid waste upon the public streets.
- (9) The purchase of totally source separated solid waste for fair market value.
- (10) Subject to all applicable laws, rules, and regulations, solid waste may be disposed of within the building or structure where it accumulates, or within a closed building or structure accessory thereto, by complete incineration made in such a manner as to create no noxious odors, fire hazards, smoke, or other nuisance, provided that any incinerators used for such disposal have been first approved by the Fire Code Official, and further provided that any residue from such burning is disposed of as provided in this Chapter, or as otherwise required by law.
- (11) Subject to all applicable laws, rules, and regulations, organic solid waste may be disposed of within the building or structure where it accumulates, or within a closed building or structure accessory thereto, by grinding or shredding the waste finely and disposing of the waste through pipes leading to a public sanitary sewer, provided that the grinder or shredder has first been approved by the Director of Public Works, that the solid waste is ground or shredded to such a degree that all particles are carried freely under the flow conditions normally prevailing in the sanitary sewers into which the waste is deposited, and that particle is greater than one-half inch in any dimension.

- (12) Any exemption granted from the requirement of a franchise pursuant to subsection (b) of this section.
- (b) The City Council may grant exemptions from the requirement of a franchise to provide solid waste management service as provided in this subsection.
- (1) Any exemption shall be based upon a consideration of the following factors:
- (A) Whether an existing franchise holder has the ability to provide the required service.
- (B) Whether there are any hardships or practical difficulties upon the applicant which can be only relieved by granting an exemption.
- (C) Whether there are any exceptional circumstances or conditions that apply to the land, buildings, or use that is the basis for the application which do not apply generally to other land, buildings, or similar uses.
- (D) Whether granting the exemption would have a deleterious impact upon consumer service and consumer rates.
- (E) Whether the applicant has the ability to secure the necessary equipment and/or personnel to provide adequate service.
- (2) Any person seeking an exemption from the requirement of a franchise shall file an application therefor on forms provided by the City Manager. The City Manager shall determine whether the applicant has submitted a complete application, and, if the application is complete, shall schedule a hearing upon the application.
- (3) Upon not less than twenty days written notice to the applicant and the affected franchisee(s), a public hearing shall be held before the City Council.
- (4) The City Manager shall provide information and recommendations to the City Council to assist the City Council in reaching a determination.
- (5) The City Council shall adopt an order setting forth its decision. The order shall be mailed by first class mail, postage prepaid, to the applicant, to any person testifying at the hearing, and to all affected franchisees. The City Council may attach such conditions to the exemption as it deems necessary to carry out the purposes of this Chapter including, but not limited to, compliance with any responsibility or requirement imposed on a franchisee under this Chapter and a term or duration for the exemption. (Ord No. 126-07)

47.083. Agreements for Joint or Regional Franchising. The City may enter into intergovernmental agreements with any city or county for joint or regional franchising of solid waste management service. (Ord No. 244-79; Ord No. 51-96; Ord No. 126-07)

47.085. Applications; Review; Issuance of Solid Waste Management Franchises.

- (a) Applications for franchises shall be made on forms provided by the City Manager. All applications shall be reviewed by the City Manager, who shall make such investigation of the applicant as the City Manager deems appropriate. The City Manager shall give written notice of an application to any franchisee that holds a franchise including part of a service area proposed for a franchise in the application.
- (b) On the basis of the application, evidence submitted by the applicant and any affected franchisee, and results of the investigation, the City Manager shall make a determination as to whether the applicant meets the qualifications under SRC 47.087, whether the service area should include additional territory, and whether additional service or equipment should be provided. The City Manager shall forward a recommendation to the City Council as to whether the application should be granted or denied, or, if granted, whether the franchise should be granted subject to modifications to the applicant's proposal.
- (c) The City Council shall adopt an order granting or denying the application, or granting the

application subject to modifications. Upon receipt of an order granting a franchise, the applicant shall enter into a written franchise with the City. No solid waste management service may be provided by the applicant until such written franchise has been entered into. (d) A franchisee shall provide solid waste management services within the service area defined by the franchise within one month from the date of the execution of the franchise, unless an extension is granted by the City Council. The City Council may require commencement of service before such one-month period, if needed for the protection of public health, safety and welfare.(Ord No. 244-79; Ord No. 51-96; Ord No. 8-2000; Ord No. 126-07)

47.087. Qualifications for Grant or Transfer of Solid Waste Disposal Franchises.

(a) Grant of New Franchise. Any person applying for a franchise to provide solid waste management service shall be granted a franchise, if the person provides such letters of recommendation as may be required by rule adopted by the City Manager and demonstrates, to the satisfaction of the City Council:

- (1) That, at the time of application:
 - (A) A franchise for the proposed service area has not been granted to another person, or
 - (B) The proposed service area is not being presently served by a franchisee pursuant to any schedule established as part of the franchise in accordance with this Chapter, or
 - (C) The proposed service area is not being adequately served by an existing franchisee, as demonstrated by a substantial demand from customers within the proposed service area for a change of the franchisee.
- (2) That the person has available resources, including, but not limited to, collection vehicles, equipment, facilities, and personnel sufficient to meet the standards of equipment and service established pursuant to this Chapter.
- (3) That the person has sufficient experience to insure compliance with this Chapter and any rules adopted by the City Manager. If the applicant does not have sufficient experience, the City Council may require a corporate surety bond, in an amount of not less than \$25,000 nor more than \$100,000, guaranteeing full and faithful performance of the duties and obligations imposed by this Chapter and all applicable federal, state, and local laws and rules or regulations.
- (4) That the person has in force, or provides a letter of intent for, public liability insurance in the amount of not less than \$300,000, and property damage insurance in the amount of not less than \$50,000, which shall both be evidenced by a certificate of insurance or copy of the letter of intent. Upon award of a franchise, any applicant providing only a letter of intent shall provide a certificate of insurance prior to the effective date of the franchise.

(b) Transfer of Existing Franchise. Any person applying to receive the transfer of an existing franchise to provide solid waste management service shall be granted the transfer of an existing franchise, if the person provides a letter of consent from the current franchisee for the service area requesting the transfer, such letters of recommendation as may be required by rule adopted by the City Manager, and demonstrates, to the satisfaction of the City Council:

- (1) That the person has available resources, including, but not limited to, collection vehicles, equipment, facilities, and personnel sufficient to meet the standards of equipment and service established pursuant to this Chapter.
- (2) That the person has sufficient experience to insure compliance with this Chapter and any rules adopted by the City Manager. If the applicant does not have sufficient experience, the City Council may require a corporate surety bond, in an amount of not less than \$25,000 nor more than \$100,000, guaranteeing full and faithful performance of the

duties and obligations imposed by this Chapter and all applicable federal, state, and local laws and rules or regulations.

(3) That the person has in force, or provides a letter of intent for, public liability insurance in the amount of not less than \$300,000, and property damage insurance in the amount of not less than \$50,000, which shall both be evidenced by a certificate of insurance or copy of the letter of intent. Upon award of a franchise, any applicant providing only a letter of intent shall provide a certificate of insurance prior to the effective date of the franchise.

(c) **Expansion of Service Area.** Any person applying to expand the service area of an existing franchise to provide solid waste management service shall be granted the expansion of the service area, if the person provides such letters of recommendation as may be required by rule adopted by the City Manager, and demonstrates, to the satisfaction of the City Council:

(1) That the person has available resources, including, but not limited to, collection vehicles, equipment, facilities, and personnel sufficient to meet the standards of equipment and service established pursuant to this Chapter in the expanded service area.

(2) **Service in Expansion Area.**

(A) A franchise for the proposed service area has not been granted to another person, or

(B) The proposed service area is not being presently served by a franchisee pursuant to any schedule established as part of the franchise in accordance with this Chapter, or

(C) The proposed service area is not being adequately served by an existing franchisee, as demonstrated by a substantial demand from customers within the proposed service area for a change of franchisee; or

(D) The franchisee provides a letter of consent from the existing franchisee in the area of expansion, consenting to the proposed expansion.

(3) That the person has sufficient experience to insure compliance with this Chapter and any rules adopted by the City Manager. If the applicant does not have sufficient experience, the City Council may require a corporate surety bond, in an amount of not less than \$25,000 nor more than \$100,000, guaranteeing full and faithful performance of the duties and obligations imposed by this Chapter and all applicable federal, state, and local laws and rules or regulations.

(4) Has in force, or provides a letter of intent for, public liability insurance in the amount of not less than \$300,000, and property damage insurance in the amount of not less than \$50,000, which shall both be evidenced by a certificate of insurance or copy of the letter of intent. Upon award of a franchise, any applicant providing only a letter of intent shall provide a certificate of insurance prior to the effective date of the franchise. (Ord No. 244-79; Ord No. 51-96; Ord No. 8-2000; Ord No. 126-07)

47.089. Request for Reconsideration.

(a) If the City Council denies an application for a new franchise, the transfer of an existing franchise, or a request to amend a franchise under SRC 47.091, the applicant may file a request for reconsideration. The request for reconsideration shall be filed with the City Manager not later than thirty days after the effective date of the order, shall be accompanied by a copy of the order, and shall set forth, with specificity, the basis for the person's request.

(b) The City Manager shall, upon receipt of a request for reconsideration, set the matter for public hearing before the City Council. The applicant shall be given not less than ten days written notice of such public hearing. The applicant shall have the burden of proof to submit substantial evidence demonstrating that the applicant satisfies the applicable criteria. Other interested persons or affected public or private agencies may appear and offer oral or written testimony. The City Council may, following the public hearing, affirm, modify, or rescind its

prior order. The order disposing of the applicant's request for reconsideration shall be final. (c) If the City Council denies the applicant's request for reconsideration, the applicant may not submit another application for a franchise for the same service area, or any portion thereof, or for an identical amendment, for a period of six months following the date of the order, unless the City Council finds that the public interest requires consideration of a new application or amendment within a shorter period of time. (Ord No. 244-79; Ord No. 51-96; Ord No. 126-07)

47.090. Term of Solid Waste Management Franchise.

(a) Unless a shorter term is agreed to by the City and the franchisee, the term of any new solid waste management franchise shall be seven years.

(b) At the time of the effective date of Ordinance Bill No. 126-07, any franchisee with a valid, current franchise term of less than seven years may request, pursuant to subsection (d) of this section, that the franchise be amended to extend the term of an existing franchise to seven years, and to allow for automatic extension pursuant to subsection (c) of this section.

(c) Unless modified, revoked, suspended, or amended pursuant to this Chapter, or unless the Council determines not to extend a franchise pursuant to this section, at the end of each franchise year an additional year shall automatically be added to the term of the franchise to maintain a seven year franchise term.

(d) The City Council may choose to not extend a franchise under subsection (c) of this section for any reason. If the City Council chooses not to extend a franchise, at least sixty days before the date that the franchise would otherwise automatically be extended, the City Council shall provide the franchisee with written notice of the City Council's intent not to extend the franchise. The franchisee shall have thirty days from the date of the notice to request a public hearing. If, following the public hearing, the City Council reaffirms the decision not to extend the franchise term, the franchise shall expire at the end of its existing term, and shall not automatically be extended as provided in this section. Nothing in this subsection shall prevent a franchisee from applying for a new franchise.

(e) Prior to the issuance or extension of a franchise, the City Council shall provide notice and opportunity for public comment. (Ord No. 244-79; Ord No. 126-07)

47.091. Review and Amendment of Franchise. Upon request of a franchisee, or in the discretion of the City Manager or City Council, and apart from any rights of the City under SRC 47.096, franchises may be reviewed by the City at any time, at which time the City and franchisee may renegotiate any of the terms of the franchise by considering the need for the change, the economic impact of the change, and the technological feasibility of the change. The City Council shall provide a notice and opportunity for public comment on any proposed review or amendment of a franchise. A franchisee may appeal the denial of a request to amend a franchise according to the procedure set forth in SRC 47.089. (Ord No. 126-07)

47.095. Renewal of Solid Waste Management Franchise. Unless revoked pursuant to SRC 47.096, any person holding a solid waste management franchise that is current and valid upon the effective date of Ordinance Bill No. 126-07 shall hold the franchise until the normal expiration date set forth in the franchise, unless such franchise is amended pursuant to SRC 47.090(b). Any franchisee that holds a new franchise with a term set pursuant to SRC 47.090(a) may, not less than six months prior to the expiration date of the new franchise, request an amendment to establish an expiration date pursuant to SRC 47.090(b). (Ord No. 244-79; Ord No. 51-96; Ord No. 8-2000; Ord No. 126-07)

47.096. Suspension and Revocation of a Franchise.

(a) If a franchisee fails to comply with any provision of this Chapter, the franchise, or any

other applicable federal, state or local law or regulation, the City Manager may issue a notice and order suspending the franchise.

(b) The notice and order shall include the following:

(1) The effective date;

(2) Reference to the particular provision, franchise term, or other applicable law or regulation that is alleged to have been violated and the specific facts that are basis for the suspension;

(3) A time certain within which the violation must be corrected, and a statement that failure to correct the violation within such time shall result in a revocation of the franchise. Except in cases where the violation creates an imminent danger to public health, safety or welfare, the date to correct the violation shall be not less than thirty days from the effective date of the notice and order; in cases where the violation creates an imminent threat to public health, safety and welfare, the correction of the violation shall be required to occur as soon as is practicable;

(4) A statement that the franchisee has the right to a hearing to contest the notice and order, by filing a notice of appeal with the City Manager not later than fifteen business days after the effective date of the notice and order, which notice shall set forth with specificity the grounds why the notice and order was issued in error, and that if a notice of appeal is not filed, the franchise will terminate; and

(5) A statement that if notice of appeal is not received within fifteen business days of the effective date of the notice and order, the franchisee shall have waived the right to a hearing, and to otherwise contest the suspension or revocation of the franchise.

(c) A copy of the notice and order shall be personally served on the franchisee, or delivered to the franchisee by first class mail and by either registered or certified mail, return receipt requested. Any notice and order served by mail shall be deemed received three business days after the date mailed if to an address within the State of Oregon, and seven business days after the date mailed if to an address outside the State of Oregon. Refusal to accept the registered or certified mail shall not be deemed to, and shall not, render the notice invalid or ineffective.

(d) If the franchisee timely files a notice of appeal, the matter shall be referred to the City Council for a hearing. At the public hearing, the franchisee and other interested persons shall have an opportunity to present oral testimony and written evidence. The City Manager shall have the burden of proving that the suspension was proper. The burden of proof shall be by a preponderance of the evidence.

(e) The City Council may, following the public hearing, affirm, modify, or rescind the notice and order. The City Council's order disposing of the franchisee's appeal shall be final.

(f) If the franchisee fails to timely file a notice of appeal, the franchise shall be deemed revoked upon the date set forth in the notice and order to correct the violation. If the City Council affirms or modifies the order, the franchisee shall correct the violation upon such date as set forth in the City Council's final order, and, if the franchisee fails to correct the violation on or before such date, the franchise shall be deemed revoked upon such date.

(g) The period within which the franchisee must correct a violation, as set forth in the City Manager's notice and order or the City Council's final order, may be extended by the City Manager for good cause shown, upon request by the franchisee submitted in writing no later than ten business days prior the date set forth in the order to correct the violation, setting forth the basis for the request, but in no instance shall such extension be greater than one-hundred and eighty days. (Ord No. 244-79; Ord No. 126-07)

47.097. Franchise Fees, Financial and Accounting Obligations of the Franchisee.

(a) Each franchisee shall pay to the City a franchise fee equal to five percent of the gross

receipts collected each year by the franchisee from its operations in the provision of solid waste management services. Payment of the franchise fee shall be made quarterly, within sixty days following the end of each quarter of each calendar year, and shall be computed upon a verified statement of gross receipts.

(b) The franchisee shall provide the City Manager with a verified and sworn statement of annual gross receipts for the calendar year period from January 1 to December 31 of each year that the franchise is in effect. The City Manager shall specify the form and detail of the statement. A copy of such statement shall be provided to the City Manager within six months following the close of each calendar year.

(c) The City Manager may inspect the financial records of a franchisee or the franchisee's agents or assigns at all reasonable times for any purpose relevant to the performance or enforcement of the franchise. The City Manager may require an audit of a franchisee's financial records to determine compliance with the payment of the franchise fee pursuant to this section, or if there is a public need therefor. (Ord No. 54-65; Ord No. 72-74; Ord No. 244-79; Ord No. 126-07)

47.099. Rates; Billing.

(a) For any services required to be performed under this Chapter, the franchisee shall not charge any amount in excess of the rates fixed pursuant to this section.

(b) The franchisee shall supply all customers with not less than thirty days notice of any rate increase, the amount of any such increase, and the effective date thereof, unless a shorter time is authorized by the City Manager.

(c) The franchisee shall bill all customers at least tri-monthly on forms approved by the City Manager.

(d) The City Council shall establish and adjust rates by service or by zone. Before any rate is established or adjusted, the City Manager shall conduct an investigation of the rates, and shall submit a recommendation to the City Council. Upon receipt of the City Manager's recommendation, the City Council shall hold a public hearing, and, after receipt of evidence and testimony, may adopt an order establishing or adjusting the rates for solid waste management provided by the franchisee.

(e) A franchisee may submit, as part of the franchisee's operating statement, or at such other time deemed appropriate by the franchisee, a request for a rate adjustment on forms provided by the City Manager. Any such request shall be, based on information submitted by the franchisee with the franchisee's annual operating statement.

(f) In establishing or adjusting rates, the following factors shall be considered:

- (1) Current and projected revenues;
- (2) Current and projected operating expenses;
- (3) Acquisition and replacement of equipment;
- (4) Professional and consultant services;
- (5) Reasonable operating margin;
- (6) Construction and maintenance costs;
- (7) Research, training, and development;
- (8) Special services;
- (9) Composting, recycling, reuse, and resource recovery services, if such services are required by the City or any other governmental agency with jurisdiction over the activity or service; and
- (10) Any other factor deemed relevant by the City Council.

(g) Where no rate has been established for a particular kind of service, the City Manager may establish an interim rate, pursuant to the factors listed in subsection (f) of this section, until a

final rate has been set by the City Council. (Ord No. 54-65; Ord No. 244-79; Ord No. 51-96; Ord No. 126-07; Ord No. 9-10)

47.101. Interruptions in and Termination of Service; Subcontracting Service.

(a) Except as otherwise provided in this section, no franchisee shall intentionally discontinue service to any portion of the franchisee's service area or to any customer without ninety days notice of intent to discontinue service to the customers within such portion of the service area or such customer and to the City Manager.

(b) Any such discontinuance shall receive prior approval by the City Council. Nothing in this subsection shall be deemed to prohibit discontinuance of service to a nonpaying customer, provided seven days notice, in writing, is given to such customer. Before service is reinstated, the franchisee may require an advance payment, not to exceed three months' collection fee. Nothing in this subsection shall apply to any order for a change, restriction, or termination of service issued to a franchisee by any public agency, public body, or court having jurisdiction over the franchisee's activity.

(c) It shall be a condition of every franchise that whenever the City Council determines that the failure of service or threatened failure of solid waste management service would result in creation of an immediate and serious health hazard or serious public nuisance, the City Council may, after a minimum of twenty-four hours written notice to the franchisee, authorize city personnel or another person to temporarily provide such service or to use the facilities or equipment of the franchisee to provide such service. The City Manager shall return any such facilities or equipment used by the City to the franchisee upon abatement of the health hazard or public nuisance.

(d) A franchisee may contract with another person to provide service within a service area after giving prior written notice to and receiving approval from the City Manager; provided, however, nothing in this subsection shall relieve the franchisee of any duty or responsibility to comply with the terms of this Chapter, the franchise, or all applicable federal, state or local laws, rules or regulations.

(e) Solid waste management service provided to a customer may be subject to periods of interruption when weather or other safety conditions prevent the safe provision of such service. If the weather or other safety conditions continue for a period exceeding seven days, approval of the City Manager must be obtained for further interruption of service. Access points necessary to eliminate unsafe conditions shall be negotiated between the franchisee and the customer.

(f) When the City Council determines an emergency exists, the City Council may authorize discontinuance of solid waste management service. (Ord No. 244-79; Ord No. 51-96; Ord No. 8-2000; Ord No. 126-07)

47.105. Prohibition on use of Words Implying City Ownership, Sponsorship or Operation. No franchisee shall use a firm name containing the words "City" or "Salem" or other words implying government ownership, sponsorship, or operation. (Ord No. 54-65; Ord No. 244-79; Ord No. 126-07)

47.110. Vehicle Regulations.

(a) All solid waste shall be collected in vehicles that have exteriors which are well-painted, are kept reasonably clean, are in good condition and repair, are so constructed, operated, and maintained so that to the greatest extent practicable the contents will not spill, seep, leak, or blow from the vehicle while in motion, and are conspicuously identified by the name of the individual or company owning or operating the vehicle in three-inch letters. Unnecessarily noisy trucks or equipment are prohibited.

(b) All vehicles used in collecting solid waste shall be of a type or general class approved by

the City Manager. Vehicles other than packer-type vehicles may be used for special pick-ups, recycling and reuse, drop and roll-off box service, satellite vehicle service and other services, when previously approved in writing by the City Manager.

(c) Franchisees shall provide the City Manager with a list of the types or classes of equipment and vehicles used by franchisee for solid waste collection. At such time as franchisee acquires any additional or substitute types of equipment or vehicles not previously approved by the City Manager, the franchisee shall notify the City Manager, in writing, of such acquisition. In giving approval to such equipment or vehicles, the City Manager shall be guided by the policy and purposes expressed in SRC 47.015 and shall ensure compliance with the specific requirements set forth in this Chapter. Unless the City Manager expressly withholds approval, in writing, not later than twenty days of the receipt of franchisee's notice, the equipment or vehicle shall be deemed approved. (Ord No. 54-65; Ord No. 72-74; Ord No. 244-79; Ord No. 126-07)

47.120. Collection of Solid Waste by a Franchisee.

(a) A franchisee shall not litter premises in the process of making collections, nor allow any solid waste to blow or fall from vehicles. The franchisee shall repair or replace at the franchisee's expense receptacles damaged as a result of the franchisee's handling thereof, fair wear and tear excepted. The franchisee shall replace lids or covers on receptacles immediately after emptying same.

(b) Solid waste collection service shall be offered at least once every seven days to each place of business, motel or hotel and residential area. Except under emergency conditions collections shall be made between the hours of 6:00 a.m. and 6:00 p.m., provided that in commercial zones designated by the City Manager, collection shall be between the hours of 5:00 a.m. and 12:00 noon. The City Manager may impose reasonable modifications to the collection periods established under this subsection. The City Manager may order more frequent collection than required by this subsection if the accumulation of waste constitutes a threat to public health, safety, or welfare.

(c) Upon request by the City Manager, the franchisee shall provide schedules of collection and disposal routes, and shall furnish copies of complaint reports and reports as to their disposition.

(d) The franchisee shall collect promptly, and with dispatch, all reasonable quantities or types of solid waste placed for collection within the franchisee's service area, and to dispose of such waste in a lawful manner, upon the payment by the customer of reasonable prices and rates as provided in SRC 47.099.

(e) The franchisee shall maintain an office where solid waste bills may be paid, service applied for and complaints made, which shall be equipped with sufficient telephones and shall have a responsible person in charge between the hours of 9:00 a.m. and 5:00 p.m. daily, Saturdays, Sundays, and holidays excepted. A telephone answering service or device may be used for temporary absences. (Ord No. 54-65; Ord No. 72-74; Ord No. 244-79; Ord No. 8-2000; Ord No. 126-07)

47.125. Pledging of a Franchise as Security. Upon recommendation of the City Manager, the City Council may permit a franchisee to pledge a franchise as security for purchase of land, equipment, or facilities needed to provide solid waste management service or to finance purchase of a business providing solid waste management service under this Chapter. The City Council may attach such conditions to such pledge as it deems necessary and appropriate to guarantee maintenance of service. (Ord No. 244-79; Ord No. 51-96; Ord No. 126-07)

47.127. Procedure on New Resource Recovery Services. Where a new resource recovery service

is proposed by the City Council, the City Manager, or a person wishing to provide such service:

- (a) All franchisees shall be given written notice of the proposed service and justification therefor by the City Manager not less than thirty days prior to any action by the City Council.
- (b) The City Council may, on its own motion, and shall, upon the request of a franchisee, hold a public hearing on the proposed service and justification therefor. The City Manager shall give not less than thirty days written notice of the hearing to any franchisee that would be affected by the new resource recovery service, if approval is granted.
- (c) In determining whether the proposed service is needed, the City Council shall consider the following factors:
 - (1) The purposes of this Chapter;
 - (2) The public need and support for such service;
 - (3) The technological, economic, and legal feasibility;
 - (4) The City Manager's recommendations, if any;
 - (5) The effect on rates and services being provided or planned under the franchises or a local, regional, or state solid waste management plan; and;
 - (6) Compliance with all applicable federal, state and local laws and regulations.
- (d) If the City Council determines that the proposed service is needed, the City Council may require a current franchisee to provide the service within a specified period of time, may grant a limited franchise to the person wishing to provide such service, may grant an exemption to the franchise requirement to allow the provision of the service, or may solicit proposals and award to one or more persons a limited franchise to provide such service. (Ord No. 244-79; Ord No. 121-80; Ord No. 51-96; Ord No. 126-07; Ord No. 9-10)

47.135. Disposal of Solid Waste Generally.

- (a) Unless otherwise authorized by federal, state or local laws and regulations, solid waste shall be placed out for disposal, composting or recycling in receptacles designed and intended for the purpose of holding such solid waste and shall be disposed of at solid waste disposal sites approved by the Oregon Department of Environmental Quality or other governmental agency having jurisdiction under Oregon law to designate or operate solid waste disposal sites.
- (b) Nonputrescible solid waste may be used for improving real property by grading or resurfacing in a manner approved by the City Manager and in compliance with all applicable federal, state and local law and regulations. (Ord No. 126-07; Ord No. 9-10)

47.145. Preparation of Solid Waste for Disposal.

- (a) Solid waste shall be drained of surplus liquid and placed in sealed receptacles approved by the City Manager.
- (b) Pet feces, sharp objects such as broken glass and knives, and any other waste with the potential of causing injury or disease shall be securely wrapped in a manner to prevent exposure or injury to the public or employees of a franchisee.
- (c) Ashes shall be allowed to cool and shall be securely wrapped or bagged before being deposited in any receptacle.
- (d) All waste, with the exception of large bulky items, shall be deposited promptly into a receptacle, or be placed or located for disposal so as not to create a safety, nuisance, litter, or health hazard.
- (e) Bulky solid waste may be placed in an appropriately sized receptacle in accordance with this Chapter, so long as the accumulation does not create a nuisance or fire hazard.
- (f) Newspapers, magazines, and similar recyclable material, when not placed in a receptacle, shall be bundled and securely tied with a strong cord or securely placed in a plastic, or heavy paper shopping bag to prevent blowing and littering prior to collection.

(g) Source separated waste for composting, recycling or reuse shall be prepared and placed in conformance with any administrative rules adopted by the City Manager for the purpose of mitigating or addressing public health, public safety or pest concerns.

(h) No liquid waste or semi-solid waste, excluding food waste, shall be placed in a receptacle, unless it is in a sealed, leak-proof vessel. (Ord No. 8-2000; Ord No. 33-05; Ord No. 126-07; Ord No. 9-10)

47.155. Solid Waste Receptacles.

(a) Receptacles for the collection of solid waste by a franchisee shall be provided to the generator by the franchisee, unless otherwise authorized by the franchisee. The loaded weight of a receptacle shall comply with the manufacturer's specifications.

(b) Except for drop boxes and recycle baskets provided to the generator by a franchisee, receptacles shall be equipped with lids sufficient to keep out precipitation and to prevent disturbance by animals and entrance of pests; shall be kept closed, except when being filled, emptied, or cleaned; and shall be kept in a clean, sealed and sanitary condition by the generator of the solid waste. Receptacles used for the disposal of compostable material may contain vent holes for the purpose of aeration. The City Manager may adopt administrative rules designed to mitigate or remedy public health, public safety or pest concerns.

(c) Solid waste placed in receptacles that are not designed for emptying by mechanical means shall not exceed a weight of sixty pounds, including the weight of the receptacles and their contents.

(d) Receptacles designed for emptying by mechanical means shall not exceed a weight of one hundred and eighty pounds for ninety gallon receptacles, one hundred and twenty pounds for sixty-four gallon receptacles, sixty pounds for thirty-two gallon receptacles, and forty pounds for twenty gallon receptacles, including the weight of the receptacles and their contents. (Ord No. 8-2000; Ord No. 33-05; Ord No. 126-07; Ord No. 9-10)

47.165. Placement of Receptacles for Collection by Franchisee.

(a) Receptacles containing solid waste, shall be kept or placed so that there is convenient and safe access for collection service by a franchisee and, except as provided in this section, shall not be kept or placed upon the street, sidewalk, or other public place unless such location has been first approved by the City Manager.

(1) All carts designed for mechanical solid waste, composting or recycling collection shall be placed at the curb or roadside by the generator prior to collection time.

(2) The generator shall provide safe access to the collection point so as not to jeopardize the persons or equipment supplying service or the motoring public.

(3) Receptacles may be placed at or on the curb, whether on the sidewalk or in the street right-of-way, provided that receptacles placed in the street shall be placed so that no part of the receptacle may be more than three feet from the curb. Placement shall be made so that receptacles are within manageable reach if standing in the street at or next to the curb line.

(4) Placement of receptacles at curbside or roadside are limited to a time period of twenty-four hours prior to pick-up to twenty-four hours after pick-up.

(5) Receptacles shall be kept outside of any locked, latched, bolted or hooked enclosure when placed out for collection by a franchisee.

(6) No person shall block service access to a commercial container that is one cubic yard capacity or larger, a drop box or roll-off box or other similar receptacle for solid waste collection.

(b) The City Manager may approve general locations for storage and placement for collection of waste materials for composting, recycling or reuse and may impose necessary conditions therefor. (Ord No. 8-2000; Ord No. 126-07; Ord No. 9-10)

47.175. Receptacle Screening Required. Multifamily, commercial, and industrial buildings for which building plans are submitted for permit after January 1, 1986, shall provide screening facilities for all receptacles, if the premises are adjacent to, or across the alley from, a single family or multifamily residential district. (Ord No. 8-2000; Ord. No. 33-05; Ord No. 126-07)

47.185. Sunken Receptacles Prohibited. No person shall install and no owner shall allow a sunken solid waste receptacle to be installed. (Ord No. 8-2000; Ord No. 126-07)

47.195. Hazardous Waste.

(a) No person shall dispose of hazardous waste in any manner that is not authorized or permitted by federal, state, or local laws and regulations.

(b) No person shall place hazardous waste out for collection or into any receptacle supplied by a franchisee unless the franchisee and ultimate disposal site agree to accept such waste prior to placing the hazardous waste out for collection or into the receptacle. (Ord No. 8-2000; Ord No. 126-07)

47.200. Accumulation of Solid Waste Prohibited.

(a) All solid waste shall be prepared for collection in conformance with SRC 47.145 and SRC 47.155 and then removed from a premises weekly, or at other reasonable intervals, so as to prevent spillage from receptacles, escape of odors, or conditions that would attract pests.

(b) An owner who has received one or more written notices from the Health Officer for violations of subsection (a) of this section on premises that the owner has let for occupancy, shall be responsible for subsequent violations, and for providing, in a location accessible to all dwelling units, at least one thirty-two gallon receptacle for each dwelling unit, or, if the premises is a multi-family dwelling unit, at least one receptacle with a cumulative capacity that allows for thirty-two gallons per apartment, into which garbage and rubbish from the dwelling units may be emptied for storage between days of collection. The owner shall subscribe to and pay for weekly solid waste management service of the receptacles with a City of Salem franchisee.

(c) Notwithstanding subsection (a) of this section, compost piles are permitted on residential property, provided each compost pile is enclosed on all sides by a wood container, concrete block container, container made of another opaque material, or wire mesh container, designed for composting and having dimensions that are not greater than four feet in height, by four feet in length, by four feet in width. (Ord No. 8-2000; Ord No. 33-05; Ord No. 126-07)

47.205. Entry Into or Removal of Solid Waste Receptacles Prohibited.

(a) No person shall enter into a receptacle which is one cubic yard or larger for the purpose of compacting the contents of the receptacle.

(b) No person shall remove a receptacle from the location where the receptacle was placed for collection, unless the person is authorized to do so by the generator. (Ord No. 8-2000; Ord No. 126-07)

47.210. Disturbance of Solid Waste in Receptacles Prohibited. No person shall remove the lid from any solid waste receptacle and remove, disturb, collect or scatter solid waste placed in such receptacle or deposit solid waste into such receptacle, unless the person is authorized to do so by the generator. (Ord No. 8-2000; Ord No. 126-07)

47.215. Solid Waste Not to be Burned in Open Places. No person shall burn or attempt to burn solid waste in any open place within the City. (Ord No. 54-65; Ord No. 244-79; Ord No. 126-07)

47.220. Dumping of Solid Waste Prohibited.

(a) No person shall discard, scatter, dump, deposit or cause or permit to be discarded, scattered, dumped or deposited, any amount of solid waste along the bank of, or in, any canal, ditch, stream, waterway, creek, river, or other body of water, or in or upon any public place or other publically-owned property, other than in receptacles provided for the purpose of holding such solid waste.

(b) No person shall discard, scatter, dump, deposit or cause or permit to be discarded, scattered, dumped or deposited, any amount of solid waste in or upon any private property unless such activity is undertaken with the consent of the property owner and is otherwise authorized by federal, state or local laws and regulations.

(c) Any person sentenced under this section to pay a fine shall be permitted, in lieu of the payment of the fine, to work at clearing solid waste from the lands and waters described by subsections (a) and (b) of this section. Credit in compensation for such work shall be allowed at the rate of \$25 for each day of work. (Ord No. 8-2000; Ord No. 33-05; Ord No. 126-07)

47.225. Placing Offensive Substances in Waters, on Highways or Other Property.

(a) Except as provided in subsection (c) of this section, no person, including a person in the possession or control of any land, shall discard any dead animal carcass or part thereof, any excrement, or any putrid, nauseous, noisome, decaying, deleterious or offensive substance, into, or in any other manner befoul, pollute or impair the quality of any spring, river, brook, creek, branch, well, irrigation drainage ditch, irrigation ditch, cistern or pond.

(b) Except as provided in subsection (c) of this section, no person shall place or cause to be placed any dead animal carcass or part thereof, any excrement, or any putrid, nauseous, noisome, decaying, deleterious or offensive substance on any public way, public property, or private property.

(c) Nothing in this section shall apply to the storage or spreading of manure or like substance for agricultural, silvicultural or horticultural purposes, except that no sewage sludge, septic tank or cesspool pumpings shall be used for such purposes, unless first treated and applied in a manner approved by the Oregon Department of Environmental Quality. (Ord No. 126-07)

47.230. Offensive Littering. No person shall create an objectionable stench or degrade the beauty or appearance of property or detract from the natural cleanliness or safety of property by intentionally:

(a) Discarding or depositing any rubbish, trash, garbage, debris or other solid waste upon the land of another without permission of the owner, or upon any public way or in or upon any public transportation facility; or

(b) Draining, or causing or permitting to be drained, sewage or the drainage from a cesspool, septic tank, recreational or camping vehicle waste holding tank or other contaminated source, upon the land of another without permission of the owner, or upon any public way; or

(c) Throwing or discarding, or permitting any rubbish, trash, garbage, debris or other solid waste to be thrown or discarded from a vehicle which the person is operating; provided, however, that nothing in this paragraph shall impose liability upon a person who is operating a vehicle transporting passengers for hire subject to regulation by the Interstate Commerce Commission or the Oregon Department of Transportation or operating a school bus described under ORS 801.460, and who does not throw or discard the solid waste. (Ord No. 126-07)

47.235. Franchisee's Cause of Action. In order to protect the reasonable investment-based expectations of franchisees who have franchises granted pursuant to this Chapter, a franchisee shall have a cause of action in any court of competent jurisdiction against any person who engages in solid waste management within the franchisee's service area and who does not have a limited franchise granted pursuant to SRC 47.127(d), or is subject to an exemption to the requirement of a franchise

under SRC 47.081, to enjoin such solid waste management and to recover damages in an amount equal the franchisee's lost profits. The prevailing party in such an action shall be entitled to reasonable attorney's fees and costs at trial and upon appeal. (Ord No. 126-07)

47.240. Civil Penalties; Enforcement.

(a) **Civil Penalty.** A civil penalty not to exceed \$2,000 per violation may be imposed on any person who fails to comply with SRC 47.035, 47.080, 47.135, 47.145, 47.155, 47.165, 47.175, 47.185, 47.195, 47.200, 47.205, 47.210, 47.215, 47.220, 47.225, and 47.230, and any franchisee who fails to comply with SRC 47.035, 47.085(d), 47.097(a), 47.099(a)-(c), 47.101(a), 47.105, 47.110(a)-(b), 47.120, 47.195, 47.215, 47.220, 47.225 and 47.230. Each day that a violation continues shall constitute a separate violation.

(b) **Civil Penalties Against Agents.** Any person who acts as the agent of, or otherwise assists, a person who engages in an activity which would be subject to a civil penalty, may likewise be subject to a civil penalty.

(c) **Remedies not Exclusive.** The remedies provided in this section are cumulative and not mutually exclusive and are in addition to any other rights, remedies and penalties available to the City under any other provision of law. (Ord No. 126-07)

47.245. Violations.

(a) Violation of SRC 47.035, 47.080, 47.135, 47.145, 47.155, 47.165, 47.175, 47.185, 47.195(b), 47.200, 47.205, and 47.210 is an infraction and is punishable by a fine of not less of \$100 and not more than \$250. The second and subsequent violation in any one year period is punishable by a fine of \$250.

(b) Violation of SRC 47.195(a), 47.220, SRC 47.225 and SRC 47.230 is a misdemeanor.

(c) Each day that a violation continues shall constitute a separate violation. (Ord No. 193-79; Ord No. 75-88; Ord No. 47-97; Ord No. 8-2000; Ord No. 126-07)

(CHAPTERS 48 AND 49 RESERVED FOR EXPANSION)