



## ORDINANCE 2017-006

### AMENDING SOLID WASTE CODE

**WHEREAS**, the City of Sherwood has previously adopted municipal code language governing solid waste management in Chapter 8.20 of its municipal code; and

**WHEREAS**, the policies and procedures outlined in Chapter 8.20 are essentially the terms and conditions attached to any franchises granted under this particular chapter; and

**WHEREAS**, the sole franchisee that is currently regulated by Chapter 8.20 is Pride Disposal Company; and

**WHEREAS**, the City of Sherwood and Pride Disposal Company are both in support of creating new code language governing rate reviews; and

**WHEREAS**, the City of Tigard has previously adopted code language governing rate reviews that has been effective; and

**WHEREAS**, City of Sherwood staff has proposed amendments to the rate review process based on the process used in the City of Tigard; and

**WHEREAS**, the City of Sherwood and Pride Disposal Company are also interested in making a series of housekeeping changes within Chapter 8.20 to reflect current practices and procedures; and

**WHEREAS**, City of Sherwood staff has proposed amendments to the code reflecting said housekeeping changes.

### **NOW, THEREFORE, THE CITY OF SHERWOOD ORDAINS AS FOLLOWS:**

**Section 1.** After full and due consideration of the information presented at the public hearings held on November 21, 2017 and December 5, 2017, the City Council finds that the text of Chapter 8.20 of the Sherwood Municipal Code should be amended to read as set forth in Exhibit 1.

**Section 2.** The proposed amendment to the Sherwood Municipal Code identified in Exhibit 1 is hereby **APPROVED**

**Section 3.** The City Manager is hereby directed and authorized to adopt rules and to take such other actions as may be necessary to implement this Ordinance, including necessary updates to the Municipal Code.

**Section 4.** This Ordinance shall become effective the 30<sup>th</sup> day after its enactment by the City Council and approval by the Mayor.

**Duly passed by the City Council this 5<sup>th</sup> of December, 2017.**

  
\_\_\_\_\_  
Lee Weislogel, Mayor

12-5-17  
Date

Attest:

  
\_\_\_\_\_  
Sylvia Murphy, MMC, City Recorder

	<u>AYE</u>	<u>NAY</u>
Rosener	<u>✓</u>	_____
Griffin	<u>✓</u>	_____
Brouse	<u>✓</u>	_____
Young	<u>✓</u>	_____
Kuiper	<u>✓</u>	_____
Garland	<u>✓</u>	_____
Weislogel	<u>✓</u>	_____

## Chapter 8.20 - SOLID WASTE MANAGEMENT

### Sections:

#### 8.20.010 - Short title.

The ordinance codified in this chapter shall be known as the city of Sherwood solid waste management ordinance and may be so cited and shall be hereinafter referred to as this chapter.

(Ord. 89-899 § 1)

#### 8.20.020 - Purpose, policy and scope.

- A. It is declared to be in the public interest for the city to establish a policy relative to solid waste management and to:
1. Provide sufficient waste volume to sustain solid waste management facilities necessary to achieve resource recovery goals established by the city, county, State Department of Environmental Quality and metro regional government;
  2. Provide the basis for agreements with other governmental units and persons for regional flow control to such facilities;
  3. Ensure safe accumulation, storage, collection, transportation, disposal or resource recovery of solid waste, and protect the public health, safety and welfare;
  4. Ensure maintenance of a financially stable, reliable solid waste collection and disposal service;
  5. Ensure rates that are just, fair, reasonable and adequate to provide necessary service to the public;
  6. Prohibit rate preference and other discriminatory practices which benefit one user at the expense of other users of the service or the general public;
  7. Conserve energy and material resources and meet statewide goals of recycling usable wastes;
  8. Eliminate overlapping service to reduce truck traffic, street wear, air pollution and noise;
  9. Provide standards for solid waste service and public responsibilities; and
  10. Provide resource recovery by and through the franchisee.
- B. No person shall:
1. Provide solid waste service, offer to provide service or advertise for the performance of service without having obtained a franchise from the city;
  2. Accumulate, store, collect, transport, transfer, dispose of or resource recover solid waste except as in compliance with this chapter, other city ordinances, and Chapter 459 Oregon Revised Statutes dealing with solid waste management, and regulations and amendments promulgated under any of the foregoing.
- C. Nothing in this chapter shall:
1. Prohibit any person from transporting directly to an authorized disposal or recycling or resource recovery facility, or utilizing or resource recover solid waste produced by himself or herself so long as he or she complies with this chapter, other city ordinances, and Chapter 459 Oregon Revised Statutes dealing with solid waste management, and regulations promulgated under any of the foregoing. Provided however, that except as provided herein, a lessor or property owner shall not provide service to a tenant, lessee or occupant except through the franchisee;

2. Prohibit any person from contracting with any other governmental agency to provide solid waste service;
3. Prohibit any person from transporting, disposing of or resource recovering, sewage sludge, septic tank pumpings and cesspool pumpings;
4. Prohibit any person licensed as a motor vehicle wrecker under ORS 481.345 et seq. from collecting, transporting, disposing of or utilizing motor vehicles or motor vehicle parts;
5. Prohibit the city council by amendment to this chapter from withdrawing or modifying certain solid waste services on the basis of finding that such service is not necessary for the implementation of the purposes of this chapter or a city, county or metro regional government solid waste management plan;
6. Prohibit any person transporting solid waste through the city that is not collected within the city;
7. Prohibit a contractor employed to demolish, construction, or remodel a building or structure, including but not limited to land clearing operations and construction wastes, from hauling waste created in connection with such employment;
8. Prohibit the occasional collection, transportation and reuse of repairable or cleanable discards or source separated solid waste for recycling or resource recovery by private charitable or nonprofit organizations for the purpose of raising funds for charitable, civic, or benevolent activity provided that the activity is conducted in accordance with the terms and under the conditions contained in this chapter;
9. Prohibit the operation at a fixed location of a facility where the generator, producer, source or franchised collector of solid waste brings that waste for transfer, disposal or resource recovery;
10. Prohibit the collection, transportation or redemption of beverage containers under ORS Chapter 459;
11. Prohibit a person from transporting or disposing of waste that he or she produces as an incidental part of janitorial services; gardening or landscaping services; rendering; or other similar and related occupations;
12. Require the franchisee to store, collect, transport, dispose of or resource recover any hazardous waste as defined by or pursuant to ORS Chapter 466.

(Ord. 89-899 § 2)

#### 8.20.030 - Definitions.

"Carry-out service" means service whereby the franchisee will collect properly stored solid waste located on the customer's property, provided said waste is clearly visible and accessible to the franchisee.

"Charitable or nonprofit organization" means any person or persons organized and existing for charitable, benevolent, humane, patriotic, religious, philanthropic, recreational, social, educational, civic, fraternal, or other nonprofit purpose, and who is exempt from federal and state income taxes as a nonprofit organization.

"Compensation" means any type of consideration paid for service including, but not limited to, the proceeds from resource recovery or recycling, rent, lease payments, and any other direct or indirect provision for payment of money, goods, services or benefits by owners, tenants, lessees, occupants or similar persons or the exchange of services between persons.

"Council" means the city council of the city of Sherwood.

"Curb-side service" means service whereby the franchisee will collect properly stored solid waste placed by the customer alongside a public street or some other location designated by the franchisee.

"Franchise" means the right to provide service granted to a person pursuant to this chapter.

"Nonrecycling customer" means a regular customer of the franchisee that elects not to enroll in the recycling program or fails to provide recyclable materials at least once monthly, as determined by the franchisee's records.

"Person" means any individual, partnership, corporation, trust, firm, estate, joint venture or other public or private legal entity.

"Putrescible material" means organic materials that can decompose and may give rise to foul-smelling, offensive odors or products.

"Recycling customer" means a regular customer of the franchisee who enrolls in the recycling program and provides recyclable materials curbside at least once monthly, as determined by the franchisee's records.

"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 after serving a specific purpose and can, therefore, be reused or recycled for the same or other purpose.
3. "Recycling," which means any process by which solid waste materials are transformed into new products in such manner that the original products may lose their identity. The process includes collection, transportation, storage and transfer of solid waste and placing the solid waste in the stream of commerce for resource recovery.
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.

"Roll cart" means a wheeled, rigid plastic can provided by the franchisee to their customers.

"Service" means the collection, transportation, storage, transfer, disposal of or resource recovery of solid waste using the public streets of the city to provide service, and including solid waste management.

"Solid waste" means:

1. All putrescible and non-putrescible wastes, including, but not limited to garbage, rubbish, refuse, ashes, waste paper, cardboard, yard debris, compost, tires, equipment and furniture; commercial, industrial, demolition and construction wastes; discarded or abandoned vehicles or parts thereof; discarded home or industrial appliances; manure, vegetable and animal solid and semi-solid wastes, dead animals, infectious waste as defined in ORS 459.386 organic food waste, electronics and associated components, mattresses, junk and other wastes. Solid waste shall not include:
  - a. Sewer sludge and septic tank and cesspool pumping, chemical toilet waste or other sludge;
  - b. Reusable beverage containers as defined in ORS 459A.700 and 459A.725;
  - c. Material used for fertilizer or for other productive agricultural operations in growing or harvesting crops and the raising of fowl or animals.
2. The fact that materials that would otherwise come within the definition of solid waste may from time to time have value and thus be utilized does not remove them from the definition.

"Solid waste management" means the prevention or reduction of solid waste; management of the storage, transfer, collection, transportation, treatment, utilization, processing and final disposal of solid waste; or resource recovery from solid waste; and facilities used for those activities.

"Source separation" means the separation or setting aside of waste, by the source generator or producer of the waste, for recycling or reuse.

"Waste" means material that is no longer wanted or usable by the source, the source generator or producer of the material, and the material is to be disposed of or resource recovered by another person, and includes both source separated material and nonsource separated materials.

(Ord. 2013-001, § 1, 2-5-2013; Ord. 98-1049 § 4; Ord. 90-915 § 2; Ord. 89-899 § 3)

8.20.040 - Franchises.

- A. Subject to the provisions of this chapter, other city ordinances, and the City Charter, the council may by resolution grant exclusive or nonexclusive franchises, with or without competitive bidding, to provide service over and upon the streets of a franchise area within the city. Nonperformance of the terms and conditions of the franchise agreement may result in financial and operating penalties to the franchisee, and may result in the loss or limitation of the franchisee's right to provide services.
- B. Where any area is annexed to the city of Sherwood and the area had been franchised by Washington County for solid waste collection service prior to annexation, the county franchise and franchise holder shall be recognized for that particular area subject to the provisions of ORS 459.085(3). If the area was franchised by Washington County to a city franchisee, that area shall be added by resolution to a city franchise area.

(Ord. 04-010 § 1 (Exh. A)(part): Ord. 89-899 § 4)

8.20.045 - Franchise—Application, application approval, and statement of ownership.

- A. Applicants for a solid waste management franchise under this chapter must file with the city manager an application in a format approved by the city manager which shall at least provide the following information:
  - 1. Full name;
  - 2. Permanent home and business address;
  - 3. Trade and firm name;
  - 4. If a joint venture, a partnership or limited partnership, the names of all partners and of their percentage of participation and their permanent addresses; if a corporation, the names and permanent addresses of all the officers;
  - 5. Evidence showing that:
    - a. An applicant for a solid waste collection and transportation franchise has arranged for disposal of all solid waste collected or transported to an authorized disposal site where it may legally be accepted and disposed of, and the location of that disposal site; or
    - b. An applicant for a curbside recycling collection and transportation franchise has arranged for the sanitary storage and recycling of the collected materials and proper disposal of any nonrecyclable residue;
  - 6. Facts showing that the applicant is qualified to render efficient solid waste or curbside recyclables collection and transportation service;
  - 7. Facts showing that the applicant has adequate experience in the collection and transportation of solid waste or curbside recyclables;
  - 8. A description of all vehicles and equipment used or intended to be used by the franchisee or its subcontractors, including vehicle type, license number, age and condition;

9. A statement certifying that the vehicles and equipment identified are in compliance with the requirements of this chapter, the state minimum standards for solid waste handling and disposal, applicable provisions of the vehicle code, and other legal requirements;
  10. Facts demonstrating that the applicant owns or has access to suitable facilities for the storage, maintenance and cleaning of vehicles and equipment;
  11. Evidence showing that the issuance of a franchise is in the public interest; and
  12. Such other facts or information as the city manager may require.
- B. Upon receipt of a completed application for a franchise, the city manager will determine if the applicant meets all the requirements of this chapter and all applicable state and federal laws and regulations.
1. Decision. A decision to grant or not to grant the franchise will be made by the city council within one hundred twenty (120) days from the receipt of a complete application.
  2. Acceptance. By signing the designated franchise acceptance, the applicant accepts all of the terms and conditions specified in the franchise.
  3. Appeal. If the city council determines that a franchise will not be granted or if the decision to grant or not grant the franchise is not made within one hundred twenty (120) days, the applicant has the right to a hearing before the city council. A request for a hearing must be made by the applicant in writing to the city recorder within fifteen (15) calendar days after receipt of notice of denial or within fifteen (15) calendar days after the one hundred twenty- (120) day has passed. Upon receipt of the written request for hearing, the city recorder will set the matter for hearing on a date not more than sixty (60) days after the receipt of the written request. The city recorder will give written notice of the time, date and place of hearing to the applicant and the public. At the hearing, the applicant has the burden of proof to show facts demonstrating that the applicant meets the requirements of this chapter and applicable state and federal laws and regulations, and that the granting of the franchise is required by the public safety, health, welfare, convenience or necessity. The city council will make its decision within fifteen (15) days after the close of the hearing on appeal. The decision of the city council is final.
- C. Every franchisee must file a statement of ownership with the city manager by July 1st of each year and verify it as true and correct under the penalty of perjury. This statement must be made in a form acceptable to the city manager.

(Ord. 04-010 § 1 (Exh. A)(part))

8.20.050 - Franchise term.

- A. The rights, privileges and initial franchise granted herein shall continue and be in full force for a period of ten years up to and including November 1, 1999, subject to terms, conditions and payment of franchise fees to the city as set forth in this chapter.
- B. On November 1st of each year the franchise granted to franchisee shall be renewed for a ten year period starting from that annual renewal date without any action from the council unless the council acts to terminate the franchise at the end of the ten year period then in effect by giving written notice to franchisee prior to the annual renewal date.

(Ord. 89-899 § 5)

8.20.060 - Franchise fees.

- A. As compensation for the franchise granted to the franchisee and for the use of city streets, the franchisee shall pay to the city a fee equal to five percent of gross cash receipts resulting from the solid waste services conducted under the franchise. Such fees shall be computed on a quarterly basis

and paid within thirty (30) days following the end of each quarterly calendar year period. The franchisee shall maintain an adequate record of gross cash receipts resulting from the solid waste services conducted under the franchise and said records shall be open at all times for audit by authorized personnel designated by the city manager.

- B. Willful misrepresentation of gross cash receipts by the franchisee shall constitute cause for immediate revocation of this franchise, pursuant to Section 8.20.090 of this chapter.
- C. The franchise fee provided for in subsection A of this section shall not relieve the franchisee of the financial responsibility for any current or future revenue or regulatory fee, tax or charge imposed by the city. The franchise fee, however, shall not exceed that which is provided in subsection A of this section for the duration of this franchise and shall be considered in lieu of the present city business license.

(Ord. 04-010 § 1 (Exh. A)(part); Ord. 89-899 § 6)

8.20.070 - Franchisee responsibility.

The franchisee shall:

- A. Resource recover or dispose of wastes at sites in compliance with Chapter 459 Oregon Revised Statutes and regulations promulgated thereunder. Any site for disposal or resource recovery within the city limits must be approved by the city;
- B. Provide and keep in force public liability and automobile liability insurance with a thirty (30) day cancellation clause in the amount of not less than two million dollars (\$2,000,000.00) relating to a single occurrence, which shall be evidenced by a certificate of insurance filed with the city recorder. This insurance shall indemnify and save the city harmless against liability or damage which may arise or occur from an injury to persons or property resulting from the franchisee's operation under this chapter;
- C. Within fifteen (15) days of adoption of the resolution, file with the city recorder a written acceptance of the franchise;
- D. Furnish sufficient collection vehicles, containers, facilities, personnel, finances, and scheduled days for collections in each area of the city as necessary to provide all types of service required under this chapter or subcontract with others to provide such service pursuant to Section 8.20.120 of this chapter. The franchisee shall maintain a collection system in conformance with all federal, state, regional and local solid waste management regulations and ensure that every vehicle or container used for the transportation of solid waste over city streets shall be regularly cleaned and maintained in a sanitary condition;
- E. Provide a cash security deposit or a performance bond of seven thousand five hundred dollars (\$7,500.00) to guarantee reimbursement to the city if costs incurred because of work performed by the franchisee that does not conform with the requirements of this chapter or other ordinances of the city or because of failure of the franchisee to meet the terms and conditions of this chapter in a timely, regular and sanitary manner. The deposit or bond shall continue until one year after expiration or termination of the franchise or until all claims or demands made against the franchisee have been settled or secured;
- F. Collect no single family residential solid waste before five a.m. or after seven p.m. unless this condition is waived by the city manager or his or her designee;
- G. Make collections no less often than once each week, except for will-call collections and drop box operations, and except as provided in Section 8.20.110 of this chapter;
- H. Allow inspection by the city of the franchisee's facilities, equipment and personnel during regular business hours;

- I. Respond to all calls for special hauling requiring equipment regularly supplied by franchisee within ninety-six (96) hours of receiving said call unless a later pickup is agreeable to the customer, subject to availability of required containers or other equipment;
- J. Provide telephone service so that the franchisee may be contacted during regular business hours, Monday through Friday, excepting holidays, and in addition, upon receipt of a written communication about service under this chapter, the franchisee shall, within seven days, reply in writing and furnish a copy of both pieces of correspondence to the city upon request;
- K. Provide curbside yard debris collection every week by providing residential customers with a sixty (60) gallon roll cart for such purposes;
- L. Provide the opportunity to recycle all residential, commercial and industrial sources of recyclable material in compliance with this chapter, other city ordinances, applicable metro regional government and State Department of Environmental Quality rules and regulations and the Oregon Recycling Opportunity Act (Chapter 729, Oregon Laws, 1983). The opportunity to recycle shall include but not be limited to, on-route or depot collection of source separated recyclable material, a public education and promotion program that encourages participation in recycling, and notification to all customers of the opportunity and terms of recycling service;
- M. Maintain a record of customer complaints and of the franchisee's response to each complaint. Records pertaining to customer complaints must be made available to the city manager upon the city manager's written request. The franchisee shall retain all records for a minimum of three years.

(Ord. 04-010 § 1 (Exh. A)(part); Ord. 94-986 § 1; Ord. 89-899 § 7)

#### 8.20.080 - Rates.

- A. The council will by resolution set rates for all solid waste collection services provided by franchisees.
- B. The rates to be charged to all persons by the franchisee shall be reasonable and uniform and shall be based upon the level of service rendered, or required by state or local laws and regulations, haul distance, concentration of dwelling units, and other factors which the city council considers to justify variations in rates.
- C. Nothing in this section is intended to prevent:
  - 1. The reasonable establishment of uniform classes of rates based upon length of haul; type of waste stored, collected, transported, disposed of, salvaged or utilized; or the number, type and location of customers serviced; the type of service; the service required by laws and regulations; or upon other factors as long as such rates are reasonable based upon cost of the particular service and are approved by the city council in the same manner as other rates;
  - 2. The franchisee from volunteering service at a reduced cost for civic, community, benevolent or charitable programs.
- D. Rates to be charged by the franchisee under this chapter shall be set by the city council by resolution at such times as deemed necessary by the council, provided, however, that rates may not be amended more than once every twelve (12) months, except for instances where landfill disposal rates have been increased by the metro regional government. The council may consider rate amendments to account for increased operating costs directly attributable to landfill disposal costs at any time, or in any frequency. The franchisee shall provide the city with thirty (30) days written notice of any request to amend rates, other than a request pursuant to the annual rate adjustment procedure set out in subsection F below. In amending the rate schedule, the council shall give due consideration to the purposes of this chapter and the direct and indirect costs to the franchisee of doing business, as may be justified and quantified by the franchisee.

- E. The franchisee shall be provided thirty (30) days prior written notice with accompanying justification for a city initiated amendment to the service rate schedule, other than an adjustment pursuant to the annual rate adjustment procedure set out in subsection F below.
- F. Unless the council has approved a rate adjustment, other than an annual rate adjustment pursuant to this subsection F or a rate adjustment based solely on landfill disposal rate increases, within the prior twelve months, rate adjustments shall be considered annually using the following procedure:
  - 1. On or before March 15<sup>th</sup>, the franchisee shall file an annual report, in a form established by the city manager, with the city manager for the year ending the immediately previous December 31<sup>st</sup>. The report is required from the franchisee regardless of whether or not a rate adjustment is requested.
  - 2. The city manager shall report to the council by April 15<sup>th</sup> regarding the franchisee reports and resulting proposed rate adjustments, if any. A copy shall be delivered to the franchisee.
  - 3. Unless there is good cause shown and recorded in the minutes of the council, if a rate adjustment is proposed, the council shall set a hearing on the proposed rate adjustment within 60 days of receiving the report from the city manager and shall either approve or disapprove the proposed rate adjustment within 30 days of said hearing.
  - 4. The rate adjustment to be proposed by the city manager under subsection 2 above shall be based on the following:
    - a. If the rate of return for the franchisee is less than eight percent or more than twelve percent, then the city will undertake a rate study to recommend new rates. The study will be designed to recommend new rates that will be effective on the immediately following January 1<sup>st</sup> and intended to produce a rate of return of ten percent for the calendar year beginning on that date. The study will also determine the expected rate of return for the franchisee during the current calendar year, and that information shall be reported to the franchisee. So long as the actual rate of return for that calendar year is within two percent more or less than the expected rate of return, no rate study or further rate adjustments will be needed based on that calendar year's report.
    - b. If the rate of return for the franchisee is between eight and twelve percent, the proposed rate adjustment will be effective on the immediately following January 1<sup>st</sup> and will be indexed to the US Department of Labor, Bureau of Labor Statistics CPI-U Over-the-Year Percent Change Annual Average for Portland-Salem (the "Index"). If the rate of return is eight to nine percent, then the proposed rate adjustment will be 1.25 times the Index. If the rate of return is greater than nine percent but less than eleven percent, then the proposed rate adjustment will be equal to the Index. If the rate of return is greater than eleven percent but less than twelve percent, then the proposed rate adjustment will be 0.75 times the Index.
  - 5. Notwithstanding the foregoing, cost of service studies will be conducted at a minimum of once every six years.
- G. Rates established by the council are fixed rates and the franchisee shall not charge more or less than the fixed rate unless pursuant to subsection (C)(2) of this section.
- H. Any services not included in the rate schedule shall be charged at the reasonable cost of providing the service taking into consideration the factors utilized in established scheduled rates pursuant to this section.
- I. In establishing rates, the council may set uniform rates, uniform rates by zone and different rates for collectors where there is a service and cost justification.
- J. Any person who receives solid waste service from the franchisee shall be responsible for payment for such service and the franchisee shall be solely responsible for the billing, collection and accounting of said payments. The city shall not be responsible or liable for unpaid, delinquent or noncollectible payments for services.

(Ord. 04-010 § 1 (Exh. A)(part); Ord. 01-1113 § 1; Ord. 00-1088 § 1; Ord. 94-986 § 2; Ord. 89-899 § 8)

8.20.090 - Transfer, suspension, modification or revocation of franchise.

- A. The franchisee shall not transfer this franchise or any portion thereof to other persons within sixty (60) days prior written notice of the intent to transfer, and the enactment by the city council of an ordinance authorizing the transfer. The city council may approve the transfer if the transferee meets all applicable requirements met by the original franchisee. The city council may attach to the authorizing ordinance whatever conditions it deems appropriate to guarantee maintenance of service and compliance with this chapter.
- B. Failure to comply with a written notice to provide the services required by this chapter or to otherwise comply with the provisions of this chapter after written notice and a reasonable opportunity to comply shall be grounds for modification, revocation or suspension of the franchise.
  - 1. After written notice from the city that such grounds exist, franchisee shall have thirty (30) days from the date of mailing of the notice in which to comply or to request a public hearing before the city council.
  - 2. If franchisee fails to comply within the specified time or fails to comply with the order of the city council entered upon the basis of written findings at the public hearing, the city council may suspend, modify or revoke franchise or make such action contingent upon continued noncompliance.
  - 3. In the event that the city finds an immediate and serious danger to the public through creation of a health or safety hazard, as a result of the actions of the franchisee, the city may take action to alleviate such conditions or suspend or revoke the franchise within a time specified in the notice to the franchisee and without prior written notice or a public hearing.

(Ord. 89-899 § 9)

8.20.100 - Preventing interruption of service.

The franchisee agrees as a condition of this 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 written or verbal notice to the franchisee, provide for or authorize another person to temporarily provide the service or to use and operate the land, facilities and equipment of a franchisee to provide emergency service. 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. 89-899 § 10)

8.20.110 - Suspension of service.

The franchisee shall not suspend or terminate service to all or a portion of his or her customers unless:

- A. Street or road access is blocked and there is no alternate route, provided that the franchisee shall restore service not later than twenty-four (24) hours after street or road access is opened.
- B. Excessive weather conditions render providing service unduly hazardous to persons providing service or to the public or such termination is caused by accidents or casualties resulting by an act of God or a public enemy.
- C. A customer has not paid for provided service after a regular billing and after a written delinquency notice, which notice shall not be sent less than fifteen (15) days after the date of mailing of the regular billing.

- D. Other than for non-payment for provided service, ninety (90) days written notice is given to the city council and to affected customers and written approval is obtained from the city council.
- E. The customer does not comply with the service standards of Section 8.20.140 of this chapter, provided that the customer is given a thirty (30) day written notice to comply with the applicable service standards.

(Ord. 04-010 § 1 (Exh. A)(part); Ord. 89-899 § 11)

8.20.120 - Subcontracts.

The franchisee may subcontract with others to provide a portion of the service where the franchisee does not have the necessary equipment or capacity to provide said service. Such a subcontract shall not relieve the franchisee of total responsibility for providing and maintaining service and from compliance with this chapter. Except where emergency incidental service is provided by a subcontractor, such subcontract shall be in writing and shall be filed with the city recorder and approved by the city manager prior to the commencement of actual service by the subcontractor.

(Ord. 89-899 § 12)

8.20.130 - Enforcement officers; franchisee right of action; damages.

- A. The city manager shall have the authority to enforce this chapter and rules and regulations adopted pursuant thereto. The city manager may designate appropriate city employees, including police officers, and others to enter premises to ascertain compliance with this chapter's provisions. No premises shall be entered without first attempting to obtain the consent of either the owner or person in control thereof, if different. If consent cannot be obtained, the city representative shall secure a search warrant from the municipal court before attempting to gain entry and shall have recourse to every other remedy provided by law to secure such entry.
- B. A franchisee shall have a cause of action in any court of competent jurisdiction against any person or entity providing service in the city limits without first having a franchise in violation of SMC 8.20.020(B). The cause of action may seek any and all appropriate relief, including injunctive relief.
  - 1. Notice to city manager. Before commencing an action under this section, the franchisee shall provide a minimum of thirty (30) days' written notice to the city manager who then may elect to either enforce the provisions of this chapter or allow the franchisee to go forward. If the city manager fails to respond to the franchisee's notice, the franchisee may proceed with its action. A franchisee may not commence or maintain an action if the city manager elects to pursue enforcement.
  - 2. Damages. Any person or entity providing solid waste service within Sherwood's city limits without first having a franchise, will be liable for and subject to the following:
    - a. Lost customer revenue due the franchisee;
    - b. Franchise fees owed the city;
    - c. Five hundred dollars (\$500.00) liquidated damages for each day that each violation of the Code occurred; and
    - d. Other appropriate legal or equitable remedy available to the franchisee and/or the city.

The court shall award reasonable attorney fees to the prevailing party.

- C. Indemnity. The city shall have no liability for franchisee's attorney fees and costs incurred pursuing enforcement under this section. Any franchisee electing to pursue its rights under subsection B above,

shall indemnify and hold the city harmless for any and all costs, damages or liabilities incurred by the city arising as a result of franchisee's pursuit of an enforcement action.

(Ord. 2013-001, § 2, 2-5-2013; Ord. 89-899 § 13)

8.20.140 - Containers/collections limitations.

- A. To achieve the purposes of this chapter, prevent recurring injuries to collectors and other persons, to comply with safety standards of the State Accident Insurance Fund; and to comply with all reasonable safety, health and environmental safeguards:
1. Solid waste roll carts will be provided by the franchisee.
  2. Putrescible material shall be placed in plastic bags or securely wrapped in paper after being drained of liquids before placing in roll carts or containers.
  3. Sunken refuse cans shall not be used.
  4. On the scheduled collection day, the carry-out service customers shall provide safe access to a pickup point which does not jeopardize the safety of the driver of a collection vehicle or the motoring public or create a hazard or risk to the person providing the service. Roll carts and containers must be visible from a public right-of-way which may be serviced and driven to by collection vehicles where practical. This form of access must not require the collector to pass behind an automobile or other vehicle or to pass under low hanging obstructions such as eaves, tree branches, clotheslines or electrical wires which obstruct safe passage to and from cans. Roll carts must be at ground level, outside of garages, fences and other enclosures, and within one hundred (100) feet of the straight right-of-way or curb. Where the city manager, or his or her designee, finds that a private bridge, culvert or other private structure or road is incapable or safely carrying the weight of the collection vehicle, the collector shall not enter onto such structure or road, and customer shall provide a safe alternative access point or system.
  5. The curb-side service customer shall place roll carts alongside a public street or other accessible place, at a location designated by the franchisee.
  6. All solid waste roll carts located at single-family residences shall be placed together in one location on the regularly scheduled collection day.
  7. All solid waste receptacles, including but not limited to roll carts, containers and drop boxes, shall be maintained in a safe and sanitary condition by the customer.
  8. Solid waste service customers shall place items not intended for pickup at least fifteen feet from solid waste roll carts(s) or container(s).
  9. No person shall place any hazardous waste as defined by or pursuant to ORS Chapter 466 out for collection by the franchisee or place it in any container supplied by the franchisee without prior written notification and acceptance by the franchisee and also upon compliance with any requirements of ORS Chapter 466 and any rules or regulations thereunder.
  10. A container for hazardous or other special wastes shall be appropriately labeled and placed in a location inaccessible to the public. If the container is reusable, it shall be suitable for cleaning and be cleaned.
  11. No person shall use any solid waste collection container of thirty-two (32) gallons or more in capacity unless it is supplied or approved by the franchisee, on the basis of safety, equipment compatibility, availability of equipment and the purposes of this chapter.
  12. Roll carts, containers and drop boxes supplied by the franchisee shall be cleaned by the customer, provided, however, that the franchisee shall be responsible for exterior painting and provide normal maintenance. The customer shall be liable for damage to roll carts, containers, and drop boxes beyond reasonable wear and tear.

- B. No stationary compactor or other container for commercial or industrial use shall exceed the safe loading design limit or operation of the collection vehicle provided by the franchisee. Upon request of a group of customers requiring special service, the city council may require the franchisee to provide for vehicles capable of handling specialized loads including, but not limited to, front loading collection trucks and drop-box trucks and systems.
- C. To prevent injuries to users and collectors, stationary compacting devices for handling solid wastes shall comply with applicable federal and state safety regulations.
- D. Any vehicle used by any person to transport wastes shall be so loaded and operated as to prevent the wastes from dripping, dropping, sifting, blowing, or otherwise escaping from the vehicle onto any public right-of-way or lands adjacent thereto.

(Ord. 89-899 § 14)

8.20.150 - Offensive waste prohibited.

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

(Ord. 89-899 § 15)

8.20.160 - Unauthorized deposit prohibited.

No person shall, without prior authorization and compliance with requirements of this chapter, deposit waste on public property or the private property of another person. Streets and other public places are not authorized as places to deposit waste except where specific provisions for containers have been made.

(Ord. 89-899 § 16)

8.20.170 - Violation—Penalty.

Violation by any person of the provisions of this chapter shall be deemed to be a misdemeanor and shall be punishable upon conviction by a fine of not more than five hundred dollars (\$500.00).

(Ord. 89-899 § 18)