

ORDINANCE NO. 31C

AN ORDINANCE GRANTING TO HEIBERG GARBAGE & RECYCLING, LLC., AN EXCLUSIVE FRANCHISE FOR A CONTINUING SEVEN-YEAR TERM TO PROVIDE RESIDENTIAL SOLID WASTE MANAGEMENT SERVICE IN THE CITY OF MAYWOOD PARK, OREGON; CREATING EXCEPTIONS; REPEALING ORDINANCES NO. 31 AND 31B; AND DECLARING AN EMERGENCY.

BE IT ORDAINED AND RESOLVED THAT EFFECTIVE _____, 2011, THE CITY OF MAYWOOD PARK ORDAINS AS FOLLOWS:

Section I. Short Title. The Ordinance shall be known as the “Solid Waste Management Ordinance” and may be so cited and pleaded; and shall be cited herein as “this Ordinance.”

Section II. Purpose, Policy and Scope. In order to protect the health, safety, welfare, and environment and to conserve energy and natural resources within the City, to provide the opportunity to recycle, and to otherwise provide for solid waste management, it is declared to be the public policy of the City to regulate solid waste management to:

- A. Adopt the priorities and policies specified by state statute.
- B. Encourage recycling as part of the overall solid waste management system, taking advantage of coordinated area-wide service, promotion, education, and marketing; and provide said service pursuant to ORS 459A, together with regulations promulgated thereunder.
- C. Insure safe, efficient, economical and comprehensive solid waste management service.
- D. Insure fair and equitable collection rates that are adequate to provide necessary solid waste management service to customers in the City.
- E. Conserve energy and material resources, reduce solid waste, and promote material and energy recovery in all forms.
- F. Provide for technologically and economically feasible solid waste and resource recovery by and through the Franchisee.
- G. Eliminate overlapping service, thereby increasing efficiency and decreasing truck noise, street wear, energy waste, air pollution, and public inconvenience.
- H. Protect public health and the environment.
- I. Provide public collection standards.

J. Protect against improper and dangerous handling of hazardous wastes.

Section III. Definitions.

A. “City” means the City of Maywood Park, Oregon.

B. “Collection service” means a service that provides for collection of solid waste or recyclable material or both.

C. “Compact and compaction” means the process of, or to engage in, the shredding of material, or the manual or mechanical compression of material.

D. “Compensation” means:

1. Any type of consideration for *solid waste management* service, including but not limited to, any 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 similar persons as part of rent. For purposes of this Section, it is presumed that all services provided by a lessor or landlord are received as consideration for rent.

2. The exchange of services between persons.

3. The flow of consideration from a person owning, possessing, or generating solid waste to another person who provides services or from a person providing service to another person owning, possessing, or generating solid waste.

4. Payment for collection, removal, or disposal of solid waste, recyclable materials and compostable materials.

E. “Compost or composting” means the controlled biological decomposition of compostable material or the product resulting from such process.

F. “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.

G. “Council” means the City Council of the City of Maywood Park, Oregon.

H. “Curbside” means the area where the driveway and the roadway meet.

I. “Dispose or disposal” means the accumulation, storage, collection, placement, depositing, or transportation of solid waste or recyclable materials.

- J. “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.
- K. “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 or animal excrement.
- L. “Franchise” means the authorization given by the City to Franchisee to provide exclusive solid waste management service pursuant to this Ordinance.
- M. “Franchisee” means Heiberg Garbage & Recycling, LLC., who is granted a franchise to engage in solid waste management service pursuant to this Ordinance.
- N. “Generator” means the person who produces solid waste, compostable material, or recyclable material to be placed, or that is placed, out for collection and disposal. As used in this Ordinance, “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 collection and disposal.
- O. “Hazardous waste” means any waste defined as hazardous waste by or pursuant to ORS 466.005; or defined as hazardous waste by another governmental unit having jurisdiction; or found by the Franchisee or a disposal site utilized by the Franchisee to be hazardous to service workers, to service equipment, or to the public.
- P. “Mixed compostables” means the process where two or more types of compostable materials are collected together (ie. not separated), in a combination allowed by the City Manager.
- Q. “Mixed recycling” means the process where two or more types of recyclable materials are collected together (ie. not separated), in a combination allowed by the City Manager.

- R. “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.
- S. “Placed for collection” means to put solid waste, recyclable material, or compostable material out for collection by a Franchisee, as provided in this Ordinance.
- T. “Receptacle” means a can, cart, bin, container, drop box, or other vessel used for the collection and disposal of solid waste, recyclable material, or compostable material that has been approved by the City and into which solid waste, compostable material, or recyclable material may be placed for such collection and disposal.
- U. “Recyclable material” means any material or group of materials that can be collected and sold for recycling at a new cost equal to or less than the cost of collection and disposal of the same material.
- V. “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.
- W. “Resource recovery” means any process of obtaining from solid waste, by presegregation 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.
- X. “Reuse” means the return of waste into the economic stream, to the same or similar use or application without change in the waste’s identity.
- Y. “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.
- Z. “Service area” means the area within the City limits, as the boundaries now exist or as they may hereafter be amended by action of the City.
- AA. “Solid Waste” means all putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, waste paper and cardboard, demolition and construction debris, vegetable or animal solid and semisolid wastes, dead animals, infectious waste as defined in ORS 459.836(2), but excluding sewage, sewage sludge, or sewage hauled as an incidental part of a septic tank or cesspool cleaning service, or materials used for fertilizer, composting, or for other productive agricultural or horticultural purposes.

- BB. “Solid waste management” means the business of collection, transportation, storage, treatment, utilization, processing, disposal, recycling and resource recovery of solid waste, recyclable materials, compostable materials, and yard debris.
- CC. “Source separate” means the person who last uses recyclable material separates the recyclable material from other solid waste.
- DD. “Waste” means any material, substance, or object that is no longer wanted 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 non-source separated material.
- EE. “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.

Section IV. Franchise. There is hereby granted to Heiberg Garbage & Recycling, LLC the exclusive franchise to establish, operate, and maintain a solid waste management service within the City of Maywood Park pursuant to the provisions of this Ordinance. The City’s signatures indicating adoption of this Ordinance and the acceptance signed by Franchisee at the end of this Ordinance constitutes a franchise agreement between City and Franchisee.

Section V. Franchise Term. Subject to the provisions of Section XVIII of this Ordinance:

- A. The franchise granted hereunder shall be for a “rolling term” and shall initially begin on the 1st day of March ,2011 and expire on the last day of February, 2018, subject to the automatic extension of such franchise as provided below.
- B. Unless the City Council takes timely action as set forth in subsection E. below, on the 1st day of March each year, the franchise shall be extended for an additional year: i.e. the remaining term is seven (7) years each March 1.
- C. The City may terminate such automatic extension after holding a public hearing prior to March 1 of the year in which such termination is proposed. The City shall give the Franchisee no less than ten (10) days’ notice of such public hearing.
- D. If the City terminates the automatic extension after holding a public hearing, the Franchisee shall have a fixed seven (7) year term beginning on the effective date of the termination.

- E. *If the City terminates the automatic extension as stated in subsection D. above, the Franchisee may seek renewal of the franchise term prior to its expiration, including reinstatement of a “rolling term.”*

Section VI. Area of Franchise. This franchise extends to the boundaries of the City of Maywood Park.

Section VII. Franchise Fee. The Franchisee shall pay to the City of Maywood Park as compensation for the rights and benefits granted under this franchise, five percent (5%) of gross residential revenue earned for solid waste management operations during the term of this Ordinance and agreement. Payment of the franchise fee shall be made quarterly to the City of Maywood Park, with a payment due April 30, July 31, October 31, and January 31 for the previous quarter’s service. All proceeds from the sale of recyclable materials will be applied by Franchisee to their cost of providing recycling service.

Section VIII. Persons and Practices Exempt from this Ordinance. Nothing in this Ordinance shall:

- A. Prohibit any person from engaging in the collection of source separated materials for resource recovery for the purpose of raising funds for a charitable, non-profit, educational, civic, or benevolent activity.
- B. Prohibit any person from transporting solid waste or recyclable material that person produces to an authorized disposal site or resource recovery facility, or from ordering a clean-up container or drop box for this purpose.
- C. Prohibit the collection, transportation, or redemption of returnable beverage containers.
- D. Prohibit the generator or producer or transports and disposes of solid waste created as an incidental part of regularly carrying on the following business or service: auto wrecking, to the extent licensed by the State of Oregon; demolition land clearing or construction; janitorial service; gardening, park maintenance, or landscaping service; street sweeping, auto body recovery; or septic tank pumping and sludge collection. “Janitorial service” does not include cleanup of accumulated or stored solid waste generated or produced by a property owner or occupant or other persons.
- E. Prohibit the City of Maywood Park from conducting clean-up campaigns for the collection of brush, cleaning out of garages or basements, or in any other way providing for the beauty of the City and the safety of its citizens.

Section IX. Franchisee Responsibility.

- A. The Franchisee shall:

1. Dispose of waste and solid waste, if not reused, recycled or resource recovered, at a site approved by the local government unit having jurisdiction in compliance with Chapter 459 and Chapter 459A of the Oregon Revised Statutes, and regulations promulgated thereunder.
2. Provide and keep in force public liability and property damage insurance that protects the Franchisee and the City in the amount of not less than \$100,000 for injury to a single person, \$300,000 to a group of persons and \$50,000 property damage, all relating to a single occurrence, which shall be evidenced by a certificate of insurance filed with the City Recorder within thirty (30) days after the adoption of this Ordinance and renewed and filed annually thereafter.
3. Provide sufficient collection vehicles, receptacles, facilities, personnel and finances to provide all solid waste management services for which the franchise was granted; or subcontract with others to provide certain types of specialized service, but the Franchisee shall remain ultimately responsible for the service under this Ordinance.
4. Trucks shall be equipped with a metal body of the compactor type that is leakproof to the greatest extent practicable. The Franchisee may use a specially designed, motorized local collection vehicle for transporting solid waste for short distances from residences or commercial stops to waiting trucks. Such local collection vehicle shall be containerized in such a way that it adequately prevents the scattering of a load. All vehicles shall be operated in conformity with all Ordinances of the City.
5. Provide notice of available recycling services to potential and actual recycling and reuse generators, and sponsor educational and promotional activities to increase public participation in recycling.
6. Provide any additional recycling or reuse service as directed by the City Council when the City Council finds that it is now or is hereafter required by state law or regulations or by recycling or reuse plans adopted by the City Council.
7. Provide weekly collection of recyclable materials and every-other-week collection of yard debris, unless the City requires more frequent collection of said materials, for all residential customers within the City. The list of recyclable materials shall be consistent with Principal Recyclable Materials List for the Metro Area issued by the Department of Environmental Quality.

B. The Franchisee shall not:

1. Give any rate preference to any person *receiving solid waste management service*. This *provision* shall not prohibit uniform classes of rates based upon length of haul, type or quantity of solid waste handled, and location of customers, so long as such rates are reasonably based upon costs of the particular service and approved by the City Council in the same manner as other rates; nor shall it prevent any person from volunteering service at reduced cost for charitable, community, civic, or benevolent purposes.
2. Transfer this franchise or any portion thereof to other persons without the prior written approval of the City Council, which consent shall not be unreasonably withheld. The City Council shall approve the transfer if the transferee meets all applicable requirements met by the Franchisee. The Council may attach whatever conditions it deems necessary to guarantee maintenance of service and compliance with this Ordinance.
3. *Be* required to store, collect, transport, transfer, dispose of, or resource recover any hazardous waste.

C. The Franchisee shall comply with the following collection requirements:

1. Service Responsibility. The Franchisee shall make available for subscription, solid waste collection service to every residence in its *franchise area* under a non-mandatory arrangement.
2. Collection Schedule. Residential solid waste collection service by all vehicles will be Monday through Friday except during holiday weeks. Solid waste collection shall be offered weekly, *unless the City approves less frequent collection*, and shall consistently occur on the same day of the week for a given residence.
3. Collection on Holidays. At the discretion of the Franchisee there may be no collections on holidays. For the holiday itself, and for all remaining days of the holiday week, make-up days will be the day following the regular collection day. If the regular collection day is Friday, the make-up day shall be Monday.
4. Missed Collection. The Franchisee shall respond promptly to reports of missed collections. A complaint of a missed collection received by the Franchisee from a *customer* or from the City shall be responded to within 24 hours. It shall be the option of the customer to either have the missed collection picked up the next business day (not on Saturday nor on Sunday) OR receive an extra *receptacle* picked up *at no additional cost* on the regularly scheduled day the following week in addition to the regular level of *solid waste management service*. This customer option does not apply where a missed collection occurs due to the late or improper setout by the *customer*, documented by the Franchisee as occurring at least twice

before within the previous 60 days at a particular *customer's* residence. In such case, the *customer* reporting the miss shall be asked to set the material out on time on the subsequent regular collection day.

5. Point of Collection. Collection of solid waste *recyclable materials, compostable materials, and yard debris* shall be at the curbside. For customers with a corner lot, pick up will be on the address side of the residence. Able bodied individuals may request collection at a location other than curbside at a rate specified by the City for this extra level of service.
 - a. Disabled Service. Franchisee must provide, at no additional charge, an alternative to curbside service to households in which no one is capable of placing the *solid waste, recycling, and yard debris receptacles* at the curb.
 - b. In-Ground Cans. The Franchisee is not required to remove a garbage can from an in-ground or “sunken” location. If a customer wishes service at such a location, they are responsible for placement of the can *at curbside*.
 - c. Ingress and Egress. The Franchisee shall not be required, when providing other than curbside service, to pass through any doors or gate(s), cross flower beds, go through hedges, or cross open lawns.
 - d. Ice and Snow Policy. Franchisee may, when weather conditions make driving or collection hazardous, delay all or portions of any collections scheduled on these hazardous days until the first day (excluding Saturdays, Sundays, and holidays) that conditions return to *a non-hazardous condition*. Normally, any day on which Portland Public Schools are closed due to weather is considered sufficiently hazardous to postpone solid waste, *recycling, and yard debris* collection.
 - e. Hours for Collection Activity. Franchisee may not transport any solid waste, including recyclable *materials and yard debris*, through the streets *of the City* except between the hours of 6:00 a.m. and 5:00 p.m.
 - f. Maywood Place Receptacles. Franchisee shall pick up the *solid waste* receptacles along Maywood Place at no extra charge to the City.

Section X. Recycling. In consideration of the franchise herein granted, Franchisee shall provide a recycling program as follows:

- A. Collection of Properly Prepared Source Separated Recyclable Materials And Yard Debris. The Franchisee shall collect recyclable materials and yard debris that have been properly prepared and placed for collection by customers, with collection occurring on the same day of the week as solid waste collection. The Franchisee shall provide collection for yard debris and for all recyclable materials and yard debris stated on the Department of Environmental Quality's Principal Recyclable Materials List for the Metro Area.
- B. Customer Preparation. The Franchisee will provide customers with instructions for preparation of recyclable materials and yard debris to be collected by Franchisee.
- C. Disposal Prohibition. The Franchisee is responsible for transporting all recyclable materials and yard debris to a Metro approved facility. No such materials shall be delivered to a disposal facility for disposal as solid waste. Violation of this provision may be cause for termination of the franchise.
- D. Receptacles. The Franchisee shall collect all properly prepared recyclable materials in City-approved receptacles. The Franchisee shall leave at the point of collection the City-approved recycling receptacles and any of the customer's reusable receptacles, and any protective covers used to keep material dry. Used motor oil containers do not have to be left. The Franchisee shall be responsible for any damage caused in the course of collection to any customer provided receptacles that are reusable, unless the damage is caused from weather or normal wear and tear. If damage is caused other than in the course of collection, the Franchisee shall be allowed to charge a replacement fee for providing another receptacle.
- E. Improperly Prepared Recyclable Materials. When the Franchisee encounters improperly prepared materials, non-recyclable items, or a set out not located at the curb, the Franchisee shall collect only properly prepared recyclable material, leave the improperly prepared or non-recyclable materials, complete a notice describing the problem, and leave it in the customer's receptacle or securely attached to the solid waste receptacle. The Franchisee shall supply a copy of the required notice and documentation to the City upon request.
- F. Cleanup on Route. The Franchisee shall make a reasonable effort to pick up all recyclable material blown, littered, and broken subsequent to being placed for collection by the customer. When encountering blown, broken, or littered recyclables, if the Franchisee is reasonably certain of the residence where the material originated and that the problem is a recurring one, the Franchisee may leave the material at that residence, along with a notice describing the problem.

The date, address, and reason for choosing the particular residence shall be documented.

- G. Customer's Responsibility. It is the responsibility of the customer to place recyclable materials and yard debris at curbside, separate and distinct from *solid waste*, safely, securely, and properly prepared in order to prevent newspapers, corrugated cardboard, and other lightweight materials from being blown away. Customers shall not use plastic garbage bags to contain recyclables. Receptacles provided by Franchisee are to be left at the residence when a customer moves.
- H. Reporting Requirements.
1. Records and Reports. Franchisee shall maintain records and reports required by the City as noted herein and promptly respond to periodic requests for such records and reports which are directly pertinent to the franchise requirements and conditions.
 2. Data Collection and Reporting. The Franchisee shall report to the City information on any changes in storage or marketing provisions and contact information. The Franchisee is responsible to keep such other records and submit such other reports as may be required by other governmental agencies, such as the Oregon Department of Environmental Quality or Metro.

Section XI. Supervision. Service provided under the franchise shall be under the supervision of the City Council. The Franchisee shall, at reasonable times, permit inspection of its facilities, equipment, accounts, records, and personnel providing service.

Section XII. Rates and Billing Procedures.

- A. Rates for service shall be set by resolution of the City Council. In determining the appropriate rates to be charged by the Franchisee, the City Council shall consider:
1. The cost of performing the *solid waste management* service provided by the Franchisee.
 2. The anticipated increases in the cost of providing the service.
 3. The need for equipment replacement and the need for additional equipment to meet service needs; compliance with federal, state and local law, Ordinances and regulations; or technological change.
 4. The rates in other cities for similar service.

5. The public interest by assuring reasonable rates to enable the Franchisee to provide efficient and beneficial service to the residents and other users of the service.
 6. Whether the rates are just, reasonable, and adequate to provide necessary solid waste management service.
 7. Current and projected revenues and expenses.
 8. The services of management.
 9. A reasonable return to the Franchisee for doing business, based on a percentage of gross receipts.
 10. The net cost of reuse and recycling together with the cost of notice, promotion, and education of and for recycling and reuse.
 11. Such other factors as the City Council deems relevant.
- B. The maximum rates to be charged shall be set by resolution. Nonscheduled services may be provided at the reasonable cost of providing the service, giving consideration to the standards in this Section.
- C. Franchisee shall charge the City-established rate for each level of service. (See attached Exhibit A for approved solid waste management rates, which may be changed from time to time by City Council resolution.) Upon request, the City may modify rates for a class of customers, such as senior citizens.
- D. Franchisee shall bill customers *bimonthly*. The statement shall contain in writing: service address, dates of service being billed, service level being billed, the billing rate for that level of service, a dated listing of any additional charges incurred during the billing period including specials, “extras,” late charges or other service charges if any, the total amount due, and the date payment is due which is no less than 14 days from the date of the billing. In addition, the statement shall include the Franchisee’s name, address, and phone number.

Customers shall be allowed one change of service in the first quarter of a newly subscribed service at no cost. Additional changes, in excess of once a year, will be charged a “change fee.” All service level changes must be effective at the beginning of a *month*. A “vacation credit” shall be given for customers who stop service for a period longer than four weeks.

The Franchisee shall report to the City any service or customer information as requested by the City.

Section XIII. *Prohibitions and Customer Responsibility.* In addition to and not in lieu of compliance with ORS Chapters 459 and 459A, and other applicable laws and regulations, the following shall apply:

A. *Prohibitions.*

1. No person shall place in any *receptacle* hazardous waste or other items found on Metro's prohibited materials list.
2. No person shall:
 - a. Enter into a receptacle for the purpose of compacting the contents of the receptacle;
 - b. Remove a receptacle from the location where the receptacle was placed for collection, unless the person is authorized to do so by the generator;
 - c. Remove the lid from any receptacle and remove, disturb, compact, collect or scatter solid waste, recyclable material or compostable material placed in such receptacle or deposit material into such receptacle, unless the person is authorized to do so by the generator.
3. No person shall install an underground solid waste *receptacle* for storage and collection after the effective date of this Ordinance. The Franchisee is not required to service an underground container unless the person responsible for it places the container at curbside prior to the time of collection.

B. *Customer Responsibility.*

1. Preparation of Solid Waste, Recyclable Material and Compostable Material for Collection.
 - a. Solid waste, recyclable material and compostable material shall be drained of surplus liquid and placed in a leak-proof receptacle, except that receptacles for yard debris and compostable material may have vent holes for aeration.
 - b. Pet feces, sharp objects such as broken glass and knives, and any other solid waste with potential for causing injury or disease shall be securely wrapped in a manner to prevent exposure or injury to the public or employees of a Franchisee. No medical sharps shall be placed in a receptacle.

- c. Ashes shall be allowed to cool and shall be securely wrapped or bagged before being deposited in any solid waste receptacle.
 - d. All solid waste, with the exception of large, bulky items, shall be deposited promptly in a receptacle, or be so placed or located for collection by the Franchisee so as not to create a safety, nuisance, litter or health hazard. Shredded paper, packing peanuts and other materials that could create a litter problem shall be securely bagged before being placed in a receptacle.
 - e. Bulky solid waste may be placed in an appropriately sized receptacle in accordance with this Ordinance, so long as the accumulation does not create a nuisance or fire hazard.
 - f. Recyclable materials and yard debris shall be placed in City-approved receptacles in order to clearly indicate to recycling collection personnel that material is set out for recycling. Recycling setouts that are not in a City-approved receptacle are not required to be collected by Franchisee, with the exception of properly prepared extra yard debris. If a customer has extra yard debris in addition to yard debris contained in the City-approved cart, it may be placed for collection in kraft paper bags, biodegradable plastic bags or bundled and securely tied with twine, with said bags or bundles not to exceed 45 pounds. Customers shall place glass in the Franchisee approved bin.
 - g. Source separated recyclable material, yard debris or compostable material shall be prepared and placed in conformance with the rules adopted by the City for the purpose of mitigating or addressing public health, public safety or pest concerns.
 - h. Solid waste, recyclable materials, and yard debris must fall loosely from the receptacle in which they are contained when emptied. The Franchisee shall not be responsible for digging the contents out of a receptacle.
 - i. 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.
2. 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 provided by Franchisee shall comply with the manufacturer's

specifications.

- b. Except for drop boxes and recycling 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, recyclable material, yard debris, or compostable material. Receptacles used for the disposal of yard debris and compostable materials may contain vent holes for the purpose of aeration. The area around such receptacles shall be kept free from accumulated waste. The Franchisee shall provide periodic maintenance to receptacles owned by Franchisee.
 - c. Solid waste placed in a receptacle that is not designed for emptying by mechanical means shall not exceed a weight of 55 pounds, including the weight of the receptacle and its contents.
 - d. Receptacles designed for emptying by mechanical means shall not exceed a weight of 145 pounds for 90 gallon receptacles, 105 pounds for 60 gallon receptacles, 75 pounds for 35 gallon receptacles, and 35 pounds for 20 gallon receptacles, including the weight of the receptacles and their contents.
3. Placement of Receptacles for Collection by Franchisee.
- a. Receptacles containing solid waste, recyclable materials, yard debris, or compostable materials 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 where such placement would be a hazard to pedestrians or the motoring public.
 - b. All receptacles shall be placed at the curb or roadside by the generator prior to collection time.
 - c. 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.
 - d. Placement of receptacles at curbside or roadside are limited to a time period of 24 hours prior to collection and 24 hours after collection.

- e. Receptacles shall be kept outside of any locked, latched, bolted or hooked enclosure, when placed out for collection by a Franchisee.
 - f. No person shall block service access to a receptacle that has been placed for collection.
4. Special Service. Where a customer requires an unusual volume of service of a special type of service requiring substantial investment in equipment, the Franchisee may require a contract with the customer as necessary to finance and assure amortization of such equipment. The purpose of this provision is to assure that such equipment not become a charge against other rate payers who are not benefitted.

Section XV. Community Cleanup Days. The Franchisee will provide two (2) days, spring and fall, for yard debris clean-up at no charge for receptacles and crew. *The City will be responsible for paying the disposal costs.*

Section XVI. Right of Pass Through of Additional Costs. If Franchisee incurs extraordinary expenses, it has a right to come to the Council and ask for those expenses to be passed through to the rate payers. Examples of these extraordinary expenses include, but are not limited to, fuel cost increases and Metro fee increases. Likewise, if expenses become reduced, the City has a right to ask for these expense reductions to be passed through to the rate payers, if such an expense reduction has not been consumed by other cost considerations in Section XII of this Ordinance.

Section XVII. Payment of Services.

- A. The Franchisee will bill for solid waste management service performed.
- B. Any person who receives solid waste management service from the Franchisee shall be responsible for payment of that service in accordance with the approved rates for the service received.
- C. It shall be the responsibility of the property owner to pay for and provide all solid waste management service through the Franchisee to customers at non-owner occupied property.
- D. The Franchisee may refuse solid waste management service to any customer if the customer has not paid within thirty (30) days of the billing due date. In no event, however, shall the Franchisee terminate said service without first notifying the customer in writing of the intention to terminate service not less than seven (7) days prior to the date of intended termination of service.

1. This notice may be securely attached to the customer's solid waste receptacle. The date and address shall be documented.
 2. The Franchisee shall supply a copy of the required notice and documentation to the City upon request.
- E. If approved in the rate schedule, the Franchisee may charge a start-up charge for a new service, a restart charge to any customer who has been previously terminated for failure to pay for service, and a late charge for any customer who has not paid their bill within thirty (30) days of billing.

Section XVIII. Suspension, Modification or Revocation of a Franchise.

- A. The City may suspend, modify or revoke this franchise upon the following conditions:
1. Failure to provide solid waste management service as required in this Ordinance or otherwise comply with the provisions of this Ordinance after twenty (20) days written notice and a reasonable opportunity to comply shall be grounds for modification, suspension, or revocation of the franchise.
 2. After written notice from the City that such grounds exist, the Franchisee shall have not less than twenty (20) days from the date of mailing of the notice in which to comply or request a public hearing before the City Council.
 3. At a public hearing, the Franchisee and other interested persons shall have an opportunity to present oral, written, or documentary evidence to the City Council.
 4. If the Franchisee fails to comply within the time specified, or if a City Council hearing is held with the order of the City Council entered upon the basis of findings at the public hearing, the City Council may suspend, modify, or revoke the franchise or make such action contingent upon continued noncompliance.
- B. In the event the City Council finds an immediate and serious danger to the public through creation of a health hazard, it may take action within a time specified in the notice to the Franchisee and without a public hearing prior to taking such action.
- C. If due to a strike or other event, the City Council finds an immediate, serious danger to the public that creates a health hazard or serious public nuisance, the City Council may, after a minimum of twenty-four (24) hours actual notice to the Franchisee, authorize another person to

temporarily provide service under this Ordinance; or, the City may provide such service. In any event, the Franchisee shall, as a condition of its franchise, attempt to provide any necessary facilities or equipment that it might have available for providing such service. In the event the power under this Section is exercised, the approved charges for the service shall prevail and the Franchisee shall continue to bill and collect the approved rate for such services, but shall reimburse the City or the person authorized by the City to temporarily provide service for their actual cost.

Section XIX. Appeals.

- A. Any action or determination by Franchisee under or pursuant to this Ordinance may be appealed to the City Council.
- B. Any action or determination of the City Council under this Ordinance may be appealed to a court of competent jurisdiction.

Section XXI. City Enforcement.

- A. The City may enforce the provisions of this Ordinance by administration, civil or criminal action, or any combination as necessary to obtain compliance with this Ordinance. The City Council may take such legislative action as is necessary to support the Ordinance and the franchise granted. The Franchisee may enforce payment or protect its rights by appropriate civil action.
- B. Any finding by any court of competent jurisdiction that any portion of this Ordinance is unconstitutional or invalid shall not invalidate any other provision of this Ordinance.

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Section XXII. Emergency Clause. In view of the necessity for solid waste management service and to better promote the safety, health, and welfare of the citizens of Maywood Park, an emergency is hereby declared to exist, and this Ordinance shall take effect immediately upon passage by the Maywood Park City Council.

Passed by the Maywood Park City Council at a meeting thereof on the _____ day of _____, 2011.

VOTE: YEA _____ NAY _____ ABSTENTION _____

Mayor

ATTEST:

City Recorder

ACCEPTANCE BY HEIBERG GARBAGE & RECYCLING, LLC
this _____ day of _____, 2011.

By: _____
President