

Council Business Meeting

February 5, 2019

Agenda Item	Solid Waste Franchise Ordinance Modification – 2 nd Reading	
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SUMMARY

The City of Ashland has a current franchise agreement for solid waste and recycling collection services with Recology Ashland that is executed via ordinance. The consumer price index (CPI) utilized in the current franchise ordinance to determine annual rate adjustments has been discontinued and is obsolete. The proposed ordinance rectifies that with the replacement of the now outdated CPI-U with a new index, the CPI-Pacific.

This proposed ordinance modification only changes the index used to calculate solid waste and recycling rates and does not alter the existing rates, which are separately approved by Council annually via resolution.

POLICIES, PLANS & GOALS SUPPORTED

N/A

PREVIOUS COUNCIL ACTION

At its January 15, 2019 Business Meeting, Council approved the first reading of this CPI replacement ordinance with unanimous approval.

Council adopted the existing franchise agreement contained in ordinance #3090 in October of 2013 which repealed ordinances 2829 and 2582 as well as an accompanying resolution 2013-32 establishing administrative operations and rules and service rates for the solid waste and recycling collection franchise.

Council has also annually approved rate adjustment resolutions consistent with both the franchise agreement ordinance and administrative operations and rules resolution each year since 2014.

BACKGROUND AND ADDITIONAL INFORMATION

The current solid waste and recycling collection franchise agreement is a ten year agreement. Each year after the initial term, the agreement renews automatically for an additional seven year period, unless terminated under terms specified in the franchise ordinance.

One of the key elements of the franchise agreement is the process and methodology utilized to develop and adjust service rates. A consumer price index (CPI) is utilized to allow for incremental and predictable rate adjustments rather than the past history of intermittent, but significant rate increases.

The CPI specified in this franchise agreement was a common and often utilized Consumer Price Index for All Urban Consumers (CPI-U). City and Recology Ashland staff met several times since the CPI-U was announced to be discontinued and researched a variety of potential replacement indexes that would provide equal or better representation of cost drivers impacting expenses incurred by Recology Ashland to provide the services specified in the franchise agreement. Both City and Recology Ashland staff determined that the newly created CPI-Pacific

regional index best fits as a replacement to the CPI-U. Other “finalists” included the Seattle-Bellevue index, the San Francisco index and the larger West Region index.

The Pacific index is recommended due to its larger geographic area which takes data samples from eleven areas within the five state region that it covers providing a good balance of being broad enough to minimize one particular market fluxuation but not so broad that it doesn’t accurately represent actual regional cost changes effectively.

Several documents from the US Bureau of Labor Statistics are attached for additional reference.

FISCAL IMPACTS

The recommendation to adopt the newly created CPI-Pacific index does not impact existing solid waste and recycling collection service rates and is intended to provide an equivalent index to use for future rate adjustment calculations that are completed and presented to Council annually in March, consistent with the rate adjustment process and methodology described in section 8 of franchise ordinance 3090.

STAFF RECOMMENDATION

Staff recommends Council approve second reading of the replacement of the CPI-U with the newly created CPI-Pacific.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

- 1) I move to adopt by second reading an ordinance modifying a franchise agreement for solid waste management and collection within the City of Ashland and repealing ordinance 3090.

REFERENCES & ATTACHMENTS

Attachment 1: Draft Ordinance replacing ordinance 3090 (inclusion of CPI-Pacific)

Attachment 2: US Bureau of Labor and Statistics – CPI Revisions for 2018 data sheets

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ORDINANCE NO. 3172

**AN ORDINANCE MODIFYING A FRANCHISE AGREEMENT FOR
SOLID WASTE MANAGEMENT & COLLECTION WITHIN THE CITY
OF ASHLAND AND REPEALING ORDINANCE 3090,**

WHEREAS, Oregon Revised Statutes Chapter 459 grants the City the authority to regulate solid waste collection and mandates the development of a recycling program; and

WHEREAS, the City desires to insure efficient and comprehensive materials waste management and collection services are available to all residents, businesses and organizations in the City

WHEREAS, ordinance 3090, adopted by Council October 1, 2013, contained a reference in section 5.8 that established the use of the Consumer Price Index for All Urban Consumers (CPI-U) as the means to adjust future solid waste and recycling rates that has been discontinued and thereby needs to be updated to reflect a currently available index for future rate adjustment requests.

THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:

SECTION 1: Title. This ordinance shall be titled and referred to as the “Solid Waste Management Franchise Ordinance”.

SECTION 2: Purpose. It is the policy and purpose of the City of Ashland to protect the health, safety and welfare of the citizens and physical environment of Ashland through the regulation of solid waste management. This regulation will:

- a) Insure safe, economical, efficient and comprehensive solid waste management services (SWMS) as further defined in this Ordinance;
- b) Assist the community in reaching and surpassing recycling and waste diversion rates of the Jackson County waste shed;
- c) Insure fair and equitable service rates and charges across all customer classes to achieve safe and efficient collection, transportation and recover of solid waste, recyclables and compostable materials;
- d) Meet or exceed all applicable Oregon Revised Statutes (ORS) 459 regulations relating to Solid Waste Management prescribed to local jurisdictions and their authorized franchisee; and
- e) Insure consistent and responsive service and communication with citizens regarding solid waste management operations, education and requirements including waste prevention,

1 product life cycle impacts, waste diversion opportunities, recycling best practices and
2 standards and general waste shed stewardship.

3 **SECTION 3: Scope.** Services defined, regulated and authorized in this ordinance are applicable
4 only within the city limits of the City of Ashland and all future urban growth boundary
5 annexations occurring during the term of this ordinance.

6 **SECTION 4: Definitions.** Except where the context clearly indicates a different meaning, or
7 where a term is defined below, definitions contained within ORS 459.005 at the time of adoption
8 or as further amended in the future, and regulations promulgated under state law are applicable to
9 this ordinance.

9 **Administrative Operations Standards and Rules**

10 All standards and rules approved by resolution of Council defining specific operating rules
11 and procedures that support and insure compliance with this Ordinance.

12 **Affiliated Company**

13 Any company which shares expenses and/or revenues with the Franchisee with respect to the
14 services under this Franchise and is: 1) the parent company (corporation, partnership or
15 limited liability company) of Franchisee; or, 2) any subsidiary of such parent company; or, 3)
16 any company of which thirty percent (30%) or more of the common stock or control is owned
or controlled by Franchisee; or Franchisee's share holders; Examples of such shared costs
include, but are not limited to: labor, equipment, vehicles, insurance, or administrative costs.

17 **Allowable Expenses**

18 Those expenses incurred by Franchisee in the performance of this Franchise that are allowed
19 by the City as reimbursable by the ratepayer as enumerated below. Allowable Expenses are
20 allowable only to the extent that such expenses are known and measurable, calculated
21 according to Generally Accepted Accounting Principles (GAAP) on an accrual basis, and
22 comply with the cost allocation methodology contained within this ordinance to the
23 Franchisee's operations within the City, do not exceed the fair market value of comparable
goods or services, and are commercially reasonable and prudently incurred by the Franchisee
solely in the course of performing its obligations under the Franchise. Allowable expenses,
shall include but not be limited to the following:

- 24 a. The costs of complying with all laws, regulations or orders applicable to the
25 obligations Franchisees under federal, state or local law, including this ordinance, as
26 well as costs for financial reporting, accounting and regulatory processes associated
27 with or required by this franchise or under law; as now or hereafter amended;
- 28 b. Disposal costs;
- 29 c. Labor costs, including operational and supervisory labor, payroll taxes, workers'
30 compensation, and benefits, as well as third party transportation costs;
- d. Vehicle and equipment expenses, including vehicle registration fees, motor fuel, oil,
tires, rental charges and/or operating lease payments and repairs and maintenance;

- 1 e. Expenses of maintaining other capital assets, including rental charges and/or
- 2 operating lease payments and repair and maintenance, to include container
- 3 maintenance and repair costs;
- 4 f. Performance bonds and insurance in at least the amounts and coverages required by
- 5 the City;
- 6 g. All administrative and management costs and expenses reasonably allocated for the
- 7 services required under this Franchise, including, but not limited to compensation,
- 8 management fees, and benefits for officers and employees, payroll taxes, data
- 9 processing, billing, equipment or facility rental or lease costs, supplies, finance and
- 10 accounting, administration, human resource and labor management, rate analysis, and
- 11 regulatory compliance;
- 12 h. Utilities;
- 13 i. Training, worker safety and employee development expenses;
- 14 j. Promotion and public education costs;
- 15 k. Depreciation and amortization of capital assets, including any necessary stand-by or
- 16 back-up equipment used on a regular and ongoing basis in the provision of services
- 17 under this Franchise over standardized economic useful lives of the various assets;
- 18 l. Outside professional fees and costs, limited to two percentage points of revenue,
- 19 unless an extraordinary circumstance exists;
- 20 m. Interest expense, other than interest paid with respect to route or Franchise
- 21 acquisition, that is not in excess of market rates ordinarily charged for the various
- 22 types of financing required for purchases or leases;
- 23 n. All surcharges, taxes or fees, other than state or federal income taxes or franchise
- 24 fees, which are imposed upon the Franchisee or levied by federal, state or local
- 25 government in connection with Franchisee's provision of collection services under
- 26 this Franchise;
- 27 o. Direct write-off charges for bad debts; and
- 28 p. Franchise fees assessed by the City.

20 Allowable expenses as defined above shall be reasonable if they are comparable with the
 21 expenses incurred by similarly situated solid waste and recycling collection companies on the
 22 West Coast of the United States.

23 **Automated Collection System**

24 A type of collection system that utilizes standardized roll carts and mechanically assisted
 25 collection equipment designed to minimize direct human handling of customer waste set out
 26 for collection.

26 **Bulky Wastes**

27 Large items of solid waste such as appliances, furniture large auto parts, trees, branches
 28 greater than four inches in diameter and 36 inches in length, stumps and other oversized
 29 wastes whose large size precludes or complicates their handling by normal collection,
 30 processing or disposal methods.

30 **City**

The existing city limits and future annexations of the City of Ashland, OR.

1
2 **City Council or Council**

3 The City Council of the City of Ashland. **Commercial**

4 Stores; offices, including manufacturing and industrial offices; restaurants; warehouses;
5 schools; colleges, universities; hospitals; and other non-manufacturing entities; manufacturing
6 entities, but not including multifamily or residential condominium complexes.

7
8 **Container**

9 A receptacle used to store solid waste or recyclable materials that is designed for on-site
10 unloading into a closed-bodied collection vehicle in which the contents of the receptacle are
11 mixed with the contents of other similar receptacles.

12 **Construction and demolition debris**

13 Used or discarded construction materials removed from a premise during construction,
14 demolition or renovation of a structure.

15 **Cost Allocation**

16 The following allocation methodology shall be used to determine expenses attributable to
17 services rendered for City of Ashland solid waste management services franchise operations.

18 1) Residential and commercial labor hours

19 The Franchisee will perform two annual surveys to estimate the time spent in each
20 jurisdiction by residential and commercial route. Total annual hours will be estimated by
21 jurisdiction for residential and commercial routes based on the two annual surveys. The
22 annual total hours will be used to allocate labor and benefits, fuel, oil, maintenance,
23 vehicle and container leases, vehicle licenses, and route costs by jurisdiction for
24 residential and commercial services.

25 2) Debris box labor hours

26 The Franchisee will estimate the average time spent per load by jurisdiction. This average
27 will be applied to the actual annual load count by jurisdiction to calculate an annual total
28 for each jurisdiction. The annual total hours will be used to allocate labor and benefits,
29 fuel, oil, maintenance, vehicle and debris box leases, vehicle licenses, and route costs by
30 jurisdiction for debris box.

3) Yardage

Yardage by jurisdiction will be estimated by subscribed volumes for residential and
commercial services and by box size for debris box service. This yardage will be used to
allocate disposal costs by jurisdiction.

4) Residential and commercial weekly lifts

The Franchisee will use two surveys to estimate the number of weekly services by
jurisdiction. This measure will be used to allocate all other costs by jurisdiction.

5) Direct cost

1 Franchise fees and other costs directly related to a specific jurisdiction will be applied to
2 the appropriate jurisdiction.

3 **Curbside/Roadside**

4 A location within three (3) feet of public right-of-way. This does not allow the garbage or
5 recycling receptacle to be placed on the inside of a fence or enclosure even if the receptacle is
6 within three (3) feet of said road or roads. For residences on “Flag Lots”, private roads or
7 driveways, “Curbside/Roadside” shall be the point where the private road or driveway
intersects a City Road, Public Access Road, State Road or Federal Road.

8 **Customer**

9 Individuals, groups, businesses, corporations or other recognized entity receiving solid waste
management services from the franchisee within the City of Ashland.

10 **Customer Classification**

11 List and definition of the different groupings utilized for rate making; i.e. residential,
12 commercial, municipal, etc.

13 **Depot**

14 A facility for transferring containerized solid waste, recyclable materials or yard debris from
15 one mode of transportation to another. The term also refers to a place for receiving source-
separated recyclable materials.

16 **Disabled Customer**

17 A subscription customer in which all adult household members possess a DMV issued
18 handicapped parking sticker/placard.

19 **Disposal Site**

20 Land and facilities used for the disposal, handling or transfer of, or resource recovery from
21 solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment
22 facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations,
23 resource recovery facilities, incinerators for solid waste delivered by the public or by a solid
24 waste collection service, composting plants and land and facilities previously used for solid
25 waste disposal at a land disposal site; Disposal site does not include the following: a facility
26 authorized by a permit issued under ORS 466.005 to 466.385 to store, treat or dispose of both
27 hazardous waste and solid waste; a facility subject to permit requirements of ORS 468B.050
or 468B.053; a landfill site which is used by the owner or person in control of the premises to
dispose of soil, rock, concrete or other similar non decomposable material, unless the site is
used by the public either directly or through a solid waste collection service; or a site operated
by a wrecker issued a certificate under ORS 822.110.

28 **Drop Box**

29 A single receptacle used to store solid waste or recyclable materials that is designed to be
30 removed from the generator’s site on the back of a roll-off truck for unloading at a disposal
site, material recovery facility, or other storage or processing facility. The contents of the

1 receptacle are not mixed with the contents of other similar receptacles until delivery to a
2 Disposal Site.

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4 **Force majeure**

5 Acts of god, fire, landslides, lightening, storms, floods, freezing, earthquakes, epidemics,
6 volcanic eruptions, public riots, civil disturbances, acts of the public enemy, wars, blockades,
7 embargoes, or acts of civil or military authority, breakage, explosions or accident to machines
8 or other materials, pipelines or materials, governmental restraint, unavailability of a disposal
site and any other event which could not with reasonable diligence be controlled or prevented
by the party affected by the event.

9 **Franchise**

10 A contract with the City allowing the use of public right-of-way to collect and transport solid
11 waste.

12 **Franchisee**

13 A person, persons, business or corporation who has been granted a franchise to operate within
14 the City of Ashland pursuant to this Ordinance.

15 **Generator**

16 A person, who by virtue of ownership, management or control, is responsible for causing or
allowing to be caused the creation of Solid Waste or Recyclable Materials.

17 **Gross Revenue**

18 "Gross Revenue" for any period shall mean:

- 19 1) Gross accrual-based billings by the Franchisee to customers for services provided under
20 this Franchise;
- 21 2) The allocated gain on the sale of fixed assets, the depreciation or amortization from
22 which, was an Allowable Expense under the terms of this Ordinance, and refunds, sales
23 proceeds or other reimbursements for any other expense that was an Allowable Expense
under this Ordinance, and
- 24 3) The accrual-based proceeds from the sales of recycled material collected within the
Franchise.

25 **Hazardous Waste**

26 Solid Waste or Waste that may, by itself or in combination with other waste, be explosive,
27 poisonous, caustic or toxic, or otherwise dangerous or injurious to human, plant or animal life,
as defined by ORS 466.005.

28 **Household Hazardous Waste**

29 Any discarded, useless or unwanted chemical, material, substance, or product that is or may
30 be hazardous or toxic to the public or the environment and is commonly used in or around
households. Household hazardous waste includes, but is not limited to, some cleaners,
solvents, pesticides, and automotive and paint products.

1 **Infectious Waste**

2 Infectious waste means biological waste, cultures and stocks, pathological waste, and sharps,
3 as defined in ORS 459.386

4 **Multifamily**

5 Any multi-dwelling building or group of buildings that (a) contain(s) five (5) or more
6 dwelling units on a single lot, such as apartments, condominiums, and mobile home parks
7 and (b) receives services on a per lot or per building basis, as opposed to a per unit basis.
8 Multifamily complex also includes certified or licensed residential care housing, such as
9 adult foster care homes, and group homes. Multifamily accounts are determined to be a
residential waste stream.

10 **Material Recovery**

11 Any process of obtaining from solid waste, by pre-segregation or otherwise, materials that
12 still have useful physical or chemical properties and can be reused or recycled for some
purpose.

13 **Material Recovery Facility**

14 A solid waste management facility that separates or stores materials for the purposes of
15 recycling from incoming, non-putrescible solid waste by using manual and/or mechanical
methods. It also means a facility that primarily accepts previously separated recyclables.

16 **Operating Margin**

17 Gross revenues minus allowable expenses within a given period.

18 **Organic Waste**

19 Materials that can be biologically synthesized by plants or animals from simpler substances,
20 are no longer suited for their intended purpose, and are readily broken down by biological
21 processes into soil constituents. Examples include, but are not limited to, food waste, yard
22 debris, contaminated paper, and putrescible materials that are generally a source of food for
bacteria.

23 **Putrescible Waste**

24 Solid waste containing organic material that can be rapidly decomposed by microorganisms,
25 and which may give rise to foul smelling, offensive products during such decomposition or
26 which is capable of attracting or providing food for birds and potential disease vectors such
as rodents and flies.

27 **Receptacle**

28 A can, cart, container, drop box, compactor or recycling bin or any other means of
29 containment of Solid Waste or Waste or Recyclable Materials.

30 **Recyclable Material, Recyclable, Recyclables**

1 Material that has or retains useful physical, chemical, or biological properties after serving its
2 original purpose(s) or function(s), and, is separated from solid waste by the generator or at a
3 material recovery facility.

4 **Recycling**

5 Any process by which waste materials are transformed into new products in such a manner
6 that the original products may lose their identity.

7 **Residence, Residential**

8 Any dwelling unit where at least 50 percent of the use of the entire building is for home use.

9 **Self-Haul**

10 Collection and transportation of solid waste from a commercial, multifamily, or residential
11 entity by the generator, owner or occupant of the property, rather than by a third party hired
12 to perform this function.

13 **Senior Discount Rate**

14 A discounted collection rate provided to customers that meet the discounted utility rate
15 provision of resolution 92-22 or future related amendments.

16 **Solid Waste or Waste**

17 The terms “solid waste” and “waste” are interchangeable. Solid waste shall include all
18 putrescible and non-putrescible waste, including but not limited to, garbage; compost;
19 organic waste; yard debris; brush and branches; land clearing debris; sewer sludge;
20 residential, commercial and industrial building demolition or construction waste; discarded
21 residential, commercial and industrial appliances, equipment and furniture; discarded,
22 inoperable or abandoned vehicles or vehicle parts and vehicle tires; manure; feces; vegetable
23 or animal solid and semi-solid waste and dead animals; and infectious waste. Waste shall
24 mean useless, unwanted or discarded materials. The fact that materials, which would
25 otherwise come within the definition of Solid Waste, may, from time to time, have value and
26 thus be utilized shall not remove them from the definition. The terms Solid Waste or Waste
27 do not include:

- 28 1) Recyclable materials or yard debris separated from solid waste and properly prepared for
29 collection;
- 30 2) Hazardous wastes as defined in ORS 466.005;
- 31 3) Materials used for fertilizer or for other productive purposes on land in agricultural
32 operations in the growing and harvesting of crops or the raising of fowl or animals;
- 33 4) Septic tank and cesspool pumping or chemical toilet waste;
- 34 5) Source separated, principal recyclable materials as defined in ORS 459A and the Rules
35 promulgated there under and under this Ordinance, which have been purchased or
36 exchanged for fair market value, unless the City declares a site of uncollected principal
37 recyclable materials to be public nuisance;
- 38 6) Applications of industrial sludges or industrial waste by-products authorized through a
39 Land Use Compatibility Statement or Management Plan approval and that have been
40 applied to agricultural lands according to accepted agronomic practices or accepted

- 1 method approved by the Land Use Compatibility Statement or Management Plan, but not
2 to exceed 100 dry tons per acre annually; and
3 7) Stabilized municipal sewage sludge applied for accepted beneficial uses on land in
4 agricultural, non-agricultural, or silvicultural operations. Sludge-derived products
5 applied for beneficial uses on land in landscaping projects.

6 **Solid Waste Management and Collection Services**

7 Prevention, reduction, management of the storage, collection, transportation, treatment,
8 utilization, processing and final disposal of solid waste; or recycling, reuse and material
9 recovery from solid waste; and facilities necessary or convenient to such activities.

9 **Source Separated Materials**

10 Recyclable materials that have been separated by type of recyclable material and removed
11 from the solid waste stream by the person who last used the recyclable materials.

12 **Transfer Station**

13 A fixed or mobile facility, other than a transportation vehicle, where solid waste is deposited
14 temporarily after being removed from the site of generation but before being transported to a
15 final disposal location.

15 **Unallowable Expenses**

16 Shall include the following:

- 17 1) All charitable and political contributions;
- 18 2) Fines and penalties, including without limitation judgments for violation of applicable
19 laws, incurred by a licensee;
- 20 3) Payments for services provided by individuals related by blood or marriage or by
21 affiliated companies to a licensee to the extent that such payments exceed the reasonable
22 cost that would be charged by an independent third party to provide the substantially
23 equivalent service;
- 24 4) Accruals for future unknown regulatory changes;
- 25 5) Costs associated with purchase of other companies including, but not limited to,
26 employee stock ownership plan payments, goodwill, amortization of goodwill and
27 premiums on key-person life insurance policies;
- 28 6) Principal or interest payments on the acquisition of solid waste, recyclable materials and
29 yard debris collection routes; the purchase of equipment and/or facilities to the extent that
30 the price includes goodwill or a premium in excess of fair market value at the time of
acquisition; State and federal income taxes;
- 7) Fees paid to a Franchisee's Board of Directors;
- 8) Attorney's fees and related expenses resulting from:
 - a. Any judicial proceeding in which the city and a Franchisee are adverse parties, unless
the Franchisee is the prevailing party;
 - b. Any judicial proceeding in which a Franchisee is ruled to be liable due to willful
misconduct or gross negligence or in violation of law or regulation, excluding judicial
proceedings involving traffic accidents;

- 1 9) Operation of community access recycling depot not physically located or operated in
2 conjunction with the Franchisee's transfer station
- 3 10) Recycling operations expenses already calculated and incorporated into Franchisee's
4 tipping fees
- 5 11) Any other expenses defined as "unallowable" and approved by mutual consent of the
6 Franchisee and the council.

7 **Utilization**

8 The terms utilize, utilization, or utilization of Solid Waste or Waste shall mean productive
9 use through recycling, reuse, salvage, resource recovery, energy recovery, or land filling for
10 reclamation, habitation, or rehabilitation of land.

11 **Waste Evaluation**

12 An evaluation completed by the City or a Franchisee of a commercial entity's waste
13 management practices, for the purpose of providing guidance to a multi-family or
14 commercial customer on effective means to reduce waste, increase recycling, and purchase
15 recycled products.

16 **Yard Debris**

17 Grass clippings, leaves, tree and shrub prunings of no greater than four (4) inches in diameter
18 or similar yard and garden vegetation. Yard debris does not include such items as: dirt, sod,
19 stumps, logs, tree and shrub prunings greater than four (4) inches in diameter, rocks, plastic,
20 animal waste or manure, cat litter, potting soil, prepared food wastes or nonputrescible
21 material.

22 **SECTION 5: Franchise Agreement.**

23 **5.1 Franchise Award**

24 No person shall do business in the collection and transport of solid waste generated within the
25 City without a current, valid City franchise. A Franchise to provide solid waste management and
26 collection services, including recyclable materials and yard debris in the service area of the City
27 shall be granted only after a determination of need for the service.

28 The determination of need is the responsibility of the City Council, which will seek the best
29 balance of the following objectives:

- 30 1) To insure safe, efficient, economical, equitable and comprehensive solid waste service;
- 31 2) To avoid duplication of service that will cause inefficiency, excessive use of fuel,
32 increased traffic, and greater wear on streets;
- 33 3) To provide service in areas of marginal return;
- 34 4) To promote and encourage recycling and resource recovery;
- 35 5) To improve the likelihood of the Franchise holder making a reasonable profit and thereby
36 encourage investment in modern equipment;
- 37 6) To cooperate with other governmental bodies by recognizing their service arrangements;
38 and
- 39 7) To otherwise provide for the service in a manner appropriate to the public interest.

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2 **5.2 Renewal of Franchises**

3 In granting a franchise renewal, the Council may, in addition to the above, consider the
4 following:

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

15 Franchises granted by the City shall be non-exclusive, however it is understood that during the
16 term of franchises granted under this Ordinance, the City shall not grant any other person a
17 franchise for Solid Waste Management Services unless there is a showing by the applicant of the
18 need for such additional service in the proposed service area. As to such application(s) the
19 existing Franchisee shall have first right of refusal to provide such services.

20 In evaluating whether a need exists for additional service, the City Council may consider, among
21 any other criteria deemed relevant by the City Council, the following items:

- 22 1) An increase in the population of the City;
- 23 2) An extension of the boundaries of the City;
- 24 3) Intensive residential, commercial or industrial development within the boundaries of the
25 City;
- 26 4) Changes in solid waste technology and/or recycling collection technology that could
27 substantially improve collection service or reduce collection costs to residents of the City;
- 28 5) The effect that an additional franchise would have on each existing Franchisee's ability to
29 meet the City's service standards and maintain a fair return on its investment;
- 30 6) Changes in federal or state laws, rules or regulations that substantially affect solid waste
or recycling collection requirements.
- 7) The Franchisee cannot or will not perform or subcontract the proposed service.

This ordinance does not prohibit any person from self-hauling solid waste and/or recyclables. A generator may self-haul his or her own material, and a generator's contractor may haul materials that are generated as a direct result of the service-provider's activity. For example, landscapers, roofers, and remodelers may self-haul materials, but may not contract with third parties other than Franchisees for collection and transport.

5.3 Franchise Terms

A franchise to provide solid waste management and collection services shall be granted for a period of ten (10) years, beginning December 1, 2013 with subsequent seven year terms

1 renewing annually, unless prior notice of request to terminate is submitted by either the City or
2 the Franchisee a minimum of 90 days prior to the renewal date.

3 **5.4 Franchise Fee**

- 4
- 5 1) Annual Fee. In consideration of the rights and benefits of the terms of this franchise,
6 Franchisee shall pay to the City each year during the life of this franchise beginning
7 November 1, 2013 an annual fee derived from revenue received by that franchisee from
8 Solid Waste Management and Collection Service boundaries of the City. The franchise
9 fee shall be five percent (5%) of gross revenues.
- 10 2) Quarterly Payments. The franchise fee required in 7(a) above shall be paid quarterly,
11 and, shall be due and payable within thirty (30) days of the end of the calendar quarter.
12 Accompanying the payments described above, Franchisee shall file with the City
13 Administrator or designee, a statement showing the amount of the gross revenues
14 received by that company within the City for the calendar quarter immediately preceding
15 the calendar quarter in which such statement is filed. There will be a reconciliation of
16 final gross revenues on the quarterly report ending September 30th of each year for the
17 prior fiscal period, which is October 1st through September 30th.
- 18 3) Review of Records; Annual Audit. Franchisee shall make available for inspection,
19 copying and review by the City Administrator or designee at any time during normal
20 work hours all records in the Franchisees' possession that the City Administrator or
21 designee deems relevant to verifying the accuracy of fees paid to the City, to regulating
22 rates or to carrying out any responsibility that the Franchisees or the City has under this
23 Ordinance.

24 No more often than once during any twelve (12) month period, City may request an audit
25 of the books, records and accounts of Franchisee by a certified public accountant or such
26 other professional chosen by the City to verify accuracy of fees paid to the City, subject
27 to the approval of the audited Franchisee; provided, however, that such approval shall not
28 be unreasonably withheld. Franchisee agrees to have their books, records and accounts
29 audited and further agree to pay for such auditing services. The report of the certified
30 public accountant or other professional shall be conclusive and final. In the event such
audit report discloses any difference of payment due either to the City or Franchisee
through error or otherwise, such payment shall be due and payable within thirty (30) days
of discovery or determination of the error. If payment is owed by the City to Franchisee,
the City shall reimburse the Franchisee for payment for the portion of the services
attributable to the audit of the Franchisee receiving such payment from the City.

If payment is owed by Franchisee to the City, and the difference of payment due is more
than the greater of five hundred dollars (\$500) or two and one-half percent (2½ %) of the
Franchisee franchise fee, or if the Franchisee is found to have violated any other term or
condition of the franchise then, notwithstanding any other provision of this Section or the
franchise, the City may request an additional audit during the next twelve (12) month
period with all expenses of such additional audit paid by such Franchisee.

- 1
2 4) Late Payments; Interest. Should Franchisee fail or neglect, for thirty (30) days after any
3 quarterly payment shall become due and payable, to make the quarterly payment, the City
4 shall provide written notice of failure of payment to Franchisee. Upon notification of
5 failure to pay, Franchisee will have thirty (30) days to remit payment to the City. If
6 Franchisee fails to pay within said thirty (30) day period, the City may charge interest
7 retroactive to the due date, at a rate of nine percent (9%) per annum, and may at its option
8 either continue the franchise in force and proceed by suit or action to collect the payment,
9 or declare a forfeiture of the franchise because of the failure to make payment, but
10 without waiving its right to collect earned franchise payments and interest.

8 **5.5 Franchise Administrative Operations Standards and Rules**

9 The Solid waste management and collections franchisee will operate within operations standards
10 set by resolution of Council. Standards and rules will be developed across all customer
11 classifications including, but not limited to, the following:

11 Service Rates and Fees

- 12 a. Rate and fee schedule for all collection services, programs by customer classification

13 Collections

- 14 a. Regular, holiday and hazardous weather schedules
15 b. Procedures for missed, bulky waste, vacation hold, etc collections
16 c. Collection receptacle standards and requirements
17 d. Receptacle location requirements for pick-up
18 e. Private property access rights and limitations
19 f. Responsibilities of the customer
20 g. Vehicle minimum equipment, maintenance standards, identification/signage and
21 standards

20 Customer Service & Communications

- 21 a. Billing standards and frequency
22 b. Billing/collection procedures for past due/non-pay accounts
23 c. Descriptions, objectives and targets for all services provided across all customer
24 classifications
25 d. Solid waste related programs, education and event promotion
26 e. Complaint/dispute resolution procedures
27 f. Community Communications and outreach plan coordination with City outlining roles
28 and responsibilities of City and Franchisee.

26 Reporting (in addition to Ordinance required reporting)

- 27 a. Efficiency analysis reports for routes, billing/collections, etc
28 b. Revenue and subscription volume reports by solid waste category (trash, recycle, yard
29 waste) for various customer classifications (residential, and commercial.). Debris box
30 volumes will be measured by dump and return and/or pull activities.
c. Customer counts and trends over time for residential and commercial customer
classifications Debris box load counts will be reported in lieu of debris box customer
counts.

1
2 **5.6 Subcontracting Services**

3 A Franchisee may contract with another person to provide specific components of solid waste
4 management and collection services within the Franchisee's service area with the written
5 approval of the City Administrator or designee, provided that the subcontract does not amount to
6 a transfer of the collection franchise and the subcontracting party agrees to:

- 7
- 1) Abide by the conditions of this ordinance and associated resolutions; and
 - 2) In written application to the City, show how they will meet the criteria applying to the current franchise

8 **5.7 Transfer of Franchise**

9 A proposed assignment or transfer of a Franchise must be requested by the Franchisee if the
10 following occur, but shall not be limited to:

- 11
- 1) A sale, exchange or other transfer of 50% or more of Franchisee's assets dedicated to service in the City;
 - 12 2) A sale, exchange, or other transfer of fifty percent (50%) or more of the outstanding
13 common stock of a Franchisee;
 - 14 3) Any reorganization, consolidation, merger, recapitalization, voting trust, pooling
15 agreement, escrow arrangement, liquidation or other transaction to which Franchisee or
16 any of its shareholders is a party which results in a change of ownership or control of
17 fifty (50%) or more of the value or voting rights in the stock of the Franchisee; and
 - 4) Any combination of the foregoing that has the effect of a transfer or change of ownership and control.

18 The Franchisee shall provide no less than 90 days' advance written notice to the City of any
19 proposed transfer or assignment. Except as specifically authorized by the City, the Franchisee
20 shall not assign any of its rights or delegate or otherwise transfer any of its obligations to any
21 other person without the prior consent of the City Council. Any such assignment without the
22 consent of City Council shall be void and any such attempted assignment shall constitute default
and grounds for termination of the Franchise.

23 If a Franchisee requests the City's consent to transfer the Franchise, the City shall act on such
24 request within sixty (60) days of the receipt of the Franchisee's written request together with all
25 information, as set forth below, required for the City's action on the request. The City and
26 Franchisee may consent in writing to additional time for the City to review and approve the
27 consent to transfer the Franchise. The City shall not unreasonably refuse to consent to an
28 assignment of the Franchise to a proposed assignee that has sufficient knowledge, experience,
29 and financial resources so as to be able to meet, to the satisfaction of the City Council, in its sole
30 discretion, all obligations of the Franchisee hereunder. An application to the City to consider a
sale or other transfer of a Franchise shall include the following:

- 1) A nonrefundable application fee of two thousand dollars (\$2,000) payable at the time of application to the City in advance to defray the City's anticipated expenses and costs resulting from the Franchisee's request;

- 1 2) Financial statements audited or reviewed by a Certified Public Accountant of the
2 Proposed Assignee's operations for the three immediately preceding operating years
3 together with any additional evidence of financial ability to perform its Franchise
4 obligations; and
- 5 3) A showing that the proposed Assignee meets all City criteria for the grant of a Franchise
6 as enumerated in this Ordinance.

6 **5.8 Establishment and Modification of Service Rates and Fees**

7 Except as set forth herein, the City Council may review and set rates on an annual basis by
8 Council resolution that considers the following goals:

- 9 1) Rates shall be established to the greatest extent practicable on a cost of service basis
10 based on the ordinance established cost allocation methodology.
- 11 2) Rates shall be adjusted annually by Council resolution equal to the percentage change in
12 the January to January Consumer Price Index for Pacific Division (CPI – Pacific)but not
13 to exceed the twelve percent operating margin cap. The City Administrator or designee
14 shall certify the CPI – Pacific rate in writing to Franchisee by March 1 of each year to
15 initiate the rate resolution.
- 16 3) Rates shall be adequate to provide an Operating Margin equal to ten percent (10%) of
17 Franchise-wide Gross Revenues; however, the City shall not be required to change rates
18 if the expected Operating Margin in the next future year falls between eight and twelve
19 percent of Gross Revenues. The ten percent target return on Gross Revenues is
20 considered sufficient to reflect the level of business risk assumed by the Franchisee, to
21 allow investment in equipment, and to ensure quality collection service.

22 Accordingly, the City shall have the authority to commission audits, reviews, or analysis of
23 Franchisee Annual Reports to validate submissions. The expected Operating Margin in a future
24 year would incorporate expected inflation factors, and the effect of known or expected increases
25 or decreases in expenses or revenues.

26 The rates charged by Franchisees shall conform to the most current Council resolution. Prior to
27 implementation, the Council must approve any interim rate for services not included in the
28 current resolution.

29 If the Franchisee notifies the City in writing that they believe a material change outside the
30 Franchisees' control has occurred, and the change will have an adverse effect on operating
margins, such that the next future year operating margins will be less than eight percent, a
material change will be deemed to have occurred. At that time, the City may undertake any type
of review it finds necessary to validate the existence of the material change and estimate its
effect on the operating margin. If the results of the review are such that no rate adjustment is
warranted, persons requesting the review shall reimburse the City for reasonable costs incurred
during the investigation at the time the next payment of franchise fees is due.

If the City believes that a material change has occurred that will result in next future year
operating margins falling under eight percent or over twelve percent, the City may undertake an
abbreviated rate review at its own expense.

1
2 **SECTION 6: Franchise Reporting Requirements.**

3 **6.1 Informational Reports**

4 Each Franchisee shall provide the City Administrator or designee by the last day of each quarter for the previous quarter:

- 5 1) A quarterly report listing the quantities of solid waste, yard waste and recyclable
6 materials by customer classification collected within the City during the previous
7 calendar quarter, the locations to which these materials were delivered, the number of
8 customer accounts, and other information requested by the City Administrator or
9 designee and mutually agreed upon with Franchisee.
10 2) A quarterly report listing the names and addresses of multi-family and commercial
11 customers that received waste evaluations during the reported quarter.
12 3) A summary of communication, marketing and educational outreach conducted by
13 Franchisee during the reported quarter.

14 **6.2 Quarterly Franchise Fee Reports**

15 Franchisee shall complete and remit to the City a Quarterly Franchise Fee report not later than
16 the last day of the month immediately following the end of the quarter.

17 At the time of payment of the quarterly Franchise Fees, the Franchisee shall file with the City
18 Administrator or designee, a verified statement of quarterly gross revenues for the period
19 covered by the tendered fee. Such statements shall be public records. Franchisee shall maintain
20 books and records disclosing the gross receipts derived from business conducted within the City,
21 which shall be open at reasonable times for audit by the City Administrator or designee.

22 Misrepresentation of gross revenue shall be deemed material and a breach of the Franchise
23 contract and shall be cause to initiate the process to terminate the franchise.

24 **6.3 Annual Franchise Reports**

25 Franchisees shall report revenues and expenses (allowable and unallowable), in an income
26 statement format, and provide a variety of information about customer counts, service levels,
27 disposal volumes, and recycling activities for all customer classifications and for all programs
28 identified in the Administrative Operations Standards and Rules resolution adopted by Council.

29 Franchisees shall report totals for all operations necessary to adequately verify compliance with
30 the cost allocation methodology as defined in this for expenses that share significant operational,
management, and administrative expenses with the City of Ashland Franchise. Resources
allocated from regional or corporate offices or affiliates shall be distributed to appropriate
expense line items, and, shall also be disclosed in a schedule describing total allocations and
their distribution to individual expense line items. All allocations from Affiliated Companies
must be described and must be equal to or less than the fair market value of similar goods and
services purchased from a non-affiliated company.

The report will also include a synopsis of the operating year, a description of the measures each
franchisee has taken in the preceding year to make its operation more efficient, a listing of the

1 efficiency measures which each Franchisee proposes to take in the next year, a composite table
2 showing the type and number of customer service complaints and a description of the measures
3 that the Franchisee has taken or is planning to take to correct the cause of commonly reported
4 complaints, and such other information as requested by the City Administrator or designee. The
5 report shall also describe and quantify communication, outreach and educational activities as
6 described in the Administrative Operations Standards and Rules resolution.

7 Franchisees may identify specific information submitted to the City in the Annual Report as
8 confidential. The City shall treat any information marked "Confidential" as such, and, shall not
9 subject the confidential information to public disclosure except as required by law. If the City
10 receives a request for disclosure of confidential information, the City Administrator or designee
11 shall notify the Franchisee within a reasonable time after receiving the request so as to allow the
12 Franchisee a reasonable opportunity to defend against the requested disclosure through
13 appropriate legal process.

14 **SECTION 7: Franchise Responsibilities and Requirements.**

15 **7.1 Access for Inspections and Delivery of Notices**

16 Franchisees shall make all company premises, facilities and records related to their solid waste,
17 recyclable materials and yard debris collection services (including, but not limited to: offices,
18 storage areas, financial records, non-financial records, records pertaining to the origin of any
19 solid waste collected by the Franchisee, receipts for sale or delivery of collected recyclable
20 materials, customer lists, and all records related to vehicle maintenance and safety which are
21 required under ODOT motor carrier requirements and regulations and ORS 767) available for
22 inspection by the City Administrator or designee within 24 hours of notice by registered mail.
23 Such inspections are only for purposes of enforcing this ordinance, and, are restricted to normal
24 business hours. During normal business hours, the Franchisee shall make all company premises
25 and facility accessible to City employees for delivery of any written notices.

26 Collection vehicles must be accessible for inspection during the normal operating hours for
27 collection, in addition to normal business hours. Where receptacles are stored in the public right-
28 of-way or when the City is inspecting a situation where the Franchisee is allegedly commingling
29 Recyclable Materials or Yard Debris with Solid Waste, the need for 24-hour notice does not
30 apply to inspection of receptacles or vehicles.

31 **7.2 Indemnification, Bond, and Insurance**

32 A Franchisee shall pay, save harmless and indemnify the City from any loss, damage, penalty or
33 claim against the City on account of or in connection with any activity of the Franchisee in the
34 operation of the Franchisee's solid waste collection business including activity by any approved
35 subcontractor providing solid waste management collections and services. If such suit shall be
36 filed against the City either independently or jointly with the Franchisee or its subcontractor to
37 recover for any claim or damages, the Franchisee upon notice to it by the City shall defend the
38 City against the action, and in the event of a final judgment being obtained against the City,
39 either independently or jointly with the Franchisee or its subcontractor, the Franchisee will pay
40 said judgment and all costs and hold the City harmless there from.

1 Franchisee shall furnish a performance bond, in a form approved by the City Attorney, by an
2 acceptable surety company in the amount of twenty-five thousand dollars (\$25,000.00), but may,
3 in lieu of a bond, furnish an irrevocable letter of credit or assign a savings account or deposit in
4 any federally insured financial institution in the amount of twenty-five thousand dollars
5 (\$25,000.00) on a form approved by the City Attorney. The Security shall guarantee faithful
6 performance of all the obligations contained herein with the premium for such bond or cost of
7 such assignment to be paid by the Franchisee furnishing the bond, letter of credit or making the
8 assignment.

7 A Franchisee shall maintain commercial general liability insurance on an occurrence basis in
8 such forms and with such companies as shall be approved by the City Attorney, which will cover
9 the Franchisee's business operation, including each vehicle operated by it. The insurance
10 coverage shall include not less than \$1,000,000.00 for one person, nor less than \$5,000,000.00
11 for bodily injury due to each occurrence, and not less than \$1,000,000.00 for damage to property
12 due to each occurrence and coverage of at least \$5,000,000 in the aggregate per occurrence. All
13 such insurance coverage shall provide a 30-day notice to the City Administrator or designee in
14 the event of material alteration or cancellation of any coverage afforded in the policies prior to
15 the date the material alteration or cancellation shall become effective. Copies of all policies
16 required hereunder shall be furnished to and filed with the City Administrator or designee prior
17 to the commencement of operations or the expiration of prior policies, as the case may be. The
18 Franchisee shall furnish proof annually to the City Administrator or designee that the insurance
19 remains in effect.

16 The provisions of this section, any bonds accepted by the City pursuant thereto, and any damage
17 recovered by the City hereunder shall not be construed to excuse unfaithful performance by the
18 Franchisee or limit the liability of the Franchisee under this ordinance or the Franchisee for
19 damages, either to the full amount of the bond, or otherwise.

20 **SECTION 8: Enforcement, Suspension, or Termination of Franchise.**

21 **8.1 Responsibility of City**

21 Franchisees are subject to the exercise of the police power of the City and to such regulations as
22 the City may provide by resolution, ordinance, rule or regulation.

23 **8.2 Enforcement of Standards**

24 The City Administrator or designee shall administer and enforce this ordinance and pursue
25 remedies for non-compliance as laid out within this ordinance. The City Administrator or
26 designee shall also administer and enforce Administrative Operations Standards and Rules as
27 adopted by Council. These standards and rules shall be enforceable with penalties allowed in
28 section 1.08 of the Ashland Municipal Code. Upon recommendation by the City Administrator
29 or designee, the Council may declare a Franchisee who fails to abide by the rules to be in default.

28 **8.3 Initiation of Enforcement Actions**

29 In addition to enforcement under State law, the City may prosecute any infraction as defined in
30 this Ordinance or the Rules issued hereunder, based on any information coming to the City, in
Ashland Municipal Court. The burden of proof is on the City to prove an infraction by a
preponderance of the evidence.

1
2 **8.4 Penalties for Infractions**

3 Each Franchise provision, including rules adopted hereunder, is subject to penalties as described
4 in section 1.08 of the Ashland Municipal Code for each day from the initial citation of the
5 offense that the offense continues to violate the terms of this ordinance or associated resolutions.

6 **8.5 Termination of Franchise for Default**

7 In addition to default for accrued penalties, upon recommendation by the City Administrator or
8 designee, the City Council may terminate a Franchise for the Franchise holder's default in
9 performing any material term or condition of the Franchise. An event of default also shall
10 include, but not be limited to entry of a judgment against the Franchise holder for material
11 misrepresentation or deceit committed against the City or a customer or entry of a judgment of
12 conviction (including conviction on a plea of no contest) against the Franchise holder or any
13 principal of same for a crime involving dishonesty.

14 Notice to a Franchisee of default shall be delivered to the Franchisee by certified mail requiring
15 the Franchisee to show cause in a public hearing before the City Council at a place and time to
16 be stated in the notice, but no earlier than 14 days from the date the notice is mailed, why the
17 Franchise should not be terminated.

18 At the hearing the Franchisee shall demonstrate the measures it has taken or commenced to cure
19 the default.

20 **8.6 Service Interruption**

21 Except for the right to refuse service for nonpayment or if Customer has attempted to improperly
22 dispose of Hazardous Waste in violation of the City's Standards and Rules as set forth in this
23 ordinance, Franchisees shall not interrupt service unless:

- 24
- 25 1) Access, roads, streets and highways necessary for collection operations are unusable or
26 unsafe and there are no alternative routes. Franchisees shall resume service within 24
27 hours after access is restored.
 - 28 2) A Force Majeure event occurs.

29 Upon the occurrence of a Force Majeure event that prevents or impairs a Franchisee's ability to
30 perform any of its Franchise obligations, the Franchisee shall:

- 31 1) Provide immediate notice, either verbal or written to the City Administrator or designee
32 of the nature of the event and extent and anticipated duration of Franchisee's inability to
33 perform any obligation under this Franchise. If verbal notice is given, then written notice
34 must be delivered to the City within 24 hours of verbal notice;
- 35 2) Commence immediately to develop, in communication and cooperation with the City, an
36 interim plan for the restoration of full performance; and
- 37 3) Take all such other reasonable actions requested by the City to assist the City in
38 protecting the public health and safety and to restore service as soon as practicable.

1 Labor unrest, including, but not limited to, strike, work stoppage or slowdown, sick-out,
2 picketing, or other concerted job action conducted by Franchisee employees or directed at the
3 Franchisee is not an event of Force Majeure, and the Franchisee shall be obligated to continue to
4 provide service notwithstanding the occurrence of any or all of events.

5 **8.7 City's Right to Perform Service**

6 Except as provided under Section 8.6, in the event that a Franchisee, for any reason whatsoever,
7 fails, refuses or is unable to collect or transport any or all solid waste for a period of more than
8 forty eight (48) hours, and if, as a result thereof, solid waste or recyclable materials should
9 accumulate in the City to such an extent that the City finds that such accumulation endangers the
10 public health, safety, or welfare, then the City shall have the right, but not the obligation, upon
11 twenty-four (24) hour prior written notice to the Franchisee, to perform or cause to be performed
12 collection services with its own or other personnel at the Franchisee's expense. This right shall
13 be in addition to and not in lieu of any other remedy available to the City. If necessary, the City
14 may take temporary possession of, and a Franchisee shall peacefully surrender, any or all the
15 Franchisee's land, equipment, and other property used or useful in the collection of Solid Waste
16 or Recyclable Materials until such time as the emergency is resolved. If such possession occurs,
17 the City assumes all responsibility and liability for the equipment and land used to perform such
18 temporary collection services.

19 **8.8 Dispute Resolution with Customers**

20 Upon receipt of any notice of dispute from a customer about any bill, charge, or service, the
21 Franchisee shall thoroughly investigate the matter and promptly report the results of its
22 investigation to the customer. Except in the event a Customer has attempted to improperly
23 dispose of Hazardous Waste in violation of the City's Standards and Rules, a Franchisee shall
24 not refuse service to any customer during a time of dispute.

25 If the Franchisee is not able to resolve a dispute with the customer, the customer may contact the
26 City Administrator or designee who will act as an informal arbitrator in an attempt to resolve the
27 matter. Should the dispute remain unresolved, the Franchisee or customer may then pursue the
28 matter in any Court with jurisdiction.

29 **8.9 Dispute Resolution with City**

30 During all disputes arising under this Franchise, the City and Franchisee shall continue
31 performance of their respective obligations under this Franchise unless and until the Franchisee
32 is terminated for default, in which case the Franchisee's obligation to pay a franchise fee based
33 on cash receipts generated from services provided under the Franchise during said dispute shall
34 survive such termination.

35 In addition to and without waiving any rights and remedies under civil or common law, in the
36 event of a dispute under this Franchise, the parties shall mutually agree to arbitration. Within
37 fifteen (15) days after agreement to Arbitration has been reached, each party shall submit the
38 name of its own arbitrator, selected from the American Arbitration Association, and the two
39 arbitrators shall select a third arbitrator selected from such panel within 15 days, or in case of a
40 disagreement concerning the appointment of the third arbitrator, the third arbitrator shall be
41 appointed from such panel by the presiding judge for the Circuit Court of the State of Oregon

1 for Jackson County. During such time that the arbitrators are being selected or appointed, the
2 parties shall continue to negotiate in good faith to resolve their dispute in a cooperative manner.

3 The decision of the arbitrators in the matter shall be final and binding on the parties, and any
4 judgment upon the award rendered pursuant to such arbitration may be entered in any court
5 having jurisdiction thereof.

6 **SECTION 9. Severability.** The sections, subsections, paragraphs and clauses of this ordinance
7 are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the
8 validity of the remaining sections, subsections, paragraphs and clauses.

9 **SECTION 10. Codification.** Provisions of this Ordinance shall be incorporated in the City Code
10 and the word “ordinance” may be changed to “code”, “article”, “section”, “chapter” or another
11 word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however
12 that any Whereas clauses and boilerplate provisions (i.e. Sections 1-3) need not be codified and
13 the City Recorder is authorized to correct any cross-references and any typographical errors.

14 The foregoing ordinance was first read by title only in accordance with Article X,
15 Section 2(C) of the City Charter on the ____ day of _____, 2019,
16 and duly PASSED and ADOPTED this ____ day of _____, 2019.

17 _____
18 Melissa Huhtula, City Recorder


19 SIGNED and APPROVED this ____ day of _____, 2019.

20 _____
21 John Stromberg, Mayor

22 Reviewed as to form:
23 _____
24

25 David H. Lohman, City Attorney
26
27
28
29
30

Consumer Price Index

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Consumer Price Index Geographic Revision for 2018

Starting in 2002, the Bureau of Labor Statistics (BLS) moved away from comprehensive revisions implemented every ten years or so in favor of incremental updates implemented on an ongoing basis. For example, expenditure weight updates are now introduced every two years, and item structure changes occur whenever they are deemed appropriate given changes in the marketplace. One element of the CPI that has not seen more frequent revisions, however, is the geographic sample.

In January 2018, BLS will introduce a new geographic area sample for the Consumer Price Index (CPI). The last time the sample was revised was in 1998. The new sample consists of 75 urban areas—large, medium, and small. There are 87 urban areas in the current sample.

Changes to the Geographic Structure

The CPI geographic sample is selected to be representative of the demographics of the United States. The 2018 revision utilizes the 2010 Decennial Census and it incorporates an updated area sample design, changes the frequency of publication for several local area indexes, and establishes some new local area and aggregate indexes. It also introduces Census division-level indexes.

Core Based Statistical Areas

For the 2018 revision, primary sampling units (PSUs) are defined using Office of Management and Budget (OMB) Core Based Statistical Area (CBSA) definitions. This is different from the previous definition of PSUs as metropolitan statistical areas.

Table 1. Publication differences between the old and the new geographic sample designs

	Number of areas published	Number of areas published monthly	Number of areas published bimonthly	Number of areas published semi-annually
Old design	27	3	11	13
New design	23	3	20	0

Riverside, CA, which was previously included in the Los Angeles-Riverside-Orange County, CA MSA, will now be its own CBSA, and will be considered a new index, starting at 100.000. The combined Washington-Baltimore index (one of the bimonthly indexes) will be discontinued. The Washington and Baltimore areas will be independent

CBSAs. The new CBSAs for Washington and Baltimore will be considered continuous with the independent areas Washington (A312) and Baltimore (A313) under the old schedule. Existing indexes for A312 and A313, not previously published for January 1998-December 2017, will be published, with a footnote to indicate that indexes are based on a substantially smaller sample, and allowing the post-revision indexes to be continuous back to 1914.

Under the old design, indexes were published for Pittsburgh PA, Cincinnati-Hamilton OH-KY-IN, Cleveland-Akron OH, Milwaukee-Racine WI, and **Portland-Salem OR-WA**. Because they did not meet a population threshold, **they will not be published under the new design**. In addition, the index for Kansas City MO-KS will no longer be published because it was not selected as part of the sample.

Table 2. Publication list of CBSAs including publication frequency and schedule

New CBSA	Old MSA	New Publication		Old Publication	
		Frequency	Schedule	Frequency	Schedule
Chicago-Naperville-Elgin, IL-IN-WI	Chicago-Gary-Kenosha, IL-IN-WI	Monthly	Monthly	Monthly	Monthly
Los Angeles-Long Beach-Anaheim, CA	Los Angeles-Riverside-Orange County, CA	Monthly	Monthly	Monthly	Monthly
New York-Newark-Jersey City, NY-NJ-PA	New York-Northern New Jersey-Long Island, NY-NJ-CT-PA	Monthly	Monthly	Monthly	Monthly
Atlanta-Sandy Springs-Roswell, GA	Atlanta, GA	Bimonthly	Even months	Bimonthly	Even months
Baltimore-Columbia-Towson, MD	Washington-Baltimore, DC-MD-VA-WV	Bimonthly	Even months	Bimonthly	Odd months
Boston-Cambridge-Newton, MA-NH	Boston-Brockton-Nashua, MA-NH-ME-CT	Bimonthly	Odd months	Bimonthly	Odd months
Dallas-Fort Worth-Arlington, TX	Dallas-Fort Worth, TX	Bimonthly	Odd months	Bimonthly	Odd months
Denver-Aurora-Lakewood, CO	Denver-Boulder-Greeley, CO	Bimonthly	Odd months	Semi-annual	Semi-annual
Detroit-Warren-Dearborn, MI	Detroit-Ann Arbor-Flint, MI	Bimonthly	Even months	Bimonthly	Even months
Houston-The Woodlands-Sugar Land, TX	Houston-Galveston-Brazoria, TX	Bimonthly	Even months	Bimonthly	Even months
Miami-Fort Lauderdale-West Palm Beach, FL	Miami-Fort Lauderdale, FL	Bimonthly	Even months	Bimonthly	Even months
Minneapolis-St. Paul-Bloomington, MN-WI	Minneapolis-St. Paul, MN-WI	Bimonthly	Odd months	Semi-annual	Semi-annual
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD	Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD	Bimonthly	Even months	Bimonthly	Even months
Phoenix-Mesa-Scottsdale, AZ	Phoenix-Mesa, AZ	Bimonthly	Even months	Semi-annual	Semi-annual
Riverside-San Bernardino-Ontario, CA	Los Angeles-Riverside-Orange County, CA	Bimonthly	Odd months	Monthly	Monthly
San Diego-Carlsbad, CA	San Diego, CA	Bimonthly	Odd months	Semi-annual	Semi-annual
San Francisco-Oakland-Hayward, CA	San Francisco-Oakland-San Jose, CA	Bimonthly	Even months	Bimonthly	Even months
Seattle-Tacoma-Bellevue, WA	Seattle-Tacoma-Bremerton, WA	Bimonthly	Even months	Bimonthly	Even months
St. Louis, MO-IL	St. Louis, MO-IL	Bimonthly	Even months	Semi-annual	Semi-annual
Tampa-St. Petersburg-Clearwater, FL	Tampa-St. Petersburg-Clearwater, FL	Bimonthly	Odd months	Semi-annual	Semi-annual
Urban Alaska	Anchorage, AK	Bimonthly	Even months	Semi-annual	Semi-annual

New CBSA	Old MSA	New Publication		Old Publication	
		Frequency	Schedule	Frequency	Schedule
Urban Hawaii	Honolulu, HI	Bimonthly	Odd months	Semi-annual	Semi-annual
Washington-Arlington-Alexandria, DC-VA-MD-WV	Washington-Baltimore, DC-MD-VA-WV	Bimonthly	Odd months	Bimonthly	Odd months

Region, division, and size-class indexes

Two additional major changes with the new design are: (1) the number of size classes and (2) the publication of Census division-level indexes in addition to the current Census region-level indexes. Under the area redesign, the CPI now has two size classes, A and B/C (corresponding to population size greater than 2,500,000 for size class A and 2,500,000 or less for size class B/C), rather than the three size classes under the old design (A, B/C, and D, with population size of more than 1,500,000 for size class A, 50,000 to 1,500,000 for size class B/C, and less than 50,000 for size class D). The current size class B/C and size class D are consolidated in order to reduce small sample bias and to reduce the standard error of indexes.

Census regions are now split into divisions, three in the South and two each in the Northeast, Midwest, and West.

Table 3. Published monthly region and division indexes in 2018

	Northeast	Midwest	South	West
Divisions				
	New England	East North Central	South Atlantic	Mountain
	Middle Atlantic	West North Central	East South Central	Pacific
			West South Central	

BLS will continue to publish monthly region-size class indexes for A-sized and B/C-sized cities in the four regions. Additional information is available in the Monthly Labor Review article [The 2018 revision of the Consumer Price Index geographic sample](#).

Publication of additional items below the national level

The following items will be published at the region, division, and area level. Series for new areas will have a base period of December 2017=100; base periods for continuing areas will vary by area.

Table 4. Newly published items below the national level

Item name	Item code
Cereal and bakery products	SAF111
Meats, poultry, fish, and eggs	SAF112
Dairy and related products	SEFJ
Fruits and vegetables	SAF113
Nonalcoholic beverages	SAF114
Other food at home	SAF115
New and used motor vehicles	SETA (1)
New vehicles	SETA01 (1)
Used cars and trucks	SETA02 (1)
Motor vehicle insurance	SETE

Footnotes:

(1) Currently published at the region level.

Item name	Item code
Tuition, other school fees, and child care	SEEB
Footnotes: (1) Currently published at the region level.	

Additional Documents:

- 2018 Geographic Revision Area Concordance ([XLSX](#))
- Post-2018 Geographic Revision Mock-Up of CPI Press Release Table 4 ([PDF](#))

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U.S. Bureau of Labor Statistics | Division of Consumer Prices and Price Indexes, PSB Suite 3130, 2 Massachusetts Avenue, NE Washington,

DC 20212-0001

www.bls.gov/CPI | Telephone: 1-202-691-7000 | [Contact CPI](#)

Consumer Price Index (CPI)

Information on Changes in the West Region Due to the 2018 CPI Geographic Revision

The Consumer Price Index (CPI) relies on a sample of households in different metropolitan areas to represent urban households across the nation. Periodically, the CPI program needs to adjust the sample to reflect changes in the distribution of the population across the country. The CPI program has updated its sample to reflect the data from the 2010 Decennial Census on the distribution of the urban population. Below are changes in the U.S. and West Region indexes. Contact the West Region Information Office with questions at (415) 625-2270 or BLSinfoSF@bls.gov.

2018			1998-2017		
Title	Publication Schedule	Area Composition	Title	Publication Schedule	Area Composition
U.S. City Average	Monthly	75 areas sampled United States	U.S. City Average	Monthly	87 areas sampled United States
West	Monthly	17 areas sampled West Census Region*	West Urban	Monthly	18 areas sampled West Census Region*
West - Size Class A	Monthly	West population size class more than 2,500,000	West - Size Class A	Monthly	West population size class more than 1,500,000
West - Size Class B/C	Monthly	West population size class 2,500,000 and under	West - Size Class B/C	Monthly	West population size class 1,500,000 and under
Mountain	Monthly	6 areas sampled Mountain Census Division**	N/A		
Pacific	Monthly	11 areas sampled Pacific Census Division***	N/A		
Los Angeles-Long Beach-Anaheim, CA	Monthly	CA: Los Angeles, Orange	Los Angeles-Riverside-Orange County, CA	Monthly	CA: Los Angeles, Orange, Riverside, San Bernardino, Ventura
Phoenix-Mesa-Scottsdale, AZ	Bimonthly ¹	AZ: Maricopa, Pinal	Phoenix-Mesa, AZ	Semiannually	AZ: Maricopa, Pinal
Riverside-San Bernardino-Ontario, CA	Bimonthly ²	CA: Riverside, San Bernardino	N/A		
San Diego-Carlsbad, CA	Bimonthly ²	CA: San Diego	San Diego, CA	Semiannually	CA: San Diego
San Francisco-Oakland-Hayward, CA	Bimonthly ³	CA: Alameda, Contra Costa, Marin, San Francisco, San Mateo	San Francisco-Oakland-San Jose, CA	Bimonthly ³	CA: Alameda, Contra Costa, Marin, Napa, Santa Clara, Santa Cruz, San Francisco, San Mateo, Solano, Sonoma
Seattle-Tacoma-Bellevue, WA	Bimonthly ³	WA: King, Pierce, Snohomish	Seattle-Tacoma-Bremerton, WA	Bimonthly ³	WA: Island, King, Kitsap, Pierce, Snohomish, Thurston
Urban Alaska	Bimonthly ¹	AK: Anchorage, Matanuska-Susitna	Anchorage, AK	Semiannually	AK: Anchorage
Urban Hawaii	Bimonthly ²	HI: Honolulu	Honolulu, HI	Semiannually	HI: Honolulu
Portland area discontinued			Portland-Salem, OR-WA	Semiannually	OR: Clackamas, Columbia, Marion, Multnomah, Polk, Washington, Yamill WA: Clark

* Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming.

**Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming. Twelve-month percent changes will be available with January 2019 data.

***Alaska, California, Hawaii, Oregon, Washington. Twelve-month percent changes will be available with January 2019 data.

¹ Reference months of February, April, June, August, October, December (Twelve-month percent changes will be available with December 2018 data). Semiannual data will continue to be published.

² Reference months of January, March, May, July, September, November (Twelve-month percent changes will be available with January 2019 data). Semiannual data will continue to be published.

³ February, April, June, August, October, December.

NOTE: All existing indexes are considered continuous, regardless of name or composition changes. Mountain, Pacific, and Riverside-San Bernardino-Ontario, CA are new indexes.

NOTE: Monthly CPIs are averages of prices for the reference month as a whole – not for a particular day such as the 1st, 15th or 31st. Bimonthly indexes—those covering a two-month period—use a single month title to identify the reference period. Monthly and bimonthly indexes are published approximately midway during the month following the reference month.

NOTE: Local area indexes are byproducts of the national CPI program. Each local index has a smaller sample size than the national index and is, therefore, subject to substantially more sampling and other measurement error. As a result, local area indexes show greater volatility than the national index, although their long-term trends are similar. Therefore, the Bureau of Labor Statistics strongly urges users to consider adopting the national average CPI for use in their escalator clauses.

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