Title 8

HEALTH AND SAFETY

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Chapter 8.04

NUISANCES

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8.04.010 Definitions.

Except where the context indicates otherwise, the singular number includes the plural and the masculine gender includes the feminine, and the following mean:

"City" means the city of Toledo.

"Council" means the governing body of the city.

"Person" means a natural person, firm, partnership, association or corporation.

"Person in charge of property" means an agency, occupancy, lessee, contract, purchaser, or person other than the owner, having possession or control of the property.

"Public place" means a building, place or accommodation, whether publicly or privately owned, open and available to the general public.
(Ord. 820 § 1, 1966)

8.04.040 Livestock and poultry.

No person shall maintain a pigsty, slaughterhouse or tannery, or permit livestock or poultry owned by the person to run at large within the city. This section shall not apply to cats, dogs or other household pets.
(Ord. 1294 § 9, 2001; Ord. 820 § 4, 1966)
(Ord. No. 1330, § 1, 10-7-2009)

8.04.060 Nuisances affecting the public health.

The owner, occupant or person in charge of property shall not permit or cause a nuisance affecting public health. The following are nuisances affecting the public health and may be abated as provided in this chapter:

A. Privies. An open vault or privy constructed and maintained within the city, except those constructed or maintained in connection with construction projects in accordance with the Oregon State Health Division regulation;

B. Debris on Private Property. Accumulations of debris, rubbish, manure and other refuse located on private property that are not removed within a reasonable time and that affect the health, safety or welfare of the city;

C. Stagnant Water. Stagnant water which affords a breeding place for mosquitoes and other insect pests;

D. Water Pollution. Pollution of a body of water, well, spring, stream or drainage ditch by sewage, industrial wastes or other substances placed in or near such water in a manner that will cause harmful material to pollute the water;

E. Food. Decayed or unwholesome food which is offered for human consumption;

F. Odor. Premises which are in such a state or condition as to cause an offensive odor or which are in an unsanitary condition;

G. Surface Drainage. Drainage of liquid wastes from private premises.

(Ord. 1113 § 1, 1980; Ord. 820 § 6, 1966)

(Ord. No. 1330, § 2, 10-7-2009)

8.04.070 Abandoned iceboxes.

No person shall leave in a place accessible to children an abandoned, unattended or discarded icebox, refrigerator or similar container which has an airtight door with a snap lock, lock or other mechanism which may not be released for opening from the inside, without first removing such lock or door from such icebox, refrigerator or similar container.
(Ord. 820 § 7, 1966)
(Ord. No. 1330, § 3, 10-7-2009)

8.04.080 Attractive nuisances.

A. The owner, occupant or person in charge of property shall not permit:

1. Unguarded machinery, equipment or other devices on such property which are attractive, dangerous and accessible to children;

2. Lumber, logs or piling placed or stored on such property in a manner so as to be attractive, dangerous and accessible to children;

3. An open pit, quarry, cistern, private or public swimming pool, or other excavation, any of which is more than eighteen (18) inches deep, without erecting adequate safeguards, barriers, and/or enclosures consisting of a fence or wall not less than four feet in height above the underlying ground or base, incapable of being crawled under, and sufficient to prevent such places from being frequented by children who are unattended.

4. An unoccupied building or structure, no matter what condition or state of disrepair, which is attractive, dangerous and accessible to children.

B. This section shall not apply to authorized construction projects, if during the course of construction reasonable safeguards are maintained to prevent injury or death to playing children.
(Ord. 1144, 1982: Ord. 820 § 8, 1966)
(Ord. No. 1330, § 4, 10-7-2009)

8.04.090 Snow and ice removal.

The owner, occupant or person in charge of property, improved or unimproved, abutting on a public sidewalk, shall not permit:

A. Snow to remain on the sidewalk for a period longer than the first two hours of daylight after the snow has fallen.

B. Ice to cover or remain on a sidewalk, after the first two hours of daylight after the ice has formed. Such person shall remove ice accumulating on the sidewalk or cover the ice with sand, ashes, or other suitable material to assure safe travel.

(Ord. 820 § 9, 1966)
(Ord. No. 1330, § 5, 10-7-2009)

8.04.100 Weeds and noxious growth.

The owner, occupant or person in charge of property shall not permit weeds or other noxious vegetation to grow upon their property. It shall be the duty of an owner, occupant or person in charge of property to cut down or to destroy weeds or other noxious vegetation as often as needed in order to prevent the weeds or noxious vegetation from becoming unsightly, from becoming a fire hazard, from maturing, or from going to seed.
(Ord. 820 § 10, 1966)
(Ord. No. 1330, § 6, 10-7-2009)

8.04.110 Scattering rubbish.

No person shall throw, dump, or deposit upon public or private property an injurious or offensive substance or any kind of rubbish, trash, debris, refuse or any substance that would mar the appearance, create a stench, detract from the cleanliness or safety of such property, or would be likely to injure an animal, vehicle or person traveling upon a public way.
(Ord. 820 § 11, 1966)
(Ord. No. 1330, § 7, 10-7-2009)

8.04.120 Fences.

A. No person shall construct or maintain a barbed-wire fence or allow barbed wire to remain as a part of a fence unless the barbed wire is placed not less than six inches above the top of a fence which is not less than six feet high.

B. No person shall install, maintain or operate an electric fence along a street or sidewalk, or along the adjoining property line of another person.
(Ord. 1154, 1983: Ord. 820 § 13, 1966)
(Ord. No. 1330, § 8, 10-7-2009)

8.04.130 Surface waters--Drainage.

A. The owner, occupant or person in charge of any building or structure shall not suffer or permit rainwater, ice or snow to fall from such building or structure on to a street or public sidewalk or to flow across such sidewalk.

B. The owner or person in charge of property shall install and maintain in a proper state of repair adequate drainpipes or a drainage system so that any overflow wager accumulating on the roof or about such building is not carried across or upon the sidewalk.
(Ord. 820 § 14, 1966)
(Ord. No. 1330, § 9, 10-7-2009)

8.04.140 Radio and television interference.

A. No person shall operate or use an electrical, mechanical or other device, apparatus, instrument or machine that causes reasonably preventable interference with radio or television reception; provided, that the radio or television receiver interfered with is of good engineering design.

B. This section does not apply to electrical and radio devices licensed, approved and operated under the rules and regulations of the Federal Communications Commission.
(Ord. 820 § 15, 1966)
(Ord. No. 1330, § 10, 10-7-2009)

8.04.150 Declaration of nuisance.

A. The acts, conditions or objects specifically enumerated and defined in Section 8.04.020 through Section 8.04.140 are declared to be unlawful and public nuisances and such acts, conditions or objects may be abated when they exist on public or private property by the procedures set forth in Section 8.04.160 through Section 8.02.240 of this chapter.

B. In addition to those nuisances specifically enumerated within this chapter every other thing, substance or act which is determined by the council to be injurious or detrimental to the public health, safety or welfare of this city is declared to be unlawful and a nuisance and may be abated when existing on public or private property as provided in Section 8.04.160 through Section 8.04.240 of this chapter.
(Ord. 1113 § 3 (part), 1980; Ord. 820 § 16, 1966)

8.04.160 Notice to abate--Private property.

Upon determination by a police officer that the officer has probable cause to believe that a nuisance exists as defined in Section 8.04.020 through Section 8.04.140 of this chapter in the city or when pursuant to Section 8.04.150(B) a thing, substance or act not defined in Section 8.04.020 through Section 8.04.140 is determined by the council to be injurious or detrimental to the public health, safety or welfare of the city, the police officer shall:

A. Serve notice in writing upon the occupant of the land where the nuisance exists or in case there is not such occupant, then upon the owner of the property or the owner's agent notifying thereof the existence of the nuisance and requesting its removal in the time specified in this chapter.

B. If the occupant or owner of the property fails to abate the nuisance after being served notice that a nuisance exists within the time specified in this chapter, the police officer shall cause to be issued a citation for violation of this chapter to the occupant or owner by personal service or by registered or certified mail, and proceed with abating the nuisance and provided for in this chapter.

(Ord. 1113 § 3, (part), 1980; Ord. 820 § 17, 1966)
(Ord. No. 1330, § 11, 10-7-2009)

8.04.170 Responsibility for removal.

Upon proper notice and opportunity to be heard, the owner or occupant of the property upon which the

nuisance exists, either or all of them, shall be responsible for its removal. In the event of removal and disposition by the city, the owner or occupant of the property where the same is located shall be liable for the expenses incurred.
(Ord. 1113 § 3 (part), 1980; Ord. 1014 (part), 1977: Ord. 820 § 18, 1966)

8.04.180 Notice procedure.

The chief of police of the city shall cause to be given notice of the existence of any acts, conditions, objects, things or substances declared to be nuisances under this chapter and request removal. Said notice shall be given at least ten (10) days before the time set therein for compliance. It shall constitute sufficient notice when a copy of the same is posted in a conspicuous place upon the property on which the nuisance is located and duplicate copies are sent by registered mail to the owner or occupant of the property at his last known address.
(Ord. 1113 § 3 (part), 1980; Ord. 1014 (part), 1977: Ord. 820 § 19, 1966)

8.04.190 Content of notice.

The notice shall contain the request for removal within the time specified in this chapter and the notice shall advise that upon failure to comply with the notice to remove, the city or its designee shall undertake such removal with the cost of removal to be levied against the owner or occupant of the property.
(Ord. 1113 § 3 (part), 1980; Ord. 1014 (part), 1977: Ord. 820 § 20, 1966)

8.04.200 Request for hearing.

The persons to whom the notice are directed or their duly authorized agent may file a written request for hearing before the city council or its designee within five days of the date set in the notice for compliance described in Section 8.04.180 for the purposes of defending against the charges by the city.
(Ord. 1113 § 3 (part), 1980; Ord. 1014 (part), 1977: Ord. 820 § 21, 1966)

8.04.210 Procedure for hearing.

The hearing shall be held as soon as practicable after the filing of the request and the person filing the request for hearing shall be advised of the time and place of said hearing at least ten (10) days in advance thereof. At any such hearing, the city and the persons to whom the notices have been directed may introduce such witnesses and evidence as either party deems necessary subject to any procedural rules which the city, may have adopted governing the conduct of hearings before the city council.
(Ord. 1113 § 3 (part), 1980; Ord. 1014 (part), 1977: Ord. 820 § 22, 1966)

8.04.220 Abatement of nuisance by city.

A. If the violation described in the notice has not been remedied by the date set in said notice for compliance or in the event that a notice requesting a hearing is timely filed, hearing is had and the existence of the violation is affirmed by the council of the city, the chief of police or his designee shall abate any nuisance violation described in the notice.

B. It is unlawful for any person to interfere with, hinder or refuse to allow the chief of police or his

designee to abate any act, condition, object, thing or substance declared a nuisance by this chapter or to interfere with, hinder or refuse to allow the chief of police or his designee to enter upon property for the purpose of abating any such act, condition, object, thing or substance declared a nuisance by this chapter.

C. The city recorder shall keep an accurate record of the expense incurred by the city in abating the nuisance and shall include therein a charge of twenty (20) percent of the expense for administrative overhead. (Ord. 1113 § 3 (part), 1980; Ord. 1014 (part), 1977: Ord. 820 § 23, 1966)

8.04.230 Assessment of costs.

A. The city recorder, by registered or certified mail, postage prepaid, shall forward to the owner or person in charge of the property a notice stating:

1. The total cost of abatement including the administrative overhead;

2. That the cost as indicated will be assessed to and become a lien against the property unless paid within thirty (30) days from the date of the notice;

3. That if the owner or person in charge of the property objects to the cost of the abatement as indicated, he may file a notice of objection with the city recorder not more than ten (10) days from the date of the notice.

B. Upon expiration of ten (10) days after the date of the notice, the council in the regular course of business shall hear and determine the objections to the costs to be assessed.

C. If the costs of the abatement are not paid within thirty (30) days from the date of the notice, an assessment of the costs as stated or as determined by the council shall be made by resolution and shall thereupon be entered in the docket of city liens and, upon such entry being made, shall constitute a lien upon the property from which the nuisance was removed or abated.

D. The lien shall be enforced in the same manner as liens for street improvement are enforced and shall bear interest at the rate of percent per year. Such interest shall commence to run from date of the entry of the lien in the lien docket.

E. An error in the name of the owner or person in charge of the property shall not void the assessment nor will a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against the property.
(Ord. 1113 § 3 (part), 1980; Ord. 1014 (part), 1977: Ord. 820 § 24, 1966)

8.04.240 Summary abatement.

The procedure provided by this chapter is not exclusive but is in addition to procedure provided by other ordinances, and the health officer, the chief of the fire department, or chief of police may proceed summarily to abate a health or other nuisance which unmistakably exists and from which there is imminent danger to human life or property.
(Ord. 1113 § 3 (part), 1980; Ord. 1014 (part), 1977: Ord. 820 § 25, 1966)

8.04.250 Violation--Penalty.

A. Violation of this chapter will constitute a Class A infraction.

B. The abatement of a nuisance is not a penalty for violating this chapter, but is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate a nuisance.
(Ord. 1244 § 6, 1996: Ord. 1113 § 3 (part), 1980; Ord. 1014 (part), 1977: Ord. 820 § 27(2), 1966)

Chapter 8.08

TEMPORARY USES, TEMPORARY STRUCTURES, AND RECREATIONAL VEHICLES

Sections:
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8.08.020 Definitions.
8.08.030 Fees.
8.08.040 Permit required.
8.08.050 Application requirements.
8.08.060 Special event structures.
8.08.070 Temporary living quarter.
8.08.080 Temporary structures.
8.08.090 Permit revocable.
8.08.100 Renewal.
8.08.110 Permits not transferable.
8.08.120 Violation--Penalty.

8.08.010 Purpose.

To regulate placement, restrict time limits, control aesthetics, limit nuisances, and generally protect health, safety, and welfare considerations the city of Toledo recognizes that certain short-term uses, structures, and recreational vehicle placements are not allowed as outright permitted uses. A temporary permit may be issued for up to six months by the city manager or other designated city staff member for only the following uses:

A. In conjunction with on-site construction, only if a building permit has been issued for such construction, and the permit is active;

B. Security measures that need to be taken for a temporary situation;

C. A temporary place to conduct business;

D. To meet special housing needs, in conjunction with an existing residence. The applicant must carry the burden of proof to show a permanent alternative is being sought and the temporary use provides the best or only alternative in the interim period;

E. Special event structures; or

F. Business office for the sale of property within a subdivision.

(Ord. 1310 § 1 (part), 2006)

8.08.020 Definitions.

As used in this chapter:

"Adequate sanitation facilities" means any public restroom, private restroom, or any portable fixture approved by either the Lincoln County Sanitarian or a Lincoln County Plumbing Inspector.

"City manager" means the city manager of the city of Toledo or designee(s).

"Recreational structure" means a campground structure with or without plumbing, heating or cooking facilities intended to be used by any particular occupant on a limited-time basis for recreational purposes and may include yurts, cabins, fabric structures, or similar structures as further defined, by rule, by the city manager. A structure intended for removal or demolition within a prescribed time not exceeding six months.

"Recreational vehicle (RV)" means a vehicular-type living unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motor power or is mounted on or drawn by another vehicle. Types of recreational vehicles include, but are not limited to, travel trailer, camping trailer, camper, camping van, and motor home.

"Special event structure" means a structure occupied in affiliation with an event recognized by the city of Toledo, state of Oregon, or United States related to a holiday, festival, or celebration, including, but not limited to Christmas, Independence Day, Toledo Summer Festival, Toledo Main Street Antique Fair, or carnivals or fairs. Special event vendors affiliated with the event organizers are exempt from obtaining a temporary permit, but are limited to no more than thirty (30) days prior to and seven calendar days following the event.

"Structure" means a building of any kind or any piece of work artificially built up or composed of parts joined together in some manner and which requires location on the ground or which is attached to something having a location on the ground.

"Temporary living quarter" means a recreational vehicle, as defined in this chapter, used for sleeping and/or living purposes and has water and sewer, but is intended for short time use (six months).

"Temporary structure" means a structure without any foundation or footings and that is removed when the designated time period (usually six months), activity, or use for which the temporary structure was erected has ceased.

"Temporary use" means a use established for a limited duration with the intent to discontinue the use upon the expiration of the permitted time of six months.
(Ord. 1310 § 1 (part), 2006)

8.08.030 Fees.

An appropriate application fee shall be set by city council resolution for a temporary permit. The

application fee and renewal fee must be paid concurrent with the application. Renewal fees will be double the original fee. A request to waive fees for recognized nonprofit applicants must be made in writing to the city council.
(Ord. 1310 § 1 (part), 2006)

8.08.040 Permit required.

All temporary uses including the uses of an RV as a living quarter or for conducting business within the city of Toledo is prohibited unless the owner of land (applicant) on which it will be parked first obtains a temporary permit from the city. Use of an RV as a temporary living quarter in conjunction with a visitation of less than fourteen (14) days at an existing residence does not require a temporary permit. Using the Type I procedure under Toledo Municipal Code Chapter 19.08, the city shall approve, approve with conditions, or deny a temporary use permit based on findings that all of the criteria are satisfied.
(Ord. 1310 § 1 (part), 2006)

8.08.050 Application requirements.

A. The application form shall be provided by the city of Toledo and the applicant shall set forth on the site plan the following:

1. The location map showing the area in the city where the use will occur;

2. The proposed siting of the temporary use or RV on property; and

3. The provisions for water, sewer, and electrical service.

B. The applicant must indicate the period of time the permit is sought and the reason for the use of a temporary structure or RV instead of a permanent structure. The applicant must propose alternatives to the temporary permit in a permanent solution plan.
(Ord. 1310 § 1 (part), 2006)

8.08.060 Special event structures.

A. Special event structures may be erected in conjunction with a recognized federal, state, or local holiday, festival, and celebration if the following are met:

1. The time limit for such structures is no longer than thirty (30) days prior to and seven calendar days after the special event.

2. The permission of the property owner must be obtained.

3. The person or persons responsible for the special event structure shall also be responsible for the maintenance of the grounds and shall have a trash receptacle available.

4. Adequate sanitary facilities must be available to the site.

5. The person or persons responsible for the temporary structure shall sign an agreement that the provisions of this subsection shall be complied with.

6. The structure must not interfere with the provisions of parking for the permanent use on the site.

B. An application for a special event structure must be made on a form prescribed by the community development and planning department. Failure to fill out all needed items will result in the rejection of the application until such time as all items are provided. The city manager shall issue the permit for a special event structure if all the conditions outlined in subsection A of this section are met.
(Ord. 1310 § 1 (part), 2006)

8.08.070 Temporary living quarter.

A. A permit to allow a person or persons to occupy a temporary living quarter may be granted subject to the following conditions:

1. The permit must be in conjunction with a valid, active building permit, security dwelling, or for a proven medical hardship.

2. The time limit shall be no longer than six months from issuance. After the expiration of the time limit, the recreational vehicle (RV) used for the temporary living quarter is subject to renewal provisions in Section 8.08.100.

3. The RV used as the temporary living quarter must be self-contained for sanitary sewer or connected to municipal sewer and water.

4. Any facility used for temporary living quarter must meet the definition of a RV as contained in this chapter.

5. Temporary living situations for nonresidential projects shall not use a job shack or other such structure instead of an RV as the living quarter.

6. Prior to the issuance of a temporary living quarter permit, the applicant shall sign an agreement to comply with the provision of this section.

7. If the property subject to the temporary living quarter permit is not owned by the applicant, written permission of the property owner is required.

B. An application for a temporary living quarter permit must be made on a form prescribed by the community development and planning department. Failure to fill out all needed items will result in the rejection of the application until such time as all items are provided. The city manager or his designate shall issue the permit for the temporary living quarter if all conditions outlined in subsection A of this section are met.
(Ord. 1310 § 1 (part), 2006)

8.08.080 Temporary structures.

A temporary structure not associated with a special event may be erected subject to the following:

A. The permit, if approved, shall be issued for a period not to exceed six months. Upon like application and approval, the permit may be renewed for an additional six months in accordance with Section 8.08.100. Under no circumstances shall any permit be issued under this section exceed one year from the date the permit was first issued.

B. Temporary structures are limited to commercial and industrial zoned properties.

C. An application for a temporary structure must be accompanied by the following:

  1. Written permission from the property owner.

  2. A site plan, drawn to scale, showing:

    a. The proposed location of the temporary structure;

    b. Existing buildings;

    c. Existing parking and proposed parking for the temporary structure;

    d. Access(es) to the parking areas;

    e. Any additional structures, seating areas, and amenities associated with the temporary structure;

    f. The location and size of trash receptacles;

    g. Utilities;

    h. Existing signs;

    i. Temporary structure building elevations or photos;

    j. The colors of the temporary structure and signing;

    k. Adequate sanitation facilities must be available to the site.

D. In addition to the above requirements, the applicant for a temporary structure permit must submit the following:

  1. An agreement stating that the applicant is aware of the limitations and conditions attached to the granting of the permit and agrees to abide by such limitations and conditions.

E. An application for a temporary structure permit must be made on a form prescribed by the

community development and planning department. Failure to fill out all needed items will result in the rejection of the application until such time as all items are provided. The city manager shall issue the permit for the temporary structure if all conditions outlined in subsections B through D of this section are met.

F. If the temporary structure permit is approved, the applicant must obtain a city of Toledo business license.

(Ord. 1310 § 1 (part), 2006)

8.08.090 Permit revocable.

Any temporary permit will be revoked on twenty-four (24) hour notice by the city manager, if, after inspection of the structure or RV, any of the following reasons are found:

A. Lacks proper sanitary facilities.

B. Is dangerous to the public health and safety.

C. Has become a public nuisance due to conditions, location, or use.

D. Noncompliance with conditions set forth in granting the permit.

E. Approval being obtained by fraud or misrepresentation.

(Ord. 1310 § 1 (part), 2006)

8.08.100 Renewal.

Except those uses allowed in Section 8.08.060 (Special event structures), six months is the maximum time for which a temporary permit may be issued by city staff. If the applicant can show that a permanent solution will be forthcoming, the applicant may apply to the city council for one renewal of the temporary permit. An applicant is only allowed to apply for one renewal. The council will determine the length of time during which the renewal will be valid up to a maximum of six months. The city council will consider the renewal application at a public meeting. Before council consideration, affected landowners within one hundred feet of the subject property boundaries shall be notified by first class mail of the renewal application, and provided at least a fifteen (15) day comment period before the public meeting. Any subsequent applications by the same property owner within three years of the expiration of the temporary permit must be approved by the city council following the same process and subject to the same fees as a temporary permit renewal.

(Ord. 1310 § 1 (part), 2006)

8.08.110 Permits not transferable.

Permits authorized by this chapter are not transferable to another person or location unless approved by the city council.

(Ord. 1310 § 1 (part), 2006)

8.08.120 Violation--Penalty.

Violations of this chapter shall constitute a Class A infraction.
(Ord. 1310 § 1 (part), 2006)

Chapter 8.12

OUTDOOR PUBLIC EVENTS, ENTERTAINMENTS AND ASSEMBLIES

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8.12.010 License required.

It is unlawful for any person, persons, corporation, organization, landowner or lessor, except regularly organized and supervised school district activities or programs such as local Toledo civic organizations which are generally recognized as such and are first approved by the Toledo city council, to allow, encourage, organize, promote, conduct, permit or cause to be advertised an outdoor event, entertainment, amusement or assembly of persons which would probably attract fifty (50) or more persons unless a valid city permit has been obtained for the operation of said assembly.
(Ord. 872 § 1, 1971)

8.12.020 Permit application.

Written application for a permit to hold outdoor assemblies as herein defined and catering to the general public shall be made to the Toledo city recorder forty (40) or more days prior to the date upon which such assembly is scheduled to be held. Written notice of approval or disapproval of said application shall be given the applicant no later than fifteen (15) days after the application has been filed. Permits shall not be denied providing the conditions enumerated in Section 8.12.040 are met by the applicant and the permit fees as required by Section 8.12.030 are paid. No permit shall be granted to anyone who has not reached the age of twenty-one (21).
(Ord. 872 § 2, 1971)
(Ord. No. 1328, § 1, 8-5-2009)

8.12.030 Fee.

The fee required to be paid to the city recorder with the filing of the application shall be in an amount set by resolution of the Council. No permit shall be granted for a period of more than three days expiring at midnight of the third day. The permit fee shall be retained by the city whether a permit is granted, denied or withdrawn.
(Ord. 872 § 3, 1971)
(Ord. No. 1328, § 2, 8-5-2009)

8.12.040 Permit--Conditions for issuance.

A. Location. No permit for an outdoor assembly shall be granted unless said assembly is to be held in those areas of the city zoned or otherwise designated for parks and recreation, or unless the owner of any private property where said assembly is to be held files with the city recorder as a part of the application his written consent to the use of his property for such purpose and furnishes evidence of his ownership, together with a description and map of the property to be used for the proposed assembly.

B. Sanitary Facilities. No permit shall be granted unless the applicants obtain the written approval of the Lincoln County health department indicating that sanitary facilities are satisfactory at the location and for the size and purpose of the assembly.

C. Fire Protection Required. No permit shall be granted hereunder unless the applicants have shown that the fire chief has approved fire protection devices and equipment available for and at the location of the assembly.

D. Public Safety. No permit shall be granted hereunder unless the applicants have obtained the written approval of the Toledo police department indicating that adequate traffic control and crowd protection policing have been contracted for or otherwise provided by the applicants.

E. Parking Facilities. Application for a permit hereunder shall be accompanied by a scale drawing showing adequate parking facilities have been made available within or adjacent to the location for which the permit is requested. Such parking facilities shall provide parking space for one vehicle for every four persons expected or reasonably to be expected. Adequate ingress and egress shall be provided to or from such parking area to facilitate the movement of any vehicle at any time to or from the parking area.
(Ord. 872 § 4, 1971)

8.12.050 Hours of operation.

A. No entertainment assembly shall be conducted in the incorporated areas of Toledo within one thousand (1,000) feet of any residence between the hours of 12:01 a.m. and nine a.m. and in all other areas between the hours of two a.m. and nine a.m.

B. The use of amplified noise shall be regulated in such a manner that it shall not interfere with the normal usage of any school, church, residence or other permanent place of human habitation unless prior written consent is obtained from all affected persons.
(Ord. 872 § 5, 1971)

8.12.060 Intoxicating liquor prohibited.

No firm, person, society, association or corporation conducting an entertainment assembly, nor any person having charge or control thereof at any time when an entertainment assembly is being conducted shall permit any person to bring into said entertainment assembly, or upon the premises thereof, any intoxicating liquor, nor permit intoxicating liquor to be consumed on the premises, and no person during said time shall take or carry onto said premises or drink thereon intoxicating liquor. This provision shall not apply to the sale and

consumption of intoxicating liquor from a facility located on the premises of an entertainment assembly when licensed by the state of Oregon.
(Ord. 872 § 6, 1971)

8.12.070 Violation--Penalty.

Any violation of, or failure to comply with, any provision of this chapter, will constitute a Class A infraction.
(Ord. 1244 § 11, 1996: Ord. 872 § 7, 1971)

8.12.080 Failure to comply.

Compliance with the terms and conditions of this chapter shall constitute the minimum health, sanitation and safety provisions, and failure to comply with the terms and conditions shall constitute a public nuisance, and the sponsors of said event shall be subject to all criminal and civil remedies as such.
(Ord. 872 § 8, 1971)

Chapter 8.16

SOLID WASTE MANAGEMENT

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8.16.010 Short title.

This chapter shall be known as the solid waste management ordinance.
(Ord. 1150 § 1, 1983)

8.16.020 Purposes, policy and scope.

It is declared to be the public policy of the city of Toledo to regulate solid waste management to:

A. Insure safe, efficient, economical and comprehensive solid waste service;

B. Insure fair and equitable consumer rates and to prohibit rate preferences or other practices that might be discriminatory;

C. Eliminate overlapping service and thereby to increase efficiency and to decrease truck noise, street wear, energy waste, air pollution and public inconvenience;

D. Protect public health and the environment;

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

(Ord. 1150 § 2, 1983)

8.16.030 Definitions.

"Affiliated company" means the parent company of a franchisee or any subsidiary of such parent company, or any company of which thirty (30) percent or more of the common stock of control is owned or controlled by the franchisee or a shareholder or shareholders of the franchisee who own or control thirty (30) percent or more of the common stock of the franchisee which shares costs with the franchisee with respect to the services provided under this agreement. Examples of such shared costs include, but are not limited to, labor, equipment or administrative costs.

"Allowable expenses" means those expenses incurred by a franchisee in the performance of this agreement that are acceptable as reimbursable by the ratepayer as enumerated in this section. Allowable expenses are allowable only to the extent that such expenses are known and measurable, calculated according to Generally Accepted Accounting Principles (GAAP) on an accrual basis, 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, as qualified in this section, shall include, but not be limited to, the following:

1. The costs of complying with all laws, regulations or orders applicable to the obligations of franchisee;

2. Disposal costs, as defined in this section, including increased disposal costs and surcharges to the extent that such increase does not exceed eighty-five (85) percent of the Consumer Price Index (CPI) for the current year. If such increased disposal costs and surcharges exceed eighty-five (85) percent of the CPI for the current year, then such costs and surcharges shall be allowed as pass through expenses;

3. Labor costs, including supervisory labor, associated with provision of services under the franchise, including workers compensation and benefits and third party transportation costs for recyclable materials;

4. Vehicle and equipment expenses, including vehicle registration fees, motor fuel, oil, tires, and repairs and maintenance of equipment;

5. All expenses of maintaining and replacing capital equipment and assets, including depreciation and repair and maintenance;

6. Performance bonds and insurance, at a minimum, in the amounts and coverage required by the city;

7. Administrative expenses related to data processing, billing and supplies, finance and accounting, officer salaries, franchise administration, human resource and labor management, rate analysis, and regulatory compliance;

8. Utilities;

9. Training and worker safety;

10. Advertising, promotion, and public education costs;

11. Property or facility depreciation, rental or lease costs necessary to the provision of services required by the franchise agreement;

12. Depreciation and amortization of capital assets, including any necessary stand-by or back-up equipment used on a regular and ongoing basis in the provision of services under this franchise over standardized economic useful lives of the various assets. The city shall set the standard economic lives based upon industry input and prevailing practices;

13. Outside professional fees and costs;

14. Debt service expenses other than any debt service expenses associated with purchases of routes or business purchases, that are not in excess of market rates ordinarily charted for the various types of financing required for purchases or leases;

15. Franchise fees;

16. Any expense incurred in the collection, handling, processing, storing, transporting, marketing, or sale or other disposition of recyclable materials, as defined in ORS 459.005(20);

17. All surcharges, taxes or fees, other than state or federal income taxes or franchise fees, which are imposed upon franchisee or levied by federal, state or local governments in connection with franchisee's provision of solid waste collection, transportation, disposal and resource recovery services;

18. Any other expense determined in advance by the city and franchisee to be reasonable and necessary to the provision of the services required under the franchise agreement;

19. Bad debts.

"City" means the city of Toledo, Oregon.

"City manager" means the city manager of the city of Toledo.

"Collection" or "collection service" means all or any part of the activities involved in the collection of solid waste and its transportation to an appropriate solid waste management facility.

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

"Customer" means generators of solid waste in the city to whom the franchisee provides service pursuant to a franchise granted by the city, and who have not been refused service pursuant to this chapter.

"Disposal" means the disposition of solid waste collected by a franchisee at a permitted solid waste handling facility selected by the franchisee.

"Disposal costs" means the total paid by a franchisee for the disposal of solid waste collected pursuant to a franchise granted by the city at the solid waste handling facility or transfer station.

"Franchisee" means Dahl Disposal Service, Inc., or a subcontractor to Dahl Disposal Service, Inc.

"Gross revenue" for any period means gross accrual-based billings by the franchisee to customers for services provided under this agreement and the accrual-based proceeds from the sales of recycled material collected within the franchise.

"Hazardous waste" means:

1. Defined as hazardous waste by or pursuant to ORS Chapter 459;

2. Defined as hazardous waste by another governmental agency or unit having jurisdiction; or

3. Found by the franchisee to be hazardous to service workers, to service equipment, or to the public.

"Operating margin" for a period means gross revenues minus allowable expenses.

"Operating ratio" is the allowable expense divided into the gross revenues. Expressed as a percentage, the return on gross revenues shall be approximately eighty-eight (88) percent of gross revenues, which is consistent with industry averages for solid waste collection companies.

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

"Resource recovery" means the process of obtaining useful material or energy resources from solid waste, including reuse, recycling and other materials recovery or energy recovery of or from solid waste.

"Revenue requirement" means the sum of the quotient of allowable expenses divided by the operating ratio, expressed as a decimal, and pass through expenses.

"Service" means the collection, compaction (through either mechanical or manual means), transportation or disposal of or resource recovery solid waste.

"Solid waste" means all solid waste or semisolid waste including without limitation: garbage, rubbish, refuse, trash, ashes or swill, newsprint or wastepaper, corrugated or cardboard; grass clippings, compost, residential, commercial, industrial, governmental or institutional wastes, discarded home or industrial appliances, equipment or furniture, vehicle parts or tires, vegetable or animal wastes, and other wastes.

"Solid waste management" means the prevention of or reduction of solid waste, management of service, and facilities and equipment necessary or convenient to such activities.

"Unallowable expense" means any of the following, which under no circumstances will be counted as an allowable expense:

1. Political and charitable contributions;

2. Federal, state, and local income taxes;

3. Loss on sale of assets;

4. Officers' life insurance premiums;

5. Director fees;

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

7. Penalties and fines;

8. Costs, whether allocated or direct, associated with collection or unrelated operations that are not governed by this section;

9. Accruals for future unknown regulatory changes;

10. Principal or interest payments on the acquisition of solid waste, recyclable materials and yard debris collection routes; the purchase of equipment and facilities at a price that would be construed to include goodwill or a premium in excess of fair market value at the time of acquisition;

11. 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.

"Waste" means material that is no longer directly usable by the source, generator or producer of the material and which is to be disposed of or to be resource recovered by another person.

1. The fact that all or any part of the material may have value and thus be recovered does not remove them from this definition.

2. The fact that the source, generator or producer of materials has separated or segregated such material from other wastes does not remove the materials from this definition.

(Ord. 1301A § 2, 2003; Ord. 1150 § 3, 1983)
(Ord. No. 1323, 12-17-2008)

8.16.040 Persons and practices exempt from franchise.

Nothing in this chapter requires a franchise for the following businesses or practices:

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

B. The collection, transportation and reuse or recycling of totally source-separated recyclable materials or operation of a collection center for totally source-separated recyclable materials by a religious, charitable, benevolent or fraternal organization, which organization was not organized or operated for any solid waste management purpose and which organization is using the activity for fund raising, including, without limitation, scouts and churches;

C. The collection, transportation or redemption of returnable beverage containers under ORS Chapter 459 and that portion thereof commonly known as the "Bottle Bill";

D. The generator or producer who transports and disposes of waste created as an incidental part of regularly carrying on the business or service of auto wrecking, to the extent licensed by the state of Oregon; gardening, park maintenance or landscaping service; street sweeping; auto body recovery; or septic tank pumping or sludge collection;

E. The transportation by a person of solid waste generated or produced by such person to a disposal site, resource recovery site or market. In the case of nonowner-occupied property, the waste is generated or produced and is owned by the occupant and not by the landlord, property owner or association of property owners, or the agent of such landlord, property owner or association;

F. The purchase of totally source-separated recyclables for fair market value;

G. The providing of service to a state or federal agency under written contract with such agency; provided, however, that the provider shall apply for a franchise for that service only, shall pay the franchise fee on such service, shall comply with all requirements imposed on the franchiser by this ordinance and shall, unless the written contract with such agency provides otherwise,

charge the rates and adhere to the terms of service imposed on the franchisee by this chapter and attached schedules;

H. The providing of service for hazardous wastes;

I. Any other practice, business or activity which is withdrawn by the council after public hearing and upon a resolution and order finding the withdrawal has no substantial impact on service, consumer rates or the purposes stated in Section 8.16.020 of this chapter. A copy of any such order shall be attached to and incorporated in this chapter.

(Ord. 1150 § 4, 1983)
(Ord. No. 1323, 12-17-2008)

8.16.050 Exceptions to provisions.

The council may authorize exceptions to provisions of this chapter, provided the following requirements have been met:

A. Applicant shall obtain an application form and file a completed application with the city manager.

B. Upon thirty (30) days' written notice to the applicant and the franchisee, a public hearing shall be held before the council.

C. The manager shall provide information and recommendations to the council to assist it in reaching a determination.

D. The council shall hold a public hearing and make findings. The council's decision shall be based on the following:

   1. The need for the proposed service;

   2. The ability of franchisee to provide the required service unless the service was being supplied on the effective date of the ordinance codified in this chapter;

   3. Whether there are unnecessary, unreasonable hardships or practical difficulties which can be relieved only by granting an exception;

   4. Whether there are exceptional circumstances or conditions applying to the land, buildings or use referred to in the application, which circumstances or conditions do not apply generally to other land, buildings or similar uses;

   5. Whether the granting of the application will not be materially detrimental or have a substantial impact on service, consumer rates or the franchisee;

   6. Whether the applicant has the necessary equipment and/or personnel to provide adequate service.

E. An order by resolution shall be drawn setting forth the decision of the council and shall be distributed to the applicant and the franchisee. The order may specify any conditions or limitations deemed necessary by the council to carry out the purposes of this chapter.

(Ord. 1150 § 5, 1983)

8.16.060 Activity prohibited.

Unless exempted under Section 8.16.040, excepted under Section 8.16.050, or franchised pursuant to Section 8.16.070, no person shall provide service or offer to provide or advertise for performance of such service in the city.

(Ord. 1150 § 6, 1983)

8.16.070 Grant of exclusive franchise.

The city grants to Dahl Disposal Service, Inc. the exclusive right, privilege and franchise to provide service within the city limits as of the date of the ordinance codified in this chapter and within any area that may hereafter be annexed to the city and, for that purpose, to utilize the streets and facilities of the city.

(Ord. 1150 § 7, 1983)

8.16.080 Franchise term.

The rights, privileges and franchise granted by this chapter shall begin on the effective date of the ordinance codified in this chapter and shall be considered renewed for an additional ten-year term unless at least thirty (30) days prior to February 1st of any year, the council shall notify the franchisee in writing of intent to terminate the franchise. Upon the giving of such notice of termination, the franchisee shall have a franchise which will terminate ten (10) years from the date of the notice of termination. The council may later extend the term or reinstate continuing renewal upon mutual agreement with the franchisee. Nothing in this section restricts the council from suspending, modifying or revoking the franchise for cause pursuant to Section 8.16.120.

(Ord. 1150 § 8, 1983)

(Ord. No. 1323, 12-17-2008)

8.16.090 Franchise fee.

A. The holder of a franchise granted pursuant to this title shall pay the following fees in the manner prescribed:

1. Any solid waste franchisee shall pay a fee of five (5) percent of the gross cash receipts from franchised collection service provided to the service territory included in the franchise.

2. The franchisee shall make quarterly payments to the city on or before the 15th day of each January, April, July, and October for the immediately preceding quarter. Grantee shall pay a pro rata fee for the last payment to the date of termination in addition to any other sums due the city and shall make such payment within thirty (30) days of termination.

3. In consideration of the franchise granted by this chapter, the franchisee shall furnish the city a certified statement of gross revenue for the calendar year from service within the city as required by this chapter and shall pay to the city two percent of the gross revenue. The statement shall include the number of residential, commercial and other services performed by franchisee and the revenue derived from those services. Payments to the city shall be based on the calendar year and shall be due by February 1st of the following year and payable to the city recorder of the city. As further compensation the franchisee shall remove all solid waste from all administrative buildings, the library, and other city-owned litter and solid waste receptacles. All consideration paid by franchisee shall be in addition to any business license or other fees assessed by the city.

(Ord. 1301A § 6, 2003: Ord. 1150 § 9, 1983)
(Ord. No. 1323, 12-17-2008)

8.16.100 Franchisee responsibility.

The franchisee shall:

A. Dispose of solid waste at the site approved by local government unit having jurisdiction or resource recover such wastes, both in compliance with ORS Chapter 459 and with this chapter;

B. Provide and keep in force public liability insurance in the amount of not less than one million dollars ($1,000,000.00) for injury to a single person, two million dollars ($2,000,000.00) to a group of persons and one million dollars ($1,000,000) property damage, all relating to a single occurrence, which shall be evidenced by a certificate of insurance filed with the city recorder;

C. Within thirty (30) days after the effective date of the ordinance codified in this chapter, file with the city recorder a written acceptance of this franchise by endorsing acceptance on a copy of this chapter;

D. Provide sufficient collection vehicles, containers, facilities, personnel and finances to provide all types of the necessary service or subcontract with others to provide such service;

E. Respond to any complaint on service;

F. Provide weekly service in residential areas and daily service to commercial areas on weekdays;

G. Where a new resource recovery service or a continuation of or a substantial expansion of an existing service is proposed by the city or another person other than the franchisee:

    1. Prior written notice of the proposed service shall be given to franchisee by city manager at least thirty (30) days prior to consideration by the council.

    2. The council may on its own motion and shall upon request of the franchisee or applicant for an exception hold a public hearing on the proposed service, costs and justification.

    3. In determining whether service is needed, the council shall give due consideration to the purposes of this chapter, the public need for the service, the technological and economic

feasibility, the effect on consumer rates, the effect on other service by franchisee, applicable laws, ordinances or regulations and any applicable solid waste management plan.

4. If council determines that such service is needed, it may require the franchisee to provide the service within a specified period of time or the council may grant an exception to another person to provide the service under Section 8.16.040(I). Where applicable, the council may determine necessary rates.

H. The franchisee is not required to store, collect, transport, transfer, dispose of or resource recover any hazardous waste; provided, however, that the franchisee may provide such service outside this chapter in compliance with all applicable laws, ordinance and regulations;

I. The franchisee may subcontract with others to provide a portion of the service where franchisee does not have the necessary equipment or personnel. Such a subcontract shall not relieve the franchisee of total responsibility for providing and maintaining service and from compliance with this chapter;

J. The franchisee shall not:

1. Give any rate preference to any person, locality or type of solid waste stored, collected, transported, disposed of or resource recovered. This paragraph shall not prohibit uniform classes of rates based upon length of haul, type or quality of solid waste handled and location of customers so long as such rates are reasonably based upon cost of the particular service and are approved by the council or shall it prevent any person from volunteering service at reduced cost for a charitable, community, civic or benevolent purpose,

2. Transfer this franchise or any portion of it to other persons without prior written approval of the council, which consent shall not be unreasonably withheld. The council shall approve the transfer if the transferee meets all applicable requirements met by the franchisee. Assignment of this franchise to a company affiliated with the franchisee shall not be considered to be a transfer for purposes of this section. A pledge of this franchise as financial security shall be considered as a transfer for purposes of this subsection. The council may attach whatever conditions it deems necessary to guarantee maintenance of service and compliance with this chapter.

(Ord. 1150 § 10, 1983)
(Ord. No. 1323, 12-17-2008)

8.16.110 Supervision.

Service provided under the franchise and other requirements of this chapter shall be under the supervision of the city manager. Franchisee shall, at reasonable times, permit inspection of his facilities, equipment and personnel providing service.
(Ord. 1150 § 11, 1983)

8.16.120 Suspension, modification or revocation of franchise.

A. Failure by franchisee to provide necessary service or otherwise comply with the provisions of this chapter after written notice and a reasonable opportunity to comply shall be grounds for modification, suspension or revocation of the franchise.

B. After written notice from the city manager that such grounds exist, the franchisee shall have at least twenty (20) days from the date of mailing of the notice in which to comply or request a public hearing before the council.

C. At a public hearing, the franchisee and other interested persons shall have an opportunity to present oral, written or documentary evidence to the council.

D. If the franchisee fails to comply within the time specified or, if a council hearing is held, with the order of the council entered upon the basis of findings at the public hearings, the council may suspend, modify or revoke the franchise or make such action contingent upon continued compliance.

E. In the event the 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.
(Ord. 1150 § 12, 1983)

8.16.130 Termination of service.

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

A. The street or road access is blocked and there is no alternate route and provided that the city shall not be liable for such blocking of access;

B. Excessive weather conditions render providing service unduly hazardous to persons providing service or such termination is caused by accidents or casualties caused by an act of God, public enemy or vandalism;

C. A customer has not complied with Section 8.16.150 of this chapter or has not paid for service provided after a regular billing and after written notice to pay;

D. Ninety (90) days' written notice of intent to terminate all or a substantial part of service is given to the council and written approval is obtained from the council; or

E. Ordered to suspend, reduce or terminate all or a portion of service by a legislative, administrative or judicial body having jurisdiction.

(Ord. 1150 § 13, 1983)

8.16.140 Rate determination.

A. Rates for service provided by franchisee shall be fixed and thereafter amended from time to time by resolution of the council.

B. In determining rates, the council shall give due consideration to current and projected revenue and expenses; actual and overhead expense; the cost of acquiring and replacement of equipment; the cost of providing for future, added or different service; a reasonable return to franchisee for doing business; research and development; and such other factors as the council deems relevant. The council may also consider rates charged by other persons performing the same or similar service in the same or similar areas under the same or similar service conditions.

C. The maximum rates to be charged shall be those set as provided herein. Unscheduled services may be provided at the reasonable cost of providing the service giving consideration to the standards in subsection B of this section.

D. Franchisee may require payment for residential service and multifamily residential service up to three months in advance. Franchisee may bill up to three months in advance, arrears or any combination. Where billed in advance, franchisee shall refund a pro rata portion of the payment for any complete month in which service is not to be provided. Franchisee may charge at the time service is provided to drop box or rolloff box service customer where the customer has not previously established credit with the franchisee.

E. If approved in the new rate schedule, franchisee may charge: a starting charge for a new service; a restart charge to any customer who has been previously terminated for failure to pay for service; and interest on past due accounts.

F. Rates may be uniform or uniform within zones or classes of service.

G. Collection of Charges.

1. Franchisee shall charge and collect those rates adopted each year in accordance with this section. The rates set shall be fixed at a level sufficient to produce a revenue requirement for the franchisee that is equal to the quotient of allowable expenses divided by the operating ratio, expressed as a decimal. The operating ratio for this agreement shall be calculated at eighty-eight (88) percent. For purposes of this section, the rates shall include all monies collected by the franchisee for the services provided pursuant to a franchise granted by the city, including, but not limited to, charges for collection of solid waste and recyclable materials, revenue from the sale of recycled material, disposal charges, surcharges, fees and taxes. Revenue shall also include any other monies received by the franchisee from any other entity as compensation for services allocated fairly and reasonably to the jurisdiction and customers receiving said services.

2. The franchisee and its affiliates may use common resources, such as equipment, fuel, labor, management, and administration, to service the city and other nearby jurisdictions. In such cases, it will be necessary to allocate the costs of such resources among the jurisdictions they serve. Franchisee and the city shall mutually agree upon an allocation formula, which may be amended upon the written mutual consent of the franchisee and the city, and shall be applied, as amended, to determine allowable expenses throughout the term of the franchise.

3. The three factors that will be used to allocate these costs are:

a. Labor hours: Used to allocate labor costs. Vehicle costs will also be allocated on labor hours as a substitute for engine hours. If, in the opinion of the operator, these hours would not be materially similar, then a four-factor formula would need to be implemented which would include engine hours to allocate the cost of vehicles;

b. Weight: Average vessel weights used to allocate disposal;

c. Customer base: Weighted customer counts used to allocate general, administrative, and management expenses.

4. The methods for collecting the data for the factors described in subsection (G)(3)(c) of this section are:

a. Labor hours: A "time on route" form will be completed by route drivers one week each quarter. This data will then be summarized and averaged for application to the annual accounting data, or summarized and applied to the specific quarterly accounting data;

b. Weight: Quarterly weight statistics will be generated by the company to obtain quarterly average vessel weights. These weights will then be applied to route list customer data to obtain relative weights per route. These relative weights per route will then be applied to the cost of disposal;

c. Customer base: This data is readily available from computer reports generated in conjunction with billing and route list preparation.

5. The factors described in subsection (G)(3)(c) of this section will be captured and applied to the costs on a periodic basis. The city and the franchisee agree that test periods shall be utilized, at least quarterly, to collect this data.

6. Commencing on April 1st, but in no event after April 1, 2004, the franchisee will submit to the city an annual report of operations prepared by the hauler's certified public accountant, showing the actual allowable expenses incurred by the franchisee in the preceding fiscal year, all additional allowable expenses the franchisee reasonably anticipates will be incurred or imposed in the current fiscal year, the allocation formulas used to determine expenses, the actual operating ratio for the preceding fiscal year, and the expected operating ratio for the current fiscal year.

7. Except as provided in subsection (H)(4)(h) of this section, a cost of living rate adjustment shall be made every other year commencing with the completion of the report described in subsection (H)(4)(f) of this section, and according to the following procedure:

a. Commencing on June 1, 2004, and on June 1st of each even numbered year thereafter (the adjustment date) throughout the term of the franchise, the rates shall be adjusted in an amount equal to eighty-five (85) percent of the two-year percentage change in the Consumer Price Index for all Urban Consumers for West B/C, All Items (1982-84=100) published by the Bureau of Labor Statistics (the index) that occurred between the months

of May and April of the previous and the current years. The adjustment shall not exceed six percent in any two-year period. In addition, no cost of living adjustment shall be allowed if the adjustment would cause the franchisee to project operations in excess of the operating ratio range. The adjusted rates shall become effective on each July 1st, thirty (30) days following the adjustment date;

b. On each adjustment date, the then current rates shall be multiplied by the calculated percentage change in the index for the year;

c. On or before each adjustment date, the franchisee shall send to the city a revised rate schedule reflecting the proposed new rates, as adjusted by the index as provided in this subsection. Upon adoption, the revised rate schedule shall become effective on July 1st of each year;

d. If a rate adjustment occurred in the previous year due to an upward adjustment of the rates due to a formal rate review, then the franchisee is only eligible for eighty-five (85) percent on the one year change in the Consumer Price Index;

e. In the event that the Index for Urban Consumers of West B/C is no longer published by the Bureau of Labor Statistics, the franchisee and the city shall negotiate in good faith and agree upon a suitable replacement index reflective of the cost of living in the franchise area.

8. If the report described in subsection (H)(4)(f) of this section indicates that the operating ratio for the next succeeding twelve (12) month period will be less than eighty-five (85) percent or greater than ninety-one (91) percent, then a rate review will automatically be implemented in accordance with this section. No more than five consecutive years shall pass during the term of this franchise without a formal rate review as set forth in this section. In the event a rate review is requested or required as provided in this section, the following procedures shall bind the city and the franchisee:

a. The city shall review the report and, if the city's review of the report indicates that the operating ratio is likely to be greater than eighty-five (85) percent or less than ninety-one (91) percent, the city shall adopt rates for the next year, either as proposed by the franchisee in the report, or as modified by the city, no later than June 15th. The adopted rates shall then become effective no later than July 1st, and shall supersede the rates that were previously in effect. The adopted rates shall provide the franchisee an operating ratio of eighty-eight (88) percent;

b. In the event the report shows that the operating ratio for the current fiscal year is not likely to be greater than eighty-five (85) percent or less than ninety-one (91) percent, the existing rates shall not be adjusted, and the current rates shall continue in effect until next adjusted in accordance with subsection (H)(4)(g) of this section. The city shall set all policies and procedures respecting the implementation of rates and shall direct the franchisee to carry out such policies and procedures. The city, its agents or employees may, upon reasonable notice and during normal business hours, audit those records of the

franchisee that pertain to revenue and allowable expenses. However, in reviewing such records, the city and its agents and employees shall maintain the confidentiality of the records, and not disclose, divulge or transmit the records, or copies of the records, to any third party, except as may be compelled under law or by a court of competent jurisdiction;

c. Upon review by the city, if it is found that deliberate or malicious material misrepresentation of books, records, accounts or data relating to collection service operations has occurred, the franchisee shall pay all review costs incurred by the city.

9. In the event the franchisee, at any time, becomes liable to pay any new or increased legislated costs, including surcharges, fees, or expenses associated with regulatory requirements, or any new or increased disposal or long-haul transportation costs or fees, and these costs represent in excess of three percent of gross revenue, then all such costs and fees shall be immediately passed through and added to the existing rate structure upon the city's receipt and verification of the franchisee's documentation of, and liability to pay, those new costs or fees. In the event the franchisee, at any time, experiences a reduction in these costs, in excess of three percent of gross revenue, then all such savings shall be immediately passed through and subtracted from the existing rate structure upon the city's receipt and verification of the franchisee's documentation of those reduced costs or fees. The franchisee shall include all such costs, cost savings, and fees in the next succeeding year's report as actual allowable expenses of the franchisee.

H. Submission of Reports.

1. The following reports and information shall be submitted by the franchisee to the city in accordance with the following schedule. Commencing with the first rate adjustment request by the franchisee, and on each April 1st thereafter, the franchisee shall submit the annual report in the format approved and distributed by the city, consisting of the following:

a. Financial statements for the franchisee for the preceding year, with schedules prepared by the franchisee's certified public accountant to provide backup for any allocated expenses. The franchisee shall also identify any expense incurred with an affiliated company. At the city's request, the franchisee shall provide backup as is reasonable to verify expenses;

b. Equipment and depreciation schedules and equipment replacement projections for the current year;

c. Projected allowable expense and pass through expense for the current year;

d. Projected gross revenue for the current year, based on current levels of service and the current rate schedule before any cost of living adjustment; and

e. Subject to the conditions of subsection G of this section, a proposed rate schedule to be effective July 1st, with rationale as to how the rates were developed.

2. Records and Information Requirements. The franchisee shall maintain accounting, statistical,

operational, and other records related to its performance under the franchise agreement. Also, the franchisee agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with applicable laws and regulation and to meet the reporting and solid waste program management needs of the city. To this extent, requirements set out in this agreement shall not be considered limiting or necessarily complete. In particular, this section is intended to only highlight the general nature of records and reports, and is not meant to define exactly what the records and reports are to be, and their content. Further, with the written direction or approval of the city, the records and reports to be maintained and provided by the franchisee in accordance with this agreement shall be adjusted in number, format, or frequency. This is not intended to require significant additional administrative labor, or the modification of the franchisee's computer software.

3. All records shall be maintained for at least five years after the expiration of this agreement, with the exception of accounts payable records, which shall be maintained for at least three years after payment. The records addressed in this agreement shall be provided or made available to the city and its official representatives during normal business hours.

4. Solid Waste Records. Records shall be maintained by the franchisee for the city relating to:

   a. Customer service and billing;

   b. Weight and volume of solid waste and recyclable materials;

   c. Routes;

   d. Facilities, equipment and personnel used;

   e. Facilities and equipment operations, maintenance and repair;

   f. Disposal of solid waste;

   g. Complaints; and

   h. Missed pick-ups.

5. CERCLA Defense Records. The city views the ability to defend against litigation brought under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 USC § 9601, et seq.), and other related litigation, as a matter of great importance. For this reason, the city regards the ability to prove where solid waste collected in the city was taken for disposal, as well as where it was not taken, to be matters for concern. Franchisee shall maintain data retention and preservation systems which can establish where solid waste collected in the city was land filled, and therefore establish where it was not land filled, and provide a copy or summary of the reports required for at least five years after the term during which collection services are to be provided pursuant to this agreement, or to provide copies of such records to the city.

6. Disposal Records. The franchisee shall maintain records of disposal of all solid waste collected

in the city for the period of this agreement, and all extensions to this agreement or successor agreements. In the event the franchisee discontinues providing solid waste services to the city, the franchisee shall provide all records of disposals or processing of all solid waste collected in the city within thirty (30) days of discontinuing service. Records shall be in chronological order, and organized in a form and manner that is capable of easily and readily being understood and interpreted.

7. Reporting Responsibilities.

   a. At the time of payment of the annual franchise fees, the franchisee shall file with the city a sworn and verified statement of annual gross revenues for the period covered by the tendered fee. Such statements shall be public records. Each franchisee shall maintain books and records disclosing the gross receipts derived from business conducted within the city, which shall be open at reasonable times for audit by city personnel or assigned agents. The city may require a uniform system of bookkeeping and record keeping to be used by all franchisees;

   b. Deliberate or malicious misrepresentation of gross revenues by a franchisee constitutes a major contract violation, and may be cause to initiate the process to terminate the franchise;

   c. The city council may change the amount and computation of franchise fees from time to time.

8. Confidentiality of Annual Rate Review Reports. Franchisees may identify information submitted to the city as confidential. The city shall treat any information marked confidential as being confidential, and shall not subject the confidential information to public disclosure except as required by law or by order of a court of competent jurisdiction. If the city receives a request for disclosure of confidential information, the city shall notify the franchisee within five business days of receiving the request, in order to allow the franchisee a reasonable opportunity to defend against the requested disclosure through appropriate legal process.

9. Reportable Incidents and Events. The franchisee shall provide the city with two copies, one to the city council and one to the city manager, of all reports, pleadings, applications, notifications, notices of violation, and all other formal actions relating specifically to the franchisee's performance of services pursuant to this agreement, submitted by franchisee to, or received by franchisee from, the United States Environmental Protection Agency, the Oregon Department of Environmental Quality, or any other federal, state, or local agency, including federal or state court actions brought by any of these agencies, with regard to franchisee operations within the state of Oregon. Copies shall be submitted to the city simultaneously with franchisee's filing or submission of such matters with the agency or court. A franchisee's routine correspondence to the agency or court need not be submitted to the city, but shall be made available to the city upon written request.

10. The refusal or willful failure of a franchisee to file any required report, or to provide required information to the city, or the inclusion of any materially false or misleading statement or

representation by the franchisee in a report, shall be deemed a material breach of the franchise, and shall subject the franchisee to all remedies which are available to the city under the franchise.

11. Vehicle Inventory. The franchisee, in conjunction with the annual report, shall provide the city with an inventory of vehicles used by the franchisee within the city. The list shall include vehicle make, year of manufacture, model name, vehicle identification number (VIN), and PUC numbers.

12. Access for Inspections and Delivery of Notices.

a. Franchisees shall make all company premises, facilities and records related to their solid waste, recyclable materials and yard debris collection services, including, but not limited to, offices, storage areas, financial records, non-financial records, records pertaining to the origin of any solid waste collected by the franchisee, receipts for sale or delivery of collected recyclable materials, customer lists, and all records related to vehicle maintenance and safety which are required under Oregon Department of Transportation motor carrier requirements and regulations and ORS Chapter 767, available for inspection by the city, the Lincoln County Solid Waste District, and their employees or assigned agent, within twenty-four (24) hours of notice by registered mail. Inspections are only for purposes of enforcing this agreement, and are restricted to normal business hours;

b. During normal business hours, the franchisee shall make all company premises and facilities accessible to city employees or assigned agents for delivery of any written notices;

c. Franchisee collection vehicles must be accessible for inspection during the normal operating hours for collection, in addition to normal business hours. Where receptacles are stored in the public right-of-way, or when the city is conducting an inspection in a situation where the franchisee is allegedly disposing recyclable or yard debris with solid waste, the need for twenty-four (24) hour notice does not apply to inspection of receptacles or vehicles.

I. City reserves the right, at any time during the period of a franchise, to examine the rate structure of a franchisee and to modify rate changes which, in the discretion of the city council, are reasonably required in view of the following considerations:

1. To facilitate considerations as in this section provided, a franchisee shall furnish and provide to the city a certified copy of the published rate schedule, which rate schedule shall contain the rates and charges made for all its operations. Said rate schedule, after having been filed as herein provided, shall be kept current and a franchise shall file with the city, at least ninety (90) days prior to any contemplated change, a new and revised rate schedule which shall be examined by the city in an appropriate public proceeding affording due process. Notification of the decision of the city council shall be made to the franchisee by certified mail. In the event of disapproval, franchisee shall not put the new rate schedule into effect, but may file with the city, either on its

own motion or in compliance with the city council's request, further information to justify the rate schedule changes. Negotiations shall be had in good faith between the parties. The existing approved rate schedule, as of the effective date of the ordinance codified in this chapter, shall be deemed to be in effect. The city may require annual statements and other records to be furnished to the city to carry out the intentions of this section.

2. In the event of approval of a new and revised rate schedule, the new and revised rate schedule shall not apply to persons and groups who have an advance payment agreement with the franchisee until the normal expiration of said advance payment agreement.

3. The rates in effect at the time the ordinance codified in this chapter takes effect and thereafter shall be subject to review and change only one time in a calendar year beginning January 1st and ending December 31st of the same year; provided, however, that:

    a. Upon application and without prior notice, the city council may, by order, grant an interim or emergency rate for new, special, or different service. The city council may specify the duration of said rate or continue it until final determination by the city council on the next overall rate adjustment;

    b. In addition to an annual rate adjustment, a supplemental rate adjustment may be requested when the cost of service is increased by governmental regulations and compliance therewith; or when there is substantial increase in a single expense that was not anticipated at the time of the last rate adjustment; or, when the total cost of service exceeds projected costs by five percent, or more.

4. Notwithstanding any other provision of Chapter 8.16, the city council may establish a fee on waste generated within the franchise which utilized the Agate Beach Landfill/Balefill. The fee shall be set from time to time by resolution of the city council at a level which will cover all expected costs including but not limited to financing closure and post-closure debt instruments. The fee shall be collected by the respective franchisees based on waste generated within the franchise area and remitted by franchisee monthly to the city. The city shall receive all fee proceeds to be held in trust exclusively for Toledo's proportional share of on-going closure and post-closure costs of the Agate Beach Landfill. Upon full funding of the costs of such closure and post-closure activities, the city shall end the Agate Beach closure fee.

    a. The institution of this fee is accepted by franchisee as an amendment to the provisions of the franchise as set out in Chapter 8.16 and shall be binding upon them, their successors, heirs, or assigns. A separate executed instrument signifying the franchisees acceptance shall be placed in the records of the city. This subsection constitutes an amendment of the original franchise agreement.

(Ord. 1301A §§ 3--5, 2003; Ord. 1150 § 14, 1983)

8.16.150 Public responsibility.

In addition to and not in lieu of compliance with ORS Chapter 459 and other applicable laws and regulations:

A. No person shall place hazardous waste for collection or disposal by franchisee without notice to the city manager or office or franchisee. This shall not apply to minor quantities of wastes generated at or by a single-family residential unit.

B. No unauthorized person shall place material in or remove material from or compact the contents of a solid waste collection container without permission of the owner of the container. For the purpose of this section, the franchisee is the "owner" of containers supplied by franchisee.

C. No unauthorized person shall remove or manually compact solid waste placed out for collection and resource recovery by the franchisee or a person exempted by Section 8.16.040 of this chapter and operating solely within the exemption.

D. No person shall install an underground solid waste container for storage and collection after the effective date of the ordinance codified in this chapter. The franchisee is not required to service an underground container unless the person responsible for it places the can above ground prior to time of collection.

E. No can for residential service shall be located behind any locked or latched door, gate or inside of any building or structure.

F. Each customer shall provide safe access to the solid waste container or wastes without risk or hazard to franchisee's employees, the public or franchisee.

G. No container designed for mechanical pickup shall exceed safe loading weights or volumes as established by the franchisee to protect service workers, the customer, the public and the collection equipment.

H. Where a customer requires an unusual volume of service or 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 ratepayers who are not benefitted.

I. Stationary compacting devices for solid wastes shall comply with federal and state safety standards and provide adequate protection to the user.

J. Every person who generates or produces wastes shall remove or have removed at least once every seven days all waste which may putrefy during that period. More frequent removal may be required by the city manager where a facility or service involves the public health. All wastes shall be removed at sufficient frequency so as to prevent health hazards, nuisances or pollution.

K. The producer or generator of waste shall clean both cans and containers and shall keep the area around such cans or containers free of accumulated wastes. The franchisee shall provide periodic maintenance to containers supplied by franchisee.

L. No person shall accumulate or store waste that is unsightly, or in violation of regulations of the Oregon Department of Environmental Quality.
(Ord. 1150 § 15, 1983)
(Ord. No. 1323, 12-17-2008)

8.16.160 Payment of service.

Any person who received service from the franchisee shall be responsible for payment of service. The owner of a rental or lease facility shall be liable for payment for services provided to a tenant of such dwelling if the tenant fails to make timely payment for such service. The owner of any multiple unit rental or lease facility having two or more dwelling units shall be primarily responsible for services provided to the occupants of such facility and shall be billed for the services.
(Ord. 1150 § 16, 1983)

8.16.170 Appeals.

Any action or determination by franchisee under or pursuant to this chapter may be appealed to the city manager. Any action or determination of the city manager under this chapter may be appealed to the city council.
(Ord. 1150 § 17, 1983)

8.16.180 City enforcement.

The city shall enforce the provisions of this chapter by administrative, civil or criminal action or any combination as necessary to obtain compliance with this chapter. The council shall take such legislative action as is necessary to support the chapter and the franchise granted. The franchisee may also enforce payment or protect its rights by appropriate civil action.
(Ord. 1150 § 19, 1983)

8.16.190 Penalties.

Violation by any person of the provisions of this chapter shall be punished upon conviction by a civil penalty of a fine of not more than five hundred dollars ($500.00). Penalties in this section are not in lieu of other remedies provided in this chapter. Each day of a violation is a separate offense; provided, however, that two or more such continuing offenses may be joined in the same action.
(Ord. 1150 § 20, 1983)

Chapter 8.20

UNIFORM FIRE CODE

Sections:
8.20.010 Documents adopted.
8.20.020 Violation--Penalty.

8.20.010 Documents adopted.

A. The city of Toledo adopts for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion that certain code known as the Uniform Fire Code and the Uniform Fire Code Standards, recommended by the Western Fire Chiefs Association and the International Conference of Building Officials, the 1991 Edition, as amended by the Oregon State Fire Marshall, 1992 amendments, except such portion as are hereinafter deleted, modified or amended by this chapter.

B. The city further adopts the National Fire Protection Association, National Fire Codes, Volumes 1 through 12, as amended yearly, as guidelines and standards to be used in enforcing the Uniform Fire Code. The Code, the Standards, and the NFPA Codes are adopted and incorporated as fully as if set out at length, and from the effective date of the ordinance codified in this chapter, the provisions of these documents shall be controlling within the city of Toledo.

C. The city also adopts the standardized-costs schedules for transportation route response, unprotected area response, and apparatus cost that are contained in the State Fire Marshal's Oregon Fire Mobilization Plan and the volunteer firefighter reimbursement rate that is contained in the State Fire Marshal's Oregon Fire Service Mobilization Plan. All responses billed under these plans are subject to a thirty (30) minute minimum response charge.
(Ord. 1229 § 3, 1994: Ord. 1128 § 1, 1981)

8.20.020 Violation--Penalty.

A. Violation of any section of this chapter, or failure to comply with any order issued under this chapter, or building in violation of specification or plans submitted and approved under this chapter, is a Class A infraction.

B. This remedy is not intended to be exclusive, and the city of Toledo may pursue any other remedy available to it by law, including the removal of the prohibited conditions.
(Ord. 1244 § 10, 1996; Ord. 1128 § 9, 1981)