

City of St. Helens
ORDINANCE NO. 3259

**AN ORDINANCE RENEWING SOLID WASTE DROP BOX FRANCHISE
AND REPEALING ORDINANCE NO. 3140**

WHEREAS the City of St. Helens (the “City”), through its Council (the “City Council”), has determined that the protection and maintenance of the public health, peace, safety and welfare can best be accomplished by the provision of drop box solid waste collection services, to all residents of and businesses in the City, under the grant of a franchise; and

WHEREAS Waste Management of Oregon, Inc. (“Franchise Holder”) has held the franchise for providing such solid waste collection services pursuant to a valid franchise; and

WHEREAS the City Council has determined that it is in the City’s best interest to renew the franchise with Franchise Holder for an additional period of ten (10) years (this “Franchise”); and

NOW THEREFORE, the City does hereby ordain as follows:

Section 1. Definitions.

- a) “**Drop Box(es)**” means a container used for the collection of solid waste, having not less than ten (10) cubic yards of capacity and can be placed, picked up and hauled away by truck.
- b) “**Effective Date**” is defined as November 19, 2020.
- c) “**Excluded Solid Waste**” means the following materials, provided, however, that Franchise Holder and the City may in the future agree in writing to include any of the following materials in the definition of Solid Waste as defined in this Franchise:
 - 1) Animal manure, dead animals, and animal remains, including remains from slaughterhouses or butcher shops;
 - 2) Grease waste or used cooking oil;
 - 3) Sewage sludge, septic tank and cesspool pumpings, or other sludge;
 - 4) Infectious waste as defined in *ORS 459.386* that is not properly containerized and stored in accordance with the requirements set forth in *ORS 459.390*;
 - 5) Asbestos and asbestos-containing waste;
 - 6) Universal wastes as defined in *OAR 340-113-0020(4)* and *40 CFR § 273.9*, including batteries, pesticides, mercury-containing equipment, and universal waste lamps as defined therein;

- 7) Other waste that requires specialized disposal and/or treatment under state or federal law;
- 8) Hazardous Waste (as defined below); and/or
- 9) Other wastes that the City and Franchise Holder agree to in writing, are to be excluded from this Franchise.

d) “**Franchise Area**” means: (i) the entire territory included within the City limits as of the Effective Date; and (ii) any additional area as may thereafter become included within the City limits, from time to time, due to annexation, incorporation, or other means, but only from and after the time as Franchise Holder is able to provide collection services in any such additional area.

e) “**Hazardous Waste**” means waste that is defined as hazardous waste or any other radioactive, volatile, corrosive, flammable, explosive, bio-hazardous, or toxic waste, substance or material, as defined by or listed or characterized under applicable federal, state, or local laws or regulations, including, but not limited to, the federal *Resource Conservation & Recovery Act, 42 U.S.C. §§ 6901 et seq.*, the *Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.*, and the *Hazardous Materials Transportation Act, 49 U.S.C. §§ 6901 et seq.*

f) “**Gross Receipts**” means any and all revenue or compensation actually collected from customers by Franchise Holder pursuant to this Franchise, and in accordance with the Generally Accepted Accounting Principles (“GAAP”).

g) “**Solid Waste**” means ‘solid waste’ as defined in *ORS 459.005*, including yard debris and recyclable materials derived from residential and commercial sources located in the Franchise Area. Notwithstanding the definition of ‘solid waste’ set forth in *ORS 459.005*, the definition of Solid Waste for the purposes of this Franchise does not include those materials specifically identified herein as “Excluded Solid Waste”, unless the City and Franchise Holder subsequently agree in writing to include such material(s) within the definition of Solid Waste for the purposes of this Franchise.

Section 2. Collection of Solid Waste. Unless exempted as provided in this Franchise, or the City’s general solid waste disposal ordinance, no person and/or business shall provide within the Franchise Area solid waste collection service, Drop Box service, or provide for the collection or transport of recycled materials for compensation or offer to provide or advertise for the performance of such services unless said person and/or business has a City-issued franchise.

Section 3. Grant. There is, granted by the City to Franchise Holder, the exclusive right, privilege and franchise to collect, convey and transport Solid Waste from Drop Boxes within the Franchise Area, subject to any restrictions hereinafter set forth, and any provisions contained in City ordinances, as such provisions exist as of the Effective Date or as may be hereafter amended or adopted.

Section 4. Duties. Franchise Holder hereby agrees to collect and dispose of, in a good and workmanlike manner, Solid Waste from Drop Boxes in the Franchise Area for the purposes of promoting the cleanliness and health of the City and to provide Franchise Holder's customers with an "opportunity to recycle", as such term is defined in *ORS 459A.005*. Franchise Holder agrees to comply with all laws and regulations pertaining to its activities, as provided by any agency or department of the United States of America, the State of Oregon, the County of Columbia or of the City, and in particular laws and regulations pertaining to the maintenance of the public health and environment protection in the Franchise Area.

Section 5. Renewal Term. The rights, privileges and franchise herein granted shall continue and be in force for a further period of ten (10) years.

Section 6. Franchise Fee. In consideration of the rights, privileges and franchise herein granted, Franchise Holder shall pay an annual franchise fee to the City equal to Seven percent (7%) of Franchise Holder's annual Gross Receipts. Franchise fees shall be paid on a quarterly basis and are due and payable within thirty (30) days of the end of each quarter. Annually, and no later than ninety (90) days following the close of Franchise Holder's fiscal year, Franchise Holder shall submit a written report to the City Administrator, that includes:

- a) a summary of Franchise Holder's previous year's customers, services provided, and new services, if any; and
- b) a calculation of Franchise Holder's Gross Receipts and the amount of franchise fees paid to the City during Franchise Holder's previous fiscal year.

Section 7. Rates. The rates to be charged for collection of Solid Waste under this Franchise are set forth at **Exhibit A** attached hereto, as the same shall be adjusted, during the term of this Franchise, in accordance with Sections 8 and 9 below.

Section 8. Annual Rate Adjustments. The rates shall be adjusted on October 1, 2021 and annually thereafter, by a percentage equal to one-half of the annual percent change in the average *Consumer Price Index for All Urban Consumers: Water and Sewer and Trash Collection Services*, or successor index ("CPI"), July to July, for West-C, all items (1982-84 = 100), (Series CUUR0000SEHG, CUUS0000SEHG), as published by the Bureau of Labor Statistics, not seasonally adjusted, and not to exceed one and one-half percent (1.5%) (<http://www.bls.gov/cpi/home.htm>) for the 12-month period ending nearest, but at least SIXTY (60) days prior to, each annual adjustment date. Franchise Holder shall notify the City of any rate adjustments hereunder at least THIRTY (30) days in advance, provided however, that Franchise Holder's failure to notify the City of such rate adjustments prior to the annual adjustment date shall not waive Franchise Holder's right to adjust rates at any time thereafter. Adjustments to the rates shall be made in units of one cent (\$0.01). Fractions less than one cent (\$0.01) will not be considered in calculating adjustments. Annual CPI adjustments shall not be negative. If the CPI index series decreases year-on-year, no CPI adjustment will occur.

Section 9. Other Rate Adjustments. Franchise Holder may at any time request a rate revision whenever a significant change in revenue or expenses occurs or is anticipated, or in the event of Uncontrollable Circumstances (see Section 15). In the event Franchise Holder requests a rate revision, the City shall consider such request in good faith and shall act upon the request without undue delay, but in no case later than SIXTY (60) days from the date the request was made. In determining reasonable rates, the City Council shall consider all relevant factors, and

the City and Franchise Holder shall work in good faith to develop and adjust the rates, as necessary, to allow Franchise Holder to earn a reasonable rate of return. The City agrees that it shall not unreasonably withhold its consent or unreasonably delay a rate review request submitted by Franchise Holder.

Section 10. Universal Service. All customers served by Franchise Holder shall be served in an impartial manner, except that Franchise Holder is not required to serve any customer who has defaulted in payment for any prior service rendered under this Franchise or in meeting reasonable service requirements set by Franchise Holder, as determined by mutual agreement between Franchise Holder and the City Council.

Section 11. Disposal Sites. Franchise Holder shall deposit all Solid Waste in a suitable place for dumping and disposing of Solid Waste, and such disposal site shall be approved by the City and any state or federal agencies that regulate such disposal areas.

Section 12. Clean-Up Projects. Nothing contained in this Franchise shall prevent City officers from utilizing persons and using vehicles for the purpose of collecting and removing Solid Waste during the city-wide clean-up sponsored by City or another public agency.

Section 13. Inspections. The hauling of Solid Waste shall be under the supervision of the City Council, and the City Council may inspect the Solid Waste hauling equipment and the manner in which Solid Waste is hauled upon City streets.

Section 14. Street Closures.

- a) The City reserves the right to vacate or to close any street(s) in the Franchise Area, used by Franchise Holder, during the course of any construction or during the course of necessary repairs thereto or in the event that any street becomes dangerous for the operation of motorized vehicles; it being understood, however, that the City shall not be held liable for damages suffered by Franchise Holder, or any of its servants or employees, during its use of any such closed streets, due to any defects in the streets or the City's failure to repair any such defects.
- b) The City reserves the right to prohibit or regulate the operation of trucks under this Franchise on any street(s) within the City, when traffic conditions, the public welfare or public convenience, in the judgment of the City Council, shall so require.

Section 15. Force Majeure. Except for the failure to make payments when due, neither party shall be in default for its failure to perform or delay in performance caused by an uncontrollable circumstance, and the affected party shall be excused from performance during the occurrence of such events. For purposes of this Franchise, "Uncontrollable Circumstances" means any act of terrorism, act of God, landslides, lightning, forest fires, storms, floods, typhoons, hurricanes, severe weather, freezing, earthquakes, volcanic eruptions, other natural disasters or the imminent threat of such natural disasters, pandemics, quarantines, civil disturbances, acts of the public enemy, wars, blockades, public riots, labor unrest (e.g., strikes, lockouts, or other labor disturbances), acts of domestic or foreign governments or governmental restraint or other causes, whether of the kind enumerated or otherwise, and whether foreseeable or unforeseeable, that are not reasonably within the control of a party.

Section 16. Hold Harmless.

- a) Franchise Holder agrees and covenants to pay for all damages for injury to real or personal property, or for any injury sustained by any person, caused by any tortuous act or deed of Franchise Holder, its agents or employees, and further agrees to hold harmless, indemnify and defend the City from and against all claims, demands, suits and actions of every name and description brought against the City for or on account of any such injuries to real or personal property caused by Franchise Holder, its agents or employees, in the exercise of any and all rights granted herein, or by or in consequence of any negligence, act or omission of Franchise Holder, its agents or employees, except that Franchise Holder shall not be liable for any claims, demands, suits and/or actions, solely arising out of the negligence, gross negligence, misconduct, act or omission of the City, or its agents or employees.
- b) Franchise Holder shall be solely responsible for obtaining all approvals, permits, licenses, insurance, and authorizations from the relevant Federal, State, and local authorities, or other entities, that may be necessary to collect and dispose of Solid Waste or other materials as contemplated by this Franchise. The City has no duty, responsibility or liability for requesting, obtaining, ensuring, or verifying Franchise Holder's compliance with applicable state or federal agency or other approval requirements. This Franchise shall not be interpreted as a waiver, modification, or grant of any local, state or federal agency or other permits or authorizations.
- c) Franchise Holder expressly agrees to promptly replace or repair or pay the cost of any such necessary replacement or repair, of any public facility that it damages.
- d) If any aspect of the indemnity contained in this Section shall be found to be illegal or invalid, for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the indemnification.

Section 17. Insurance. Franchise Holder shall carry, maintain and keep in full force and effect, throughout the term of this Franchise, a policy or policies of insurance, on terms and conditions, as specified in **Attachment A** attached hereto and incorporated herein by reference.

Section 18. Complaint. Franchise Holder shall maintain a telephone number for the receipt of service calls or complaints and shall be available for such calls on all working days. Any complaints must be given prompt and courteous attention, and, in case of missed scheduled collections, Franchise Holder shall investigate and, if verified, shall arrange for pickup of such missed collection within twenty-four (24) hours after the complaint is received.

Section 19. Default.

- a) If Franchise Holder fails to collect Solid Waste within the Franchise Area, due to any cause(s) within its control, and any such failure continues for a period of TEN (10) days, or if Franchise Holder fails to perform the conditions, agreements, provisions, or acts herein mentioned, for any reason, then after TEN (10) days of receipt from the City of a notice of such default, the right

herein granted shall cease, and Franchise Holder shall surrender and forfeit any right and privilege granted by this Franchise; provided, however, that Franchise Holder shall not be liable for interruption and/or suspension of its operations hereunder due to any Uncontrollable Circumstances (see Section 15).

- b) Should Franchise Holder, except for in the case of the occurrence of Uncontrollable Circumstances, fall further than ONE (1) week behind in its regular collection schedule, the City may, at its option, cause such uncollected Solid Waste to be collected and disposed of, or the City Administrator may issue a written demand to Franchise Holder to immediately cause such uncollected Solid Waste to be collected and disposed of properly. If Franchise Holder fails to respond with a plan sufficient to collect and dispose of the uncollected Solid Waste and/or fails to commence such collection within SEVENTY-TWO (72) hours of receipt of notice, the City may collect and dispose of the uncollected Solid Waste using City resources. The City Engineer, or his or her designee, shall keep an itemized account of the actual expenses incurred by the City or its contractor, and Franchise Holder shall be billed for all costs as they are incurred. The financial responsibility of Franchise Holder under this Section shall continue until a new franchise ordinance authorizing a new franchise holder is adopted or until NINETY (90) days after the date of default, whichever occurs sooner. Franchise Holder shall pay such costs as are billed under this Section in full within SIXTY (60) days of receipt of a bill from the City. In the event such a bill is not paid in full when due, Franchise Holder expressly agrees that the City may elect to reduce said charges to a lien against any real property of Franchise Holder, cause the same to be duly recorded and/or seek collection of said charges as a personal obligation of Franchise Holder, using any available legal remedies. Any liens imposed may be foreclosed pursuant to state law.

Section 20. Notices. All written notification required herein shall be effective upon receipt and delivered by certified US mail, return receipt requested, overnight delivery by a nationally recognized courier/delivery service, or by hand delivery to the party's address shown below, as may be amended by the parties from time to time:

If to the City: City Administrator
City of St. Helens
265 Strand Street
St. Helens, OR 97051

If to Franchise Holder: Senior Legal Counsel
Waste Management of Oregon, Inc.
720 Fourth Ave., Suite 400
Kirkland, WA 98033

Copy to: Waste Management of Oregon, Inc.
Attn: Dave Huber, District Manager
1525 B Street
Forest Grove, OR 97116

And: Waste Management of Oregon, Inc.
Attn: Nicolas Ries, Operations Manager
34240 Johnson Landing Road
Scappoose, OR 97056

Section 21. Assignment and Subcontractors. Franchise Holder shall not assign or transfer this Franchise, or any right, license, or privilege granted herein except upon the express written consent of the City Council. Any performance under this Franchise shall be by Franchise Holder, its employees or agents, and no part of any of Franchise Holder's operations as herein contemplated shall be performed or furnished by any contractor or subcontractor except with the express written consent of the City Council, and upon compliance with such terms as it shall specify. If the City Council's consent is obtained, the provisions of this Franchise, and any additional terms that the City Council may require, shall be binding upon Franchise Holder, its assignees, contractors and subcontractors. Notwithstanding the foregoing, Franchise Holder may assign this Franchise to a subsidiary or corporate affiliate of Franchise Holder without the prior consent of the City Council, and this Franchise shall be binding upon the parties and their respective successors and assigns.

Section 22. Acceptance. Franchise Holder shall indicate its acceptance of the terms and conditions of this Franchise in writing prior to the Effective Date of the Ordinance, for this Franchise to be in effect upon such date.

Section 23. Construction. Any finding by any court of sufficient jurisdiction that any portion of this Franchise is unconstitutional or invalid shall not invalidate any of the other provisions of this Franchise.

Section 24. Repeal. Ordinance No. 3140 is hereby repealed.

Read the first time: February 3, 2021
Read the second time: February 20, 2021

* * *

APPROVED AND ADOPTED this 20th day of February 2021 by the following vote:

Ayes:

Nays:

Rick Scholl, Mayor

ATTEST:

Kathy Payne, City Recorder

ATTACHMENT A

INSURANCE REQUIREMENTS

Franchise Holder and its subcontractors shall carry, maintain and keep in full force and effect, throughout the term of this Franchise, a policy or policies of insurance that provide, at a minimum, the following coverages and limits:

TYPE OF INSURANCE	LIMITS OF LIABILITY	
General Liability	Each occurrence	\$2,000,000
	General Aggregate	\$3,000,000
	Products/Comp Ops Aggregate	\$2,000,000
	Personal and Advert. Inj.	\$2,000,000
<i>Please indicate if Claims Made or Occurrence</i>		
Automobile Liability	Combined Single – covering any vehicle used on City business	\$2,000,000
	Combined Aggregate	\$3,000,000
Workers' Compensation	Per Oregon State Statutes	

The coverages and policies detailed in the above table shall not be canceled, modified or revoked without providing the City thirty (30) days advance written notice. Franchise Holder shall provide to the City certificates of insurance evidencing such insurance, in the manner set forth in Section 19 (Notices) of this Franchise and prior to Franchise Holder's commencement of performance of the services set forth in this Franchise.

Franchise Holder shall name the City, its officers, agents and employees as additional insureds under its Commercial General Liability and Automobile Liability policies, but only to the extent of Franchise Holder's indemnity obligations set forth in Section 15 of this Franchise.

The certificate of insurance for Franchise Holder's Workers' Compensation policy need not name the City as an additional insured but must list the City as a 'certificate holder'.

The procuring of such required insurance shall not be construed to limit Franchise Holder's liability hereunder. Notwithstanding said insurance, Franchise Holder shall be obligated for the total amount of any damage, injury or loss caused by negligence or neglect by Franchise Holder in its performance of this Franchise. It is agreed that any insurance maintained by the City shall apply in excess of, and not contribute toward, insurance held by Franchise Holder.

EXHIBIT A

**RATES FOR DROP BOX SERVICES
(Effective as of October 1, 2020)**

Container Size	Rate
10-Yard Drop Box Haul	\$ 134.00
20-Yard Drop Box Haul	\$ 140.70
30-Yard Drop Box Haul	\$ 148.12
40-Yard Drop Box Haul	\$ 148.12
Compactor Haul	\$ 282.12
Rental Per Day - All sizes	\$ 4.51
Rental Per Month - All sizes	\$ 90.27
Mileage - All sizes	\$ 1.78
Disposal Rate, per ton	\$ 90.70

Plus 7% franchise fee added to total monthly charge