

ORDINANCE NO. 342

AN ORDINANCE OF THE CITY OF PORTOLA, COUNTY OF PLUMAS
AMENDING CHAPTER 8.04 OF THE CITY OF PORTOLA MUNICIPAL CODE
PROVIDING FOR REGULATION OF SOLID WASTE COLLECTION AND RECYCLING

The Council of the City of Portola, California, ordains as follows:

Section 1. Chapter 8.04 of the Portola Municipal Code is hereby amended to read as follows:

Title 8

HEALTH AND SAFETY

Chapter 8.04

SOLID WASTE COLLECTION AND RECYCLING

Sections:

8.04.010	General Provisions
8.04.020	Definitions
8.04.030	Grant of Franchise
8.04.040	Regulation of Franchise
8.04.050	Operation of Franchise
8.04.060	Fees and Fee Increases
8.04.070	Bonds and Insurance
8.04.080	Miscellaneous Provisions
8.04.090	Solid Waste Storage
8.04.100	Mandatory Service
8.04.110	Violation-Penalties

The City Council of the City of Portola, California ordains as follows:

Title 8 of the City of Portola Municipal Code, Chapter 8.04 - Garbage, Chapter 8.30 - City Landfill, and Chapter 8.34 - Collection and Disposal of Recyclables are repealed.

A new Chapter 8.04 is enacted and added to the City of Portola Municipal Code to read as follows:

8.04.010 GENERAL PROVISIONS

8.04.011 Title and Citation. This Chapter of the City of Portola Municipal Code shall be known and may be cited as the “City of Portola Solid Waste Collection and Recycling Ordinance.”

8.04.012 Findings. The City Council of the City of Portola, California finds that it is necessary, in order to preserve the environment and protect the health and safety and quality of life for the residents of Portola, to provide for an efficient solid waste management system which includes mandatory collection of solid waste and recyclable materials. The Council also finds it necessary, in order to comply with the state of California Assembly Bill 939, known as the California Integrated Waste Management Act of 1989, which requires jurisdictions to divert from disposal in landfills 50 percent of the solid waste generated within the city of Portola, that certain resource recovery and recycling programs be established. As such, the Council finds it necessary to assure that all generators of solid waste and recyclable materials within the city of Portola are included in the solid waste collection and recycling system.

8.04.020 DEFINITIONS

Unless the contrary is stated or clearly appears different from the context, the definitions set forth in this section shall govern the construction of the words and phrases used in this chapter. Definitions used in the present tense shall include the future tense. The word “shall” is mandatory and not directory.

“**AB 939**” means the California Integrated Waste Management Act of 1989 Statutory cite) (Public Resources Code section 40000 et seq.), requiring cities and counties to recycle 50 percent of solid wastes by the year 2000.

“**Billings**” means invoices generated by the franchisee for the purpose of collection of payments for the residential and commercial solid waste collection services.

“**Bin**” means a solid waste container possessing a lid, the top of which shall not exceed 72 inches in height from the surface of the ground and having a capacity of at least one (1) cubic yard, but not more than (8) eight cubic yards.

“**Biomass**” means ground and segregated yard wastes and other organic debris which meets the specifications of cogeneration energy production facilities.

“**Bulky Waste**” means large items of solid waste such as appliances, furniture, trees, mattresses, branches, stumps and other oversize wastes the large size of which precludes or complicates their handling by normal collection, processing or disposal methods.

“**Can**” means a Solid Waste receptacle provided by the Customer, serviced by manual Collection, and not exceeding thirty-two (32) gallons in volume and not exceeding forty (40) pounds in weight.

“**Cart**” means a plastic container with a hinged lid and wheels with a capacity of thirty-two (32), sixty-four (64) and/or ninety-six (96) gallons.

“**City**” means the city of Portola, California and the extent of its jurisdiction over solid waste matters within the physical boundaries of the city.

“**City Manager**” means the city council appointed manager of the affairs of the city of Portola.

“**Collection Bag**” means a sealable bag, not greater in capacity than 32 gallons, designed to contain solid waste or recyclable materials for curbside collection.

“**Collection Vehicle**” means any vehicle or equipment specifically designed and manufactured for the purpose of solid waste and recyclable material collection.

“**Commercial Customer**” means any person who produces commercial solid waste and uses a container, bin or debris box for accumulation thereof.

“**Commercial Solid Waste**” means all types of solid wastes generated by stores, business offices, commercial warehouses, non-profit organizations, multi-family residential complexes, government offices, schools and other commercial sources, excluding residences with less than three dwelling units per parcel.

“**Commercial Service**” means solid waste and recyclable materials collection service provided by the Franchisee to any person producing commercial solid waste.

“**Composting**” means the controlled micro-biologic degradation of non-putrescible organic wastes yielding a clean and safe horticultural amendment.

“**Compost Facility**” means a facility at which yard waste and other non-putrescible organic wastes are accepted for grinding, processing and composting. Depending on its size, a composting facility may need a permit to operate from the state of California.

“**Construction and Demolition Debris**” means waste building materials and rubble resulting from construction, remodeling, repair and demolition operations on pavements, houses, commercial buildings and other structures.

“Container” means any and all types of Solid Waste and Recycling receptacles, including Cans, Carts, Bins, Debris Boxes, and Crates.

“Crate” means a stackable plastic Container used to store Recyclable Materials.

“County” means the county of Plumas, California.

“Curbside Collection” means the scheduled collection of solid wastes and recyclable materials wastes in containers from residences at a curb or walkway adjacent to a roadside.

“Debris Box” means an open-top solid waste container with a capacity of at least 10 cubic yards, but not greater than 50 cubic yards.

“Disposal” means the state of California permitted destination site for the solid wastes collected by the Franchisee under the franchise agreement.

“End Market” means the established destination for recyclable material which qualifies as a waste diversion credit for the purpose of compliance with Assembly Bill 939.

“Franchise” means the exclusive right granted in this chapter of the Portola Municipal Code to operate the solid waste collection and recycling services within the incorporated boundaries of the city of Portola.

“Franchise Agreement” means the executed contract by and between the city and the Franchisee which delineates specific terms and conditions for operation of the Solid Waste Collection and Recycling program.

“Franchise Fee” means the fee paid by the Company to the City for the right to hold the Franchise granted by this Agreement.

“Franchisee” means any person or entity receiving an exclusive franchise pursuant to this chapter and the franchise agreement.

“Garbage” means all kitchen and table food wastes, waste containers, and animal and/or vegetable waste which results from the storage, preparation and handling of food stuffs.

“Hazardous Waste” means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the US Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901), all future amendments thereto, and all rules and regulations promulgated thereunder.

“Household Hazardous Waste (HHW)” means any hazardous waste generated incidental to owning, residing in, and/or maintaining a place of residence. Household hazardous waste does not include any waste generated in the course of operating a business at a residence.

“Household Hazardous Waste Collection Event” means a controlled activity conducted by a licensed hazardous waste contractor in which HHW is collected from residents of Portola at a designated location and the collected wastes are categorized, packaged and transported for proper disposal.

“Inert Wastes” means wastes which contain no decomposable component and no soluble contaminants. Inert wastes include rock, soil, construction rubble, and concrete and asphalt chunks.

“Landfill” means a waste management facility, licensed by the state, which is permitted for the final disposal of non-hazardous solid wastes.

“Litter” means all improperly and/or inadvertently discarded waste materials, including paper, plastic, cardboard, glass, aluminum, and other natural and synthetic materials, deposited on lands or in waters of the state.

“Local Enforcement Agency” means the Plumas County Environmental Health Department and/or its designee.

“Minimum Service” means the required minimum level of waste collection service and includes one 32-gallon customer-supplied can and one recycling container collected at least once per week.

“Mulch” means ground, non-putrescible organic materials, such as wood, non-treated lumber, branches and limbs which are not composted nor are subjected to the composting process.

“Multi-Family Residential Complex” means complexes with three or more residential dwelling units including apartments, condominiums, triplexes, four-plexes and mobile home parks which are located on a single parcel.

“Occupied” means to dwell in a premise on a continuous, permanent basis, be it a residence or commercial structure. A primary residence is considered “occupied,” whereas a secondary residence is not. Proof of primary residency outside of Portola City limits may be established through documentation, including tax documents, credit card statements and voter registration.

“Open Burning” means the burning of any material under such conditions that the products of combustion are emitted directly into the atmosphere.

“Owner” means the person(s) having title to the premises of residential or commercial properties and/or dwellings that are leased or are otherwise Occupied.

“Performance Requirements” means the minimum levels of basic Solid Waste Collection and Recycling services required of the Franchisee to fulfill their contractual obligations to the city of Portola.

“Putrescible Waste” means wastes which are capable of being decomposed by micro-organisms with sufficient rapidity as to cause nuisances of odors, gases or other offensive conditions, and includes materials such as food wastes, offal, and dead animals.

“Recyclable Materials” means those materials that are normally part of the solid waste stream which have market value and can be segregated from non-recyclable wastes.

“Recycling” means the processes by which recovered wastes are re-manufactured into usable products.

“Recycling Container” means a container which is provided by the Franchisee for the sole purpose of containing recyclable materials which are source separated from the non-recyclable portion of the waste stream.

“Residential Service” means solid waste and recyclable material collection service for single family residences, two family residences (duplexes), or trailer-homes, as provided by the Franchisee.

“Residential Waste” means all types of solid wastes generated by residential dwellings.

“Solid Waste” means all putrescible and non-putrescible solid and semi-solid wastes generated by residences and commercial enterprises, including garbage, yard waste, recyclable material, construction and demolition debris, industrial wastes, inert wastes, abandoned vehicles and other discarded materials.

“Source Separation” means the segregation of recyclable materials by the generator of said materials.

“Transfer Station” means the facility designated by the city of Portola where the Franchisee will haul collected solid wastes for disposal. The transfer station will be a facility permitted by the state of California to operate as a waste management facility. All wastes disposed of at the transfer station are ultimately recovered for recycling or hauled to a state licensed sanitary landfill for final disposal.

“Variable Container Rate” means waste collection rates structured to reflect variables in cost to provide different container sizes and/or additional containers.

“Waste Collection and Recycling Plan” means a plan prepared by the Franchisee and approved by the City Manager which describes the collection, disposal and recycling of solid wastes generated in the city of Portola. The Waste Collection and Recycling Plan is updated by the Franchisee at least biennially or more frequently, as necessary, due to changes in regulations and/or technology. The

Waste Collection and Recycling Plan is subject to review and approval by the City Council.

“White Goods” means major residential and commercial appliances, including washing machines, clothes dryers, water heaters, ovens, stoves, refrigerators, freezers, air conditioners and residential furnaces. All white goods are classified as recyclable materials. Certain white goods (e.g. refrigerator units) may contain Freon gases, which must be lawfully removed before the white good can be recycled.

“Yard Waste” means lawn cuttings, weeds, leaves, and shrub and tree pruning materials which are less than six inches in diameter and less than four feet long.

8.04.030 GRANT OF FRANCHISE

8.04.031 Franchise Required. No person shall be allowed to occupy or use the public streets or rights-of-way of the city of Portola for the purpose of conducting a service for the weekly collection of solid wastes and recyclable commodities or be allowed to operate such a system without a franchise granted in accordance with the provisions of Chapter 8.04 of the Portola Municipal Code. Provided, however, that residential property owners and owners or tenants of commercial property undertaking remodeling of the commercial property they own or occupy, are entitled to haul and properly dispose of non-hazardous solid wastes generated on their property in excess of the curbside collection system established herein. Further, businesses which provide landscaping and/or other contracting services which generate solid wastes incidental to the business service, and are duly licensed to provide such services in the city of Portola, may haul those wastes for proper disposal.

8.04.032 Qualifications of Franchisee. A franchise shall not be awarded pursuant to this chapter except to a Franchisee who meets all of the following qualifications:

- A. The Franchisee or his employees have not been convicted nor held liable for acts involving moral turpitude within the previous five years and is not presently under indictment, investigation or compliant charging such acts;
- B. The Franchisee has not had a judgment in any action for fraud, deceit or misrepresentation entered against it, him, her, or them by any court of competent jurisdiction within the past five years;
- C. The Franchisee does not have pending against it, her, him, or them any legal claim, lawsuit or administrative proceeding arising out of or involving the operation of the type of service which is subject to the franchise; and
- D. The Franchisee has the financial and technical capability to enable it to maintain and operate the services for the term of the franchise.

8.04.033 Competitive Bid Procedure. Any franchise for a solid waste collection and recycling program shall be awarded after the solicitation of competitive bids pursuant to the formal bidding procedures as may be specified by the City in compliance with applicable law.

8.04.034 Public Hearing and Award of Franchise. After the bids have been opened, the city clerk shall schedule a public hearing for the council to determine whether it would serve the public interest and necessity to award the franchise for which the bids have been solicited. The city clerk shall also cause a notice of that hearing to be published in at least one paper of general circulation within the city at least ten days prior to the date of that hearing. The notice shall state the purpose of the hearing and the time and date of its location. At the time and place set for the public hearing on the matter, the council shall conduct a public hearing to determine whether the franchise should be awarded. The public hearing may be continued from time to time at the discretion of the council. At the conclusion of the hearing, the council may award the franchise to the lowest responsible bidder or reject all bids.

8.04.035 Grant of Franchise.

- A. *Scope of Grant.* Any franchise granted under this chapter shall authorize and permit the Franchisee to engage in the service for which the franchise has been granted within the city of Portola.
- B. *Grant Both a Right and an Obligation.* In the event that the city council grants a franchise under this chapter, the franchise shall constitute both a right and an obligation to provide the

services required by the provisions of this chapter and the franchise agreement.

8.04.036 Franchise Exclusive. Any franchise granted pursuant to this chapter shall be exclusive, subject to the provisions of Section 8.04.030, et al, and further provided that nothing in this chapter or in any franchise granted hereunder shall require recyclable materials to be deposited with a franchisee or affect the rights of any person to dispose of recyclable materials in any lawful manner.

8.04.037 Term. The term of any franchise and all rights, privileges, obligations, and restrictions pertaining thereto shall be as set forth in the Franchisee's franchise, but shall in no event be for a period of more than fifteen (15) years from the effective date of the franchise. The effective date of the franchise shall be the date of written acceptance of the franchise by the Franchisee is filed with the city clerk or such other date as may be specified in the franchise agreement.

8.04.038 Transfer of ownership.

- A. *Transfer of Franchise.* Any franchise granted hereunder shall be a privilege to be held for the benefit of the public. Such franchise cannot in any event be sold, transferred, leased, assigned, or disposed of by forced or voluntary sale, merger, consolidation, receivership, or other means without the prior consent of the city, and then only under such conditions as the city may establish.
- B. *Ownership or Control.* The Franchisee shall promptly notify the City Manager of any proposed change in, transfer of, or acquisition by any other party of control of the Franchisee. The word "control" as used herein is not limited to major partners or stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or transfer by any person or group of persons of twenty-five percent (25%) of the aggregate partnership interests in or voting shares of the Franchisee. Every change, transfer, or acquisition of control of the Franchisee shall make the franchise subject to cancellation unless and until the city shall have consented thereto. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the city may inquire into the qualifications of the prospective controlling party, and the Franchisee shall assist the city in any such inquiry. In seeking the city's consent to any change in ownership or control of the Franchisee, the Franchisee shall have the responsibility to establish to the satisfaction of the city that the proposed purchaser, transferee, or assignee (the "proposed transferee") which, in the case of a partnership or corporation, shall include all partners, officers, directors, and all persons having a legal or equitable interest in five percent (5%) or more of its partnership interests or voting stock, or any of the proposed transferee's principals, meets all of the qualifications applicable to the Franchisee of a franchise as set forth in section 8.04.030, herein.
- C. *Right of Lender to Operate System.* Notwithstanding anything to the contrary contained in this chapter, any financial institution having a pledge of the franchise for the advancement of money for the construction and/or operation of the franchise service for which the franchise is granted shall have the right to notify the city that it, or its designee satisfactory to the city, will take control and operate the services for which the franchise was granted in the event of a Franchisee default in its financial obligations. Further, such financial institution shall also submit a plan for such operation that will ensure continued service and compliance with all franchise requirements during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one year unless extended by the city in its discretion and during that period of time it shall have the right to petition the city to transfer the franchise to another Franchisee. If, after considering the legal, financial, character, technical, and other public interest qualities of the proposed transferee, the city finds that such transfer is satisfactory, the city will approve the transfer and assign the rights and obligations of such franchise to such proposed transferee.
- D. *Transferee to Assume Franchisee's Obligations Under Franchise.* In no event shall a transfer of ownership or control be approved without the successor in interest to the Franchisee assuming all of the Franchisee's obligations under its franchise. Notwithstanding the requirements of the Franchisee's franchise, the city may require, as a condition of the transfer of such franchise, that the proposed transferee furnish either or both a security fund and a performance bond in such amount or amounts as the city shall designate.
- E. *Permitted Encumbrances.* Notwithstanding the provisions of this section, the Franchisee may pledge, assign, hypothecate, or create a security interest in its franchise without the consent of

the city in favor of any bank, financial institution, or other lender with respect to any indebtedness of the Franchisee to such person.

8.04.040 REGULATION OF FRANCHISE

8.04.041 City regulations. The solid waste collection and recycling program, for which a franchise is required by this chapter, shall be operated in conformance with the regulations now or hereafter adopted by or pursuant to this chapter and in conformance with the terms and conditions provided in the franchise agreement by and between the city and the Franchisee, as well as the provisions of any city law or regulation of general application now or hereafter in effect. In the event of a conflict between a regulation adopted by or pursuant to this chapter and the provisions of any city law or regulation of general application, the regulations adopted by or pursuant to this chapter shall prevail.

8.04.042 Federal and state regulations. The regulations adopted by or pursuant to this chapter shall be interpreted and applied so as to be consistent with any applicable federal or state law or regulation now or hereafter in effect to the extent such federal or state law or regulation is preemptive of local laws and regulations, provided that in the event of any conflict between this chapter or any regulations adopted by or pursuant to this chapter and any such federal or state law or regulation, the federal or state law or regulation shall prevail.

8.04.043 City Council Determinations on Maximum Permitted Rates for Service. The fees to be charged by a Franchisee for solid waste collection and recycling services shall be as set forth in the agreement granting the franchise for such services and shall be implemented through resolution by the city council, as set forth in the Resolution for Solid Waste Collection and Recycling Fees. Future fee increases for solid waste collection and recycling shall be applied for by Franchisee and are subject to city council approval, as set forth in section 8.04.060 of this chapter.

8.04.044 Default. The Franchisee shall be deemed to be in default with respect to the performance of its obligations under its franchise upon the occurrence of any of the following events:

- A. The Franchisee is in violation of the provisions of its franchise agreement, this chapter of the Portola Municipal Code or any federal or state law or regulation applicable to the operation of the Franchisee's service in the city and such violation is not corrected within thirty (30) days following receipt of written notice thereof from the City Manager specifying such violation or, if more than thirty (30) days are reasonably required to correct such violation, within such additional time as the City Manager shall consider reasonably necessary to effect such correction.
- B. The Franchisee has failed to perform according to the specifications and standards included in the agreement granting the franchise, including, but not limited to, any required standards for the maintenance of collection schedules, hours of collection, vehicle and equipment maintenance and condition, collection of missed collections within a specified time, and maintenance of a business office location with specified hours of operation and procedures for responding to customer complaints.
- C. The Franchisee has engaged in repeated violations of any of its material obligations under its franchise agreement or this chapter or any material federal or state law or regulation applicable to the operation of the Franchisee's service in the city which, for purposes of this chapter, shall be deemed to exist if the same or similar violation occurs three (3) or more times within any twelve (12) month period. In any such case, the Franchisee shall not be entitled to notice or a period to correct the third such violation.

Remedies Upon Default.

- A. *Remedies.* Upon the occurrence of any event of default by the Franchisee, the city council may invoke any or all of the following remedies upon default:
 - 1. Assess against the Franchisee monetary penalties not to exceed One Thousand Dollars (\$ 1,000.00) for each such event of default or series of related events of default and/or require the Franchisee to cure each such event of default within such time, in such manner, and upon such terms and conditions as the city council shall designate; or
 - 2. Implement the procedures required to exercise the city's rights under the conditions of the Performance Bond; or

3. Revoke and terminate the Franchisee's franchise.
- B. *Public Hearing.* Prior to imposing any such remedy or remedies upon the Franchisee upon the occurrence of any such event of default, the city shall do the following:
1. The city shall provide the Franchisee with at least fifteen (15) days prior written notice of the time and place of a public hearing to be held before the city council for purposes of determining whether such event of default has occurred and, if it has occurred, whether such event of default was for just cause. Notice as to the time and place of such hearing shall be published at least once ten (10) days before such hearing in a newspaper of general circulation within the city;
 2. The Franchisee shall be afforded full due process in connection with such hearing, including, but not limited to, an opportunity to introduce evidence, to require the production of evidence, and to introduce and/or question persons connected with or having knowledge of the alleged default. A transcript may be made of the hearing at the Franchisee's expense;
 3. The city council shall hear any persons interested therein and, based upon the evidence presented at such hearing, shall determine whether or not an event of default by the Franchisee has occurred;
 4. If the city council shall determine that an event of default occurred by the Franchisee and such default was with just cause, the city council shall direct the Franchisee to correct or remedy the same within such additional time, in such manner, and upon such terms and conditions as the council determines to be necessary; or
 5. If the city council shall determine that an event of default occurred by the Franchisee and such default was without just cause, then the city council may, by resolution, impose any one or more of the remedies set forth in subsection A of this section.
- C. *Remedies Cumulative.* The city council may, in its sole judgment and discretion, impose any one or more of the foregoing remedies against the Franchisee, which administrative remedies shall be in addition to any and all other legal or equitable remedies it has under the franchise or under any applicable law.
- D. *City's Rights Not Affected.* The termination and forfeiture of any franchise shall in no way affect any of the rights of the city under the franchise or any provisions of law.

8.04.46 Receivership and Foreclosure.

- A. *Receivership.* Any franchise herein granted shall, at the option of the city, cease and terminate one hundred twenty (120) days after the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of the Franchisee, whether in a receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days or unless:
1. Such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this chapter and the franchise granted pursuant hereto, and the receivers or trustees within the one hundred twenty (120) days shall have remedied all material default under the franchise agreement; and
 2. Such receivers or trustees shall, within the one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises whereby such receivers or trustees assume and agree to be bound by each and every term, provision, and limitation of the franchise.
- B. *Foreclosure.* Subject to the provisions of this chapter permitting a lender to operate the service upon the default of the Franchisee in its obligations to such lender, in the case of a foreclosure or other judicial sale of the equipment of the Franchisee, or any part thereof, the city may serve notice of termination upon the Franchisee and the successful bidder at such sale, in which event

the franchise and all rights and privileges of the Franchisee hereunder shall cease and terminate thirty (30) days after service of such notice, unless:

1. The city council shall have approved the transfer of the franchise in the manner provided by this chapter; and
2. Such successful bidder shall have covenanted and agreed with the city to assume and be bound by all the terms and conditions of the franchise.

8.04.050 OPERATION OF FRANCHISE

8.04.051 Solid Waste Collection and Recycling Services to be Provided. The Franchisee shall provide the solid waste collection and recycling services as set forth in this chapter of the Portola Municipal Code and the franchise agreement.

8.04.052 Performance Requirements. The following performance requirements must be met and maintained by the Franchisee:

- A. Collect solid wastes and recyclable materials at intervals not less than once per week, except that solid waste shall be collected from commercial food preparation establishments two (2) times per week.
- B. Comply with the provisions of the solid waste and recyclable material collection fee schedule, as adopted by the city council in the Resolution for Solid Waste Collection and Recycling Fees. The Franchisee shall be responsible for the billing and receipt of all fees for residential and commercial collection services. The Franchisee shall be responsible for payment of all costs incurred over the course of providing the residential and commercial collection services.
- C. Collection of solid wastes and recyclable materials shall not commence earlier than 7:00 a.m. and shall be stopped no later than 6:00 p.m. each collection day. Collection services shall not be allowed on Sundays. The Franchisee may defer collection services by one day or move up collections by one day in observation of the following nationally recognized holidays: New Years Day; Independence Day; Thanksgiving Day; and Christmas Day, unless the alternate collection day is on a Sunday.
- D. Collect recyclable materials from single-family, two-family and multifamily residential complexes on the same day(s) established for the collection of solid wastes.
- E. Submit a quarterly report to the city in a form prescribed by the City Manager and which provides information on the Franchisee's solid waste disposal and recycling operations, within the boundaries of the city, as may be determined by the City Manager to be necessary in order to evaluate the Franchisee's recycling program. Said report shall be submitted to the city no later than 30 days after the end of each calendar quarter. Documentation supporting the amount of recyclable materials collected, delivered to appropriate end markets, or otherwise disposed of, and any other documentation and/or materials necessary to verify the Franchisee's recycling operations, shall be maintained by the Franchisee for at least two years. The Franchisee's recycling rate shall not be less than twenty-five percent (25%) of the total of all wastes collected within the city of Portola;
- F. At a minimum, the Franchisee shall collect the following types of recyclable materials from residential customers: newsprint; cardboard; plastic containers; glass containers; and aluminum containers. The Franchisee is required to provide recycling services to commercial customers consistent with State of California regulatory requirements.
- G. Prepare and submit to the City Manager a Waste Collection and Recycling Plan which describes the procedures and processes of solid waste and recyclable material collection, processing, disposal and end market destination, as appropriate. The Waste Collection and Recycling Plan shall describe in adequate detail how the Franchisee will meet the city's requirement of recycling at least twenty-five percent (25%) of the total of solid wastes collected by the Franchisee. The Plan, which must be approved by the City Manager (and is also subject to review and approval by the City Council), shall initially be submitted in response to the Request for Proposal for Solid Waste Collection and Recycling Services. Prior to commencement of the franchise the Waste Collection and Recycling Plan shall be modified, as necessary, to reflect any changes incorporated into the Plan as a result of contract negotiations.

Further, the Plan shall be updated at least biennially biannually (or more frequently, as necessary to reflect changes in technology and/or government regulations) throughout the term of the franchise agreement.

- H. Submit to the City Manager for approval any notice regarding solid waste collection services which the Franchisee intends to send or otherwise give to a customer. All such notices shall be filed with the City Manager at least 14 days prior to the date such notice is sent or otherwise provided to a customer. The failure of the City Manager (or designee) to respond to such notice within 7 days after it was filed shall constitute the City Manager's approval of the same. Provided, however, that bills sent to a customer in the regular course of business for services rendered or to be rendered (and/or a notice of termination of services by reason of the non-payment of such bills) shall be exempt from the approval process required pursuant to this subsection;
- I. Maintain at all times a current list of residential and commercial customer names, addresses and collection schedules, which shall be made available to the City Manager or other appropriate city representative upon request. The Franchisee shall maintain confidentiality of the customer list - it shall not be sold or otherwise transferred to any third party;
- J. Not allow any garbage, rubbish, waste matter or recyclable material to spill, drop, fall or remain on the ground or surface in or upon any public street, alley, way or place in conjunction with the waste and recyclable materials collection operations;
- K. Maintain a business office within the city of Portola or surrounding community (in close proximity to the city boundary) open to the general public during the hours of 8 a.m. to 5 p.m., Monday through Friday, holidays excepted, which is staffed with at least one employee to respond to customer questions and complaints submitted either in person or by telephone. During hours the business office is not open to members of the general public, the Franchisee shall place in operation a telephone answering machine capable of recording customer questions and complaints. Recorded questions and complaints shall be responded to not later than the end of business hours on the business day next following the day such question or complaint was recorded;
- L. Storage and equipment yards used by the Franchisee within the boundary of the city of Portola shall be kept clean and free of debris and stored waste. Recyclables shall be stored in bins or otherwise kept in a manner to maintain clean and dry conditions. The storage and equipment yard shall be maintained in a safe, clean and healthful manner, free of litter and/or accumulated debris, and shall not become a public nuisance nor imperil the environment.
- M. Pay the city of Portola business license tax when it is due and before it is delinquent.

8.04.053 Collection Vehicles and Debris Boxes.

- A. It shall be unlawful for the Franchisee to use any truck or other vehicle for the removal or transportation of any solid wastes and recyclable materials from any property within the city unless the same conforms to the specifications set forth in this chapter.
- B. Vehicles used for the collection of any and all solid wastes must be of the mechanical-compaction type, provided that in the case of an emergency such as mechanical breakdown or other cause beyond the control of the Franchisee, the City Manager may, upon the request of the Franchisee, approve the use of nonmechanical-compaction-type equipment for a limited period of time during such emergency, as determined by the City Manager. Only enclosed covered-body-type vehicles shall be used for the collection of solid wastes.
- C. Each collection vehicle shall be maintained in a clean and mechanically safe condition.
- D. All vehicles shall be painted and legibly bear the name of the Franchisee's refuse Collection Company. Said company name, colors, and size of lettering must first be approved by the City Manager. Advertising on the Franchisee's refuse collection vehicles for companies or entities other than the collection firm is prohibited.
- E. Each collection vehicle shall be constructed and maintained in such manner that it is watertight and free from odor leakage.

- F. Doors and openings to vehicle bodies shall be kept closed at all times when said vehicles are not being loaded or unloaded of solid wastes. All vehicles shall be of such type and design and shall be operated in such manner so as not to incur any damage to public or private property in their use and operation.
- G. The Franchisee shall have the right to utilize debris boxes for the use by customers for collection of dry (non-putrescible) solid wastes, provided that:
 - 1. Such boxes shall contain the business name and phone number of the Franchisee owning or otherwise entitled to possession of the box in a conspicuous place on the exterior of the box;
 - 2. Such boxes shall not be dropped or placed on a public sidewalk, street or way, except: 1) in that portion of a sidewalk, street or way that may have been temporarily closed during the course of construction of an improvement on an adjoining property by order of the city; or 2) an encroachment permit is obtained from the City of Portola.
 - 3. Such boxes shall be so maintained and handled as to not permit the contents placed therein to fall or be blown there from to create litter. To this end, all filled or partially-filled debris boxes shall be covered during transport to prevent litter generation.

8.04.54 Disposal of Collected Solid Waste Materials. All solid wastes collected by the Franchisee shall be disposed of the same day they are collected. Solid wastes collected by the Franchisee under the terms and conditions of this chapter of the Portola Municipal Code and the franchise agreement shall be delivered to the Delleker Transfer Station for disposal. However, recyclable materials collected by the Franchisee are not required to be delivered to the Delleker Transfer Station, provided that those materials are delivered to permitted facilities with appropriate end market capability and waste diversion credits are provided to the city. The Franchisee shall be responsible for payment of all fees imposed at the Delleker Transfer Station and, further, the Franchisee shall be allowed to petition the city council for solid waste collection and recycling service fee increases as a direct result of any increase in fees at the Delleker Transfer Station, as provided for in section 8.040.063 of this chapter.

8.04.055 Solid Waste Carts

Type and size. Except as otherwise provided in this chapter, receptacles for the storage of solid wastes and recyclable materials shall:

- A. Have tight-fitting covers for holding garbage without leakage or escape of odors;
- B. Have suitable handles and wheels; and
- C. Be constructed of watertight metal or plastic materials.
- D. Be provided to residences in sizes of 32, 64 and 96 gallons, as specified by each residential customer.

Number of Containers. Containers for the temporary storage of solid wastes and recyclable materials shall be furnished in the minimum of one per residential unit for each of the two waste types (solid waste and recyclable materials). Additional containers shall be furnished, as necessary, to store the solid wastes and recyclable materials which would ordinarily accumulate on the property in one week's time, in accordance with the variable container rate schedule provided in the Resolution for Solid Waste Collection and Recycling Fees, as adopted by the Portola City Council.

Container Exceptions. Notwithstanding any other provision in this chapter to the contrary, Franchisee supplied Collection Bags, when sealed and closed, may be utilized for the collection of garbage and other solid wastes in addition to the receptacles otherwise required by this chapter on an as-needed basis. The Collection Bags shall be provided by the Franchisee and shall be of a type, size and color approved by the City Manager. Fees for the Franchisee-supplied Collection Bags shall be in accordance with the variable container rate schedule provided in the Resolution for Solid Waste Collection and Recycling Fees, as adopted by the Portola City Council.

Bins. Bins for the collection of commercial solid wastes shall possess a tight-fitting lid, the top of which shall not exceed 72 inches in height from the surface of the ground and shall have a capacity of

at least one cubic yard, but not more than eight cubic yards. Bins shall be water tight and shall not be in such a state of disrepair as to constitute an unsightly nuisance.

Debris Boxes. Debris boxes for collection of dry solid wastes (non-putrescible) shall be an open-top container with a capacity of at least 10 cubic yards and not greater than 50 cubic yards. Debris boxes shall not be in such a state of disrepair as to constitute an unsightly nuisance.

8.04.60 FEES AND FEE INCREASES

8.04.061 Fees. The Franchisee shall bill residential and commercial customers in accordance with the variable container rate schedule provided in the Resolution for Solid Waste Collection and Recycling Fees, as adopted and as may be amended by the Portola City Council.

8.04.062 Collection of Fees All residential and commercial customers of the Franchisee who are required to subscribe to solid waste collection services in the City of Portola shall receive billings generated by the Franchisee and shall pay the Franchisee for such services in accordance with the fee schedule set forth in Resolution for Solid Waste Collection and Recycling Fees. Customer billings shall not be issued at a greater frequency than once per month, except, however, that debris box customers shall be billed in accordance with the provisions described in the franchise agreement. Customers may also be billed for replacement of containers if damaged beyond normal wear.

All Franchisee billings shall be paid in full within 30 days of the billing date, except that arrangements for collection of delinquent payments may be made between the Franchisee and an individual customer. Late fees for past due invoices may be assessed by the Franchisee at an interest rate of not more than eighteen percent (18%) per annum (or 1.5% per month).

8.04.063 Fee Increases. The variable container rate schedule for residential and commercial collections services shall remain in effect for the first two (2) years of the franchise agreement. No less than thirty (30) days prior to the second anniversary date following commencement of residential and commercial collection services under this chapter and the franchise agreement, the Franchisee may apply to the city of Portola for a fee increase. The fee increase shall apply to the monthly residential and commercial charges for collection services and to the unit charges for debris boxes and extra items. Any fee increase granted shall be based on seventy-five percent (75%) of the West Region All Urban Consumer Price Index, non-seasonally adjusted, for the prior two (2) years, consistent with the terms and conditions of the franchise agreement. The fee increase shall be considered for approval by the Portola City Council and shall become effective no sooner than ninety (90) days following the second anniversary date of commencement of collection services.

For the third through the fourteenth years of the franchise agreement, the Franchisee shall be entitled to request fee increases every other year, i.e. all “even” anniversary dates of the franchise agreement. The fee increase shall be calculated on seventy-five percent (75%) of the June West Region All Urban Consumer Price Index, non-seasonally adjusted, for the two (2) prior years. The fee increase request shall be filed with the City of Portola no later than 120 days prior to the anniversary date of commencement of collection services. The fee increase shall be considered for approval by the Portola City Council in accordance with the applicable procedures required under the California Constitution and may become effective no sooner than the anniversary date of commencement of collection services.

The Franchisee shall also be able to petition the Portola City Council for fee increases based on increases in the cost of doing business for costs other than those normally associated with the Consumer Price Index adjustments. Those extraordinary costs include changes in local, state and/or federal regulations which may have a material affect on the costs for the Franchisee to provide the residential and commercial collection services and increases in costs at the transfer station where the Franchisee is required to deliver solid wastes collected in the city of Portola.

For adjustments to the residential and commercial service variable container rate for schedule for Franchisee costs above and beyond the biennial Consumer Price Index adjustment, the Franchisee shall document the changed conditions which have caused increases in the cost of doing business and provide justification for the requested increase(s). The Portola City Council shall consider the Franchisee’s documentation and any other relevant information prior to approving any fee increase other than the Consumer Price Index adjustment. The City Council may, at its sole discretion, approve all, a portion, or none of the Franchisee’s request for a fee adjustment.

8.04.064 Solid Waste Administration Fee. A fee to fund the administration of the solid waste

enterprise fund is hereby established. This fee shall be charged to the utility users within the City of Portola as a separate item on utility bills. The amount of the Solid Waste Administration fee shall be adopted by resolution of the Portola City Council.

8.04.070 BONDS AND INSURANCE

8.04.071 Performance Bond. The Franchisee of the waste collection franchise shall, at least thirty days prior to the commencement of operation, file with the city a performance bond in the amount of fifty thousand dollars (\$50,000.00) payable to the city for all losses and damages the city may sustain as a result of any act or omission of the Franchisee, its employees, agents, and contractors arising from the operation or termination of the services under the franchise agreement, and including any payments required to be made to the city hereunder. Such bond shall be obtained from an insurance company licensed to do business in the State of California with a Best's Guide rating of "B" or better, or, in the alternative, an unlicensed, U.S. domiciled company with a Best's Guide rating of "A", and shall be in a form approved by the city attorney. In no event shall the amount of such bond be construed to limit the liability of the Franchisee for damages.

8.04.72 Insurance.

- A. *Scope of Coverage.* The Franchisee shall maintain throughout the term of the franchise the following insurance:
1. *Workers' Compensation Insurance.* Workers' compensation insurance shall be maintained in accordance with the workers' compensation insurance and safety laws of the state of California.
 2. *Comprehensive General Liability.* Comprehensive general liability insurance, including, but not limited to, coverage for bodily injury and property damage, shall be maintained in an amount of not less than one million dollars (\$1,000,000.00) combined single limit. The city of Portola shall be named as additional insured.
 3. *Comprehensive Vehicle Liability.* Comprehensive vehicle liability insurance including, but not limited to, non-ownership and hired vehicle coverage, as well as owned vehicles with coverage for bodily injury and property damage and an MSC-90 endorsement including environmental restoration coverage for accidents during transportation, shall be maintained in an amount of not less than one million dollars (\$1,000,000.00) combined single limit. The city of Portola shall be named as additional insured.
 4. *Pollution Liability.* Pollution liability or sudden accidental pollution liability coverage shall be maintained in an amount of not less than one million dollars (\$1,000,000.00) combined single limit. The city of Portola shall be named as additional insured.
- B. *Certificates of Insurance.* The Franchisee shall furnish the city with copies of such insurance policies and any endorsements thereto for approval by the City Manager. Thereafter, Franchisee may substitute for same a certificate of insurance issued by the respective insurance company or companies certifying that such insurance policy or policies are in full force and effect.
- C. *City As Additional Insured.* The city, its officers, boards and commissions, and members thereof, its employees and agents shall be named as additional insured in all of the liability insurance policies required under subsections A.2, A.3 and A.4 of this section. The obligation of the insurers under such policies to provide coverages in the amounts specified herein shall be up to the limits of liability as set forth in such franchise without right of contribution from any insurance in effect for the city. Such policies shall not be canceled or reduced in coverage without thirty (30) days' unqualified prior written notice to the city of the effective date thereof.
- D. *No Limitation of Liability.* The minimum amounts set forth in the franchise for such insurance shall not be construed to limit the liability of the Franchisee to the city under the franchise issued hereunder to the amounts of such insurance.
- E. *Licensed Insurers.* Insurance carriers providing coverage under this section shall be duly licensed to operate in the state of California and with a Best's Guide rating of "B" or better, or, in the alternative, an unlicensed, U.S. domiciled company with a Best's Guide Rating of "A", and shall be subject to approval of the city.

8.04.080 MISCELLANEOUS PROVISIONS

8.04.081 Holiday Operations. The Franchisee may delay or move up the waste collection schedule by one day for the purpose of providing the Franchisee's employees the day off for the following national holidays: New Year's Day, Independence Day, Thanksgiving Day and Christmas Day. If the Franchisee intends to delay waste collection services for those holidays, an appropriate notice in a newspaper of general circulation shall be provided.

8.04.082 Overloaded Containers. Rocks, soil and other inert wastes shall not be placed in 32, 64, and 96 gallon containers and shall not be placed in bins. Containers which contain those heavy materials may be rejected by the Franchisee for collection. The Franchisee shall place a notice on the overloaded container with customer instructions to remove the materials. The customer shall contact the Franchisee to schedule an alternative collection date following removal of the heavy materials by the customer. This provision shall also apply to debris boxes unless arrangements are made in advance with the Franchisee to accept heavy materials.

8.04.083 Unacceptable Wastes. Hazardous wastes, liquid wastes, hot ashes and embers, tires and bulky wastes shall not be disposed of in 32, 64, or 96 gallon solid waste containers nor shall those unacceptable wastes be disposed of in bins. The customer may, with approval from the Franchisee, dispose of tires and/or bulky wastes in debris boxes and the Franchisee shall be entitled to charge extra for disposal of those items. Under no circumstances shall hazardous or liquid wastes be disposed of in any Franchisee supplied container.

If the Franchisee discovers any unacceptable wastes in a container, collection of that container may be denied by the Franchisee. The Franchisee, upon discovering unacceptable waste in a container, shall provide notice to the customer along with instructions on removing the unacceptable waste. It shall be the responsibility of the customer to make arrangements with the Franchisee to reschedule container pickup.

8.04.084 Disposal of Recyclable Solid Wastes. It shall be unlawful for the Franchisee to dispose of recyclable solid waste in a landfill disposal site, or to dispose of such recyclable solid waste in a manner which results in other than the delivery of such materials to an appropriate end market.

8.04.085 Service of Notices. The Franchisee shall maintain within the franchise area throughout the term of the franchise an address for the services of notices by mail.

8.04.086 Emergency Services. The Franchisee shall provide debris boxes and/or other suitable containers to the city under emergency services conditions in the city of Portola. The Franchisee shall work cooperatively with the city under the emergency services conditions to meet the needs of Portola. The Franchisee shall be reimbursed for the debris boxes, provided, however, that reimbursement may be delayed past normal billing cycles if the city finds the need to apply for monetary relief from state and/or federal agencies.

8.04.087 Non-Enforcement by the City. The Franchisee shall not be relieved of its obligation to comply with any of the provisions of this chapter and/or the franchise agreement by reason of any failure of the city to enforce prompt compliance.

8.04.088 Force Majeure. In the event the Franchisee's performance of any of the terms, conditions, obligations, or requirements of its franchise, including such terms, conditions, obligations, or requirements as are set forth in this chapter and/or the franchise agreement is prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof, provided that the Franchisee has promptly notified the city in writing of its discovery of the occurrence of such an event, the nature of the event and the anticipated extent of the delay. Such causes beyond the Franchisee's reasonable control or not reasonably foreseeable control shall include, but shall not be limited to, acts of God and civil emergencies.

8.04.089 Indemnification. The Franchisee shall, by acceptance of any franchise granted herein, indemnify the city, its officers, boards and commissions, and members thereof, its employees and agents from any and all liabilities which might arise out of or relate to the exercise or enjoyment by the Franchisee of such franchise. Should the city or any of its officers, boards and commissions, and members thereof, its employees or agents be named in any suit, or should any claim be made against it or any of them by suit or otherwise, whether the same be groundless or not, arising out of or relating to

any claim for which the Franchisee may be required to indemnify the city hereunder, the Franchisee shall defend the city and said officers, boards and commissions, and members thereof, its employees and agents and shall indemnify them for any judgment rendered against them or any sums paid out in settlement or otherwise.

8.04.0810 Severability. If any term, covenant, condition, or provision of this chapter or the franchise agreement granted pursuant to this chapter or the application thereof to any person or circumstance is, to any extent invalid or unenforceable, the remaining terms, covenants, conditions, and provisions of this chapter or franchise agreement, or the application of such term, covenant, condition, or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this chapter or franchise agreement shall be valid and enforced to the fullest extent permitted by law.

8.04.090 SOLID WASTE STORAGE

8.04.091 Disposal Generally. It shall be unlawful for any person to dispose of any solid waste in the city other than at a disposal site designated by the city council and/or City Manager, excepting that the same may be placed in containers and in the manner as provided by this chapter.

8.04.092 Accumulation on Residential Property. Solid wastes and recyclable materials accumulated on property used for single and two family residences shall be placed in Franchisee provided containers or otherwise stored for collection in the manner provided by this chapter. All containers used for the storage of solid wastes and recyclable materials shall be emptied and the contents thereof removed and disposed of when said contents are within four (4) inches or less from the top of the container and at least once a week. Solid wastes and recyclable materials shall not be allowed to overflow containers nor be allowed to accumulate on adjacent properties.

Recycling containers shall contain recyclable solid waste only, and no other garbage shall be disposed of in those containers. Recyclable materials shall not be disposed of in solid waste containers. Notwithstanding anything in this chapter to the contrary, recyclable cardboard boxes and cartons not easily placed in recycling containers shall be neatly tied in bundles with a maximum length of 4 feet and a maximum thickness of 2 feet, and placed on the ground adjacent to recycling containers.

8.04.093 Accumulation on Multi-Family Residential Complexes and Commercial Property. Solid wastes and recyclable materials accumulated on properties used for multi-family residences and commercial uses shall be placed in containers and/or bins or otherwise stored for collection in the manner provided by this chapter. All containers used for the storage of solid wastes and recyclable materials accumulated on such property shall be emptied and the contents thereof removed and disposed of when said contents are within four inches or less from the top of the container and at least once a week. Solid waste generated by restaurants shall be collected twice a week.

8.04.094 Placement of Containers.

Single-Family and Two-Family Residences. Notwithstanding anything herein to the contrary, it shall be unlawful for any person to place solid waste and recyclable material containers within a front yard or adjoining public right-of-way except that single-family and two-family residential customers may do so in accordance with the following standards:

- A. Such containers shall be placed curbside in front of the residence or adjoining public right-of-way not more than 12 hours in advance of the day on which the collection services are to be provided and shall not be permitted to remain in the front yard or adjoining public right-of-way more than 24 hours thereafter; and
- B. Such containers shall not be placed in a position that will obstruct public streets, public sidewalks, or any public or private driveway; and
- C. Containers shall only contain the materials they are designated to hold and shall not be offensive or a nuisance to any person.

Multi-Family Residential Complexes. All owners of multi-family residential complexes consisting of three or more units shall provide solid waste and recycling services to the residents thereof. Multi-family residential complex owners shall provide and maintain one or more containers with a total capacity of at least 64-gallons for every three (3) units. The containers shall be located in areas that are equally convenient for use by residents as are the areas in which solid waste containers are located.

Businesses. All business operators who subscribe to commercial collection services shall place bins at a location within the business property which is accessible to a collection vehicle.

8.04.095 Theft of Recyclable Materials. The theft of any recyclable material from the Franchisee's containers is unlawful and is strictly prohibited.

8.04.096 Open Burning Prohibited. The open burning of garbage by any person within the city of Portola is unlawful and is strictly prohibited.

8.04.100 MANDATORY SERVICE

To protect public health and safety, all Residential Service, Multi-Family Residential Complexes and Commercial Service (as defined herein) premises within City limits which are Occupied shall ~~have~~ subscribe to Solid Waste collection services from the City's Solid Waste collection Franchisee. Required Residential Service and Commercial Service shall include the Minimum Service (as defined herein). Minimum Services for Multi-Family Residential complexes shall consist of at least one container with a total capacity of at least 64-gallons for every three (3) units. Commercial customers shall ~~not~~ be required to subscribe to recycling services, consistent with State of California regulatory requirements. The Solid Waste collection services shall be in the name and responsibility of (including payment of fees) the property owner. Owners of Occupied property shall make arrangements for Solid Waste collection services directly with the Franchisee. Any person electing not to accept such service shall be required to pay the minimum charge for solid waste service. Failure to pay such minimum charge shall constitute a violation of this section 8.04.100.

Enforcement of collection of fees for refuse services at Occupied properties shall be the responsibility of the Franchisee.

8.04.110 VIOLATION-PENALTIES

A violation of any provision of this chapter shall constitute an infraction, for which the City may issue a citation in accordance with the general penalty provisions contained in the Portola Municipal Code. Either in addition to or in lieu of the issuance of a citation, solid waste collection service to the premises of a person who has violated this chapter may be suspended, as well as other city services, including sewer and water service.