



Dallas City Council Agenda

Tuesday, February 22, 2011, 7:00 p.m.
 Mayor Brian Dalton, Presiding
 Dallas City Hall
 187 SE Court Street
 Dallas, Oregon 97338

City Council

Mayor
 Brian Dalton

Council President
 Wes Scroggin

Councilor
 Jim Fairchild

Councilor
 Beth Jones

Councilor
 Jackie Lawson

Councilor
 Mark McDonald

Councilor
 Kevin Marshall

Councilor
 David Voves

Councilor
 LaVonne Wilson

Councilor
 Ken Woods, Jr.

Staff

City Manager
 Jerry Wyatt

Asst. City Manager
 Kim Marr

City Attorney
 Lane Shetterly

Community Development
 Director
 Jason Locke

Finance Director
 Cecilia Ward

Fire Chief
 Bill Hahn

Police Chief
 John Teague

Public Works Director
 Fred Braun

City Recorder
 Emily Gagner

All persons addressing the Council will please use the table at the front of the Council. All testimony is electronically recorded. If you wish to speak on any agenda item, please sign in on the provided card.

<u>ITEM</u>	<u>RECOMMENDED ACTION</u>
1. ROLL CALL	
2. PLEDGE OF ALLEGIANCE	
3. QUESTIONS OR COMMENTS FROM THE AUDIENCE <i>This time is provided for citizens to address the Council or introduce items for Council consideration on any matters.</i>	
4. PUBLIC HEARINGS <i>Public comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.</i>	
5. CONSENT AGENDA <i>The following items are considered routine and will be enacted by one motion. There will be no separate discussion of these items unless a Council member so requests, in which case the item will be removed from the Consent Agenda and considered separately.</i>	
a. Approval of February 7, 2011 City Council Minutes p 3	
b. Acknowledge report of the Jan 25, 2011 Park Bd Mtg p 9	
6. ITEMS REMOVED FROM CONSENT AGENDA	
7. REPORTS OR COMMENTS FROM THE COUNCIL MEMBERS	
8. REPORTS FROM CITY MANAGER AND STAFF	
a. Auditor Presentation p 14	Presentation
b. Aquatic Center rate review p 23	Discussion
c. Council vacancy procedure p 29	Discussion/motion
d. Garbage rate resolution discussion p 32	Discussion/motion
e. Park Host discussion p 37	Motion

Dallas City Council Agenda

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Our Vision

Our vision is to foster an environment in which Dallas residents can take advantage of a vital, growing, and diversified community that provides a high quality of life.

Our Mission

The mission of the City of Dallas is to maintain a safe, livable environment by providing open government with effective, efficient, and accountable service delivery.

Our Motto

*Commitment to the Community.
People Serving People.*

Dallas City Hall is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to the City Manager's Office, 503-831-3502 or TDD 503-623-7355.

f. Oath of Office Ordinance discussion [p 42](#)

Discussion

g. Other

9. RESOLUTIONS

a. Resolution No. 3216: A Resolution limiting the fee for appeal of a Type III land use proceeding; and amending Resolution 3200, adopted June 7, 2010. [p 48](#)

Roll call vote

10. FIRST READING OF ORDINANCE

a. Ordinance No. 1734: An Ordinance relating to solid waste management in the City of Dallas, Oregon, including, without limitation, granting to Dallas Disposal Co., dba Allied Waste Services of Dallas, an Oregon corporation, the exclusive franchise to collect, transport, or transfer solid waste over and upon the city streets and first option to dispose of or recover materials or energy from solid waste generated or produced in the city; creating new provisions; providing penalties; and, repealing Ordinance No. 1327, the existing franchise dated September 7, 1982, and all provisions of the City Code or ordinances in conflict herewith. [p 51](#)

First reading

11. SECOND READING OF ORDINANCE

a. Ordinance No. 1733: An Ordinance amending provisions of the Dallas Development Code; and repealing conflicting provisions. [p 93](#)

Roll call vote

12. OTHER BUSINESS

13. ADJOURNMENT

Following the Council meeting, there will be a meeting of the Dallas Development Commission Urban Renewal Agency Board of Directors.

PLEASE NOTE: Because of the Presidents' Day holiday, the Council meeting will be held on TUESDAY, February 22.

DALLAS CITY COUNCIL
Monday, February 7, 2011
Council Chambers

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The Dallas City Council met in regular session on Monday, February 7, 2011 at 7:00 p.m. in the Council Chambers of City Hall with Mayor Brian Dalton presiding.

ROLL CALL AND PLEDGE OF ALLEGIANCE

Council members present: Council President Wes Scroggin, Councilor Jim Fairchild, Councilor Beth Jones, Councilor Jackie Lawson, Councilor Kevin Marshall, Councilor Mark McDonald, Councilor David Voves, Councilor LaVonne Wilson, and Councilor Ken Woods, Jr.
Excused: Councilor Kevin Marshall

Also present were: City Manager Jerry Wyatt, City Attorney Lane Shetterly, Assistant City Manager Kim Marr, Community Development Director Jason Locke, Police Chief John Teague, Fire Chief Bill Hahn, and Recording Secretary Joanne Ballweber.

Mayor Brian Dalton led the Pledge of Allegiance.

QUESTIONS OR COMMENTS FROM THE AUDIENCE

Mayor Dalton explained that those speaking would need to limit their comments to five minutes. He added if there were any comments on agenda items to please make them now.

Chelsea Pope, Executive Director of the Dallas Area Chamber of Commerce, commented on Charley Engelfried, a Dallas High School student, who passed away at a wrestling match in Silverton. She shared that Charley's family had requested black and orange ribbons be placed on car antennas during the month of February. Chelsea said the ribbons are free and available at the Chamber office. She advised OSU Federal Credit Union had set up an account for all donations to assist the family with funeral costs. Ms. Pope announced the funeral service was scheduled for Saturday at the Dallas High School stadium. She added it was expected to be an extremely large service as several schools has already indicated they would be sending their wrestling, football, and track teams as Charley was involved in all of those sports. She said there had also been some anonymous donors that had come forward and would like something built to honor Charley. Ms. Pope noted that the community was amazing about pulling together in good times and bad and it had shown during this tragic time. She advised that all information regarding Charley would be posted on the Chamber web site.

John Frei said he had a copy of the Dallas City Charter with him. He read section 30, Oath of Office, of the Dallas City Charter. Mr. Frei said the use of the word "shall" is mandatory and Council cannot by ordinance change mandatory language in the City charter by which analogy is the constitution for City government.

Fay Frei stated that during the January 3, 2011, Council meeting Mayor Dalton advised the City's charter only required that the oath of office include support of the United States and the State of Oregon. She added Mr. Shetterly stated the same identical thing. Mrs. Frei said any modification would be by charter amendment and not by ordinance. She questioned if the City Council would put the amendment before a vote to local citizens and if not, why not? Mrs. Frei commented that at the January 3, 2011 Council meeting Mr. Shetterly also said that changes to the charter would require a vote of the citizens. She asked if an oath required upholding all City ordinances that are subject to repeal does this mean a City Councilor can never repeal an ordinance they swore to uphold.

Randy Rohman commented he gave a letter to the Mayor and Councilors. He said it was time the City looked at a cost of service analysis for sewer rates. Mr. Rohman said cost of service is commonly used based upon the average winter water use to determine sewer rates. He added there would be several ways to compute winter water usage. Mr. Rohman advised the process for obtaining a cost of service rate analysis would be relatively complex and there were a number of consultants in the state that work on water and sewer rates and system development charges that would do this type of work. He added it would not be expensive and is an allowable charge from the water and sewer enterprise fund. Mr. Rohman said people who were low water users subsidize the people who were high water users. He stated to be fair to the citizens the City

1 would need to look into a cost of service analysis especially on sewer and maybe water at the
2 same time.

3 Mayor Dalton announced he appreciated the presentations and ideas.

4 **PUBLIC HEARINGS**

5 NONE

6 **CONSENT AGENDA**

7 Councilor McDonald requested to remove the January 18 Council minutes from the consent
8 agenda.

9 It was moved by Councilor Lawson and seconded by Councilor Scroggin to approve the Consent
10 Agenda with the modifications. The motion carried unanimously.

11 Items approved by the Consent Agenda were: a) acknowledge report of January 24
12 Administrative Committee meeting; b) acknowledge report of January 24 Building and Grounds
13 Committee meeting; c) approve OLCC Liquor License for Sweeney's Pub and Lotto; d)
14 acknowledge department quarterly reports; and e) acknowledge Park and Recreation Board
15 agenda.

16 **ITEMS REMOVED FROM CONSENT AGENDA**

17 **APPROVE JANUARY 18, 2011 COUNCIL MINUTES**

18 Councilor McDonald commented he wanted more of the discussion on the 2030 project in the
19 minutes. Councilor Lawson said Beth Jones did not attend the Ford Family Leadership Institute
20 and requested that correction. The minutes were approved with the modifications.

21 **REPORTS OR COMMENTS FROM COUNCIL**

22 Councilor McDonald reported he attended a round table discussion with Congressman Kurt
23 Schrader. He said it concerned the ban on earmarks and the loss of federal funds for local
24 projects. He added it was obvious there would be cutbacks from federal as well as the state funds.

25 Councilor McDonald said he attended a meeting of the local Public Safety Coordination Council.
26 He advised there was discussion about the possibility that the sheriff's department would propose
27 a metro police force to cover all of Polk County. Councilor McDonald announced he had looked
28 at the City budget and certain costs of the Police Department and of all the four local police
29 departments including the sheriff's department there was a substantial difference in the cost per
30 officer. He proclaimed the sheriff's department has a far lower cost per man than the City's
31 police force. Councilor McDonald speculated, if the City used the cost basis of the sheriff's
32 department there would be a potential saving of \$800,000 per year. He further speculated the
33 possibility of a merger with the sheriff's department and the Dallas City Police would potentially
34 save over \$1,500,000. Councilor McDonald said he wanted the Council to direct the City
35 Manager to investigate cost benefits of adopting the cost basis of the sheriff's department or a
36 merger of the two departments and give a report on any potential impact on the general fund and
37 any financial benefits of such an action.

38 Mayor Dalton advised the typical way that would be handled would be to first refer the matter to
39 the Public Safety Committee. He added that committee would make a recommendation to the
40 Council.

41 Councilor Lawson commented she felt it would be a waste of time investigating that issue and
42 would not be a direction the Council should go. Councilor Fairchild said the committee would
43 need to compare what level of service would be provided as well as response time to the cost.
44 Councilor Wilson agreed with Councilor Lawson and stated the Police Department had performed
45 very well and she would not like to pursue that item. Councilor Scroggin said there would be an
46 answer for the difference in cost of service and it wouldn't take too long to come up with what it
47 would entail. He added he would like the issue to be referred to the Public Safety Committee.

1 Councilor Jones and Councilor Voves agreed that it would be best to refer it to the Public Safety
2 Committee for questions and discussion and then the committee could decide to bring it to the
3 Council. Councilor Voves said he and Councilor Wilson had been through the process of
4 comparing before and it would be easy to say money would be saved but when looked into more
5 thoroughly it could cost more.

6 Mayor Dalton advised the majority of the Council would like to send this issue to the Public
7 Safety Committee. He requested that that it be put on the agenda for the next Public Safety
8 Committee meeting.

9 Councilor Woods announced that he was reappointed as chairman for the fourth year to the Mid
10 Willamette Area Commission on Transportation.

11 REPORTS FROM CITY MANAGER AND STAFF

12 Mr. Wyatt said the Superintendent of the Dallas School District wanted the Council to have a
13 copy of the PowerPoint presentation that she provided. He stated she wanted anyone interested to
14 be advised that there was a school board meeting at the Dallas High School in the Bollman
15 auditorium at the same time tonight.

16 APPOINTMENT OF CITIZENS COMMITTEE BIOMASS MEMBERS

17 Councilor Wilson reviewed the minutes of the January 24 Administrative Committee. She
18 reported that Mr. Wyatt gave the committee a list of names of people interested in the Biomass
19 Committee. Councilor Wilson said the Administrative Committee would recommend the Council
20 review the names and vote. Mr. Wyatt reviewed the staff report. He stated the anticipated start
21 date would be sometime in March.

22 It was moved by Councilor Woods and seconded by Councilor Wilson to appoint to the Biomass
23 Citizens Committee the list of names as presented. The motion carried unanimously.

24 PROPOSAL OF SALE OF CITY PROPERTY

25 Councilor Wilson reported this proposal came from the staff and she reviewed the minutes
26 regarding the matter. She said the Administrative Committee recommended it be brought before
27 the Council and would move for approval after discussion. Mr. Wyatt advised the property is
28 zoned Park Open Space and originally he thought it was zoned Residential so the property would
29 need a zone change. He added the property is adjacent to the Aquatic Center and was originally
30 designated as a parking lot for the Aquatic Center. Mr. Wyatt advised the property would not be
31 needed as there would be maximum capacity with the existing parking lot and the on street
32 parking. He said the budget included \$200,000 for property sale and the sale would likely
33 exceed that amount even though the economy is down. Mr. Wyatt explained any bid offer would
34 be brought to the Council and the Council could reject all bids.

35 It was moved by Councilor Wilson and seconded by Councilor Fairchild to direct the City
36 Manager to dispose of City property and present offers to purchase the property to Council for
37 final decision. Councilor Fairchild asked if the City would retain a portion of road access or right
38 of way along the street to be able to access the bridge. Mr. Wyatt answered he would look into a
39 right of way off of Barberry Avenue. In answer to a question from Councilor McDonald, Mr.
40 Wyatt said the property has not had a valuation on it and in the past the lots along the creek have
41 sold for about \$150,000. The motion carried unanimously.

42 COUNCIL VACANCY PROCEDURE UPDATE

43 Councilor Wilson reviewed the minutes regarding the Council vacancy procedure. She said she
44 wanted to remind the Council that this issue was referred to the Administrative Committee from
45 the Council. Councilor Wilson advised the Council that Mr. Wyatt and Mr. Shetterly would
46 develop an application with questions and present them to the Council in February. Mr. Wyatt
47 said he spoke to four other cities that have had Council vacancies and gone through the process.
48 He reported that these cities advertised for the position, had an application process, full council

1 interviews, and they selected by majority. Mr. Wyatt stated all the cities differed in the
2 application process and what the application would actually involve. He advised it was
3 discussed that the City would have an application very similar to one that was used when
4 someone would run for a Council seat. He added the questions would be like those used in
5 interviews. Mr. Shetterly explained the majority would be based on the number of remaining
6 members.

7 It was moved by Councilor Woods and seconded by Councilor Lawson to direct the City Manager
8 and City Attorney to develop an application and a procedure to fill a council vacancy and bring it
9 back to the Council for approval. The motion carried unanimously.

10 OATH OF OFFICE ORDINANCE

11 Councilor Wilson reviewed the section of minutes in the Administrative Committee meeting that
12 referred to the Oath of Office. She reported that Mr. Shetterly advised the committee that an
13 ordinance would have to be adopted if the Council wanted the wording of the Oath of Office
14 changed. She added it was moved by the Administrative Committee to bring this issue to the full
15 Council for their action. Mr. Shetterly clarified this was not a first reading of the ordinance as
16 one has not been prepared yet. In response to a question from Councilor Jones, Mr. Shetterly
17 answered the Charter establishes the minimum elements of an oath in support of the constitutional
18 law of the United States and State of Oregon but the Council by ordinance can adopt additional
19 elements as long as they would not be inconsistent with the Charter. Mr. Shetterly explained the
20 Council would be maintaining what the Charter requires and adding by ordinance the additional
21 elements. In addition Mr. Shetterly explained the ordinance drafted would also recognize that to
22 give an oath to support the Charter and City ordinances does not disqualify or prohibit any
23 Council Member from seeking to amend an ordinance or the Charter. He further explained it
24 would not be an oath that would bind a Councilor to the Charter and ordinances and could never
25 be changed. Mr. Shetterly mentioned that many cities extend this oath to Planning
26 Commissioners as well as City Officers. Councilor McDonald said the oath of office as outlined
27 in section 30 was clearly outlined that an ordinance cannot legally amend the Charter, only an
28 amendment to the Charter can change the oath. He stated an amendment to the Charter would
29 require a vote by the citizens per the Oregon Constitution. He added in the Oregon Constitution
30 article XI section 2 stated the legal voters of every city and town are hereby granted power to
31 enact and amend their municipal charters subject to the constitution and criminal laws of the state
32 of Oregon. Councilor McDonald shared it was his opinion that ordinances were inferior to the
33 Charter. He hypothesized this ordinance would be voided if passed.

34 It was moved by Councilor Lawson and seconded by Councilor Jones to prepare an ordinance to
35 adopt the oath of office for elected officials as was presented in the packet. Councilor McDonald
36 said he would request a postponement until the City Attorney prepared a written legal opinion as
37 to why he would think this was legal. Mr. Shetterly said section 30 does not give the language of
38 the oath and this ordinance would not change that. Mr. Shetterly added he would prepare a staff
39 report for the next Council meeting. Councilor Voves asked what would happen if an elected
40 Council member chose not to take the oath. Mayor Dalton answered an elected official would not
41 be able to perform the duties of a Councilor until sworn. Councilor Voves commented it had
42 been previously discussed that the Administrative Committee would review the entire charter and
43 he wondered if that was still being considered. Mayor Dalton answered it was. Councilor
44 Woods called for a question. Mayor Dalton proclaimed the question had been called. The
45 motion passed 7 to 1 with Councilor McDonald voting no.

46 AQUATIC CENTER RATE REVIEW

47 Mr. Locke advised rates at the Aquatic Center were set by the Dallas City Council. He said some
48 of the larger rates would include daily admission, annual membership, and facility rental rates.
49 Mr. Locke presented a PowerPoint that was an overview of the last 4 years of Aquatic Center
50 rates. He reviewed the amount of subsidies for the general fund. Mr. Locke said the difference
51 between expenditure and revenue had declined due to an efficiency project, scheduling, and
52 tightening expenditures. He added there had been hard work to lower expenditures. Mr. Locke
53 explained that a proposal was brought to the Building and Grounds Committee to recommend an
54 increase for daily admission rates as well as annual membership rates. He said the revenue was
55 down and compared the revenue in 2010 of \$231,000 to 2008 which was \$282,000. Mr. Locke

1 stated the combination of proposed rate increases would bring additional revenue of about
2 \$50,000 per year at current attendance rates. Mr. Locke said that rates had not increased since
3 opening the Aquatic Center and membership has remained fairly steady. He also said as noted in
4 the staff report there would be a risk factor with price sensitivity but he was fairly confident that
5 those changes would not produce a further reduction in revenue. In response to a question from
6 Councilor Scroggin, Mr. Locke answered the bulk of the revenue generated from the daily
7 admissions would come from the family category. He added the least amount of daily admissions
8 were seniors. Mr. Locke said he would get information that would advise which group would be
9 most affected by the increases. Councilor Lawson advised she would be comfortable with the
10 increases, but would like to see senior daily rates frozen because of a lack of disposable income
11 for them. She added she would agree with an increase in senior annual rates however because of
12 how it would factor out. The Councilors discussed advertising for the Aquatic Center. Mr. Locke
13 advised they do advertise but also have relied on word of mouth. He stated he has tried to be
14 competitive with rates to draw users from other areas. Mayor Dalton asked the Council if they
15 would want to postpone action due to all the feedback. Mr. Wyatt said he would present a
16 resolution later.

17 SAFETY INSPECTION OF MERCER RESERVOIR

18 Mr. Wyatt reported the City had a positive safety inspection on Mercer Reservoir.

19 RESIGNATION OF COUNCILOR DAVID VOVES

20 Mr. Wyatt referred the Council to Councilor Voves's letter of resignation on page 56 of the
21 Agenda Packet. Councilor Scroggin thanked Councilor Voves for filling the council seat he was
22 appointed to and proclaimed the great job he performed. Mayor Dalton added Councilor
23 Scroggin speaks for the council and the community.

25 OTHER

26 Mr. Wyatt asked permission from the Council to be excused from the March 21 Council meeting.
27 He explained he had two sons that would be playing baseball in Arizona.

28 Mr. Wyatt said the City of Silverton had been very supportive through the process regarding the
29 sudden death of Charley Engelfried. He advised he would be in contact, on behalf of the Council,
30 with the City Manager in Silverton and would express the appreciation of the City of Dallas for
31 the care and love the students, teachers, coaches, and City of Silverton had shown. Mayor Dalton
32 advised Mr. Wyatt to draft a letter of appreciation to Silverton.

33 RESOLUTIONS

34 NONE

35 FIRST READING OF ORDINANCE

36 **Ordinance No. 1733:** An Ordinance amending provisions of the Dallas Development Code;
37 repealing conflicting provisions.

38 Mayor Dalton indicated the Council had discussed this at the last Council meeting.

39 Mayor Dalton declared Ordinance No. 1733 to have passed its first reading.

40 SECOND READING OF ORDINANCE

41 OTHER BUSINESS

42 None

43 There being no further business, the meeting adjourned at 8:19 p.m.

44 Read and approved this _____ day of _____ 2011.

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Mayor

ATTEST:

City Manager

DRAFT

1 **CITY OF DALLAS PARK AND RECREATION BOARD**

2 January 25, 2011 Meeting Minutes

3 Members present were Chair Dick Hoffman, Vice Chair Chris Castelli, Judy
4 Boustead, Barbara Chaney, June Krause, Councilor Jackie Lawson, Carol
5 Mannen, Kevin Moen, Sue Rohde, and Sandy Teal. Also present were Michele
6 Campione of ICAN and Tyler Walker of Polk County Public Health Tobacco
7 Prevention.

8 Staff members present were: City Manager Jerry Wyatt, Assistant City Manager
9 Kim Marr, Park Supervisor Ron Lines, and Recording Secretary Patti Senger.

10 Excused were: Tim Larson and O'Landa Long.

11 Chair Dick Hoffman called the meeting to order at 7:00 pm.

12 After review of the minutes from the October 27, 2010, meeting, Dick Hoffman
13 clarified his statements beginning on line 118 of page 4 in regards to the portion
14 of the Rickreall Creek Trail System and the sidewalk system that connects to the
15 City Park. As part of the continuation in the plan there should be uninterrupted
16 stretches of sidewalks leading to each entrance of the Park. This would alleviate
17 crossing the street numerous times to get to a sidewalk leading up the Park and
18 avoid walking in parking lots, ditches or grassy areas as you enter the Park. A
19 cross walk may be considered to encourage people to use the desired route.

20 Chris Castelli made a motion to approve the minutes, it was seconded, and
21 they were accepted as presented.

22 **ELECTION OF OFFICERS**

23 Carol Manning nominated Dick Hoffman as Chair Person and Mr. Hoffman
24 nominated Chris Castelli as Vice Chair Person. The Board voted unanimously to
25 elect Mr. Hoffman as Chair Person of the Board and Mr. Castelli as Vice Chair
26 Person of the Board. Jackie Lawson nominated Patti Senger as Recording
27 Secretary and the Board voted unanimously to elect Ms. Senger as Recording
28 Secretary for the Board.

29 **ACTION ITEMS**

30 **DETENTION POND**

31 Ron Lines reported that the Engineering Department is working on the design of
32 the detention pond at Kingsborough Park and distributed a map of the
33 conceptual plan. He explained how the water flow in the area created the

34 need for the detention pond and how it would relieve water overflow by
35 holding the influx of water and prevent flooding in the streets and the
36 surrounding area. Ms. Lawson asked if it would be possible to create a pond or
37 wetlands to offset a requirement from a particular large building that would
38 come in. Mr. Castelli clarified that it would become a litigation project and Jerry
39 Wyatt agreed. Ms. Rohde asked if we were leaning toward a dry detention
40 pond and Mr. Wyatt responded that it would be easier regarding maintenance
41 and Mr. Lines added that in the summer it would only require grass seeding. Mr.
42 Castelli asked about the engineering on the detention pond and Mr. Lines
43 responded that it was being done in house. Kevin Moen asked if this pond
44 would be fenced off and what the liability would be with children. Mr. Wyatt
45 stated that it would not be fenced off and would be similar to other ponds
46 across America, and there would always be a concern with kids when a pond is
47 put in. There was discussion about parking and Mr. Wyatt stated that rather
48 than a drop off area additional angled parking along Wyatt Street would be
49 more beneficial.

50 KINGSBOROUGH PARK NEIGHBORHOOD MEETING

51 Mr. Wyatt reported that the flyer with the conceptual plan would be distributed
52 to the Kingsborough Park neighborhood but the meeting would be scheduled in
53 the spring after the pond issues had been worked out.

54 PARK HOST

55 Mr. Lines reported that the Park Host was a suggestion that came from the Park
56 and Recreation Board in a motion from the October 27, 2010, meeting. Mr.
57 Wyatt stated that it was brought to council and they were looking at legal issues
58 including if this person would be a volunteer or a City employee.

59 SMOKING

60 Mr. Lines reported that we currently have an ordinance that states people must
61 be 25 feet away from building structures and play equipment in the park and if
62 the Board was interested in making the Parks entirely smoke free, this was an
63 opportunity for that discussion. Dick Hoffman asked about enforcement. Jackie
64 Lawson introduced Tyler Walker of Polk County Public Health Tobacco
65 Prevention who informed the Board that in Polk County, Independence is the
66 only city with a "No-Smoking" rule in their parks. Enforcement comes via word of
67 mouth with citizens educating one another and they were not using any law

68 enforcement; furthermore, they had not come across a situation where they
69 have needed law enforcement. She added there were other places working
70 on the enforcement piece and how they would get word to the citizens about
71 the change stressing the importance of spreading awareness and using it as an
72 educational tool similar to other policies such as the alcohol policy and the after
73 dark policy. When asked about signage Mr. Lines explained that currently the
74 state provided stickers. It was suggested that signs be posted and Ms. Lawson
75 asked if there would be state funding for new signage and Ms. Walker
76 responded that there could be. Mr. Castelli suggested that it could be easier to
77 enforce a rule of no-smoking throughout the parks due to the clear boundary
78 rather than arguments about whether someone was 25 feet away from a
79 structure or not. Mr. Hoffman added that there was currently a \$100 fine
80 associated with the ordinance. There was discussion about why this ordinance
81 didn't pass the first time it went to council and Mr. Wyatt replied that it was tied
82 to another ordinance and neither passed at that time. When asked about staff
83 consideration of this ordinance Mr. Lines answered that it would keep the parks
84 cleaner of cigarette butts. Mr. Hoffman suggested a place to put cigarettes at
85 the entrances and Mr. Wyatt stated that the one in front of City Hall doesn't
86 work and assumes that wouldn't work either. MS. LAWSON MADE A MOTION TO
87 RECOMMEND TO CITY COUNCIL THAT ALL OF THE DALLAS CITY PARKS AND THE
88 RICKREALL CREEK TRAIL SYSTEM BE MADE SMOKE FREE. THE MOTION SECONDED
89 AND CARRIED UNANIMOUSLY.

90 **PARK UPDATES**

91 ROTARY PARK PLAYGROUND EQUIPMENT

92 Carol Mannen noted that she saw an equipment delivery truck and asked if it
93 was the new playground equipment. Mr. Lines reported that we received all of
94 the equipment that was ordered for the three parks and that the Rotary Park
95 installation would be the priority. Mr. Hoffman asked if they caught the arsonist
96 and Mr. Lines responded that we had not. Mr. Lines continued that they are
97 currently discussing what would stay in the Brandvold section and what would
98 be removed, indicating the merry-go-round would stay and the swing-set from
99 Kingsborough Park would be moved to replace the existing swing set.

100 NEWLY ADOPTED PARK HOURS

101 It was reported that Dallas City Council adopted Resolution No. 3214 changing
102 all Dallas City Parks hours from dawn to dusk each day. Mr. Wyatt mentioned

103 that with the newly adopted park hours and upcoming decisions about the
104 smoking signs that we would be working on uniform signage. Mr. Hoffman
105 reminded the board of the importance of emergency contact numbers on the
106 new signage. Mr. Wyatt added that the police department was looking into
107 night vision goggles to help them with enforcement of park closures.

108 **SPORTS PROGRAM UPDATE**

109 Mr. Wyatt reported that Dave Brautigam was scheduled to report to the Board
110 about the youth programs and because he couldn't attend tonight's meeting
111 we would move his report to next month's agenda. He added that the City was
112 working to establish consistency throughout the programs and Mr. Brautigam
113 would discuss some of the obstacles he has found and outline a plan of action.

114 **QUESTIONS OR COMMENTS**

115 Judy Boustead declared that the Arboretum looks great and Ms. Mannen
116 reported that there has not been a problem with Rickreall Creek this year. She
117 added that 21 LaCreole students had worked all morning spreading bark dust
118 on the trails. She acknowledged that Jamie Richardson was in charge of this
119 great group of kids. Ms. Boustead added that when the kids get involved, and
120 take ownership it cuts down on vandalism.

121 Judy Boustead asked about the Japanese Garden and Mr. Wyatt responded
122 that Jim Fairchild was working on that project and was unable to attend
123 tonight's meeting. He stated that trees have been cut down and that removal
124 of the stumps was not part of the plan. He added that information would be
125 provided by Mr. Fairchild.

126 **OTHER BUSINESS**

127 LETTER FROM KIDS, INC.

128 Mr. Wyatt reported that the City has given financial help to Kids, Inc. in the past.
129 The City has met with Kids, Inc. and explained the financial situation of the City
130 and that we are using the funds normally donated to Kids, Inc. to fund the sports
131 coordinator position. Mr. Castelli asked about scholarships that Kids, Inc.
132 referred to in the letter and it was answered that the coordinator of each sport
133 would make the decisions about the scholarship either in registration fees or
134 equipment based on need. Ms. Lawson asked if they had applied for the Dallas
135 Foundation Grant and Mr. Wyatt reminded the Board that there were other

136 grants available to Kids, Inc. including the Dallas Foundation, Meyers Trust, Ford
137 Family Trust Foundation, the Community Foundation, and United Way.

138 Mr. Wyatt explained that the Park and Recreation Board would be assisting with
139 the sports programming over the next six to nine months. He added that Kevin
140 Moen has been involved in sports programming at the high school and middle
141 school levels. There would be an analysis of the existing kindergarten through
142 grade 12 programs and decisions would need to be made. While thanking
143 them for the ways they have stepped up this last year Mr. Wyatt stated that
144 there would be a lot of work ahead as we address the issues. Ms. Teal added
145 that with some of the programs cuts that were discussed at the school board
146 meeting it may be pertinent to have something in place for volleyball and
147 football before school starts next fall.

148 UPDATE BOARD MEMBER CONTACT LIST

149 Mr. Hoffman stated that a form was being passed around and asked everyone
150 to update their names and addresses for the contact list.

151 PARK RESERVATIONS

152 Patti Senger updated the board on the park reservations that had been made
153 since the price restructuring last fall. She stated that 30 reservations had been
154 made and the revenue generated was up 36% over what was paid for the
155 same number of reservations last year.

156 ADJOURN

157 Dick Hoffman reminded the board that the next meeting was scheduled on
158 Tuesday, February 22 at 7:00 p.m. and adjourned the meeting at 7:40 p.m.

February 22, 2011

To the Honorable Mayor and City Council
City of Dallas
Dallas, Oregon

EXECUTIVE SUMMARY OF EXIT CONFERENCE

The purpose of this executive summary is to assist you in fulfilling your responsibilities for oversight of the City's financial reporting. This letter summarizes the results and conclusions of certain matters required to be communicated to those charged with governance. The full communication to those charged with governance as required by Statement of Auditing Standards 114 and 115 was passed out to you with this letter.

- We have completed our audit of the financial statements and related disclosures of the City of Dallas. We issued our report, which contain "clean opinions" on January 31, 2011.
- Dallas Financial Statements:
 - Our opinion on the City's financial statements is limited to the basic financial statements, supplementary data, and audit comments.
 - The introductory and statistical section of the report has not been audited by us and, accordingly, we expressed no opinion on that data.
 - The financial statements were submitted to the Government Finance Officers Association for the Certificate of Achievement for Excellence in Financial Reporting.

Required Communications to Those Charged with Governance

- There were no restrictions on our audit scope.
- There were no significant difficulties incurred during the course of the audit.
- There were no disagreements with management.
- There were no new significant policies adopted or changes from policies previously adopted.
- Management judgments and accounting estimates were found to be appropriate in the circumstances.
 - Accumulated Depreciation
 - Compensated Absences

- The most sensitive disclosures affecting the financial statements were:
 - Prior period adjustment
 - Capital assets
 - Long-term debt
- We noted no significant or unusual transactions entered into by the City during the year for which there was a lack of authoritative guidance or consensus.
- There were uncorrected misstatements with a total financial effect of \$32,224 that management has determined that the effect of the uncorrected misstatements is immaterial.
 - Unbilled utility revenue – CY \$162,551, PY \$172,528
 - Unrecorded liabilities - \$21,247
- Audit adjustments necessary for proper presentation of the financial statements were made:
 - Prior period adjustment to correct fund balance.
 - Prior period adjustment to correct capital assets.
 - Prior period adjustment to remove OPEB liability.
- In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a “second opinion” on certain situations. There were no such consultations with other accountants.

Audit Comments and Disclosures in accordance with Minimum Standards

- Audit Comments and Disclosures required by state regulations are located on page 75.
- We tested the following in connection with Oregon Minimum Standards:
 - Collateral
 - Indebtedness
 - Budgets
 - Insurance and Fidelity Bonds
 - Programs Funded from Outside Sources
 - Highway Funds
 - Investments
 - Public Contracts and Purchasing

Control Deficiencies

- There were deficiencies identified during the course of the audit which we considered to be significant deficiencies/material weaknesses that we are required by Statement of Auditing Standards 115 to communicate to you. These are communicated in a separate letter accompanying the full memo.
 - City did not maintain detailed capital asset records
 - City was behind in reconciling bank accounts
 - Employees in the Finance Department have the ability to initiate, enter and post journal entries into the accounting software with no required review process

We appreciate the opportunity to have been of service and look forward to working with you in the future. If you have any questions now or in the future please do not hesitate to contact us.

A handwritten signature in black ink, appearing to read "Kammy Austin", with a long, sweeping flourish extending to the right.

Kammy Austin, CPA
Merina & Company, LLP

February 4, 2011

To the Honorable Mayor and City Council
City of Dallas

We have audited the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City of Dallas (City) for the year ended June 30, 2010. Professional standards (for Certified Public Accountants) require that we provide you with the following information about our responsibilities under general accepted auditing standards and *Government Auditing Standards*, as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our letter to you dated June 17, 2010. Professional standards also require that we communicate to you the following information related to our audit.

Other Information in Documents Containing Audited Financial Statements

The auditor's responsibility for other information in documents containing the entity's financial statements and report does not extend beyond the financial information identified in the opinion letter titled the Independent Auditor's Report. The auditor does not have an obligation to perform any procedures to corroborate other information contained in these documents. We applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the required supplementary information. Nothing came to our attention that caused us to believe that such information, or its manner of presentation, is materially inconsistent with the information, or manner of its presentation appearing in the financial statements.

Significant Audit Findings

Qualitative Aspects of Accounting Practices

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the City are described in Note 1 to the financial statements. No new accounting policies were adopted and the application of existing policies was not changed during 2010. We noted no transactions entered into by the governmental unit during the year for which there is a lack of authoritative guidance or consensus. There were three prior period adjustments that were included in the financial statements:

Capital Assets – During the year ended June 30, 2009 management was depreciating capital assets as a group rather than depreciating each asset and disposing of assets as they become fully depreciated and were no longer in use. During the year ended June 30, 2010 management entered the capital assets into a capital asset tracking system and recalculated depreciation for each asset. A prior period adjustment was made to adjust depreciation to agree with the asset listing from the capital asset tracking system.

Fund balances – A prior period adjustment was made to several funds to adjust the fund balance to agree with the ending fund balance from the 2009 financial statements.

Other Post Employment Benefit (OPEB) liability not applicable – During the year ended June 30, 2009 management recorded an Other Post Employment Benefit (OPEB) liability while implementing GASB 45 Accounting and Financial Reporting by Employers for Postemployment Benefits Other than Pensions. During the year ended June 30, 2010 an independent actuarial firm performed an evaluation of the OPEB liability and determined that the City did not have a liability under GASB 45.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimates affecting the City's financial statements were:

Management's estimate of the accumulated depreciation is based on historical cost or estimated historical cost if purchased or constructed and donated capital assets are recorded at estimated fair market value at the date of donation.

Management's estimate of the compensated absences payable is based on current wages.

We evaluated the key factors and assumptions used to develop these estimates in determining that they are reasonable in relation to the financial statements taken as a whole.

Certain financial statement disclosures are particularly sensitive because of their significance to financial statement users. The most sensitive disclosures affecting the financial statements were:

The disclosure of capital assets in Note 3, long-term obligations in Note 4, and the prior period adjustments in Note 9 to the financial statements for the year ended June 30, 2010.

Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing and completing our audit.

Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. We noted some known uncorrected misstatements of the financial statements with a total financial statement effect of \$32,224. Management has determined that the effect of the uncorrected misstatements is immaterial, both individually and in the aggregate, to the financial statements taken as a whole. The City relied on Merina and Company, LLP to propose material audit adjustments that were necessary for proper presentation of the financial statements. Some of these proposed audit adjustments were material misstatements.

Disagreements with Management

For purposes of this letter, professional standards define a disagreement with management as a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction,

that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

Management Representations

We have requested certain representations from management that are included in the management representation letter dated January 31, 2011.

Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the governmental unit's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Other Audit Findings or Issues

We noted certain matters that we reported to management of the City in a separate letter dated February 4, 2011.

We received the full cooperation of the City's management and staff, and had unrestricted access to the financial records in the performance of the audit. We appreciate the many courtesies extended and assistance provided by both management and staff.

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the governmental unit's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

This information is intended solely for the use of the Honorable Mayor, City Council and management of the City of Dallas and is not intended to be and should not be used by anyone other than these specified parties.

If you should have any questions or comments, we will be pleased to discuss this report with you at your convenience.

Very truly yours,



Merina & Company, LLP
Certified Public Accountants and Consultants

To Honorable Mayor and Council Members,
City of Dallas, Oregon

In planning and performing our audit of the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of City of Dallas, Oregon (City) as of and for the year ended June 30, 2010, in accordance with auditing standards generally accepted in the United States of America, we considered the City internal control over financial reporting (internal control) as a basis for designing our auditing procedures for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the City's internal control. Accordingly, we do not express an opinion on the effectiveness of the City's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be significant deficiencies or material weaknesses and therefore there can be no assurance that all such deficiencies have been identified. In addition, because of inherent limitations in internal control, including the possibility of management override of controls, misstatements due to error or fraud may occur and not be detected by such controls. However, as discussed below, we identified certain deficiencies in internal control that we consider to be material weaknesses and other deficiencies that we consider to be significant deficiencies.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A material weakness is a deficiency or combination of deficiencies in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. We consider the following deficiencies in the City's internal control to be material weaknesses:

2010-1

Condition: The City did not maintain detailed records of their capital assets.

Criteria: A detailed record of capital assets needs to be maintained.

Effect: The lack of a detailed record of their capital assets resulted in prior period adjustments.

Cause: Without detailed capital asset records, it is difficult to calculate depreciation expense, record and report capital asset dispositions, and allocate depreciation expense among functions.

Recommendation: The City needs to complete an inventory of their capital assets, create a current capital asset list, and purchase software to maintain their capital asset list.

Management's Response: A capital assets listing had already been created based on historical information.

2010-2

Condition: The City was behind in reconciling the bank accounts.

Criteria: Good internal controls mandate that bank reconciliations be completed timely.

Effect: The lack of timely bank reconciliations makes the process more difficult to identify and correct reconciling items. It also does not allow management and the City Council to review activity of the City on a timely basis.

Cause: An update to the City's financial software caused erroneous activity to be recorded which was not fully corrected until after year-end.

Recommendation: We recommend that the City develop procedures to ensure that bank reconciliations are completed and reviewed timely.

Management's Response: A process has been put in place to review the bank statements upon receipt and complete the bank reconciliation by the middle of the following month from the date of the bank statement. All documents associated with the corresponding month's bank statement are kept in a binder for easy, quick reference.

2010-3

Condition: Employees in the Finance Department have the ability to initiate, enter and post journal entries into the accounting software with no required review process.

Criteria: Good internal control mandates that manual journal entries be documented and reviewed to verify the necessity and accuracy of the entry.

Cause: The City has not developed formal procedures to review journal entries.

Recommendation: We recommend that the City establish procedures to review all journal entries.

Management's Response: Journal entries are now created by one employee and then reviewed and posted by a different employee.

The City's written response to the significant deficiency identified in our audit has not been subjected to the audit procedures applied in the audit of the financial statements and, accordingly, we express no opinion on it.

This communication is intended solely for the information and use of management, Honorable Mayor, City Council Members, and others within the organization and is not intended to be and should not be used by anyone other than these specified parties.

Merina & Company

Merina & Company, LLP
West Linn, Oregon
February 4, 2011

DALLAS CITY COUNCIL REPORT

TO: MAYOR BRIAN DALTON AND CITY COUNCIL

<i>City of Dallas</i>	Agenda Item No. 8 b	Topic: Resolution No. 3215 Aquatic Center rates
Prepared By: Jason Locke, Community Development Director	Meeting Date: February 22, 2011	Attachments: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Approved By: Jerry Wyatt		

RECOMMENDED ACTION: Discuss changes to Aquatic Center rates, and direct staff to make any necessary changes to the DAC fee schedule, and adopt Resolution 3215.

BACKGROUND: At the February 7th meeting, staff introduced proposed rate changes for daily admissions and annual memberships at the Dallas Aquatic Center. During that conversation, Council expressed concerns regarding senior daily rate increases, the breakdown of attendance #'s, and the overall concept of raising rates at this time, given the risk that price sensitivity had the potential to further reduce revenue.

The attached revised rate schedule reflects changes to the senior daily rates (leave as is), and a smaller increase to the family rates. In parenthesis next to the proposed daily rates is the percentage of revenue by category. Also, note that City of Dallas residents make up 75% of the annual pass holders, with the majority being family passes.

As Staff stated in the previous report:

The bottom line is that revenue has declined across the board, including pro shop and concession sales, birthday parties, and admissions. Fortunately, expenditures have been reduced significantly and so it is almost a complete offset, as the Revenue/Expenditure ratio has remained consistent, and has even gotten a little better. This results in less general fund subsidy. The Buildings and Grounds Committee recommended the increases become effective July 1, 2011 based on the staff recommendation. **Considering the revenue situation, staff is now recommending the new rates become effective May 1, 2011.**

FISCAL IMPACT:

The revised rates would generate approximately \$35-40,000/year based on current attendance and membership levels.

ATTACHMENTS:

- 1) Resolution 3215 with Revised fee schedule

RESOLUTION NO. 3215

A Resolution establishing a schedule of rates and fees to be paid by persons using the Dallas Aquatic Center, and repealing Resolution No. 3152.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

Section 1. The fees and rates charged for persons using the Dallas Aquatic Center are hereby adopted as set forth in Exhibit A, attached hereto and by reference incorporated herein.

Section 2. All other rates, fees and prices not expressly set forth in Exhibit A may be set by the City Manager.

Section 3. Upon the effective date of this resolution, Resolution No. 3152 is hereby repealed.

Section 4. This resolution shall take effect May 1, 2011.

Adopted: March 7, 2011

Approved: March 7, 2011

BRIAN W. DALTON, MAYOR

ATTEST:

JERRY WYATT, CITY MANAGER

EXHIBIT A

2011 DALLAS AQUATIC CENTER RATES

1) General Admission Day Use Pass

	<u>Resident</u>	<u>Non-Resident</u>	
Adult (18-59)	\$5.00(8.49%)	\$6.50(11.31%)	+\$0.50
Youth (under 18)	\$4.00(17.76%)	\$5.00(15.91%)	+\$1.00
Senior (60 & over)	\$3.50(2.95%)	\$5.00(2.61%)	Leave as is
Family ¹ (Revised)	\$12.00(16.37%)	\$18.00(17.89%)	+\$2.00 & +\$3.00

***Infants 3 and under wading pool use \$1.00*

2) Youth summer only Pass (June-August)

	<u>Resident</u>	<u>Non-Resident</u>	
Youth (18 & under)	\$100.00	\$125.00	+\$25.00

3) 3-month Water Aerobics Pass (unlimited use)

	<u>Resident</u>	<u>Non-Resident</u>
All ages	\$75.00	\$100.00

4) Annual Membership

(Includes all lap swims, recreation swims, and unlimited water aerobics, as well as a 20% discount all classes/lessons, 10% discount on room/facility rentals and swimsuits, 5 free passes per year for friends and family, and discounts on special events)

(Resident passes make of 75% of the total)

	<u>Resident</u>	<u>Non-Resident</u>	
Adult (18-59)	\$250	\$325	+\$25.00
Youth (under 18)	\$200	\$275	+\$25.00 & +\$35.00
Senior (60 & over)	\$200	\$275	+\$25.00 & +\$35.00
Two-person	\$375	\$450	+\$25.00
Family ¹	\$450	\$600	+\$50.00

5) 20 coupons (non-expiring)

	<u>Resident</u>	<u>Non-Resident</u>
Adult (18-59)	\$81.00	\$108.00
Youth (under 18)	\$54.00	\$72.00
Senior (60 & over)	\$63.00	\$90.00

6) Facility rental rates

¹ "Family" means up to four persons related by blood, marriage or civil union who reside together in the same household. In the case of an annual pass, add \$60.00 for each additional family member.

Small room \$30.00/hour
Large Room \$60.00/hour

Entire facility (includes both rooms, all pools, lifeguards, and one lead lifeguard for one hour)

<u># of Guests</u>	<u>Rate*</u>
1-40	\$200.00
41-80	\$250.00
81-120	\$300.00
121-160	\$350.00
161-200	\$400.00
201-240	\$450.00

*Add \$75.00 for each additional hour.

2011
DALLAS AQUATIC CENTER RATES
(SINGLE RATE OPTION)

1) General Admission Day Use Pass

Adult (18-59)	\$5.00
Youth (under 18)	\$4.00
Senior (60 & over)	\$4.00
Family ¹	\$12.00

***Infants 3 and under wading pool use \$1.00*

2) Youth summer only Pass (June-August)

Youth (18 & under)	\$100.00
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3) 3-month Water Aerobics Pass (unlimited use)

All ages	\$75.00
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4) Annual Membership

(Includes all lap swims, recreation swims, and unlimited water aerobics, as well as a 20% discount all classes/lessons, 10% discount on room/facility rentals and swimsuits, 5 free passes per year for friends and family, and discounts on special events)

(OPTIONAL: Residents receive 10% discount on annual pass)

Adult (18-59)	\$250
Youth (under 18)	\$200
Senior (60 & over)	\$200
Two-person	\$375
Family ¹	\$450

5) 20 coupons (non-expiring)

Adult (18-59)	\$85.00
Youth (under 18)	\$60.00
Senior (60 & over)	\$60.00

¹ "Family" means up to four persons related by blood, marriage or civil union who reside together in the same household. In the case of an annual pass, add \$60.00 for each additional family member.

6) Facility rental rates

Small room \$30.00/hour
Large Room \$60.00/hour

Entire facility (includes both rooms, all pools, lifeguards, and one lead lifeguard for one hour)

<u># of Guests</u>	<u>Rate*</u>
1-40	\$200.00
41-80	\$250.00
81-120	\$300.00
121-160	\$350.00
161-200	\$400.00
201-240	\$450.00

*Add \$75.00 for each additional hour.

DALLAS CITY COUNCIL REPORT

TO: MAYOR BRIAN DALTON AND CITY COUNCIL

<i>City of Dallas</i>	Agenda Item No. 8 c	Topic: Council Vacancy Procedure
Prepared By: Emily Gagner	Meeting Date: February 22, 2011	Attachments: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Approved By: Jerry Wyatt		

RECOMMENDED MOTION:

Motion to approve the form and procedure as presented.

BACKGROUND:

With Councilor Voves’ resignation, the Council indicated a desire to create an application process to fill that vacancy. Jerry and Lane drafted the proposed application form based on the state form for candidacy filing for a general election. If approved, the process would be as follows:

1. Advertise the vacancy on our website and in local newspapers
2. Application process – collect applications from all interested parties
3. Application deadline – to be determined by the Council. (Staff recommends March 31)
4. Screening of applications for completeness
5. Interview finalists before the full Council (most likely at a Council workshop)
6. Appointment by a majority of the Council

FISCAL IMPACT:

Minimal – cost of advertising in newspaper(s)

ATTACHMENTS:

Proposed application form

Filing of Candidacy for Vacant Council Seat

This information is a matter of public record and may be published or reproduced.



Candidate Information

Candidate Name:

Previous Name(s) if any:

Residence Address:

City:	State:	ZIP Code:
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Home Phone:	Work Phone:	Cell Phone:
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Fax:	Email Address:
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Mailing Address *(where all correspondence will be sent):*

City:	State:	ZIP Code:
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Required Information *(if no relevant information, list "none")*

Occupation *(present employment - paid or unpaid)*

Occupational Background *(previous employment - paid or unpaid)*

Educational Background *(schools attended, use attachment if needed)*

Complete Name of School <i>no acronyms</i>	Last Grade Level Completed	Diploma/Degree/ Certificate	Course of Study <i>optional</i>

Other:

Prior Governmental Experience *(elected or appointed)*

Why do you wish to be appointed? What do you have to offer the Dallas City Council?

By signing this document, candidate hereby states:

***He/she will accept the nomination for office indicated**

***He/she will qualify for said office if selected**

***That all information provided on the form, including occupation, educational and occupational background, and prior governmental experience, is true to this best of his/her knowledge.**

Candidate's Signature

Date Signed

This information is a matter of public record and may be published or reproduced.

DALLAS CITY COUNCIL REPORT

TO: MAYOR BRIAN DALTON AND CITY COUNCIL

<i>City of Dallas</i>	Agenda Item No. 8 d	Topic: Garbage rate resolution discussion
Prepared By: Emily Gagner	Meeting Date: February 22, 2011	Attachments: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Approved By: Jerry Wyatt		

RECOMMENDED MOTION:

Motion to direct the City Attorney to draft a resolution for garbage rate increase for the March 7 Council agenda for passage.

BACKGROUND:

Allied Waste of Dallas has requested a rate increase for the waste collection services provided under their franchise agreement with the City. The last rate increase was April 1, 2009. The rate increase reflects Allied Wastes' increased costs as well as a 4% increase in the franchise fee. Following is a copy of the current rate resolution showing the current and proposed rates.

FISCAL IMPACT:

This will have a positive fiscal impact, as it reflects an increase from 3% to 7% the franchise fee the City receives from Allied Waste.

ATTACHMENTS:

Resolution 3179 (adopted 4/6/09) with the new rate comparison included

GCL - Resolutions

RESOLUTION NO. 3179 / NEW RATES COMPARISON

A Resolution approving changes in rates for refuse collection service and repealing Resolution No. 3153.

WHEREAS, Allied Waste of Dallas, the owner and holder of the exclusive right, privilege and franchise to collect, transport and transfer waste within the City of Dallas, has applied to the City Council of the City of Dallas for changes in the rates for solid waste collection as set forth in Resolution No. 3153 of the City of Dallas adopted and approved on May 29, 2008; and

WHEREAS, the city Council reviewed said application and determined therefrom that the desired rate changes are justifiable and that the new rates hereinafter set forth are reasonable and should be approved; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

Section 1. The schedule of rates and charges established by Allied Waste of Dallas, and which are now on file at the City Manager's office, may be changed in accordance with the request of the Allied Waste of Dallas to amounts not to exceed the following:

RESIDENTIAL RATES

(Based on standard can, not exceeding 32 gallon capacity)

	CURRENT	PROPOSED
For one stop a week service:		
Not to exceed one can	\$ 16.20	17.50
Each Additional can	15.30	16.00
Extra cans, bags or boxes next to regular service can/cart, each.....	5.50	6.00
Additional 32 gallon cart (automated pick up)	14.80	16.00
Additional 90 gallon cart (automated pickup)	24.00	25.90
On call, one can	8.00	9.00
Yard debris only	8.00	9.00
Up drive fee	17.00	18.00
Loaner Containers, 2 cubic yards, delivered, emptied and removed	50.00	54.00
each additional dump	40.00	44.00

One 64-gallon recycle cart per residence at no charge, even if customer does not have garbage service.

One 90-gallon yard waste cart per residence at no charge with garbage service; without garbage service see rate above.

Special Charges (Residential)

CURRENT PROPOSED

Minimum charge for specials	\$22.00	23.00
Average size load, such as large chair or recliner, dishwasher, dryer, kitchen table, push lawn mower, twin or double mattress, rototiller, water heater	22.00	23.75
Medium size load, such as console TV, love seat, queen or king mattress, 55-gallon drum	24.50	26.50
Large size load, such a couch, range (electric or gas), washing machine	27.50	29.70
Extra large load, such as bathtub, freezer, hide-a-bed, refrigerator, riding lawn mower	33.00	35.65
Tires: car, off rim (each)	10.00	
on rim (each)	15.00	
Tires: truck, off rim (each)	25.00	
on rim (each)	30.00	
Other items or piles:		
per cubic yard of material	21.00	23.00
plus per minute for one person to load (based on 80.00 per person hour)	1.55	1.65
plus per minute for second person if required80	.85

COMMERCIAL RATES

For standard can, not exceeding 32 gallon capacity and cart service, the rates shall be the same as the residential rate for one stop a week service multiplied by the number of pickups per week.

Rear-Load Container Rates

#Pick-ups per week	1 yard (\$/month)	1.5 yards (\$/month)	2 yards (\$/month)
1	\$81.50 88.00	\$101.20 109.30	\$123.00 132.80
2	148.60 160.50	190.50 205.70	233.80 252.50
3	217.30 234.70	279.60 302.00	344.30 371.80
4	285.40 308.20	369.00 398.50	454.80 491.20

#Pick-ups per week	1 yard (\$/month)	1.5 yards (\$/month)	2 yards (\$/month)
5	353.60	381.90	458.40
		495.10	565.50
			610.70

MISCELLANEOUS CONTAINER SERVICE RATES

CURRENT PROPOSED

Locking container set up fee	\$40.00	45.00
Cleaning - pickup and return	87.50	90.00
	per hour	

DROP BOXES

For residential customers, delivered on Tuesday and picked up on Friday or delivered on Friday and picked up on Tuesday. Commercial and industrial on an as needed basis:

Customers must pay any additional fees charged by the landfill for non-acceptable waste in Drop Boxes.

DROP BOXES
(Roll-Off Containers)

10, 20 and 30 Yard Drop Boxes

Haul Fee	\$166.00	180.00
Delivery Fee	39.00	42.00
Rent	14.00	10.00
	(after first 4 days) (maximum of \$92/month)	

Disposal fee shall be based on Coffin Butte disposal fees, as amended from time to time.

Drop Boxes Larger Than 30 Yards	178.00	192.00
	per haul	
Rent on Regular Boxes	92.00	99.00
	per month	
Rent on Boxes with Lids	90.00	105.00
	per month	
Relocate (on site)	50.00	54.00
Relocate (off site)	85.00	85.00
Custom Hauling/Custom Cleaning	87.50	90.00
	per hour	

	<u>CURRENT</u>	<u>PROPOSED</u>
Asbestos Boxes		
Haul Fee	166.00	180.00
Disposal	80.00	
	per ton	
(5 ton minimum; tied to disposal rate at landfill)		

Compactors		
Haul Fees:		
30 yard or less	220.00	238.00
30 yard & larger	220.00	238.00

NON-PAYMENT

If service is discontinued for non-payment of account, user will be charged a fee of \$30.00 to restart the service.

OFF-ROUTE SERVICE FEE

Fee applies to all requests not on scheduled routes 20.00 22.00

BAD CHECKS

Each time a check in payment of service is reprocessed for payment, a charge of \$20.00 will be added to user's account.

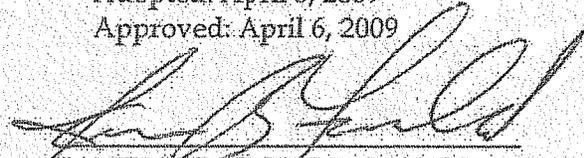
25.00

SERVICE CHARGE

Accounts not paid by the due date thereof will be charged a service fee of .75% per month, or \$5.00 per month, whichever amount is greater.

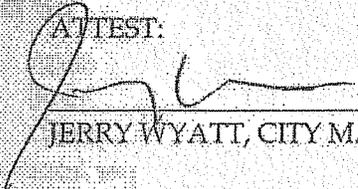
Section 2. The rates set forth herein in Section 1 above shall become effective as of billing dates beginning on May 1, 2009 and on said date Resolution No. 3153, adopted and approved on May 29, 2008 is repealed.

Adopted: April 6, 2009
Approved: April 6, 2009



JAMES B. FAIRCHILD, MAYOR

ATTEST:



JERRY WYATT, CITY MANAGER

DALLAS CITY COUNCIL REPORT

TO: MAYOR BRIAN DALTON AND CITY COUNCIL

<i>City of Dallas</i>	Agenda Item No. 8 e	Topic: Park Host Discussion
Prepared By: Emily Gagner	Meeting Date: February 22, 2011	Attachments: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Approved By: Jerry Wyatt		

RECOMMENDED MOTION:

Motion to direct staff to move forward with advertising for the Park Host position.

BACKGROUND:

The Park and Recreation Board and the Building and Grounds Subcommittee have previously discussed having a Park Host in the Dallas City Park during the summer. Attached is the proposed application form the City would use to solicit applicants for the position. The proposed procedure would be as follows:

1. Advertise the position
2. Accept applications until the application deadline
3. Screening of applications for completeness
4. Interview finalists
5. Finalist selection

FISCAL IMPACT:

Minimal – cost of advertising opening

ATTACHMENTS:

Proposed application form for Park Host position



City of Dallas, Oregon

Application for Park Host Volunteers

(use this form for up to two volunteer applicants with the same mailing address
If at a different address, attach a separate application for each person.)

Application for Calendar Year: _____ Number of People Occupying Host Site: _____

Rec'd _____
Ent'd _____
Initials _____

1st Applicant's Last Name: _____ First Name: _____ M.I. _____

2nd Applicant's Last Name: _____ First Name: _____ M.I. _____

Full Name(s) of other people staying with you at host site: (Please check box after name if these people are NOT planning to host)

_____ _____

Will you have a pet with you? Yes No (current rabies vaccination certifications are required; be sure to bring with you)

Part 1 : Contact Info

Primary Mailing Address:	Alternate Address:
Street:	Street:
City, State, Zip:	City, State, Zip:
Primary Phone #: circle: (land line, cell, msg, work)	Primary Phone #: circle: (land line, cell, msg, work)
2nd Alternate Phone #: circle: (land line, cell, msg, work)	2nd Alternate Phone #: circle: (land line, cell, msg, work)
Is this mail forwarding address only? <input type="checkbox"/> Yes <input type="checkbox"/> No If no, what time(s) of the year can mail reach you here?	At what times of the year can mail reach you here: What is the best way to contact you? circle: (primary phone, alternate phone, e-mail)
Primary E-mail Address:	Secondary E-mail Address:

Part 2: Job History/Skill Assessment

Applicant #1: Are you retired? <input type="checkbox"/> Yes <input type="checkbox"/> No	Applicant #2: Are you retired? <input type="checkbox"/> Yes <input type="checkbox"/> No
Previous Occupation (s): Current Occupation:	Previous Occupation (s): Current Occupation:
Do you have a driver's license? <input type="checkbox"/> Yes <input type="checkbox"/> No State of Issue: Exp:	Do you have a driver's license? <input type="checkbox"/> Yes <input type="checkbox"/> No State of Issue: Exp:

Part 3: Past Hosting Work

Please refer to the enclosed "Park Host Definitions & Duties" sheet for a listing of general duties.

Applicant #1:	Applicant #2: Are you retired? <input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Have you been a host at other parks or recreation areas? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, please complete the info below. List most recent experiences first and include all assignments during the last year you hosted. Attach 2nd sheet if you need more room.</p>	<p>Have you been a host at other parks or recreation areas? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, please complete the info below. List most recent experiences first and include all assignments during the last year you hosted. Attach 2nd sheet if you need more room.</p>
<p>1 Park: _____ State: _____ <input type="checkbox"/>Public or <input type="checkbox"/> Private Dates: _____ Contact Name & Phone #: _____ _____ Host Type/Duties: _____ _____ _____</p>	<p>1 Park: _____ State: _____ <input type="checkbox"/>Public or <input type="checkbox"/> Private Dates: _____ Contact Name & Phone #: _____ _____ Host Type/Duties: _____ _____ _____</p>
<p>2 Park: _____ State: _____ <input type="checkbox"/>Public or <input type="checkbox"/> Private Dates: _____ Contact Name & Phone #: _____ _____ Host Type/Duties: _____ _____ _____</p>	<p>2 Park: _____ State: _____ <input type="checkbox"/>Public or <input type="checkbox"/> Private Dates: _____ Contact Name & Phone #: _____ _____ Host Type/Duties: _____ _____ _____</p>
<p>3 Park: _____ State: _____ <input type="checkbox"/>Public or <input type="checkbox"/> Private Dates: _____ Contact Name & Phone #: _____ _____ Host Type/Duties: _____ _____ _____</p>	<p>3 Park: _____ State: _____ <input type="checkbox"/>Public or <input type="checkbox"/> Private Dates: _____ Contact Name & Phone #: _____ _____ Host Type/Duties: _____ _____ _____</p>

Part 4: References

List two references for each applicant below. In the left column, please circle whether these are Personal (P) or Professional (Pro) references and fill in how long you have been acquainted with each.

Applicant #1:	Applicant #2:
1 P/Pro Name: _____ Address: _____ City, State, Zip: _____ Phone #: _____ How Long: _____	1 P/Pro Name: _____ Address: _____ City, State, Zip: _____ Phone #: _____ How Long: _____
2 P/Pro Name: _____ Address: _____ City, State, Zip: _____ Phone #: _____ How Long: _____	2 P/Pro Name: _____ Address: _____ City, State, Zip: _____ Phone #: _____ How Long: _____

Part 5: Questions

Please answer the following questions.

Applicant #1:	Applicant #2:
Do you have any medical/physical conditions or limitations to be taken into consideration when assigning tasks? *NOTE: All hosts do need to be physically able to perform the duties of the jobs they accept.	
<input type="checkbox"/> Yes <input type="checkbox"/> No Please Explain: _____ _____ _____	<input type="checkbox"/> Yes <input type="checkbox"/> No Please Explain: _____ _____ _____

Why is Park hosting a volunteer job that you would like?	
_____ _____ _____	_____ _____ _____

Is there anything else you'd like us to know about you?	
_____ _____ _____ _____	_____ _____ _____ _____

Part 6: Your Recreational Vehicle/Camping Equipment

Make/Year of RV: _____ Motor home 5th Wheel Trailer Other _____

Homeowner's Insurance is required for the length of your assignment. Do you have insurance? Yes No

Length of entire unit: (RV and/or truck/trailer) _____

Is there an extra vehicle or tow vehicle? Yes No Length: _____

Are there any slide-outs? Yes No Amps needed: _____

Do you have a satellite dish? Yes No If yes, is it mounted on your RV or a separate portable one? _____

By Oregon law and as a safety precaution, all hosts are subject to a criminal background check each year before assigned duties can begin. Upon scheduling, we will request that you complete a separate criminal history/DMV check form. Please read the statement below, fill in your name(s), then sign and date the application.

I/We, _____ and _____, hereby certify that the information provided on this application is true and correct to the best of my knowledge and belief. I hereby grant the City of Dallas permission to verify facts contained here within. I hereby authorize the release of any relevant information pertaining to reference checks, criminal history, driving records, education, work and volunteer history to verify my eligibility to volunteer at any site operated by the City of Dallas. I agree to abide by all City of Dallas personnel rules as a temporary employee/volunteer park host.

1st Applicant's Signature: _____ Date: _____

2nd Applicant's Signature: _____ Date: _____

New Park Host Checklist of Supplies:

I/We have a personalized park host sign for my RV site: Yes No

If no, name(s) as you'd like it to appear on the sign: _____

Applicant 1:
Volunteer Host Uniform vest size: S M L XL 2X 3X 4X
Name as you would like it to appear on your name tag: _____

Applicant 2:
Volunteer Host Uniform vest size: S M L XL 2X 3X 4X
Name as you would like it to appear on your name tag: _____

Please send application materials to:
Volunteer Park Host
City of Dallas
187 SE Court Street
Dallas, Oregon 97338



Contact Information:
City Manager's Office 503.831.3502
Website: www.ci.dallas.or.us

MEMORANDUM

To: Mayor Brian W. Dalton and City Council
From: Lane Shetterly, City Attorney
Date: February 22, 2011
Re: Proposed ordinance to adopt forms of oath of office

The ordinance presented to the council for first reading, relating to the adoption of a standard form of oath of office for elected officials of the city as well as the city manager and municipal judge, differs from the draft ordinance that was presented to the council on February 7, 2011, in that it provides for two alternative forms of oath for elected officials. One option (in Section 3 of the ordinance) includes an oath to support the constitutions and laws of the United States and the State of Oregon as well as the charter and ordinances of the City of Dallas. The second option (in Section 4), omits the reference to the charter and ordinances of the city, and addresses only the federal and state constitutions and laws. In this way, the ordinance presented for first reading represents a compromise between those councilors who wish to continue to include support of the charter and ordinances of the city as part of the oath of office, and Councilor McDonald, who does not.

Section 30 of the Dallas Charter of 1964 provides that “[b]efore entering the duties of his [sic] office, each officer shall take an oath or shall affirm that he [sic] will support the constitution and laws of the United States and of Oregon and that he [sic] will faithfully perform the duties of his [sic] office.” This section of the charter does not prescribe the form of oath to be taken, just that an elected official must take “an oath” (or affirm) that he or she will support the federal and state constitutions and laws, and faithfully discharge the duties of his or her office.

As I expressed to the council at its meeting on February 7, it is not clear that this section of the charter limits what the council may, under its authority as the legislative body of the city, reasonably require of an oath of office, as long as the oath includes those elements that are expressly required by the charter. For that reason I said at the February 7 council meeting that I was prepared to defend the initial draft ordinance, which would have required all elected officials to take an oath that included an oath to support the charter and ordinances of the city as well as the state and federal constitutions. Other cities have similar charter and ordinance requirements. (For example, Section 2-205 of the City of Portland

charter requires elected officials to take an oath or affirmation “that he or she will support the Constitutions of the United States and of the State of Oregon, and will faithfully and honestly discharge his or her duties * * *;” Portland Code Section 3.74.020 requires the Mayor and city commissioners to take an oath or affirmation that they will support the “Charter of the City of Portland and its laws” as well as the federal and state constitutions and laws.) At the same time, however, I pointed out that the issue of whether the charter limited the authority of the council to require, by ordinance, the proposed form of oath had not been litigated or determined by a court in the state of Oregon and was not entirely free from doubt.

Based on that, and the council’s discussion at the February 7 council meeting, this ordinance proposes to avoid the question of – and a dispute over – the council’s authority to adopt an ordinance that *requires* council members to give an oath to support the city charter and ordinances by offering two optional oaths for council members and the mayor.

Under even the most conservative reading of the charter, this ordinance is clearly within the council’s authority to prescribe an optional standard form of oath of office. For one thing, the charter does not specifically require what the language of the oath must be, just what it must contain. That leaves room for the council to operate within its legislative authority under the charter, again, under even the narrowest of interpretations of the charter.¹ The option presented in Section 3 includes only those elements described in Section 30 of the charter – an oath to support the constitution and laws of the United States and Oregon, and to faithfully discharge the duties of office. As such, it should be unobjectionable and is beyond doubt legally sound.

Section 2 is an optional form of oath that includes the elements of the oath that are expressly required under the charter – that being the constitution and laws of the United States and Oregon – as well as support for the charter and ordinances of the city. Since there is nothing in the charter that *prohibits* the inclusion of these elements in the oath of office, it is again clear, under the most conservative

¹ Section 5 of the charter provides:

“In this charter no mention of a particular power shall be construed to be exclusive or to restrict the scope of the powers that the city would have if the particular power were not mentioned. The charter shall be liberally construed to the end that the city may have all powers necessary or convenient for the conduct of its municipal affairs, including all powers that cities may assume pursuant to state laws and to the municipal home rule provisions of the state constitution.”

Section 6 provides that “[e]xcept as this charter provides otherwise, all powers of the city shall be vested in a mayor and council.”

reading of the charter, that it is permissible for those elected officials who wish, to take this form of oath or affirmation.

As for the additional requirement in the ordinance that the city manager and municipal court judge give the form of oath prescribed in Section 3, there is nothing in the charter that addresses an oath of office for those positions, so it is within the council's legislative authority to enact such a requirement under the "necessary and convenient" powers referred to in Section 5 of the charter and delegated to the mayor and council under Section 6.

ORDINANCE NO.

An Ordinance adopting an oath of office for elected officials and certain appointed officers of the City of Dallas.

WHEREAS, Section 30 of the Dallas Charter of 1964 provides that “[b]efore entering the duties of his [sic] office, each officer shall take an oath or shall affirm that he [sic] will support the constitution and laws of the United States and of Oregon and that he [sic] will faithfully perform the duties of his [sic] office;” and

WHEREAS, the oath of office of the Mayor and members of the City Council has historically included an oath to support the charter and ordinances of the city, in addition to the constitution and laws of the United States and of Oregon; and

WHEREAS, the City Council finds that a standard form of oath for persons elected to serve the City of Dallas as Mayor and as members of the City Council is important to maintain the consistency and integrity of the oath of office; and

WHEREAS, the City Council further finds that each appointed member of the Dallas Planning Commission, the City Manager appointed pursuant to Section 21 of the Dallas Charter and the Municipal Judge appointed pursuant to Section 22 of the Dallas Charter should likewise be required to take an oath upon initial appointment to such office; NOW, THEREFORE,

THE CITY OF DALLAS DOES ORDAIN AS FOLLOWS:

Section 1. Each person elected or appointed as Mayor and city councilor, upon the commencement of each term of office, and before entering upon the duties of such office, shall take an oath or affirmation substantially in the form set forth in Section 3 or 4.

Section 2. Each person appointed to the Dallas Planning Commission and each person appointed as City Manager and Municipal Judge of the City of Dallas shall, upon initial appointment, and upon re-appointment after any break in service, and before entering upon the duties of such office, shall take the oath or affirmation set forth in Section 3.

Section 3. The oath or affirmation required under Section 1 for each person elected or appointed as Mayor and city counselor may be given, and for

persons appointed to the Dallas Planning Commission and as City Manager and Municipal Judge shall be given, in substantially in the following form:

State of Oregon)
County of Polk) ss
City of Dallas)

I, [name], do solemnly [swear or affirm] that I will support the constitution and laws of the United States and the State of Oregon, and the charter and ordinances of the City of Dallas, and that I will, to the best of my ability, faithfully discharge my duties as [Mayor, City Council member, Planning Commission member, City Manager, Municipal Judge] during my continuance therein [so help me God].

[Signature]

Subscribed and sworn before me this [date] day of [month], [year].

[Attestation by City Manager, City Recorder, or other person authorized to take oaths under the laws of the State of Oregon]

Section 4. A person elected or appointed as Mayor and city counselor may, in lieu of the oath provided in Section 3, give the oath provided in this section, substantially in the following form:

State of Oregon)
County of Polk) ss
City of Dallas)

I, [name], do solemnly [swear or affirm] that I will support the constitution and laws of the United States and the State of Oregon, and that I will, to the best of my ability, faithfully discharge my duties as [Mayor, City Council member] during my continuance therein [so help me God].

[Signature]

Subscribed and sworn before me this [date] day of [month], [year].

[Attestation by City Manager, City Recorder, or other person authorized to

take oaths under the laws of the State of Oregon]

Section 5. No person shall attest his or her own oath of office.

Section 6. This ordinance shall apply to all persons elected or appointed to the offices described in Sections 1 and 2 after the effective date of this ordinance.

Section 7. No person serving in any of the offices described in Sections 1 or 2 as of the effective date of this ordinance who has not taken an oath of office substantially in a form set forth in this ordinance shall be required to take such oath as a condition of continuing in such office until such person has been re-elected or re-appointed to such office.

Read for the first time: February 22, 2011
Read for the second time: March 7, 2011
Passed by the City Council: March 7, 2011
Approved by the Mayor: March 7, 2011

BRIAN W. DALTON, MAYOR

ATTEST:

JERRY WYATT, CITY MANAGER

DALLAS CITY COUNCIL

REPORT

TO: MAYOR JIM FAIRCHILD AND CITY COUNCIL

<i>City of Dallas</i>	Agenda Item No. 9 a	Topic: Resolution No. 3216 Appeal fees
Prepared By: Jason Locke, Community Development Director	Meeting Date: February 22, 2011	Attachments: Yes <input type="checkbox"/> No
Approved By: Jerry Wyatt		

RECOMMENDED ACTION: Adopt Resolution 3216.

BACKGROUND: The Council adopted revised Land Use fees in 2010 by Resolution #3200. The fee for appeals was set at \$300 or ½ the original application fee, whichever was greater. This generally covers the average cost of the appeal process. However, staff did not recognize at the time that some applications, including large subdivisions or master plans, would result in appeal fees that would exceed the average cost of processing. In order to remedy this situation, staff has prepared a Resolution amending appeal fees to cap the cost at \$2500, regardless of the original cost of the application.

FISCAL IMPACT:

In the case of an appeal of a land use decision, average cost will still be recovered.

ATTACHMENTS:

- 1) Resolution 3216
- 2) Amended fee schedule

RESOLUTION NO. 3216

A Resolution limiting the fee for appeal of a Type III land use proceeding; and amending Resolution 3200, adopted June 7, 2010.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

Section 1: The fee for appeal of a Type III land use proceeding from the Dallas Planning Commission to the Dallas City Council, shall be the greater of \$300 or one-half the original application fee, up to a maximum fee of \$2500.

Section 2: This Resolution amends Resolution 3200 adopted on June 7, 2010, and shall take effect on passage.

Adopted: February 22, 2011
Approved: February 22, 2011

BRIAN W. DALTON, MAYOR

ATTEST:

JERRY WYATT, CITY MANAGER

**City Of Dallas
Land Use Fee Schedule
Adopted by Resolution No. 3200**

Application	Review Procedure	Fee
Pre-application conference for Type III or IV		\$150
Street or ROW Vacation		\$1000
Address Change		\$50
Annexation	Type IV	1 acre or less \$2000, more than 1 acre \$3000
Code Interpretation	Type II	\$500
Code Text Amendment	Type IV	\$2500
Comprehensive Plan Amendment	Type IV	\$3500
Conditional Use Permit	Type III	\$1000
Home Occupation Permit Type I	Type I	\$200
Home Occupation Permit Type III	Type III	\$700
Master Planned Development	Type III	\$2000 + \$75/unit
Final Plat	Type I	\$500 + \$10/unit
Modification to Approval	Type II minor Type III major	\$500 ½ the cost of application fee
Land Use District Map Change		
Quasi-Judicial (does not require a plan amendment)	Type III	\$2500
Legislative (plan amendment)	Type IV	\$5000
Property Line Adjustments, including Lot Consolidations	Type I	\$300
Legal Lot Determination	Type I	\$200
Non-Conforming Use or Development Confirmation	Type I	\$200
Partition or Replat of 2-3 lots	Type II	\$400/lot
Land Use Review	Type I/II	Included in Building Permit fee
Site Design Review	Type II	\$500
Site Design Review w/ Adjustment	Type III	\$1000
Subdivision or Replat of >3 lots	Type III	\$300/lot for the first 20 lots and \$150 for each additional lot
Preliminary Plat	Type I	\$500
Final Plat		
Temporary Use Permit (includes Temporary Medical Hardship Dwelling)	Type II/III	\$200/\$500
Variance		
Class A (Adjustment)	Type II	\$300
Class B	Type III	\$700
UGB Amendment	Type IV	\$5000
Floodplain permit	Type I	\$100
Demolition Permit	Type I	\$200
Sign Permit		\$2.50/sq. ft. \$100 minimum + building permit fee (If required)
Outside City Water Application		\$200
Appeal	Type III	\$300 or 1/2 the original application fee, whichever is greater, not to exceed \$2500

*Amended by Resolution No. 3216

This is a compared version of the Ordinance up for first reading at the 2/22/11 meeting to show where the major changes can be found.

ORDINANCE NO. ____

AN ORDINANCE RELATING TO SOLID WASTE MANAGEMENT IN THE CITY OF DALLAS, OREGON, INCLUDING, WITHOUT LIMITATION, GRANTING TO DALLAS DISPOSAL CO., dba ALLIED WASTE SERVICES OF DALLAS, AN OREGON CORPORATION, THE EXCLUSIVE FRANCHISE TO COLLECT, TRANSPORT OR TRANSFER SOLID WASTE OVER AND UPON THE CITY STREETS AND FIRST OPTION TO DISPOSE OF OR RECOVER MATERIALS OR ENERGY FROM SOLID WASTE GENERATED OR PRODUCED IN THE CITY; CREATING NEW PROVISIONS; PROVIDING PENALTIES; AND, REPEALING SECTIONS ____ TO ____, INCLUSIVE, OF ORDINANCE NO. 1327, RESOLUTION ____, THE EXISTING FRANCHISE DATED SEPTEMBER 7, 1982,, AND SECTIONS OF THE CITY CODE OR ORDINANCES IN CONFLICT HEREWITH.

BE IT ORDAINED BY THE CITY OF DALLAS:

Section 1. Repeal of Existing Ordinances, Resolution and Franchise.

Sections __ to __, inclusive, of Ordinance No 1327, Resolution ____, the existing franchise between the City of Dallas and Dallas Disposal Co. dated September 7, 1982, and sections of the City Code or ordinances in conflict with this Ordinance are hereby repealed and the following Ordinance and franchise is adopted and inserted in lieu thereof.

DIVISION 1. GENERAL PROVISIONS

Section 1A. Short Title. This Ordinance shall be known as the "Solid Waste Management Ordinance" and may be so cited and pleaded and shall be cited herein as "this Ordinance."

Section 1B. Purposes, Policy and Scope. It is declared to be the public policy of the City of Dallas to regulate solid waste management to:

- (1) Insure safe, efficient, economical and comprehensive solid waste service.
- (2) Insure fair and equitable consumer rates and to prohibit rate preferences or other practices that might be discriminatory.
- (3) Conserve energy and material resources, reduce solid wastes and promote material and energy recovery in all forms.
- (4) Provide for technologically and economically feasible resource recovery.

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- (5) Eliminate or prevent overlapping service and thereby increase efficiency and to decrease truck noise, street wear, energy waste, air pollution and public inconvenience.
- (6) Protect public health and the environment.
- (7) Provide public service standards.
- (8) Protect against improper and dangerous handling of hazardous wastes.
- (9) Provide a basis and incentive for investment in solid waste equipment, facilities, sites and technology.

Section 1C. Definitions.

- (1) "City" means the City of Dallas.
- (2) "City Council" or "Council" means the City Council of the City of Dallas.
- (3) "Compact and compaction" mean the process of, or to engage in, the shredding of material, or the manual or mechanical compression of material.
- (4) "Compensation" includes any type of consideration paid for solid waste management service including, but not limited to, proceeds from resource recovery; rent, or any direct or indirect provision for the payment of money, goods, services or benefits by tenants, lessees, occupants or similarly situated persons; and the exchange of service between people.
- (5) "Compost or Composting" mean the controlled biological decomposition of compostable material or the product resulting from such process.
- (6) "Compostable Material" means yard debris, food waste and food-soiled paper when source separated for composting, but does not include food-soiled paper containing plastic or any other material that inhibits controlled biological decomposition.
- (7) "Food-Soiled Paper" means paper products that have been in contact with food or food waste to the degree that they would not be able to be recycled into new paper products. Food-soiled paper includes, but is not limited to, used paper table covers, used napkins, pizza boxes, coffee filters, and waxy corrugated cardboard. Food-soiled paper does not include unsoiled cardboard, paperboard, or office paper.

- (8) "Food Waste" means all waste from meats, fish, shellfish, grains, fruits and vegetables, which attends or results from the storage, preparation, cooking, handling, selling, or serving of food for human consumption. Food waste includes but is not limited to, excess, spoiled or unusable food or dairy products, meats, fish, shellfish, grains, fruits, vegetables, breads and dough, incidental amounts of edible oils, and organic waste from food processing. Food waste does not include large amounts of oils and meats which are collected for rendering, fuel production or other reuse applications. Food waste does not include dead animals or animal excrements.
- (9) "Franchisee" means Dallas Disposal Co., dba Allied Waste Services of Dallas.
- (10) "Generator" means the person who produces solid waste, compostable material, or recyclable material to be placed, or that is placed, for collection and disposal. As used in this Ordinance and Franchise Agreement, "generator" does not include any person who manages an intermediate function resulting in the alteration or compaction of the solid waste, compostable material, or recyclable material after it has been produced by the generator and placed for collection and disposal.
- (11) "Hazardous Waste" means any waste defined as hazardous waste by or pursuant to ORS Chapter 459; or defined as hazardous waste by another governmental unit having jurisdiction; or found by Franchisee to be hazardous to service workers, to service equipment, or to the public.
- (12) "Infectious Waste" means biological waste, cultures and stocks, pathological waste and sharps, as defined by ORS 459.386.
- (13) "Mixed Compostables" means the process whereby two or more types of compostable materials are collected together (i.e. not separated), in a combination allowed by the City Manager.
- (14) "Mixed Recycling" means the process where two or more types of recyclable materials are collected together (i.e. not separated), in a combination allowed by the City Manager.
- (15) "Person" means an individual, partnership, association, corporation, limited liability company, trust, firm, estate, cooperative, joint venture or other private legal entity or any public agency.

- (16) "Placed for Collection" means to put solid waste, recyclable material, or compostable material out for collection by the Franchisee, as provided in this Ordinance and Franchise Agreement.
- (17) "Receptacle" means a can, cart, bin, container, drop box or other vessel used for the collection and disposal of solid waste, recyclable material, or compostable material that has been approved by the City and into which solid waste, recyclable material, or compostable material may be placed for such collection and disposal.
- (18) "Recyclable Material" means any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.
- (19) "Recycling" means any process by which solid waste is transformed into new or different products in such a manner that the original products may lose their original identity.
- (20) "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.
- (21) "Reuse" means the return of waste into the economic stream, to the same or similar use or application without change in the waste's identity.
- (22) "Service" means the collection, transportation or disposal of or resource recovery from solid waste, recyclable materials and compostable materials by the Franchisee.
- (23) "Service Area" means the geographical area in which solid waste management service is provided by Franchisee. The geographical area for this Franchise is the area within the city limits of the City as now constituted, together with any area hereafter annexed by the City.
- (24) "Solid Waste" means all useless or discarded putrescible and nonputrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, grass clippings, compost, sewage sludge, septic tank and cesspool pumpings or other sludge, commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals, infectious waste and other wastes. "Solid waste" does not include:
- (a) Hazardous waste as defined in ORS 466.005.

(b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials used on land in agricultural operations and the growing or harvesting of crops and the raising of animals. This exemption is limited to waste generated on farms from the raising or growing of plants and animals, including crop residue, manure, animal bedding and carcasses of dead animals, when such material is properly applied in a manner consistent with sound agricultural practices, either to land as a fertilizer, soil amendment or mulch, or as animal bedding.

Deleted: Agricultural Waste, limited to waste generated on farms from the raising or growing of plants and animals including crop residue, manure, animal bedding, and carcasses of dead animals, when such waste is properly applied in a manner consistent with sound agricultural practices either to land as a fertilizer, soil amendment or mulch to grow crops, or as animal bedding in raising of animals.

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(25) "Solid Waste Management" means the prevention of or reduction of solid waste; management of the collection, storage, transfer, transportation, treatment, utilization, processing and final disposal of solid waste, or resource recovery from solid waste; and, facilities and equipment necessary or convenient to such activities.

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

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

b. The fact that the source or generator of materials has separated or segregated such material from other waste does not remove the materials from this definition.

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(27) Yard Debris: "Yard Debris" means all vegetative waste generated from property maintenance and/or landscaping activities, including but not limited to, grass clippings, leaves, hedge trimmings and small tree branches, but excluding tree stumps and other similar bulky wood or wood material.

DIVISION 2. FRANCHISE AND EXEMPTIONS

Section 2A. Persons and Practices Exempt from Franchise. Nothing in this Ordinance requires a franchise from the following persons for the following businesses or practices:

(1) The collection, transportation and reuse of repairable or cleanable discards by a private charitable organization regularly engaged in such business or activity.

- (2) The collection, transportation and reuse or recycling of totally source separated materials or operation of a collection center for totally source separated materials by a religious, charitable, benevolent or fraternal organization, which organization was not organized nor is operated for any solid waste management purpose and which organization is using the activity for fund raising.
- (3) The collection, transportation or redemption of returnable beverage containers under that portion of ORS Chapter 459A.700 to 459A.740, commonly known as the "Bottle Bill".
- (4) The generator 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; demolition, land clearing or construction; janitorial service; gardening, park maintenance or landscaping service; street sweeping; auto body recovery; or septic tank pumping or sludge collection. For the purpose of this subsection, "janitorial service" does not include cleanup or collection of accumulated or stored wastes generated or produced by other persons, nor does it include a business that primarily or solely transports and disposes of solid waste accumulated, created, generated, or produced by a property owner or occupant. Deleted: or producer
- (5) 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 a residential dwelling unit, whether individually owned, non-owner occupied, or grouped through an association or cooperative of property owners, the waste is deemed generated or produced by, and is deemed owned by, the individual owner or occupant and not by the landlord, property owner (in the case of a non-owner occupied residential dwelling unit), cooperative or association or property manager or the agent of such landlord, property owner, property manager, cooperative or association. A person owning, managing or entitled to possession of a premises may haul wastes left by a tenant or occupant at the end of the tenancy or occupancy.
- (6) The purchase of totally source separated solid waste for fair market value.
- (7) The providing of service for hazardous wastes; provided, however that the Franchisee may engage in management of hazardous wastes in compliance with all applicable local, state and federal laws, rules or regulations.
- (8) Any other practice, business or activity which is withdrawn by a resolution and order of the Council, after public hearing thereon, and based upon written findings. Prior to granting such an exception, the City Manager

shall give 30 days' prior written notice to the Franchisee of the public hearing and the proposed basis of the exception. Prior to granting such an exception, the Council must find that the exception carries out the purposes and policy stated in Section 1B of this Ordinance; that, there is a need for proposed service, that the Franchisee cannot or will not provide the required service; that the applicant has the necessary equipment, experience, finances and personnel to provide adequate service and that the granting of the exception will not be materially detrimental or have a substantial impact on service, consumer rates or the business franchised under this Ordinance.

Section 2B. Practices Prohibited Without a Franchise: Unless exempted by Section 2A or franchised pursuant to Section 2C of this Ordinance, no person shall provide Solid Waste Management Service for compensation or offer to provide or solicit customers for such Service, or advertise the providing of such Service in the City.

Section 2C: Grant of Exclusive Franchise. The franchise granted by this section is based upon the prequalification of the applicant on the basis of demonstrated knowledge of the service business, the ability of applicant to continue to furnish all required and necessary equipment and personnel; the financial responsibility of the applicant; the capacity of the applicant to indemnify the City and its inhabitants against the failure on its part to fulfill the terms of the franchise or against injuries occurring to the City or any of its inhabitants in the performance of such franchise; and, the prior experience of the applicant in maintaining adequate public service in the City and the surrounding area with virtually no public complaint.

There is hereby granted to Dallas Disposal Co., dba Allied Waste Services of Dallas, an Oregon corporation, the exclusive right, privilege and franchise to provide Solid Waste Management Service within the city limits as of the date of this ordinance and any area that may hereafter be annexed to the City, subject to the provisions of ORS 459.085 and, for that purpose to utilize the streets, public rights-of-way and facilities of the City. The City recognizes the Franchisee as the existing collection service, and grants this Franchise upon the basis that the whole City is one service area. This grant of an exclusive franchise is under the authority of ORS 459A.085 and under ORS 459A.085(3).

Section 2D. Franchise Term. The rights, privileges and franchise herein granted shall be considered as a continuing seven year franchise. That is, beginning on October 1 of each year, the franchise shall be renewed for an additional seven year term, unless prior to that time, the Council shall notify the Franchisee in writing of intent to terminate the franchise renewals. The termination of further renewals may be with or without cause. Upon giving of such notice of termination of renewals, the Franchisee shall have a franchise which will terminate six years from the date of the notice of termination. The Council may later extend the term

or reinstate the continuing renewal upon mutual agreement. Nothing in this section restricts this Council from suspending, modifying or revoking the franchise for cause pursuant to Section 2H of this Ordinance, taking emergency action under Section 2I of this Ordinance or pursuing other available remedies.

Section 2E. Franchise Fee: In consideration of the franchise granted by this Ordinance, the Franchisee shall pay a fee of seven percent (7%) of the gross cash receipts of the Franchisee from the franchised service business within the City. The fee shall be paid to the City Recorder on a quarterly basis, with payment for each calendar quarter due on the last day of the month immediately following the end of such calendar quarter. This fee shall be in lieu of any other business license fee or other fees charged by the City, but not in lieu of any ad valorem taxation.

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Section 2F. Franchisee Responsibility

(1) The Franchisee shall:

- a) Dispose of solid waste at a state approved disposal site or resource recover such waste, both in compliance with ORS Chapter 459 and ORS Chapter 459A and with this Ordinance.
- b) Contract with a solid waste disposal site for the disposal of municipal wastes collected within the City.
- c) Provide and keep in force public liability insurance in the amount of not less than \$1,000,000 for injury to a single person, \$2,000,000 to a group of persons and \$200,000 property damage, all relating to a single occurrence, which shall be evidenced by a certificate of insurance filed with the City Recorder. Said certificate shall name the City as additional insured, and must provide that the insurance evidenced by the certificate may not be cancelled or amended without thirty (30) days' notice to the City.
- d) Within 30 days after the effective date of this ordinance, file with the City Recorder a written acceptance of this franchise by endorsing acceptance on a copy of this Ordinance.
- e) 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.
- f) Respond to any complaint on service.
- g) Provide a performance bond in the amount of \$5000 with a surety licensed to do business in the State of Oregon conditioned upon the

full and faithful performance of this agreement and franchise and this Ordinance.

- h) Comply with all requirements of the Opportunity to Recycle Act now incorporated in Oregon Revised Statutes 459 and 459A, together with the rules and regulations promulgated thereunder.
 - i) Maintain sufficient resources, staff, vehicles and equipment to be available to perform Franchisee's obligations under this agreement within a reasonable amount of time.
 - j) Maintain a recycling collection center open to the public, at reasonable hours, for the deposit and collection of Recyclable Materials.
- (2) Where a new resource recovery service or a substantial expansion of an existing service is proposed by the City or another person other than the Franchisee:
- a) Prior written notice of the proposed service shall be given to Franchisee by the City Manager at least 30 days prior to consideration by the City Council.
 - b) The Council may, on its own motion, and shall upon request of the Franchisee, hold a public hearing on the proposed service, costs and justification.
 - c) In determining whether service is need, the Council shall give due consideration to the purposes of this Ordinance, 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.
 - d) If Council determines that such service is needed, it shall give Franchisee a reasonable opportunity to provide it. The Council shall determine any rates necessary to pay for such service.
- (3) The Franchisee is not required to store, collect, transport, transfer, dispose of or resource recover any hazardous wastes.
- (4) The Franchisee may subcontract with others for services or to provide a portion of the service where Franchisee does not have the necessary equipment or service; provided, however, the Franchisee shall obtain the consent of the City Council to any such subcontract prior to its effective date unless conditions beyond the control of the Franchisee require the

employment of a subcontractor prior to obtaining such consent. In the latter event the consent of the City Council to such subcontract shall be obtained within thirty (30) days after the effective date of the subcontract. Such a subcontract shall not relieve the Franchisee of total responsibility for providing and maintaining service and from compliance with this franchise and Ordinance.

(5) The Franchisee shall not:

- a. 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, nor shall it prevent any person from volunteering service at reduced cost for a charitable, community, civic or benevolent purpose.
- b. Transfer this franchise or any portion thereof to other persons without prior written approval of the Council, which consent shall not be unreasonably withheld. A pledge of this franchise as financial security shall be considered as a transfer for purposes of this subsection. The Council may attach to its consent such conditions it deems reasonably necessary to guarantee maintenance of service and compliance with this franchise and Ordinance.

(6) The Franchisee shall make its services available to all the inhabitants of the City without discrimination as to cost, frequency of service, or type of service, except, that the holder of such franchise shall have the right to make reasonable rules and regulations relating to the service performed by Franchisee, subject to approval of the Council.

(7) The franchise granted under this Ordinance is conditioned upon the Franchisee's agreement to indemnify and save the City harmless against any claims, liabilities, damages or actions, of whatever form or nature, for property damage, bodily injury or death, arising from or in any way relating to the Franchisee's operation of the service business, including costs and attorney fees incurred in defense thereof.

(8) The Franchisee shall maintain collection vehicles in a reasonably clean and sanitary condition and shall maintain them in a good and safe operating condition. If any collection vehicle becomes unsuitable for the purpose for which it is intended by reason of its becoming unsafe, dilapidated, unsightly, unsanitary or obsolete, the City Council may direct the Franchisee to remove the vehicle from service until the objections are corrected or to replace it within a reasonable time.

- (9) Any vehicle used to transport solid waste shall be so loaded and operated as to prevent the wastes, to the greatest extent possible, from dropping, sifting, leaking, blowing or otherwise escaping from the vehicle onto the public rights-of-way, or adjacent lands.

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- (10) The Franchisee shall conduct its service business at all times in conformity with the laws of the State of Oregon and the rules of the Oregon Environment Quality Commission and other public agencies having regulatory authority relating to health and sanitation.

Section 2G. Supervision. Service provided under the franchise and other requirements of this Ordinance shall be under the supervision of the City Manager. The Franchisee shall, at reasonable times, permit inspection by the Council, a Council Committee or the City Manager or the City Manager's designee of its facilities, equipment and personnel providing service.

Section 2H. Suspension, Modification or Revocation of Franchise. The provisions in this section are in addition to and not in lieu of any other remedy of the City.

- (1) Failure to provide necessary service or otherwise comply with the provision of this Ordinance after written notice and a reasonable opportunity to comply shall be grounds for modification, suspension or revocation of the franchise.
- (2) After written notice from the City Manager that such grounds exist, the Franchisee shall have at least 20 days from the date of mailing of the notice which to comply or request a public hearing before the Council.
- (3) At a public hearing, the Franchisee and other interested persons shall have an opportunity to present oral, written or documentary evidence to the Council.
- (4) 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 hearing, the Council may suspend, modify or revoke the franchise or make such action contingent upon continued noncompliance.
- (5) 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.
- (6) The waiver by the City of one or more defaults or breaches in Franchisee's observance of the terms and conditions of this franchise and Ordinance shall not be deemed by any court to be a continuing waiver of such default or breach or of any subsequent default or breach thereof.

Section 2I. Preventing Interruption of Service. The Franchisee agrees as a condition to its franchise that whenever the Council determines that a failure of service or threatened failure of service would result in the creation of an immediate and serious health hazard or serious public nuisance, the Council may, after a minimum of 24 hours' actual notice to the Franchisee and a public hearing thereon if requested by the Franchisee, authorize the City or another person to temporarily provide service. The City or the person providing the service may use and occupy the land and operate the facilities and equipment of the Franchisee for the use of which the City will provide the Franchisee with reasonable compensation. The Council shall return any seized property and business upon abatement of the actual or threatened interruption of service.

Section 2J. Termination of Service. The Franchisee shall not terminate service to all or a portion of its customers unless:

- (1) The street or road access is blocked and there is no alternate route, and provided that the City shall not be liable to the Franchisee or Franchisee's customers for such blocking of access;
- (2) Dangerous weather conditions render providing service unduly hazardous to persons;
- (3) A customer has not complied with Division 4 of this Ordinance or has not paid for service provided after a regular billing and after a 15 day written notice to pay;
- (4) Ninety days written notice of intent to terminate is given to the Council and written approval obtained from the Council; or
- (5) Ordered by a legislative, administrative or judicial body having jurisdiction.

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DIVISION 3. RATE REGULATION

Section 3A. Rate Determination.

(1) The rates for service under this Franchise shall be those rates currently in effect upon the adoption of this Franchise unless modified by the Council. These rates shall remain in effect until a change in rates is approved by the City Council. The Council shall establish and as considered necessary from time to time change rates by resolution. In determining the appropriate rate to be charged by the Franchisee, the Council may consider any or all of the following, subject to a public hearing:

- (a) The cost of performing the service provided by Franchisee.

- (b) The anticipated increase in the cost of providing this service and the anticipated costs of providing future, added or different services.
- (c) The need for equipment replacement and the need for additional equipment to meet service needs; compliance with federal, state, local law, ordinances and regulations, or technological change.
- (d) The necessity that the Franchisee have a reasonable rate of return, based on a reasonable operating margin.
- (e) The rates charged in other cities of similar size in the area for similar service.
- (f) The public interest in assuring reasonable rates to enable the Franchisee to provide efficient and beneficial service to the residents and other uses of the service.
- (g) The local wage scales, cost of management facilities and disposal fees or charges.
- (h) Any profit or cost savings resulting from recycling, and any additional costs resulting from recycling.
- (i) Any costs associated with recovering bad debt including the interest on late payments.
- (i) Any modifications to this Franchise Agreement that result in a financial impact on Franchisee.
- (j) Any other information that the City Council deems necessary or relevant for rate setting.

(3) On all but emergency or interim rates, the Franchisee shall provide the City Council 60 days' written notice of the proposed rate change together with accompanying justification. An emergency or interim rate for a new or altered service may be adopted by the Council without 60 days' written notice of the proposed rate change.

(4) Rates changed shall be those provided in "Exhibit A". Non-scheduled services may be provided at the reasonable cost of providing the service, giving due consideration to the standards in subsection (2) of this section.

(5) 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 thereof. Where billed in advance, the Franchisee will refund a prorated portion of the payment for any complete month in which service is not provided.

(6)The following systems may be used by the Franchisee to reduce bad debts which would otherwise become a charge against legitimate paying customers:

- a. The Franchisee may charge at the time service is provided to drop box or roll-off box customers or for any other customer that has not previously established credit with the Franchisee. In determining credit, the Franchisee may take into consideration nonpayment for service by other service providers in other areas and any other relevant information.
- b. Subject to the amount or rate being approved in the rate schedule, the Franchisee may charge:
 1. A starting charge for a new service;
 2. A restart charge or advance deposit or both for any customer who has previously been terminated for failure to pay for service; and
 3. Interest on past due accounts, not to exceed the legal maximum.
- c. In addition to the other provisions of this section and not in lieu thereof, the Franchisee may collect the entire cost of billing and collecting bad debts including, without limitation, the cost of professional debt collection.

(7)In addition to rate established by the Council, the Franchisee may pass through additional disposal costs imposed by a unit of government having jurisdiction. Disposal costs shall be computed using actual weight ticket data from collection trucks. Written notice shall be given to the City Manager prior to imposing the passthrough rates.

Section 3B. Business Practices. Except as modified by this Ordinance, the Franchisee may use normally accepted business practices.

Section 3C. Accounting, Records, and Audit. The Franchisee shall keep a complete and accurate set of books which shall reflect the gross receipts from services under the franchise rendered within the City, which book shall be balanced at least annually. Books and records shall be kept usual normally accepted accounting practices as modified to provide the information required for rate determination under Section 3A of this Ordinance. The frequency, detail and

disposition of records and the cost of such record keeping shall be reviewed by and with the City Manager who shall make a final determination, subject to any direction by the Council. The City Manager or a qualified designee shall have the right to inspect and audit the books and records of the Franchisee at reasonable times and places.

DIVISION 4. PUBLIC RESPONSIBILITY

Section 4A. Public Responsibility. In addition to and not in lieu of compliance with ORS Chapter 459 and ORS Chapter 459A, and other applicable laws and regulations, all persons who receive Service from Franchisee shall comply with this Division.

Section 4B. Preparation of Solid Waste, Recyclable Material and Compostable Material for Collection.

(1) Solid waste, recyclable material and compostable material shall be drained of surplus liquid and placed in a leak-proof receptacle, except that receptacles for compostable material may have vent holes for aeration.

(2) Pet feces, sharp objects such as broken glass and knives, and any other solid waste with potential for causing injury or disease shall be securely wrapped in a manner to prevent exposure or injury to the public or employees of a franchisee. No medical sharps shall be placed in a receptacle.

(3) Ashes shall be allowed to cool and shall be securely wrapped or bagged before being deposited in any solid waste receptacle.

(4) All solid waste, with the exception of large, bulky items, shall be deposited promptly in a receptacle, or be so placed or located for collection by the franchisee so as not to create a safety, nuisance, litter or health hazard. Shredded paper, packing peanuts and other materials that could create a litter problem shall be securely bagged before being placed in a receptacle.

(5) Bulky solid waste may be placed in an appropriately sized receptacle in accordance with this Ordinance, so long as the accumulation does not create a nuisance or fire hazard.

(6) Newspapers, magazines and similar recyclable material items, when not placed in a receptacle, shall be placed at the curb, and shall be bundled and securely tied with a strong cord or securely placed in a heavy paper shopping bag, to prevent blowing and littering prior to or during collection.

(7) Source separated recyclable material or compostable material shall be prepared and placed in conformance with the rules adopted by the City Manager

for the purpose of mitigating or addressing public health, public safety or pest concerns.

(8) No liquid waste or semi-solid waste, excluding food waste, shall be placed in a receptacle, unless it is in a sealed, leak-proof vessel.

(9) Every person who generates or produces waste shall remove or have removed all putrescible wastes at least every seven days unless the City authorizes less frequent service. More frequent removal may be required where the facility, activity or use involves risk to the public health, safety or welfare. All wastes shall be removed at sufficient frequency as to prevent health hazards, nuisances or pollution.

(10) The generator of waste shall bear the primary responsibility for maintaining receptacles and the area around such receptacles in a clean, sanitary and odor-free condition. In the event, however, the generator of waste, in the opinion of the City Manager, fails, refuses or neglects to keep such receptacles clean, the Franchisee shall, at the request of the City Manager, clean the receptacles and impose its costs incurred in cleaning the receptacles and in picking up, transporting and returning the receptacles against the generator of the waste which is accumulated in said receptacles. The Franchisee shall provide periodic maintenance to receptacles supplied by franchisee.

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Section 4C. Solid Waste Receptacles.

(1) Receptacles for the collection of solid waste by Franchisee shall be provided to the generator by the Franchisee, unless otherwise authorized by the franchisee. The loaded weight of a receptacle shall comply with the manufacturer's specifications.

(2) Except for drop boxes and recycling baskets provided to the generator by Franchisee, receptacles shall be equipped with lids sufficient to keep out precipitation and to prevent disturbance by animals and entrance of pests; shall be kept closed, except when being filled, emptied or cleaned; and shall be kept in a clean, sealed and sanitary condition by the generator of the solid waste, recyclable material or compostable material. Receptacles used for the disposal of compostable materials may contain vent holes for the purpose of aeration.

(3) Solid waste placed in a receptacle that is not designed for emptying by mechanical means shall not exceed a weight of 60 pounds, including the weight of the receptacle and its contents.

(4) Receptacles designed for emptying by mechanical means shall not exceed a weight of 180 pounds for 95 gallon receptacles, 120 for 65 gallon receptacles, 60

pounds for 35 gallon receptacles, and 40 pounds for 20 gallon receptacles, including the weight of the receptacles and their contents.

(5) Where a commercial or industrial customer requires a container, compactor or drop box due to 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 rate payers who are not benefited.

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

Section 4D. Placement of Receptacles for Collection by Franchisee.

(1) Receptacles containing solid waste, recyclable materials or compostable materials shall be kept or placed so that there is convenient and safe access for collection service by Franchisee and, except as provided in this section, shall not be kept or placed upon the street, sidewalk or other public place where such placement would be a hazard to pedestrians or the motoring public.

(2) All carts designed for mechanical solid waste, recycling or composting collection shall be placed at the curb or roadside by the generator of the waste prior to collection time.

(3) The generator of the waste shall provide safe access to the collection point so as not to jeopardize the persons or equipment supplying service or the motoring public.

(4) Receptacles may be placed at or on the curb, whether on the sidewalk or in the street right-of-way, provided that receptacles placed in the street shall be placed so that no part of the receptacle may be more than three feet from the curb. Placement shall be made so that receptacles are within manageable reach if standing in the street or next to the curb line.

(5) Placement of receptacles at curbside or roadside are limited to a time period of 24 hours prior to collection and 24 hours after collection.

(6) Receptacles shall be kept outside of any locked, latched, bolted or hooked enclosure, when placed out for collection by a franchisee.

(7) No person shall block service access to a receptacle that has been placed for collection.

Section 4E. Prohibitions

- (1) No person shall place hazardous waste into any solid waste, recyclable material or compostable material receptacle or drop box supplied by a franchisee, or place any hazardous waste out for collection or disposal by a franchisee, without the prior written approval from the Franchisee.
- (2) No person shall:
 - (a) Enter into a receptacle for the purpose of compacting the contents of the receptacle;
 - (b) Remove a receptacle from the location where the receptacle was placed for collection, unless the person is authorized to do so by the generator of the waste; or
 - (c) Remove the lid from any receptacle and remove, disturb, collect or scatter solid waste, recyclable material or compostable material placed in such receptacle or deposit such material into such receptacle, unless the person is authorized to do so by the generator of the waste.
- (3) No person shall place or cause to be placed any solid wastes in any street, alley or other public place, or upon any private property, whether owned by such person or not, within the city, except it being in proper containers for collection, or on the express approval granted by the City Manager, nor shall any person throw or deposit or cause to be thrown or deposited any solid wastes into any stream or other body of water.
- (4) No person shall burn garbage or putrescible solid wastes within the city.

Section 4F. Payment of Service. Any person who receives service from the Franchisee shall be responsible for payment of service. The owner of a rental or leased 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.

DIVISION 5. ADMINISTRATION AND ENFORCEMENT

Section 5A. Appeals.

- (1) Any action or determination by Franchisee under or pursuant to this Ordinance may be appealed to the City Manager.
- (2) Any action or determination of the City Manager under this Ordinance may be appealed to the City Council.

Section 5B. Construction. Any finding by any court of competent jurisdiction that any portion of this Ordinance is unconstitutional or invalid shall not invalidate any other provision of this Ordinance.

Section 5C. City Enforcement: The City shall enforce the provisions of this Ordinance by administrative, civil or criminal action or any combination as necessary to obtain compliance with this Ordinance. The Council shall take such legislative action as is necessary to support the Ordinance and the franchise granted. The Franchisee may also enforce payment or protect its rights by appropriate civil action.

Section 5D. Penalties. Violation by any person of the provisions of Section 2B, subsections 2F(9), 4B(9), 4B(10), 4C(2), 4C(6), 4D(1), 4(D)7 or Section 4E shall be deemed a civil infraction. Each day a violation continues is a separate offense; provided, however that two or more such continuing offenses may be joined in the same action.

Deleted: or Subsections (1), (2), (3), (12), (13), (14), (15), (16), (17), (18), or (19) of ¶ Section 4A

Read for the first time on:

Read for the second time on:

Adopted by the City Council on:

Approved by the Mayor on:

MAYOR

ATTEST:

CITY MANAGER

ACCEPTANCE AND AGREEMENT BY FRANCHISEE:

The Franchisee accepts all the requirements and provisions of this Ordinance and agrees to abide by the terms thereof.

DALLAS DISPOSAL CO., dba ALLIED WASTE SERVICES OF DALLAS

By _____

Dated: _____

ORDINANCE NO. 1734

An Ordinance relating to solid waste management in the City of Dallas, Oregon, including, without limitation, granting to Dallas Disposal Co., dba Allied Waste Services of Dallas, an Oregon corporation, the exclusive franchise to collect, transport or transfer solid waste over and upon the city streets and first option to dispose of or recover materials or energy from solid waste generated or produced in the city; creating new provisions; providing penalties; and, repealing Ordinance No. 1327, the existing franchise dated September 7, 1982, and all provisions of the City Code or ordinances in conflict herewith.

BE IT ORDAINED BY THE CITY OF DALLAS:

Section 1. Repeal of Existing Ordinances and Franchise. Ordinance No 1327, the existing franchise between the City of Dallas and Dallas Disposal Co. dated September 7, 1982, and all provisions of the Dallas City Code or ordinances in conflict with this Ordinance are hereby repealed and the following Ordinance and franchise is adopted and inserted in lieu thereof.

DIVISION 1. GENERAL PROVISIONS

Section 1A. Short Title. This Ordinance shall be known as the "Solid Waste Management Ordinance" and may be so cited and pleaded and shall be cited herein as "this Ordinance."

Section 1B. Purposes, Policy and Scope. It is declared to be the public policy of the City of Dallas to regulate solid waste management to:

- (1) Insure safe, efficient, economical and comprehensive solid waste service.
- (2) Insure fair and equitable consumer rates and to prohibit rate preferences or other practices that might be discriminatory.
- (3) Conserve energy and material resources, reduce solid wastes and promote material and energy recovery in all forms.
- (4) Provide for technologically and economically feasible resource recovery.

- (5) Eliminate or prevent overlapping service and thereby increase efficiency and to decrease truck noise, street wear, energy waste, air pollution and public inconvenience.
- (6) Protect public health and the environment.
- (7) Provide public service standards.
- (8) Protect against improper and dangerous handling of hazardous wastes.
- (9) Provide a basis and incentive for investment in solid waste equipment, facilities, sites and technology.

Section 1C. Definitions.

- (1) "City" means the City of Dallas.
- (2) "City Council" or "Council" means the City Council of the City of Dallas.
- (3) "Compact and compaction" mean the process of, or to engage in, the shredding of material, or the manual or mechanical compression of material.
- (4) "Compensation" includes any type of consideration paid for solid waste management service including, but not limited to, proceeds from resource recovery; rent, or any direct or indirect provision for the payment of money, goods, services or benefits by tenants, lessees, occupants or similarly situated persons; and the exchange of service between people.
- (5) "Compost or Composting" mean the controlled biological decomposition of compostable material or the product resulting from such process.
- (6) "Compostable Material" means yard debris, food waste and food-soiled paper when source separated for composting, but does not include food-soiled paper containing plastic or any other material that inhibits controlled biological decomposition.
- (7) "Food-Soiled Paper" means paper products that have been in contact with food or food waste to the degree that they would not be able to be recycled into new paper products. Food-soiled paper

includes, but is not limited to, used paper table covers, used napkins, pizza boxes, coffee filters, and waxy corrugated cardboard. Food-soiled paper does not include unsoiled cardboard, paperboard, or office paper.

- (8) “Food Waste” means all waste from meats, fish, shellfish, grains, fruits and vegetables, which attends or results from the storage, preparation, cooking, handling, selling, or serving of food for human consumption. Food waste includes but is not limited to, excess, spoiled or unusable food or dairy products, meats, fish, shellfish, grains, fruits, vegetables, breads and dough, incidental amounts of edible oils, and organic waste from food processing. Food waste does not include large amounts of oils and meats which are collected for rendering, fuel production or other reuse applications. Food waste does not include dead animals or animal excrements.
- (9) “Franchisee” means Dallas Disposal Co., dba Allied Waste Services of Dallas.
- (10) “Generator” means the person who produces solid waste, compostable material, or recyclable material to be placed, or that is placed, for collection and disposal. As used in this Ordinance and Franchise Agreement, “generator” does not include any person who manages an intermediate function resulting in the alteration or compaction of the solid waste, compostable material, or recyclable material after it has been produced by the generator and placed for collection and disposal.
- (11) “Hazardous Waste” means any waste defined as hazardous waste by or pursuant to ORS Chapter 459; or defined as hazardous waste by another governmental unit having jurisdiction; or found by Franchisee to be hazardous to service workers, to service equipment, or to the public.
- (12) “Infectious Waste” means biological waste, cultures and stocks, pathological waste and sharps, as defined by ORS 459.386.
- (13) “Mixed Compostables” means the process whereby two or more types of compostable materials are collected together (i.e. not separated), in a combination allowed by the City Manager.

- (14) “Mixed Recycling” means the process where two or more types of recyclable materials are collected together (i.e. not separated), in a combination allowed by the City Manager.
- (15) “Person” means an individual, partnership, association, corporation, limited liability company, trust, firm, estate, cooperative, joint venture or other private legal entity or any public agency.
- (16) “Placed for Collection” means to put solid waste, recyclable material, or compostable material out for collection by the Franchisee, as provided in this Ordinance and Franchise Agreement.
- (17) “Receptacle” means a can, cart, bin, container, drop box or other vessel used for the collection and disposal of solid waste, recyclable material, or compostable material that has been approved by the City and into which solid waste, recyclable material, or compostable material may be placed for such collection and disposal.
- (18) “Recyclable Material” means any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.
- (19) “Recycling” means any process by which solid waste is transformed into new or different products in such a manner that the original products may lose their original identity.
- (20) “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.
- (21) “Reuse” means the return of waste into the economic stream, to the same or similar use or application without change in the waste’s identity.
- (22) “Service” means the collection, transportation or disposal of or resource recovery from solid waste, recyclable materials and compostable materials by the Franchisee.

- (23) “Service Area” means the geographical area in which solid waste management service is provided by Franchisee. The geographical area for this Franchise is the area within the city limits of the City as now constituted, together with any area hereafter annexed by the City.
- (24) “Solid Waste” means all useless or discarded putrescible and nonputrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, grass clippings, compost, sewage sludge, septic tank and cesspool pumpings or other sludge, commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals, infectious waste and other wastes. “Solid waste” does not include:
- (a) Hazardous waste as defined in ORS 466.005.
 - (b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials used on land in agricultural operations and the growing or harvesting of crops and the raising of animals. This exemption is limited to waste generated on farms from the raising or growing of plants and animals including crop residue, manure, animal bedding and carcasses of dead animals, when such material is properly applied in a manner consistent with sound agricultural practices, either to land as a fertilizer, soil amendment or mulch, or as animal bedding.
- (25) “Solid Waste Management” means the prevention of or reduction of solid waste; management of the collection, storage, transfer, transportation, treatment, utilization, processing and final disposal of solid waste, or resource recovery from solid waste; and, facilities and equipment necessary or convenient to such activities.
- (26) “Waste” means material that is no longer directly usable by the source or generator of the material, which material is to be disposed of or to be resource recovered by another person.
- (a) The fact that all or any part of the material may have value and thus be recovered does not remove it from this definition.

- (b) The fact that the source or generator of materials has separated or segregated such material from other waste does not remove the materials from this definition.
- (27) “Yard Debris” means all vegetative waste generated from property maintenance and/or landscaping activities, including but not limited to, grass clippings, leaves, hedge trimmings and small tree branches, but excluding tree stumps and other similar bulky wood or wood material.

DIVISION 2. FRANCHISE AND EXEMPTIONS

Section 2A. Persons and Practices Exempt from Franchise. Nothing in this Ordinance requires a franchise from the following persons for the following businesses or practices:

- (1) The collection, transportation and reuse of repairable or cleanable discards by a private charitable organization regularly engaged in such business or activity.
- (2) The collection, transportation and reuse or recycling of totally source separated materials or operation of a collection center for totally source separated materials by a religious, charitable, benevolent or fraternal organization, which organization was not organized nor is operated for any solid waste management purpose and which organization is using the activity for fund raising.
- (3) The collection, transportation or redemption of returnable beverage containers under that portion of ORS Chapter 459A.700 to 459A.740, commonly known as the “Bottle Bill”.
- (4) The generator 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; demolition, land clearing or construction; janitorial service; gardening, park maintenance or landscaping service; street sweeping; auto body recovery; or septic tank pumping or sludge collection. For the purpose of this subsection, “janitorial service” does not include cleanup or collection of accumulated or stored wastes generated or produced by other persons, nor does it include a business that primarily or solely transports and disposes of solid waste accumulated, created, generated, or produced by a property owner or occupant.

- (5) 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 a residential dwelling unit, whether individually owned, non-owner occupied, or grouped through an association or cooperative of property owners, the waste is deemed generated or produced by, and is deemed owned by, the individual owner or occupant and not by the landlord, property owner (in the case of a non-owner occupied residential dwelling unit), cooperative or association or property manager or the agent of such landlord, property owner, property manager, cooperative or association. A person owning, managing or entitled to possession of a premises may haul wastes left by a tenant or occupant at the end of the tenancy or occupancy.
- (6) The purchase of totally source separated solid waste for fair market value.
- (7) The providing of service for hazardous wastes; provided, however that the Franchisee may engage in management of hazardous wastes in compliance with all applicable local, state and federal laws, rules or regulations.
- (8) Any other practice, business or activity which is withdrawn by a resolution and order of the Council, after public hearing thereon, and based upon written findings. Prior to granting such an exception, the City Manager shall give 30 days' prior written notice to the Franchisee of the public hearing and the proposed basis of the exception. Prior to granting such an exception, the Council must find that the exception carries out the purposes and policy stated in Section 1B of this Ordinance; that, there is a need for proposed service, that the Franchisee cannot or will not provide the required service; that the applicant has the necessary equipment, experience, finances and personnel to provide adequate service and that the granting of the exception will not be materially detrimental or have a substantial impact on service, consumer rates or the business franchised under this Ordinance.

Section 2B. Practices Prohibited Without a Franchise. Unless exempted by Section 2A or franchised pursuant to Section 2C of this Ordinance, no person shall provide Solid Waste Management Service for compensation or offer to provide or solicit customers for such Service, or advertise the providing of such Service in the City.

Section 2C: Grant of Exclusive Franchise. The franchise granted by this section is based upon the prequalification of the applicant on the basis of demonstrated knowledge of the service business, the ability of applicant to continue to furnish all required and necessary equipment and personnel; the financial responsibility of the applicant; the capacity of the applicant to indemnify the City and its inhabitants against the failure on its part to fulfill the terms of the franchise or against injuries occurring to the City or any of its inhabitants in the performance of such franchise; and, the prior experience of the applicant in maintaining adequate public service in the City and the surrounding area with virtually no public complaint.

There is hereby granted to Dallas Disposal Co., dba Allied Waste Services of Dallas, an Oregon corporation, the exclusive right, privilege and franchise to provide Solid Waste Management Service within the city limits as of the date of this ordinance and any area that may hereafter be annexed to the City, subject to the provisions of ORS 459.085 and, for that purpose to utilize the streets, public rights-of-way and facilities of the City. The City recognizes the Franchisee as the existing collection service, and grants this Franchise upon the basis that the whole City is one service area. This grant of an exclusive franchise is under the authority of ORS 459A.085 and under ORS 459A.085(3).

Section 2D. Franchise Term. The rights, privileges and franchise herein granted shall be considered as a continuing seven year franchise. That is, beginning on October 1 of each year, the franchise shall be renewed for an additional seven year term, unless prior to that time, the Council shall notify the Franchisee in writing of intent to terminate the franchise renewals. The termination of further renewals may be with or without cause. Upon giving of such notice of termination of renewals, the Franchisee shall have a franchise which will terminate six years from the date of the notice of termination. The Council may later extend the term or reinstate the continuing renewal upon mutual agreement. Nothing in this section restricts this Council from suspending, modifying or revoking the franchise for cause pursuant to Section 2H of this Ordinance, taking emergency action under Section 2I of this Ordinance or pursuing other available remedies.

Section 2E. Franchise Fee. In consideration of the franchise granted by this Ordinance, the Franchisee shall pay a fee of seven percent (7%) of the gross cash receipts of the Franchisee from the franchised service business within the City. The fee shall be paid to the City Recorder on a quarterly basis, with payment for each calendar quarter due on the last day of the month immediately following the end of such calendar quarter. This fee shall be in lieu of any other business

license fee or other fees charged by the City, but not in lieu of any ad valorem taxation.

Section 2F. Franchisee Responsibility.

- (1) The Franchisee shall:
 - (a) Dispose of solid waste at a state approved disposal site or resource recover such waste, both in compliance with ORS Chapter 459 and ORS Chapter 459A and with this Ordinance.
 - (b) Contract with a solid waste disposal site for the disposal of municipal wastes collected within the City.
 - (c) Provide and keep in force public liability insurance in the amount of not less than \$1,000,000 for injury to a single person, \$2,000,000 to a group of persons and \$200,000 property damage, all relating to a single occurrence, which shall be evidenced by a certificate of insurance filed with the City Recorder. Said certificate shall name the City as additional insured, and must provide that the insurance evidenced by the certificate may not be cancelled or amended without thirty (30) days' notice to the City.
 - (d) Within 30 days after the effective date of this ordinance, file with the City Recorder a written acceptance of this franchise by endorsing acceptance on a copy of this Ordinance.
 - (e) 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.
 - (f) Respond to any complaint on service.
 - (g) Provide a performance bond in the amount of \$5000 with a surety licensed to do business in the State of Oregon conditioned upon the full and faithful performance of this agreement and franchise and this Ordinance.
 - (h) Comply with all requirements of the Opportunity to Recycle Act now incorporated in Oregon Revised Statutes 459 and

459A, together with the rules and regulations promulgated thereunder.

- (i) Maintain sufficient resources, staff, vehicles and equipment to be available to perform Franchisee's obligations under this agreement within a reasonable amount of time.
 - (j) Maintain a recycling collection center open to the public, at reasonable hours, for the deposit and collection of Recyclable Materials.
- (2) Where a new resource recovery service or a substantial expansion of an existing service is proposed by the City or another person other than the Franchisee:
- (a) Prior written notice of the proposed service shall be given to Franchisee by the City Manager at least 30 days prior to consideration by the City Council.
 - (b) The Council may, on its own motion, and shall upon request of the Franchisee, hold a public hearing on the proposed service, costs and justification.
 - (c) In determining whether service is need, the Council shall give due consideration to the purposes of this Ordinance, 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.
 - (d) If Council determines that such service is needed, it shall give Franchisee a reasonable opportunity to provide it. The Council shall determine any rates necessary to pay for such service.
- (3) The Franchisee is not required to store, collect, transport, transfer, dispose of or resource recover any hazardous wastes.
- (4) The Franchisee may subcontract with others for services or to provide a portion of the service where Franchisee does not have the necessary equipment or service; provided, however, the Franchisee shall obtain the consent of the City Council to any such subcontract

prior to its effective date unless conditions beyond the control of the Franchisee require the employment of a subcontractor prior to obtaining such consent. In the latter event the consent of the City Council to such subcontract shall be obtained within thirty (30) days after the effective date of the subcontract. Such a subcontract shall not relieve the Franchisee of total responsibility for providing and maintaining service and from compliance with this franchise and Ordinance.

- (5) The Franchisee shall not:
 - (a) 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, nor shall it prevent any person from volunteering service at reduced cost for a charitable, community, civic or benevolent purpose.
 - (b) Transfer this franchise or any portion thereof to other persons without prior written approval of the Council, which consent shall not be unreasonably withheld. A pledge of this franchise as financial security shall be considered as a transfer for purposes of this subsection. The Council may attach to its consent such conditions it deems reasonably necessary to guarantee maintenance of service and compliance with this franchise and Ordinance.
- (6) The Franchisee shall make its services available to all the inhabitants of the City without discrimination as to cost, frequency of service, or type of service, except, that the holder of such franchise shall have the right to make reasonable rules and regulations relating to the service performed by Franchisee, subject to approval of the Council.
- (7) The franchise granted under this Ordinance is conditioned upon the Franchisee's agreement to indemnify and save the City harmless against any claims, liabilities, damages or actions, of whatever form or nature, for property damage, bodily injury or death, arising from or in any way relating to the Franchisee's

operation of the service business, including costs and attorney fees incurred in defense thereof.

- (8) The Franchisee shall maintain collection vehicles in a reasonably clean and sanitary condition and shall maintain them in a good and safe operating condition. If any collection vehicle becomes unsuitable for the purpose for which it is intended by reason of its becoming unsafe, dilapidated, unsightly, unsanitary or obsolete, the City Council may direct the Franchisee to remove the vehicle from service until the objections are corrected or to replace it within a reasonable time.
- (9) Any vehicle used to transport solid waste shall be so loaded and operated as to prevent the wastes, to the greatest extent possible, from dropping, sifting, leaking, blowing or otherwise escaping from the vehicle onto the public rights-of-way or adjacent lands.
- (10) The Franchisee shall conduct its service business at all times in conformity with the laws of the State of Oregon and the rules of the Oregon Environment Quality Commission and other public agencies having regulatory authority relating to health and sanitation.

Section 2G. Supervision. Service provided under the franchise and other requirements of this Ordinance shall be under the supervision of the City Manager. The Franchisee shall, at reasonable times, permit inspection by the Council, a Council Committee or the City Manager or the City Manager's designee of its facilities, equipment and personnel providing service.

Section 2H. Suspension, Modification or Revocation of Franchise. The provisions in this section are in addition to and not in lieu of any other remedy of the City.

- (1) Failure to provide necessary service or otherwise comply with the provision of this Ordinance after written notice and a reasonable opportunity to comply shall be grounds for modification, suspension or revocation of the franchise.
- (2) After written notice from the City Manager that such grounds exist, the Franchisee shall have at least 20 days from the date of mailing of the notice which to comply or request a public hearing before the Council.

- (3) At a public hearing, the Franchisee and other interested persons shall have an opportunity to present oral, written or documentary evidence to the Council.
- (4) 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 hearing, the Council may suspend, modify or revoke the franchise or make such action contingent upon continued noncompliance.
- (5) 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.
- (6) The waiver by the City of one or more defaults or breaches in Franchisee's observance of the terms and conditions of this franchise and Ordinance shall not be deemed by any court to be a continuing waiver of such default or breach or of any subsequent default or breach thereof.

Section 2I. Preventing Interruption of Service. The Franchisee agrees as a condition to its franchise that whenever the Council determines that a failure of service or threatened failure of service would result in the creation of an immediate and serious health hazard or serious public nuisance, the Council may, after a minimum of 24 hours' actual notice to the Franchisee and a public hearing thereon if requested by the Franchisee, authorize the City or another person to temporarily provide service. The City or the person providing the service may use and occupy the land and operate the facilities and equipment of the Franchisee for the use of which the City will provide the Franchisee with reasonable compensation. The Council shall return any seized property and business upon abatement of the actual or threatened interruption of service.

Section 2J. Termination of Service. The Franchisee shall not terminate service to all or a portion of its customers unless:

- (1) The street or road access is blocked and there is no alternate route, and provided that the City shall not be liable to the Franchisee or Franchisee's customers for such blocking of access;
- (2) Dangerous weather conditions render providing service unduly hazardous to persons;

- (3) A customer has not complied with Division 4 of this Ordinance or has not paid for service provided after a regular billing and after a 15 day written notice to pay;
- (4) Ninety days written notice of intent to terminate is given to the Council and written approval obtained from the Council; or
- (5) Ordered by a legislative, administrative or judicial body having jurisdiction.

DIVISION 3. RATE REGULATION

Section 3A. Rate Determination.

- (1) The rates for service under this Franchise shall be those rates currently in effect upon the adoption of this Franchise unless modified by the Council. These rates shall remain in effect until a change in rates is approved by the City Council. The Council shall establish and as considered necessary from time to time change rates by resolution. In determining the appropriate rate to be charged by the Franchisee, the Council may consider any or all of the following, subject to a public hearing:
 - (a) The cost of performing the service provided by Franchisee.
 - (b) The anticipated increase in the cost of providing this service and the anticipated costs of providing future, added or different services.
 - (c) The need for equipment replacement and the need for additional equipment to meet service needs; compliance with federal, state, local law, ordinances and regulations, or technological change.
 - (d) The necessity that the Franchisee have a reasonable rate of return, based on a reasonable operating margin.
 - (e) The rates charged in other cities of similar size in the area for similar service.
 - (f) The public interest in assuring reasonable rates to enable the Franchisee to provide efficient and beneficial service to the residents and other uses of the service.

- (g) The local wage scales, cost of management facilities and disposal fees or charges.
 - (h) Any profit or cost savings resulting from recycling, and any additional costs resulting from recycling.
 - (i) Any costs associated with recovering bad debt including the interest on late payments.
 - (j) Any modifications to this Franchise Agreement that result in a financial impact on Franchisee.
 - (k) Any other information that the City Council deems necessary or relevant for rate setting.
- (2) On all but emergency or interim rates, the Franchisee shall provide the City Council 60 days' written notice of the proposed rate change together with accompanying justification. An emergency or interim rate for a new or altered service may be adopted by the Council without 60 days' written notice of the proposed rate change.
- (3) Rates changed shall be those provided in "Exhibit A". Non-scheduled services may be provided at the reasonable cost of providing the service, giving due consideration to the standards in subsection (1) of this section.
- (4) 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 thereof. Where billed in advance, the Franchisee will refund a prorated portion of the payment for any complete month in which service is not provided.
- (5) The following systems may be used by the Franchisee to reduce bad debts which would otherwise become a charge against legitimate paying customers:
- (a) The Franchisee may charge at the time service is provided to drop box or roll-off box customers or for any other customer that has not previously established credit with the Franchisee. In determining credit, the Franchisee may take

into consideration nonpayment for service by other service providers in other areas and any other relevant information.

- (b) Subject to the amount or rate being approved in the rate schedule, the Franchisee may charge:
 - 1. A starting charge for a new service;
 - 2. A restart charge or advance deposit or both for any customer who has previously been terminated for failure to pay for service; and
 - 3. Interest on past due accounts, not to exceed the legal maximum.
- (c) In addition to the other provisions of this section and not in lieu thereof, the Franchisee may collect the entire cost of billing and collecting bad debts including, without limitation, the cost of professional debt collection.
- (6) In addition to rates established by the Council, the Franchisee may pass through additional disposal costs imposed by a unit of government having jurisdiction. Disposal costs shall be computed using actual weight ticket data from collection trucks. Written notice shall be given to the City Manager prior to imposing passthrough rates.

Section 3B. Business Practices. Except as modified by this Ordinance, the Franchisee may use normally accepted business practices.

Section 3C. Accounting, Records, and Audit. The Franchisee shall keep a complete and accurate set of books which shall reflect the gross receipts from services under the franchise rendered within the City, which book shall be balanced at least annually. Books and records shall be kept usual normally accepted accounting practices as modified to provide the information required for rate determination under Section 3A of this Ordinance. The frequency, detail and disposition of records and the cost of such record keeping shall be reviewed by and with the City Manager who shall make a final determination, subject to any direction by the Council. The City Manager or a qualified designee shall have the right to inspect and audit the books and records of the Franchisee at reasonable times and places.

DIVISION 4. PUBLIC RESPONSIBILITY

Section 4A. Public Responsibility. In addition to and not in lieu of compliance with ORS Chapter 459 and ORS Chapter 459A, and other applicable laws and regulations, all persons who receive Service from Franchisee shall comply with this Division.

Section 4B. Preparation of Solid Waste, Recyclable Material and Compostable Material for Collection.

- (1) Solid waste, recyclable material and compostable material shall be drained of surplus liquid and placed in a leak-proof receptacle, except that receptacles for compostable material may have vent holes for aeration.
- (2) Pet feces, sharp objects such as broken glass and knives, and any other solid waste with potential for causing injury or disease shall be securely wrapped in a manner to prevent exposure or injury to the public or employees of a franchisee. No medical sharps shall be placed in a receptacle.
- (3) Ashes shall be allowed to cool and shall be securely wrapped or bagged before being deposited in any solid waste receptacle.
- (4) All solid waste, with the exception of large, bulky items, shall be deposited promptly in a receptacle, or be so placed or located for collection by the franchisee so as not to create a safety, nuisance, litter or health hazard. Shredded paper, packing peanuts and other materials that could create a litter problem shall be securely bagged before being placed in a receptacle.
- (5) Bulky solid waste may be placed in an appropriately sized receptacle in accordance with this Ordinance, so long as the accumulation does not create a nuisance or fire hazard.
- (6) Newspapers, magazines and similar recyclable material items, when not placed in a receptacle, shall be placed at the curb, and shall be bundled and securely tied with a strong cord or securely placed in a heavy paper shopping bag, to prevent blowing and littering prior to or during collection.
- (7) Source separated recyclable material or compostable material shall be prepared and placed in conformance with the rules adopted by

the City Manager for the purpose of mitigating or addressing public health, public safety or pest concerns.

- (8) No liquid waste or semi-solid waste, excluding food waste, shall be placed in a receptacle, unless it is in a sealed, leak-proof vessel.
- (9) Every person who generates or produces waste shall remove or have removed all putrescible wastes at least every seven days unless the City authorizes less frequent service. More frequent removal may be required where the facility, activity or use involves risk to the public health, safety or welfare. All wastes shall be removed at sufficient frequency as to prevent health hazards, nuisances or pollution.
- (10) The generator of waste shall bear the primary responsibility for maintaining receptacles and the area around such receptacles in a clean, sanitary and odor-free condition. In the event, however, the generator of waste, in the opinion of the City Manager, fails, refuses or neglects to keep such receptacles clean, the Franchisee shall, at the request of the City Manager, clean the receptacles and impose its costs incurred in cleaning the receptacles and in picking up, transporting and returning the receptacles against the generator of the waste which is accumulated in said receptacles. The Franchisee shall provide periodic maintenance to receptacles supplied by franchisee.

Section 4C. Solid Waste Receptacles.

- (1) Receptacles for the collection of solid waste by Franchisee shall be provided to the generator by the Franchisee, unless otherwise authorized by the franchisee. The loaded weight of a receptacle shall comply with the manufacturer's specifications.
- (2) Except for drop boxes and recycling baskets provided to the generator by Franchisee, receptacles shall be equipped with lids sufficient to keep out precipitation and to prevent disturbance by animals and entrance of pests; shall be kept closed, except when being filled, emptied or cleaned; and shall be kept in a clean, sealed and sanitary condition by the generator of the solid waste, recyclable material or compostable material. Receptacles used for the disposal of compostable materials may contain vent holes for the purpose of aeration.

- (3) Solid waste placed in a receptacle that is not designed for emptying by mechanical means shall not exceed a weight of 60 pounds, including the weight of the receptacle and its contents.
- (4) Receptacles designed for emptying by mechanical means shall not exceed a weight of 180 pounds for 95 gallon receptacles, 120 for 65 gallon receptacles, 60 pounds for 35 gallon receptacles, and 40 pounds for 20 gallon receptacles, including the weight of the receptacles and their contents.
- (5) Where a commercial or industrial customer requires a container, compactor or drop box due to 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 rate payers who are not benefitted.
- (6) Stationary compacting devices for solid wastes shall comply with federal and state safety standards and provide adequate protection to the user.

Section 4D. Placement of Receptacles for Collection by Franchisee.

- (1) Receptacles containing solid waste, recyclable materials or compostable materials shall be kept or placed so that there is convenient and safe access for collection service by Franchisee and, except as provided in this section, shall not be kept or placed upon the street, sidewalk or other public place where such placement would be a hazard to pedestrians or the motoring public.
- (2) All carts designed for mechanical solid waste, recycling or composting collection shall be placed at the curb or roadside by the generator of the waste prior to collection time.
- (3) The generator of the waste shall provide safe access to the collection point so as not to jeopardize the persons or equipment supplying service or the motoring public.
- (4) Receptacles may be placed at or on the curb, whether on the sidewalk or in the street right-of-way, provided that receptacles placed in the street shall be placed so that no part of the receptacle

may be more than three feet from the curb. Placement shall be made so that receptacles are within manageable reach if standing in the street or next to the curb line.

- (5) Placement of receptacles at curbside or roadside are limited to a time period of 24 hours prior to collection and 24 hours after collection.
- (6) Receptacles shall be kept outside of any locked, latched, bolted or hooked enclosure, when placed out for collection by a franchisee.
- (7) No person shall block service access to a receptacle that has been placed for collection.

Section 4E. Prohibitions.

- (1) No person shall place hazardous waste into any solid waste, recyclable material or compostable material receptacle or drop box supplied by a franchisee, or place any hazardous waste out for collection or disposal by a franchisee, without the prior written approval from the Franchisee.
- (2) No person shall:
 - (a) Enter into a receptacle for the purpose of compacting the contents of the receptacle;
 - (b) Remove a receptacle from the location where the receptacle was placed for collection, unless the person is authorized to do so by the generator of the waste; or
 - (c) Remove the lid from any receptacle and remove, disturb, collect or scatter solid waste, recyclable material or compostable material placed in such receptacle or deposit such material into such receptacle, unless the person is authorized to do so by the generator of the waste.
- (3) No person shall place or cause to be placed any solid wastes in any street, alley or other public place, or upon any private property, whether owned by such person or not, within the city, except it being in proper containers for collection, or on the express approval granted by the City Manager, nor shall any person throw or deposit

or cause to be thrown or deposited any solid wastes into any stream or other body of water.

- (4) No person shall burn garbage or putrescible solid wastes within the city.

Section 4F. Payment of Service. Any person who receives service from the Franchisee shall be responsible for payment of service. The owner of a rental or leased 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.

DIVISION 5. ADMINISTRATION AND ENFORCEMENT

Section 5A. Appeals.

- (1) Any action or determination by Franchisee under or pursuant to this Ordinance may be appealed to the City Manager.
- (2) Any action or determination of the City Manager under this Ordinance may be appealed to the City Council.

Section 5B. Construction. Any finding by any court of competent jurisdiction that any portion of this Ordinance is unconstitutional or invalid shall not invalidate any other provision of this Ordinance.

Section 5C. City Enforcement: The City shall enforce the provisions of this Ordinance by administrative, civil or criminal action or any combination as necessary to obtain compliance with this Ordinance. The Council shall take such legislative action as is necessary to support the Ordinance and the franchise granted. The Franchisee may also enforce payment or protect its rights by appropriate civil action.

Section 5D. Penalties. Violation by any person of the provisions of Section 2B, subsections 4B(9), 4B(10), 4C(2), 4C(6), 4D(1), 4D(7) or Section 4E shall be deemed a civil infraction. Each day a violation continues is a separate offense; provided, however that two or more such continuing offenses may be joined in the same action.

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Section 2. This ordinance being necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist and this ordinance shall take effect on April 1, 2010.

Read for the first time on: February 22, 2011
Read for the second time on: March 7, 2011
Adopted by the City Council on: March 7, 2011
Approved by the Mayor on: March 7, 2011

BRIAN W. DALTON, MAYOR

ATTEST:

JERRY WYATT, CITY MANAGER

ACCEPTANCE AND AGREEMENT BY FRANCHISEE:

The Franchisee accepts all the requirements and provisions of this Ordinance and agrees to abide by the terms thereof.

DALLAS DISPOSAL CO., dba ALLIED WASTE SERVICES OF DALLAS

By: _____
Dated: _____

H:\Dallas\OrdinanceAlliedWaste.wpd

ORDINANCE NO. 1733

An Ordinance amending provisions of the Dallas Development Code; and repealing conflicting provisions.

WHEREAS, the Dallas City Council has determined that it is timely and appropriate to make certain technical and editorial amendments to the Dallas Development Code adopted by Ordinance No. 1710, on December 21, 2009, and effective January 22, 2010; and

WHEREAS, the City duly notified the Oregon Department of Land Conservation and Development of the proposed Development Code amendment not less than 45 days prior to the first evidentiary hearing and the Department did not object to the changes;

WHEREAS, after required public involvement, notices and public hearings before the Dallas Planning Commission and Dallas City Council, the City Council, on January 17, 2011, preliminarily approved the proposed amendments to the Dallas Development Code; and

WHEREAS, the City Council found and hereby finds that the proposed Dallas Development Code amendments conform to the Dallas Comprehensive Plan, as amended, and applicable Statewide Planning Goals, and it is in the public interest to adopt them; NOW, THEREFORE,

THE CITY OF DALLAS DOES ORDAIN AS FOLLOWS:

Section 1. Those amendments to Sections 1.2.070, 2.2.090(F)(3), 2.2.100(C)(1), and 4.3.140, and Tables 2.2.020, 2.3.020(B), 2.3.020, and 2.4.020, of the Dallas Development Code, as set forth on Exhibit A, attached hereto and by reference incorporated herein, are hereby adopted and approved.

Section 2. The findings and conclusions of the staff report recommending the adoption of the foregoing amendments, attached hereto as Exhibit B, and by reference incorporated herein, are hereby adopted and approved as the findings and conclusions of the City Council.

Section 3. All conflicting provisions of Ordinance No. 1710, establishing and adopting the Dallas Development Code, are hereby repealed upon the effective date of this ordinance.

Read for the first time: February 1, 2011
Read for the second time: February 22, 2011

Passed by the City Council: February 22, 2011
Approved by the Mayor: February 22, 2011

BRIAN W. DALTON, MAYOR

ATTEST:

JERRY WYATT, CITY MANAGER

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