IN THE COURT OF APPEALS OF THE
STATE OF OREGON

PRIDE DISPOSAL COMPANY,
an Oregon corporation,
Plaintiff-Appellant,

v.

VALET WASTE, LLC,
a Delaware limited liability company,
Defendant-Respondent.

Washington County Circuit Court
16CV18818; A164611

Andrew Erwin, Judge.

Argued and submitted May 17, 2018.

Thomas R. Rask, III, argued the cause for appellant. Also on the briefs was Kell, Alterman & Runstein, L.L.P.

Cody Hoesly argued the cause for respondent. Also on the brief were John Dunbar and Larkins Vacura Kayser LLP.

Before Armstrong, Presiding Judge, and Tookey, Judge, and Shorr, Judge.

TOOKEY, J.

Affirmed.

TOOKEY, J.

As the old saying goes, "[O]ne man's rubbish may be another's treasure." J. F. Campbell, 1 *Popular Tales of the West Highlands: Orally Collected with a Translation*, introduction, xi (1860). The dispute in this case involves the entitlement to collect and transport that treasure.

Plaintiff, Pride Disposal Company (Pride), has an exclusive franchise over the "collection" and "transportation" of "solid waste" in the cities of Sherwood and Tigard pursuant to the provisions of the Tigard Municipal Code (TMC) and the Sherwood Municipal Code (SMC). Defendant, Valet Waste, LLC (Valet), was hired by two apartment complexes, one in the City of Tigard and one in the City of Sherwood, to gather the residents' garbage through a doorstep garbage service and then take it to a trash compactor that each apartment complex has on site. Pride brought a civil action against Valet, alleging that Valet's doorstep garbage service violates Pride's exclusive privilege to collect and transport solid waste under both the TMC and the SMC.[1] The parties filed cross-motions for summary judgment, and the trial court granted Valet's motion for summary judgment on Pride's claims under the TMC and the SMC, concluding that Valet's "actions are not the type of actions either municipal code seeks to restrict." On appeal, Pride contends that the trial court erred when it granted Valet's motion for summary judgment. For the reasons that follow, we conclude that the trial court did not err when it granted Valet's motion for summary judgment and, accordingly, we affirm.

I. BACKGROUND[2]

The facts are undisputed. The cities of Sherwood and Tigard conferred an exclusive franchise over the "collection"

[1] Under TMC section 11.04.170(B)(1), "a franchisee may commence a civil action" against "any person providing service in the Tigard city limits without having a franchise" if the franchisee provides "30 days' written notice to the city manager" and the city manager declines to pursue any enforcement action. *See also* SMC § 8.20.130(B)(1) (similar). Tigard and Sherwood authorized Pride to bring this civil action after both cities declined to pursue any enforcement action on their own behalf.

[2] "Because the parties filed cross-motions for summary judgment below, in stating the facts, we consider all evidence submitted in support of and in opposition to both motions." *WSB Investments, LLC v. Pronghorn Devel. Co., LLC*, 269 Or App 342, 345 n 4, 344 P3d 548 (2015) (internal quotation marks omitted).

and "transportation" of "solid waste" to Pride through the provisions of the TMC and the SMC. The Arbor Heights Apartments in Tigard (Arbor Heights) and the Sunfield Lake Apartments in Sherwood (Sunfield Lake) are located within Pride's franchised territories.

Valet is not a franchised solid waste service provider in Tigard or Sherwood. Valet was hired by Arbor Heights and Sunfield Lake to provide a doorstep garbage service for their residents. Valet's service occurred, with two exceptions, entirely on private property.[3] The residents at those apartment complexes place their garbage into a Valet container at their doorstep. Valet employees pick up the garbage five days a week, load it into a pickup truck, and then take the garbage to a trash compactor that each apartment complex has on site.

Pride collects the trash compactors from Arbor Heights and Sunfield Lake, transports the compactors to an authorized disposal, recycling, or resource recovery facility where they are emptied, and returns the compactors to those apartment complexes.

As noted, Pride brought a civil action against Valet, alleging that Valet's doorstep garbage service violates Pride's exclusive franchise to provide solid waste services under the TMC and the SMC. *See* TMC § 11.04.020(B)(1) ("No person shall *** "[p]rovide service *** without having obtained a franchise from the city."); SMC § 8.20.020 (B)(1) (similar). Pride sought to enjoin Valet from performing its doorstep garbage service and sought an award of liquidated damages for Valet's alleged violations of the TMC and the SMC. *See* TMC § 11.04.170(B) (authorizing $500 in liquidated damages for each violation and "injunctive relief"); SMC § 8.20.130(B) (similar).

The parties filed cross-motions for summary judgment, centering their arguments on whether Valet was providing a "service," as defined by the TMC and the SMC. *See* TMC § 11.04.030(N) ("'Service' means the collection,

[3] Arbor Heights is bisected by a public road that Valet crossed to access the other side of Arbor Heights's private property. Additionally, at Sunfield Lake, Valet used a public road to turn around its pickup trucks and reenter the apartment complex.

transportation, storage, transfer, disposal of or resource recovery of solid waste, including solid waste management."); SMC § 8.20.030 ("'Service' means the collection, transportation, storage, transfer, disposal of or resource recovery of solid waste, using the public streets of the city to provide service, and including solid waste management."). Specifically, Pride argued that "[t]he services performed by Valet involve both the 'collection' and the 'transportation' of solid waste." In response, Valet contended that it was not providing a "service" in violation of either code, because it was simply moving the garbage "on private property" to the compactors from which it is collected and transported by Pride to an authorized disposal, recycling, or resource recovery facility. Valet asserted that neither code grants Pride an exclusive franchise over "taking trash to the dumpster" on a person's "private property."

After hearing arguments and reviewing the parties' submissions, the trial court issued a letter opinion stating that "[b]oth parties agree there are no genuine issues of material fact to these proceedings and [the] parties are entitled to a legal ruling at the summary judgment stage." The trial court concluded that Valet's "actions are not the type of actions either municipal code seeks to restrict," because Valet's service does not interfere with Pride's exclusive franchise right to collect the tenants' garbage from the trash compactors or interfere with Pride's right to transport the tenants' garbage from the landlords' private property to an authorized disposal, recycling, or resource recovery facility. Accordingly, the trial court granted Valet's motion for summary judgment.

On appeal, Pride contends that the trial court erred in granting Valet's motion for summary judgment, because "Valet's actions violated the Tigard and Sherwood municipal codes." Valet responds that "the trial court was correct when it granted Valet's motion for summary judgment on the ground that *** '[Valet] does not interfere with [Pride's] exclusive franchise right to gather and haul the apartments' trash from private property to public disposal,'" because "'Valet conducts its service almost entirely on private property'" and "does not remove waste from the apartment complexes." Both parties now reprise their arguments about

whether Valet was providing a "service," as defined by the TMC and the SMC, focusing their efforts on a discussion of what constitutes the "collection" and "transportation" of "solid waste" under the TMC and SMC.

Boiled down to its essence, the issue before us in this case is whether the code drafters intended the terms "collection" and "transportation" to have a meaning that captures the type of service offered by Valet—*viz.*, moving the tenants' garbage and recycling across a landlord's private property and placing it in containers that Pride then collects and transports to an authorized disposal, recycling, or resource recovery facility.

II. ANALYSIS

"Because the material facts are not in dispute, we review the trial court's grant of summary judgment to determine whether defendant was entitled to judgment as a matter of law." *Drake v. Mutual of Enumclaw Ins. Co.*, 167 Or App 475, 478, 1 P3d 1065 (2000) (citing ORCP 47 C). "The proper construction of a municipal ordinance is a question of law, which we resolve using the same rules of construction that we use to interpret statutes." *City of Eugene v. Comcast of Oregon II, Inc.*, 359 Or 528, 540, 375 P3d 446 (2016). Accordingly, "we look primarily to the ordinance's text, context, and legislative history, although we may look also to general rules of statutory construction as helpful." *Id.* at 540-41 (internal quotation marks and brackets omitted). However, before turning to the substantive provisions of the TMC and the SMC, we pause briefly to provide some context to the exclusive franchise that Pride has over the "collection" and "transportation" of "solid waste" in Tigard and Sherwood.

As the Oregon Supreme Court observed nearly a century ago, the "[h]auling [of] garbage through the public streets, especially by such individuals *** who did not produce it, cannot be considered as a common right" of "the citizens of the country generally," because it "is everywhere regarded as peculiarly subject to the police power of the state," and, as such, is a "special privilege[] which only a sovereign c[an] exercise as a matter of right." *Elliott v. City of Eugene et al.*, 135 Or 108, 112-15, 294 P 358 (1930); *see*

also Spencer et al. v. City of Medford et al., 129 Or 333, 338, 276 P 1114 (1929) (it "has been usually held that a city has authority, in the interest of public health and cleanliness, to regulate and provide for the disposal of garbage"). As such, "a sovereign" can confer that special privilege as an exclusive franchise because, as just noted, the privilege of hauling other people's garbage through the public streets does "not belong to the citizens of the country generally of common right." *Elliott*, 135 Or at 113-14. When the franchise conferred is an exclusive one over hauling "the entire garbage of the city through the public streets," or a designated portion thereof, it creates "a monopoly." *Id.*; *see also Spencer et al.*, 129 Or at 339 ("[G]arbage is widely regarded as an actual and potential source of disease or detriment to the public health, and *** therefore it is within the well-recognized limits of the police power, for the municipality, acting for the common good of all, either to take over itself or confine to a single person or corporation the collection, transportation through the streets and final disposition of a commodity which so easily may become a nuisance." (Internal quotation marks omitted.)).

Additionally, a municipality's authority to franchise out its right to haul an entire city's garbage through the city's streets is provided for under ORS chapters 459 and 459A. The Legislative Assembly has declared that, "[i]n the interest of the public health, safety and welfare and in order to conserve energy and natural resources, it is the policy of the State of Oregon to establish a comprehensive statewide program for solid waste management which" will "[c]learly express the Legislative Assembly's previous delegation of authority to cities and counties for collection service franchising and regulation and the extension of that authority under the provisions of this section and ORS 459.125 and 459A.005 to 459A.085." ORS 459.015(2)(b). To further that policy, the Legislative Assembly has also declared that "[l]ocal government units have the primary responsibility for planning for solid waste management." ORS 459.017 (1)(b); *see also* ORS 459A.085 (the "Legislative Assembly finds that providing for collection service" is "a matter of statewide concern" and "[i]t is the intent of the Legislative Assembly that a city or county may displace competition with

a system of regulated collection service by issuing franchises which may be exclusive if service areas are allocated").

With that historical context and legislative overlay in mind, we now turn to the substantive provisions of the TMC and SMC.

A. *Did Valet provide "service" under the TMC?*

1. *Text*

We begin "with the text and context of the code, which are the best indications of the code drafters' intent." *Jimenez/Carlson v. Multnomah County*, 296 Or App 370, 377, 438 P3d 403 (2019). As discussed above, TMC section 11.04.020(B) provides, in part, that "[n]o person shall *** "[p]rovide service *** without having obtained a franchise from the city." "Service" is defined, as relevant here, as "the collection [and] transportation *** of solid waste." TMC § 11.04.030(N). The TMC defines "solid waste" in a list which includes "garbage, rubbish, refuse, ashes, wastepaper and cardboard." TMC § 11.04.030(O).[4] However, nothing in the TMC "[p]rohibit[s] any person from collecting or transporting any waste, produced by that person, from the site at which it is produced, in a vehicle *** directly to an authorized disposal or recycling or resource recovery facility" (authorized facility) but, "solid waste produced by a tenant *** is produced by such person and not by the landlord" and "no person shall provide services to any tenant *** of any property of such person, and the landlord or property owner shall provide service through the franchisee." TMC § 11.04.040(D)(1).

Accordingly, under those provisions of the TMC, a tenant can "collect" their own waste from the site at which it is produced and "transport" it in a vehicle directly to an authorized facility that complies with chapter 459 of the Oregon Revised Statutes, but a third party cannot "collect" or "transport" a tenant's garbage directly to an authorized facility for a landlord without first having obtained a franchise from the city. As we discuss below, the "collection" and

[4] When we use the more generic terms "garbage" and "rubbish" throughout this opinion, we are referring to the definition of solid waste under the TMC and SMC.

"transportation" of garbage under the TMC occurs when garbage is being removed from a person's property and taken to an authorized facility. In other words, the "collection" and "transportation" of garbage occurs when Pride collects the tenant's garbage from the trash compactor on the scheduled collection day and then transports it over the city streets to an authorized facility. Because Valet is not providing that "service" to any tenant of Arbor Heights when Valet gathers garbage from a tenant's doorstep and takes it to the on site trash compactor, Valet does not need to obtain a franchise from the city.[5]

The code does not define "collection" or "transportation," and, therefore, we look to the dictionary for further guidance, *Jimenez/Carlson*, 296 Or App at 377, while keeping in mind that "we do not simply consult dictionaries and interpret words in a vacuum" because dictionaries "do not tell us what words mean, only what words *can* mean, depending on their context and the particular manner in which they are used." *State v. Cloutier*, 351 Or 68, 96, 261 P3d 1234 (2011) (emphasis in original).

The parties offer similar definitions of "collection" and "transportation." The noun "collection" is defined as "the act of collecting." *Webster's Third New Int'l Dictionary* 444 (unabridged ed 2002). The verbs "collect" and "collecting" are

[5] Under the TMC and the SMC, certain businesses that generate solid waste are exempt from the prohibition on providing "service." *See* TMC § 11.04.040 (D)(11) (the TMC does not "[p]rohibit a person from transporting or disposing of waste that is produced as an incidental part of the regular carrying on of the business of janitorial service; gardening or landscaping service; or rendering. (These sources do not include the collection, transportation or disposal of accumulated or stored wastes generated or produced by other persons)."); SMC § 8.20.020(C)(11) (the SMC does not "[p]rohibit a person from transporting or disposing of waste that he or she produces as an incidental part of janitorial services; gardening or landscaping services; rendering; or other similar and related occupations[.]"). As Pride acknowledges in its opening brief, "Valet has not argued that either of these exemptions apply." Additionally, Valet notes that the "janitor exemption does not apply to the waste at issue here," because "[m]ost of the waste that Valet deals with is not its own[;] *** it is waste produced by apartment residents." Rather than relying on an exemption, Valet argues that it is not providing "service" under the TMC or the SMC because the code drafters did not intend for the terms "collection" and "transportation" to have a meaning that would prohibit it from gathering the tenant's garbage and moving it to an on site collection container. In light of the parties' arguments, and because we conclude that Valet is not providing "service" under the TMC or SMC, we need not decide whether any of the exemptions to providing "service" apply.

defined, as relevant here, as "to bring together into a band, group, assortment, or mass" and "to receive, gather, or exact from a number of persons or other sources." *Id.* Likewise, the noun "transportation" is defined as "an act, process, or instance of transporting or being transported." *Id.* at 2430. The verbs "transport," "transporting," and "transported" are defined, as relevant here, as "to transfer or convey from one person or place to another **:** CARRY, MOVE." *Id.* (boldface and uppercase in original).

Pride acknowledges that "the [parties'] respective definitions h[o]ld the same functional and commonly understood meaning." Nonetheless, Pride contends that, applying those definitions, Valet's doorstep garbage service violates the TMC because, "[u]nder the plain terms of the ordinance, only franchisees may collect or transport solid waste." For its part, Valet observes that those "definitions are broad enough to support Pride's interpretation of the ordinances, namely, that Valet 'collects' and 'transports' trash and recycling when it gathers those things from containers at residents' doorsteps and takes them to the apartment complexes' on site compactors." But Valet contends that those "definitions also support a narrower meaning, which is *** collection [of garbage] from the apartment complexes' compactors and transportation to a disposal facility—activities that Pride engages in, but Valet does not."

We agree with Valet; the dictionary definitions of "collect" and "transport" lack a temporal or spatial requirement that would resolve the parties' dispute. In other words, those definitions do not tell us when and where the "collection" and "transportation" of garbage occurs. Thus, those definitions merely establish, at most, that "'both parties' interpretations might be *permitted* but neither is *required*" by the text of the code alone. *State v. Gonzalez-Valenzuela*, 358 Or 451, 464, 365 P3d 116 (2015) (emphases in original); *see also Graydog Internet, Inc. v. Giller*, 362 Or 177, 186-87, 406 P3d 45 (2017) (discussing context where dictionary definitions "can be read either more broadly *** or more narrowly"). We turn to other contextual clues to ascertain the code drafters' intended meaning of those terms. *Gonzalez-Valenzuela*, 358 Or at 461 ("Dictionary definitions

lack context and often fail to capture the nuanced connotations conveyed by the normal use of a term in a particular context.").

2. *"Collection" in context*

Context includes other provisions of the city's code, *State v. Smith*, 246 Or App 614, 619, 268 P3d 644 (2011), *rev den*, 351 Or 675 (2012), and, thus, we read "th[ose] word[s] *in pari materia* with the wording of" the other relevant parts of the code, *State v. Werdell*, 340 Or 590, 596, 136 P3d 17 (2006).

To begin with, the definition of "service" in the TMC indicates that "collection" and "transportation" are part of the overall service that is required by the franchise agreement under the TMC. As noted, "service" is defined as "the collection, transportation, storage, transfer, disposal of or resource recovery of solid waste." TMC § 11.04.030(N). That list reflects the ordinary sequence of events that occurs after a franchised garbage company picks up a customer's collection container—the franchisee collects garbage from a designated collection container and then transports that garbage over the public roads to an authorized facility. We point out that a person would not ordinarily think that they are providing franchised waste services, like a typical solid waste franchisee, when the person gathers garbage on private property and takes it to an on site collection container. Additionally, the collection of garbage on private property and the transportation of that garbage to an on site collection container is not a service that Pride is required to provide as the exclusive franchisee, nor does Pride claim that it provides such a service. As we explain below, the manner in which the terms "collection" and "transportation" are used throughout the TMC demonstrate that the code drafters did not intend for Pride's exclusive franchise to extend to the service that Valet provides. *See Kohring v. Ballard*, 355 Or 297, 304-05, 325 P3d 717 (2014) (departing from the "straightforward" dictionary definition of the word "sustained" because, in context, "it seem[ed] clear that the legislature did not intend the term to be understood literally").

We begin by discussing the portions of the TMC that are the most relevant to the first event that occurs when Pride performs its exclusive service—the collection of solid waste. TMC section 11.04.100 imposes container requirements and collection limitations, in part, "to prevent recurring back and other injuries to collectors." TMC § 11.04.100(A). To achieve that goal, the code requires that,

> "[o]n the scheduled collection day, the customer shall provide safe access to the pickup point which does not jeopardize the safety of the driver of a collection vehicle or the motoring public or create a hazard or risk to the person providing service. Receptacles must be in a visible (from the street or alley) location which may be serviced and driven to by satellite vehicles where practical. Access must not require the collector to pass behind an automobile or other vehicle or to pass under low-hanging obstructions such as eves, tree branches, clotheslines or electrical wires which obstruct safe passage to and from receptacles. Receptacles must be at ground level, outside of garages, fences and other enclosures, and within 100 feet of the street right-of-way or curb. Where the city manager finds that a private bridge, culvert or other structure or road is incapable of safely carrying the weight of the collection vehicle, the collector shall not enter onto such structure or road."

TMC § 11.04.100(A)(3). In addition, "[a]ll solid waste receptacles located at single-family residences shall be placed together in one authorized location on the regularly scheduled collection day," TMC § 11.04.100(A)(4). Those portions of the code further suggest that "collection" does not occur when garbage is gathered through a process on private property and placed in one of Pride's collection containers, but, rather, when an approved collection container is collected from a designated pickup point by Pride's collection vehicles on the scheduled collection day. *See also* TMC § 11.04.100 (A)(10) ("If for other than manual pickup, no customer shall use any solid waste collection container unless it is supplied by the franchisee or is approved by the franchisee on the basis of safety, equipment compatibility, availability of equipment and the purposes of this chapter."); TMC § 11.04.070(A)(5) (the franchisee shall "[c]ollect no single-family residential solid waste before 5 a.m. or after 7 p.m. unless this condition is waived by the city manager or designee"); TMC

§ 11.04.070(A)(7) (the franchisee shall "[m]ake collection no less often than once each week, except for will-call collections and drop box operations[.]").

Of particular relevance here, because the apartment complexes use compactors, is TMC section 11.04.105, which governs the use of "stationary solid waste compactors" and requires that a permit be issued to ensure that the compactor is compatible "with the equipment of franchised haulers." TMC § 11.04.105(A); *see also* TMC § 11.04.105 (B)(2)(b) and (C)(1) (requiring compatibility "with the franchisee's hauling equipment"). Additionally, the applicant for a solid waste compactor permit must submit a

> "[s]ite plan [that] indicates the location of the compactor; maneuvering distance showing *the compactor can be picked up, transported and returned by the franchisee*; where applicable, *receptacles at the same location as the stationary compactor for separated recyclable materials to be collected and transported by the franchisee*."

TMC § 11.04.105(B)(2)(a) (emphases added). In addition, TMC section 11.04.105(F) provides that "[n]o stationary compactor or other container for multifamily residential *** use shall exceed the safe-loading design limit or operation of the collection vehicles provided by the franchisee serving the area." These provisions demonstrate that the "collection" of solid waste occurs when the compactor is loaded onto Pride's collection vehicle and then transported to an authorized facility. *See* TMC § 11.04.105(L) ("Franchisee shall not be obligated to transport a compactor that violates the provisions of this section.").[6]

[6] Pride contends that Valet's activities interfere with its exclusive franchise right because Valet's services "divert collection fees away from *** Pride" by "allow[ing] landlords to maintain a single compactor, rather than multiple dumpsters throughout a large serviced property." We reject that argument for several reasons. First and foremost, Valet does not infringe on Pride's exclusive franchise rights when a customer chooses to use a compactor, because the TMC and SMC allow a landlord to obtain a permit to use a single compactor instead of using multiple dumpsters. TMC § 11.04.105; SMC § 8.20.140(B). Second, Pride's rates are set by the cities based, in part, on factors such as the "type of service" provided and the "concentration of dwelling units." TMC § 11.04.090; SMC § 8.20.080; *see also* City of Tigard Resolution 13-18, Exhibit A, and City of Sherwood Resolution 2013-062, Exhibit A (setting higher commercial container collection rates for compacted garbage). Third, the codes provide for rate adjustments for the different types of service that Pride provides to ensure that Pride receives an aggregate

What is expressly prohibited by the TMC is the collection of garbage, by a party that is not a franchised solid waste service provider, *after* it has been placed in the compactor or collection container for the franchisee to collect. TMC section 11.04.040(F) provides that "[s]olid waste placed out for collection *** belongs to the franchisee when so placed." Additionally, TMC section 11.04.040(H) provides that "[n]o person shall take or remove any solid waste placed out for collection by a franchisee *** under this chapter." *See also* TMC § 11.04.105(C)(5)(d) (the compactor must have a "[s]anitary and tight design to prevent *** [the] unauthorized removal of waste from the compactor"). Those prohibitions demonstrate that the collection of garbage occurs after the garbage has been accumulated from within the customer's private property and has been placed in a container for Pride to collect, because the TMC does not grant Pride a possessory interest in the customer's garbage until *after* the collection container has been placed out for collection.

3. *"Transportation" in context*

Other sections of the code demonstrate that Pride's exclusive franchise over the transportation of garbage does not give Pride the exclusive right to move garbage on private property to an on site trash compactor. When read in context, the term "transport" refers to the transportation of garbage in one of Pride's collection vehicles to an authorized facility using the city streets. For example, TMC § 11.04.060(A) provides that, "[a]s compensation for the franchise granted to each franchisee *and for the use of city streets*, the franchisee shall pay to the city a fee." (Emphasis added.) *See Schmidt v. Masters*, 7 Or App 421, 433, 490 P2d 1029 (1971) (noting that county solid waste franchise agreements are "directed

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amount of profit. *See* TMC § 11.04.090(E)(4)(a) (rates are intended to produce an aggregate profit of 10%); SMC § 8.20.080(D)-(E) (rate adjustment process); City of Tigard Resolution 13-18 (the city of Tigard sets "an aggregate target profit rate of 10 percent annually for the City's franchised solid waste haulers"); City of Sherwood Resolution 2013-062 (the "City of Sherwood aims to set a reasonable aggregate target profit of 8 percent to 10 percent annually for their solid waste franchisees"). Finally, although Pride may prefer to collect multiple dumpsters to transport to an authorized facility, rather than a single compactor, that would also appear to be contrary to one of the express purposes of the TMC and SMC to "[e]liminate overlapping service to reduce truck traffic, street wear, air pollution and noise." TMC § 11.04.020(A)(8); SMC § 8.20.020(A)(8).

toward a reduction in the number of vehicles collecting garbage and wastes over county streets in a given area," and "[t]hey thus bear a direct relationship to traffic congestion, possible littering of streets, safety to individuals, unsightliness and efficiency, which in turn bear a relationship to getting a necessary service done with a minimum injury to public health, safety and welfare"). The franchisee also has the responsibility to "[f]urnish sufficient collection vehicles, containers, *** and scheduled days for collections *in each area of the city* necessary to provide all types of service required under this chapter." TMC § 11.04.070(A)(3) (emphasis added); *see also* TMC § 11.04.040(I) (discussing "on-route" recycling service by the franchisee); TMC § 11.04.090 (rates charged by the franchisee shall be based, in part, on "haul distance"). Those provisions of the TMC support Valet's proposed interpretation that the transportation of garbage occurs when Pride moves the garbage that it has collected from a collection container to an authorized facility using the city streets.

TMC section 11.04.140 also links the transportation service that Pride provides to the use of the city streets. For example, TMC section 11.04.140(A) provides that the franchisee shall not terminate service to its customers unless "[t]he street or road access is blocked and there is no alternate route and provided that the franchisee shall restore service not later than 24 hours after street or road access is opened." *See also* TMC § 11.04.140(B) (the franchisee shall not terminate service to its customers unless, "[a]s determined by the franchisee, excessive weather conditions render providing service unduly hazardous to persons providing service or to the public or such termination is caused by accidents or casualties caused by an act of God, a public enemy, or a vandal, or road access is blocked"). And, as outlined above, the provisions of TMC section 11.04.100 also suggest that transportation occurs when garbage is moved to an authorized facility using the public roads. *See* TMC § 11.04.100 (A)(3) ("Receptacles must be in a visible (from the street or ally) location which may be serviced and driven to by satellite vehicles where practical. *** Receptacles must be at ground level, outside of garages, fences and other enclosures, and within 100 feet of the street right-of-way or curb.").

Based on the broader context of the TMC set forth above, we conclude that the code drafters did not intend for the terms "collection" and "transportation" to have a meaning that captures the type of service offered by Valet—*viz.*, gathering the tenants' garbage and moving it across a landlord's private property to place it in an on site collection container. Instead, the "collection" and "transportation" of garbage under the TMC occurs when an approved collection container is collected from a designated pickup point by Pride's collection vehicles on the scheduled collection day and then transported over the city streets to an authorized facility.

4. *General rules of statutory construction*

As noted, Pride is the franchise grantee and, "[i]n interpreting franchises, if the terms of the franchise are doubtful, they are to be construed strictly *against the grantee* and liberally in favor of the public." *Comcast of Oregon II, Inc.*, 359 Or at 542 (emphasis in original, internal quotation marks and ellipses omitted). "Therefore, no rights are conferred on a grantee by implication, and that which has not been expressly granted has been withheld." *Id.* Thus, under the franchise agreement, Pride's "service rights extend only as far as [Pride's] service obligations." *Id.* at 543.

Because the collection of garbage on private property and the transportation of that garbage to an on site collection container is not a service that has been expressly granted to Pride, and because Pride is not required to provide such a service, the TMC does not confer on Pride the exclusive right to gather garbage on private property and then move it to an on site collection container. Indeed, because the terms of the franchise are "doubtful" in that respect, we must construe the franchise liberally in favor of a property owner's right to decide how to gather and move garbage to a collection container on the owner's private property, as long as it does not violate other provisions of the TMC or Oregon law. *Id.* at 542; *see* TMC § 11.04.020(B)(2) ("[n]o person shall *** [a]ccumulate, store collect, transport, dispose of or resource recover solid waste except in compliance with this chapter, other city codes, and Chapter 459, Oregon Revised Statutes[.]"); TMC § 6.02.010(B) ("Accumulations of debris,

rubbish, manure or other refuse that affect the health of surrounding persons" are a "nuisance affecting the public health."); TMC § 6.02.240(B) ("All putrescible solid wastes shall be removed from any premises at least once every seven days, regardless of whether or not confined in any container, compactor, drop box or other receptacle."); TMC § 6.02.250 ("No person shall have waste on property that is offensive or hazardous to the health or safety of others or which creates offensive odors or a condition of unsightliness.").[7]

5. *Conclusion*

Based on the foregoing analysis of the text in context, and our application of general rules of statutory construction, we conclude that the trial court did not err when it granted Valet's motion for summary judgment on Pride's claim that Valet was providing a "service," as defined by the TMC.

B. *Did Valet provide "service" under the SMC?*

Although the SMC differs in some respects, the provisions of the SMC indicate that, like the TMC, "service," through the "collection" and "transportation" of garbage, occurs when Pride collects the garbage in Sunfield Lake's compactor and then transports it, "using the public streets of the city," to an authorized facility. SMC § 8.20.030.

SMC section 8.20.020(B)(1) provides, in part, that no person shall "[p]rovide solid waste service *** without having obtained a franchise from the city." Additionally, "a lessor or property owner shall not provide service to a tenant, lessee or occupant except through the franchisee." SMC § 8.20.020(C)(1). "Service" is defined as "the collection, transportation, storage, transfer, disposal of or resource recovery of solid waste, using the public streets of the city

[7] We are also unpersuaded by Pride's argument that the incidental crossing of a public road that bisects a piece of private property materially alters the type of service that Valet provides, because Valet is not using the public road while it gathers the tenant's garbage, and because Valet is not using the public road to transport the garbage off of the private property. In other words, we conclude that Valet's crossing of the road that bisects Arbor Heights's private property does not infringe on Pride's exclusive right to provide "service" by collecting garbage from designated containers and then transporting that garbage over the public roads to an authorized facility.

to provide service, and including solid waste management." SMC § 8.20.030. The SMC also defines "solid waste" in a nonexclusive list, which includes "garbage" and "rubbish." *Id*. Accordingly, under the SMC, a third party cannot "collect" or "transport" a tenant's garbage for a landlord without first having obtained a franchise from the city.

As noted above, we begin "with the text and context of the code, which are the best indications of the code drafters' intent." *Jimenez/Carlson*, 296 Or App at 377. The SMC does not define "collection" or "transportation" and, again, the dictionary definitions merely establish, at most, that "both parties' interpretations might be *permitted* but neither is *required*" by the text of the code alone. *Gonzalez-Valenzuela*, 358 Or at 464 (emphases in original). Thus, we turn to other contextual clues to ascertain the code drafters' intended meaning of those terms. *Id*. at 461.

We begin by observing that, under the SMC, the definition of "service" includes the phrase, "using the public streets of the city to provide service." SMC § 8.20.030. When viewed in context, that phrase indicates that "service" occurs when Pride uses "the public streets of the city" to "collect" the garbage in Sunfield Lake's compactor and then "transport" it to an authorized facility. *See* SMC § 8.20.020(A)(8) (the purpose of the code is to "[e]liminate overlapping service to reduce truck traffic, street wear, air pollution and noise"); SMC § 8.20.040(A) (authorizing the city council to grant an exclusive franchise "to provide service over and upon the streets of a franchise area within the city"); SMC § 8.20.070(D) (the franchisee shall "ensure that every vehicle or container used for the transportation of solid waste over city streets shall be regularly cleaned and maintained in a sanitary condition").

Other portions of the code also support that interpretation of "service." For example, a franchisee's application for a solid waste management franchise must include evidence showing that the applicant has "arranged for disposal of all solid waste collected or transported to an authorized disposal site where it may legally be accepted and disposed of." SMC § 8.20.045(A)(5)(a). Additionally, the applicant must provide "[a] description of all vehicles and

equipment used or intended to be used by the franchisee or its subcontractors, including vehicle type, license number, age and condition." SMC § 8.20.045(A)(8). Moreover, "[a]s compensation for the franchise granted to the franchisee *and for use of city streets*, the franchisee shall pay to the city a fee equal to five percent of gross cash receipts resulting from the solid waste services conducted under the franchise." SMC § 8.20.060(A) (emphasis added); *see also* SMC § 8.20.070(D) (the franchisee shall "[f]urnish sufficient collection vehicles, containers, facilities, personnel, finances, and scheduled days for collections in each area of the city as necessary to provide all types of service required under this chapter"); SMC § 8.20.110(A) (the franchisee shall not suspend or terminate service unless "[s]treet or road access is blocked and there is no alternate route, provided that the franchisee shall restore service not later than twenty-four (24) hours after street or road access is opened"). Thus, those provisions indicate that the "collection" and "transportation" of garbage occurs when Pride uses the "public streets of the city," SMC § 8.20.030, to collect garbage from containers and then transport it to "an authorized disposal site where it may legally be accepted and disposed of." SMC § 8.20.045 (A)(5)(a).

Many provisions of the SMC are similar to those we noted above in the TMC and also point us towards the same result regarding Pride, Valet, and the SMC. *See, e.g.*, SMC § 8.20.140(A)(4) ("On the scheduled collection day, the carry-out service customers shall provide safe access to a pick up point which does not jeopardize the safety of the driver of a collection vehicle" and "[c]ans, tote barrels and containers must be visible from a public right-of-way which may be serviced and driven to by collection vehicles where practical"); SMC § 8.20.140(A)(5) (the "curb-side service customer shall place cans or tote barrels alongside a public street or other accessible place, at a location designated by the franchisee"); SMC § 8.20.140(B) ("No stationary compactor or other container for commercial or industrial use shall exceed the safe loading design limit or operation of the collection vehicle provided by the franchisee."); SMC § 8.20.080 (rates shall be based, in part, on the "concentration of dwelling units," "type of service," and "haul distance").

Given our analysis of the text and context, and the rule that "no rights are conferred on a grantee by implication," *Comcast of Oregon II, Inc.*, 359 Or at 542, we conclude that the code drafters did not intend the terms "collection" and "transportation" in the SMC to have a meaning that captures the type of service offered by Valet.[8] Therefore, the trial court did not err when it granted Valet's motion for summary judgment on Pride's claim that Valet was providing a "service," as defined by the SMC.

III. CONCLUSION

Neither the TMC or the SMC gives Pride the exclusive right to gather garbage on a person's private property and then move it to an on site collection container. Therefore, the trial court did not err when it granted Valet's motion for summary judgment on Pride's claims that Valet was providing solid waste services in violation of the TMC and the SMC.

Affirmed.

[8] Again, as with our related conclusion with regard to Valet's incidental use of the public road that bisects Arbor heights, here, we are unpersuaded by Pride's argument that Valet's use of a public road to turn around its pickup trucks and then reenter Sunfield Lake's private property alters the type of service that Valet provides in a way that infringes on Pride's exclusive right to provide "service" under the SMC.