

CITY OF BAY CITY

ORDINANCE NO. 555

AN ORDINANCE GRANTING TO R. SANITARY SERVICE AN EXCLUSIVE FRANCHISE TO CONDUCT A SOLID WASTE COLLECTION AND HAULING BUSINESS IN THE CITY OF BAY CITY; PROVIDING THE REGULATION THEREOF AND EXERCISE OF FRANCHISE UNTIL JUNE 1, 2007; AND REPEALING BAY CITY ORDINANCE NO. 485.

The City of Bay City ordains as follows:

Section 1. Title. This ordinance shall be known as the City of Bay City Solid Waste Management Ordinance and may be referred to as the Franchise.

Section 2. Repeal. Bay City Ordinance 485 codified as Bay City Ordinance 3-1 is hereby repealed in its entirety. Furthermore, all resolutions and motions setting rates, fees, charge, procedures or regulations pertaining to the solid waste collection and hauling within Bay City are hereby repealed except Resolution 93-11, which is specifically not repealed.

Section 3. Definitions. Except where the context clearly indicates a different meaning, the definitions appearing in ORS 459.005 and regulations promulgated thereunder are applicable to this ordinance. The singular includes the plural and vice versa. As used in this ordinance, the following words shall be defined as follows:

- A. City. The City of Bay City. Where the city limits are extended, the City shall include such extended geographic boundaries.
- B. Compensation. Compensation includes:
 - 1) Any type of consideration paid for service including, but not limited to, rent, the proceeds from resource recovery, any direct or indirect provision for the payment of money, goods, services or benefits by tenants, lessees, occupants or similarly situated persons;
 - 2) The exchange of service between persons;
 - 3) The flow of consideration from a person owning, possessing or generating solid waste to another person who provides services or from a person providing services to another person owning, possessing or generating solid waste. Compensation does not include the benefits, incidental advantages or tax advantages resulting from the donation of services or any form of solid waste.
- C. Franchisee. R. Sanitary Service to whom an exclusive franchise is granted by this Franchise.

- D. Person. An individual, partnership, association, corporation, trust, firm, estate or other private legal entity.
- E. Service. The collection, transportation or disposal of or the resource recovery from solid waste.
- F. Recyclable Materials. 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.
- G. Resource Recovery. The process of obtaining useful material or energy resources from solid waste, including energy recovery, material recovery, recycling and reuse of solid waste.
- H. Solid waste. All putrescible and nonputrescible materials including but not limited to garbage, rubbish, refuse, ashes, wastepaper, cardboard, grass clippings, compost, equipment and furniture, plastic products, vegetable and animal solid and semi-solid material, glass, bio-medical waste and any other material disposed of by individual or commercial or industrial enterprises; provided, however, the term does not include the following:
- 1) Environmentally hazardous wastes as defined in ORS Chapter 466.005;
 - 2) Materials used for fertilizer or for other productive purposes of which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals;
 - 3) Beverage containers subject to reuse or refund provisions contained in ORS 459.810 to 459.890;
 - 4) Discarded or abandoned vehicles;
 - 5) Manure;
 - 6) Liquid petroleum products resulting from the operation of a commercial or industrial activity;
 - 7) Discarded home and industrial appliances;
 - 8) Waste from existing industrial enterprises which are of such a type as to provide a waste material of such volume, characteristics, or content as to not be compatible with the feasible, economical or practical operation to be conducted at the disposal site for the principal purpose of providing a solution to the disposal of solid waste which is presently being landfilled. Such described and excluded types of industrial waste includes but is not limited to material considered as of the date of this franchise to be useless or which is generally discarded by fish and seafood processors and the wood products industry. Provided, however, wastes generated from present or future industrial

enterprises, which due to volume, characteristics, or content is alleged by the franchise holder not to be compatible with its feasible, economical or practical operations, shall be exempted, if such allegation is found to be true by the City Council after a public hearing. The hearing shall be set as soon as practicable. Pending the Council's determination, the franchise holder shall not be obligated to accept nor process such material.

- 9) Demolition and construction wastes;
- 10) Pathological wastes;
- 11) Those materials and compounds above defined as solid waste which are precluded by an order of the Oregon Department of Environmental Quality or other states or federal regulatory agency from being permitted to be utilized by the franchise holder in the disposal or recycling process approved by the district and for which the franchise was granted;
- 12) Sewage sludge;
- 13) Septic tank and cesspool pumpings;
- 14) Used batteries; and
- A. Used plumbing and used major kitchen appliances.

I. Council. The City Council of Bay City.

Section 4. Exclusive franchise.

- A. There is hereby granted to R. Sanitary Service of Garibaldi, Oregon, the privilege and franchise to conduct a solid waste collecting and hauling business in the City of Bay City, State of Oregon, for a period of ten 10) years, ending June 1, 2007. The franchise shall be subject to the terms and conditions contained in this ordinance as well as subject to any state or federal law or rule which may effect the provisions herein. This franchise shall be an exclusive franchise to George Reding dba R. Sanitary Service.
- B. Exceptions. The exclusive right, privilege and franchise granted under this section is subject to the following exceptions:
 - 1) Collection drives of public services organizations approved by the City after application is made to the City and found by the City not to materially alter or affect operations or profit of the franchise holder and which are conducted on a noncontinuous basis.
 - 2) A prior written notice of such activity shall be prepared and signed by the person intending to engage in such activity or an authorized representative and delivered to the City, which notice shall specify the geographic areas and times in which such activities are intended to take place.

- 3) Any person residing within the City may dispose of their own home solid wastes by hauling said wastes to an approved landfill or transfer station.
- 4) A person may engage in the practice of towing or otherwise removing damaged, discarded or abandoned vehicles or parts thereof, so long as such activity is conducted in compliance with applicable state and local laws.
- 5) A person may engage in the practice of pumping, transportation, and disposal of septic tank and cesspool pumpings or other sludge, provided such activity is conducted in compliance with applicable state and local laws.
- 6) A person who engages in an occupation, such as gardener, landscaper, grounds keeper, or construction contractor for a property owner or tenant in the City and who produces thereby small volumes of solid waste in such person's own equipment where the solid waste produced is incidental to the particular job the person is performing.

Section 5. Franchise fee. As compensation for the right, privilege and franchise hereby granted, and for the length of this franchise, the franchise shall pay quarterly to the City Recorder of Bay City an amount equivalent to two (2%) percent of the grantee's "gross revenues" as defined herein. The term "gross revenues" as used herein shall mean and be construed as the amount of money actually collected by the Franchisee from its Bay City customers during the quarter of time in question except that portion of money collected on behalf of Tillamook County for the operation of the solid waste program. The Franchisee shall keep accurate books of account and the City shall have the right to inspect the same at all times during business hours and from time to time to audit the same for the purpose of determining such gross revenues. The City Council may set a fixed sum to be paid in lieu of the franchise fee percentage.

Section 6. Franchise responsibility. The franchise shall operate within the schedule of rates established by this franchise and shall exercise every effort to give the citizens of Bay City a prompt and efficient service at all times. The franchisee shall have the right of hearing at which he may have legal counsel in the event there is a dispute involving this franchise. The Franchisee shall:

- A. Dispose of wastes collected at a site approved by the City that is in compliance with Chapter 459, Oregon Revised Statutes and regulations promulgated thereunder.

- B. Provide and keep in force public liability insurance with a thirty (30) day cancellation clause in the amount of not less than \$100,000.00 for injury to a single person, \$300,000.00 to group of persons and \$50,000.00 property damage, all relating to a single occurrence, which shall be evidenced by a certificate of insurance filed with the City Recorder. The insurance shall indemnify and say the City harmless against liability or damage which may arise or occur from an injury to persons or property resulting from the franchisee's operation under this ordinance.
- C. Furnish sufficient collection vehicles, containers, facilities, personnel, finances, and scheduled days for collections in each area of the City necessary to provide all types of services required under this ordinance, but where necessary, the Franchisee may subcontract with others to provide certain types of specialized service in accordance with the provisions of this ordinance and in particular in accordance with Section 9 of this ordinance.
- D. Except as otherwise provided, all vehicles used in the collection and/or transportation of waste shall be equipped with leak-proof metal body of the compactor type. If a Franchisee uses a specially designed, motorized local collection vehicle for transporting solid waste over short distances from residential or commercial stops to waiting trucks, the container portion of such vehicle shall be equipped with a cover, adequate to prevent scattering of the load. If any pickup truck or open-bed truck is used by a Franchisee, the load shall be covered with an adequate cover to prevent scattering of the load. All vehicles shall be operated in conformity with all ordinances of the City. All vehicles shall be properly licensed, registered, and equipped in compliance with the motor vehicles laws of the State of Oregon.
- E. Upon receipt of a written complaint about service under this ordinance, the Franchisee shall, within seven (7) days, reply to the complainant in writing and furnish a copy of both pieces of correspondence to the City.
- F. Maintain a bill paying station or address within Tillamook County; provide a telephone service so that the Franchisee may be reached by the public during the period of 8:00 a.m. to 4:00 p.m. Monday through Friday. Telephone service means local non-toll telephone service available to customers of Bay City.
- G. Collect no residential solid waste before 5:00 a.m. or after 7:00 p.m. unless this condition is waived by the City Council, except during the Daylight Savings Time when no collection shall be made after 9:30 p.m.

- H. Provide collection and disposal of solid waste to anyone within the City limits of City of Bay City if a request is made for such service.
- I. The Franchisee shall provide the opportunity to Recycle in accordance with Senate Bill 405 (Chapter 759, Oregon Laws, 1983) also known as the "Opportunity to Recycle Act," which is codified in ORS 459.165 - 459.200 and 459.250. In addition, the Franchisee shall comply with any and all rules and regulations adopted by the Department of Environmental Quality.
- J. Provide each solid waste service customer with a copy of the current rate schedule, collection rules and regulations, and scheduled day of collection.
- K. Permit inspection by the City of the Franchisee's facilities, equipment, business records pertaining to Bay City and personnel at reasonable times.
- L. Respond to all calls for special hauling within ninety--six (96) hours of receiving said calls unless a later pickup is agreeable.
- M. Insure that every vehicle or container used for the transportation of solid waste through the streets shall be maintained in a reasonably sanitary condition.

Section 7. Transfer, modification or revocation of franchise.

- A. The Franchisee shall not transfer this franchise or any portion thereof to other persons or entities, including transfer of the controlling interest of a corporation, without thirty (30) days written prior notice of the intent and without written approval of the City Council, which consent shall not be unreasonably withheld.
- B. Failure to comply with the provisions of this ordinance after written notice and a reasonable opportunity to comply shall be grounds for the modification, revocation or suspension of this franchise by the City.
- C. Upon receipt of the written notice, referred to in subsection (B), the Franchisee shall have thirty (30) days from the date of mailing of the notice in which to comply or to request a public hearing before the City. A request for a public hearing before the City shall be made in writing and in the event a public hearing is held, the Franchisee and other interested persons shall have a reasonable opportunity to present information and testimony in oral or written form.
- D. Either party to this franchise shall have a right to a public hearing before the City for the purposes of modification of the rates prescribed in Section 8.

Section 8. Rates. The rates for service under this ordinance shall be those rates set by Resolution 93-11. Said rates shall remain in effect until a change in rates is approved by the City by resolution and after public hearing. The City shall establish from time to time rate changes by resolution. In determining the appropriate rate to be charged by the Franchisee, the City may consider any or all of the following:

- A. The cost of performing the service to be provided by the Franchisee.
- B. The anticipated increase in the cost of providing this service.
- 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 investment of the Franchisee and the value of the business and the necessity that the Franchisee have a reasonable rate of return.
- 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 residence and other users of the service.
- G. The local wage scales, cost of management facilities and land fill and dumping fees or charges.
- H. Any profit or cost savings resulting from recycling, and any additional costs resulting from recycling.
- I. Any other information necessary for rate review.

Section 9. Subcontracts. The Franchisee shall not subcontract with another person on a regular, periodic or long-term basis to provide service or solid waste management service under this ordinance without prior City approval. Such subcontract shall not relieve the Franchisee of responsibility for compliance with this ordinance.

Section 10. Public Responsibility.

- A. The Franchisee, the City and the public shall comply with the provisions of state law, including but not limited to ORS Chapter 459, ORS 654 (Employment Safety and Health), and ORS Chapter 656 (Workers' Compensation) as well as the regulations promulgated pursuant thereto by the Department of Environmental Quality, the Workers' Compensation Department, and the State Accident Insurance

Fund. The rules of the administration of the Oregon Safe Employment Act and the Oregon Occupational Safety and Health Code shall be complied with. The following requirements shall pertain to service under this ordinance:

- 1) No garbage receptacle designed for manual pickup for individual residence service shall exceed thirty-two (32) gallons in size nor weigh more than sixty (60) pounds gross loaded weight. Cans shall be tapered so they are larger at the top and have a place for hand hold at the bottom. Franchisee shall not be required to service underground cans unless the property owner places the cans above ground for pickup.
 - 2) To protect against injury to employees of the Franchisee and to protect against rodent and fire danger, cans shall be rigid and composed of materials that resist splitting or cracking from changes in weather conditions.
 - 3) The customer shall provide safe access to the pickup point so as not to jeopardize the persons or equipment supplying service or the motoring public.
- B. To protect the privacy, safety, pets and security of the customers, and to prevent unnecessary physical and legal risk to the Franchisee and its employees, a residential paying customer shall place the container to be emptied outside a locked or latched gate and outside any garage or other building. Nothing contained herein shall prevent or discourage the use of a sight obscuring waste receptacle screening for commercial or industrial containers or drop boxes.
- C. Stationary compactors for handling solid waste shall comply with applicable federal and state safety regulations. No such compactor shall be loaded so as to exceed the safe loading design limit or operation limit of the collection vehicles used by the Franchisee. A person who wishes services for a compactor shall, prior to acquisition of such compactor inquire of the Franchisee as to compatibility of Franchisee's equipment or equipment which the Franchisee is willing to acquire.
- D. Putrescible solid waste shall be removed from the premises of a customer at regular intervals not to exceed seven (7) days in accordance with Oregon Administrative Rules 340-61-070.
- E. Except as otherwise expressly provided in this ordinance, any person who receives a service shall be responsible for payment of said service in accordance with the rate

schedule approved by the City Council at the time service is rendered.

Section 11. Acceptance. Within fifteen (15) days after the effective date of this ordinance, the Franchisee shall file with the City Recorder a written acceptance of its franchise.

Section 12. City Enforcement. The City, through its designated officers and employees, shall take such steps as it considers appropriate within the power of the City to take, to protect the rights of the Franchisee and the City in performance of service or waste management service and shall cooperate with Franchisee in protecting such rights.

Section 13. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

PASSED and ADOPTED by the City Council this 13th day of May, 1997 and APPROVED by the Mayor this 13th day of May, 1997.

/s/ Albert Griffin
Albert Griffin, Mayor

/s/ Linda Wheeler

Linda Wheeler, City Recorder

ACCEPTED BY FRANCHISEE:

/s/George Reding Date 5/16/97
George Reding, dba
R. Sanitary Service