

ORDINANCE NO. 1562

AN ORDINANCE GRANTING TO HOOD RIVER GARBAGE SERVICE, INC. A FRANCHISE FOR GARBAGE SERVICE AND SOLID WASTE MANAGEMENT FROM THE CITY OF HOOD RIVER; ESTABLISHING REQUIREMENTS FOR REFUSE DISPOSAL; AND REPEALING SECTIONS OF CHAPTER 8.04 OF THE HOOD RIVER MUNICIPAL CODE.

THE CITY OF HOOD RIVER ORDAINS AS FOLLOWS:

Section 1.     SECTIONS REPEALED.     Sections 8.040.010

thru 8.04.200 are hereby repealed.

Section 2.     PURPOSE, POLICY AND SCOPE.

1. In order to protect the environment and to conserve energy and natural resources within the City of Hood River, to provide the Opportunity to Recycle, and to otherwise provide for solid waste management, it is declared to be the public policy of the City of Hood River to regulate solid waste management to:

a. Giving due consideration to economic and technical feasibility, establish priorities on managing solid waste from the City by: First, reducing the amount of solid waste generated; Second, reusing material for the purpose for which it was originally intended; Third, recycling the material that cannot be reused; Fourth, recovering material where possible; and Fifth, assuring that remaining wastes will be disposed of in a landfill that fully meets all requirements of state law and the Department of Environmental Quality.

b. Provide the Opportunity to Recycle as part of the overall solid waste collection system taking advantage of coordinated area-wide service, promotion, education and marketing.

c. Encourage research and demonstration projects in recycling, reuse, resource recovery and solid waste management

generally by and through the franchise with technical assistance of other persons.

d. Insure safe, economical and comprehensive solid waste service.

e. Insure rates that are just, fair, reasonable and adequate to provide necessary public service and to prohibit rate preferences and other discriminatory practices.

f. Provide for technologically and economically feasible reuse, recycling and other resource recovery.

2. Except for the franchisee no person shall provide service or offer to provide or advertise for the performance of service.

Section 3. DEFINITIONS.

1. The following terms shall have the meaning given them by ORS 459.005: "Collection Franchise", "Collection Service", "Recyclable Material", "Energy Recovery", "Material Recovery", "Recycling", "Reuse", "Source Separate" and "Solid Waste Management". The "Opportunity to Recycle" shall be as defined by ORS 459.165.

2. City. The City of Hood River.

3. Council. The City Council of the City of Hood River.

4. Franchisee. The person or persons granted authority by Section 4 of this ordinance or a subcontractor to such person or persons, if approved by the Council.

5. Hazardous Waste. Any Waste defined as hazardous wastes by or pursuant to ORS Chapter 459; or defined as hazardous wastes by another governmental unit having jurisdiction; or found by the franchisee to be hazardous to service workers, to service

equipment or to the public.

6. Person. Any individual, partnership, association, corporation, trust, firm, estate, joint venture or other private or public legal entity or agency.

7. Service. The collection, transportation, reuse, recycling or other resource recovery from or disposal of solid waste.

8. Service Area. The City of Hood River and any area annexed hereafter.

9. Resource Recovery. The process of obtaining useful material or energy resources from solid waste, including energy recovery, materials recovery, recycling or reuse of solid waste.

10. Solid Waste. All putrescible and non-putrescible waste including but not limited to, garbage, rubbish, refuse, ashes, swill; wastepaper, corrugated or cardboard; grass clippings; compost; residential, commercial, industrial, demolition and construction wastes; discarded residential, commercial and industrial appliances, equipment and furniture; discarded, inoperable or abandoned vehicles or vehicle parts and vehicle tires; manure, vegetable or animal solid or semi-solid waste, dead animals and all other wastes not excepted by this subsection. Solid Waste does not include:

a. Hazardous waste as defined in Section 5 of this section.

b. Sewer sludge and septic tank and cesspool pumping or chemical toilet waste.

c. Reusable beverage containers as defined in ORS 459.860.

11. Waste. Material that is no longer usable by or that is no longer wanted by the sources of the material, which material is to be disposed of or be reused, recycled or otherwise resource recovered by another person.

a. The fact that all or any part of the materials, which would otherwise come within the definition of "waste" may have value and thus be reused, recycled or otherwise recovered does not remove them from this definition.

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

Section 4. FRANCHISE AND EXCEPTIONS.

1. The council finds that, to achieve the purposes of and implement the policy of Section 2 of this Ordinance including, without limitation, the Opportunity to Recycle, it is necessary to extend an integrated franchise for collection of recyclables and solid wastes, upon the basis of adequate public service.

2. There is hereby granted to Hood River Garbage Service, Inc. pursuant to ORS 459.165 through ORS 459.200, the exclusive right, privilege and franchise to provide service within the City limits.

3. Pursuant to ORS 459.200, the Council further finds that, to improve efficiency of collection of recyclable materials; to provide adequate volume to insure the economic feasibility of recycling more materials by more participants in the collection system; to take advantage of actual and potential joint notice, promotion and education efforts on recycling; and to improve the creation, maintenance and availability of markets and stability

of markets for recyclable material, the franchisee shall, to the extent feasible, cooperate with others engaged in providing the Opportunity to Recycle in adjacent or other areas.

4. Nothing in this franchise shall:

a. Prohibit any person from transporting solid waste he produces himself to an authorized disposal site or resource recovery facility, providing he complies with Section 14 of this ordinance.

b. Prohibit any person from engaging in a charitable, civic or benevolent activity. Merely operating as a nonprofit entity does not qualify under this exception.

Section 5. FRANCHISE TERM. The rights, privileges and franchise herein granted shall be considered as a continuing four year franchise subject to termination as follows:

Unless grounds exist for suspension, modification or revocation of the franchise under Section 9, this ordinance shall be considered as a continuing four year term. That is, beginning on January 1st of each year the franchise will be considered renewed for an additional four year term, unless at least 30 days prior to January 1st of any year the City shall notify the franchisee of intent to terminate the franchise. Upon the giving of such notice of termination, the franchisee shall have a franchise which will terminate four years from the date of notice of termination.

In the event the franchisee shall desire to terminate service given under the terms of this franchise, then it shall give not less than one hundred eighty days notice of the intent to terminate

service and obligations under the franchise. In the event of a voluntary termination of service by the franchisee, the City shall have a right and option to purchase all of the equipment of the franchisee at a price which will be agreed upon between the parties. If the parties cannot agree to a purchase price, then the same shall be submitted to arbitration. Each party shall select one arbitrator and the two arbitrators selected shall select a third party, and the three arbitrators shall determine a fair and equitable price to be paid by the City to the franchisee for all equipment to be purchased.

Section 6. FRANCHISE FEE. In consideration of the franchise granted by this Ordinance, the franchisee shall pay to the City of Hood River, Oregon, the sum of \$200.00 annually to be paid on or before the 1st day of August of each year while such franchise is in effect or prorated part thereof.

Section 7. FRANCHISEE RESPONSIBILITY.

1. The franchisee shall:
  - a. Dispose of solid wastes not reused, recycled or resource recovered at a site approved by the local government unit having jurisdiction in compliance with ORS Chapter 459 and regulations promulgated thereunder.
  - b. Provide and keep in force public liability insurance in an amount not less than \$50,000.00 to any claimant for any number of claims for damage to or destruction of property, including consequential damages, arising out of a single accident or occurrence, \$100,000.00 to any claimant for all other claims arising out of a single accident or occurrence and \$300,000.00 for any number of claims arising out of a single accident or

occurrence, or in such higher amounts as may hereafter be required by the City up to amounts established as municipalities' limits of liability under ORS 30.270 or any similar statute in effect hereafter, with the policy or policies of insurance to name the City as an additional insured and with evidence of such insurance to be filed with the City Recorder.

c. The franchise shall not take effect until the franchisee has filed with the City Recorder a written acceptance of the franchise.

d. Provide sufficient collection vehicles, containers, facilities, personnel and finances to provide all types of necessary service or subcontract with others, if consent to do so is given by the Council, to provide such service pursuant to Section 12 of this ordinance.

e. Respond to any written complaint on service in accordance with franchisee's written complaint procedure policies.

f. Contract for the right to dispose of collected wastes that are not reused, recycled or otherwise resource recovered during the term of the franchise and further for self-hauling by citizens of the City for so long as that is permitted by the City or by regulatory agencies.

2. The franchisee shall provide the level of recycling and reuse service required by ORS 459.165 through ORS 459.200 together with applicable existing or future ordinances, laws, regulations, standards or guidelines promulgated thereunder; provided, however, that the City of Hood River will support and assist the franchisee in carrying out this responsibility. The franchisee agrees to:

a. Operate a recycling depot at Hood River Recycling &

Transfer Station for the purpose of providing a public facility where residents may take recyclable materials.

b. Provide at least once-a-month collection of recyclable materials for all single family residential dwelling units within the City. What materials are recyclable materials may be periodically determined by the Council. For single family residential recycling collection service, recyclable materials shall be properly cleaned and prepared newspapers, cardboard, tinned cans, glass separated by colors, and aluminum.

c. Provide collection of recyclable materials from commercial, industrial, institutional, governmental and multi-family residential sources at least monthly, or as otherwise directed.

d. Provide notice to potential and actual recycling and reuse sources and sponsor educational and promotional activities to increase public participation in recycling.

e. Provide any additional recycling or reuse service as directed by the Council as is now or hereafter required by state laws or regulations or by recycling or reuse plans adopted by the Council.

3. The City and the Franchisee mutually agree that:

a. Pursuant to ORS 459.200, the net cost of required or permitted recycling and reuse together with any notice, educational or promotional service on recycling and reuse shall be considered as a cost of doing business, and shall be repaid to the franchisee as part of the rate base and shall be considered in all future rate adjustments.

b. The franchisee may subcontract all or a portion of the services required by subsection 2 of this Section pursuant to Section 12 of this Ordinance.



c. The franchisee may impose reasonable requirements on those participating in source separation programs to ensure quality control necessary to assure successful processing and marketing. Such requirements shall be filed with and be approved by the City Administrator prior to implementation.

4. 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 quantity of solid waste handled and location of customers so long as such rates are reasonably based upon costs of the particular service and are approved by the City Council in the same manner as other rates nor shall it prevent any person from volunteering service at reduced cost for a charitable, community, civic or benevolent purpose.

b. Transfer of this franchise or any portion thereof to other persons or any subcontract for services to be provided under this franchise or transfer or issuance of stock in the franchisee unless such transfer or issuance is to Katherine M. Durr, Donald R. Durr, Sharron E. Rath or R. John Rath, who are presently shareholders, is prohibited without the prior written approval of the Council. The Council may in its absolute discretion grant or deny consent for any such transfer or subcontract. A pledge of this franchise as financial security shall be considered as a transfer for the purposes of this subsection. If the City approves a transfer the Council may attach whatever conditions it deems appropriate to guarantee maintenance of service and compliance with the terms of the franchise.

5. The franchise holder shall make collection of and haul away not less often than weekly the solid waste from all premises served by it.

a. The only exception shall be as follows: Senior Citizens (65 years or older) who request service of less than weekly shall be permitted to have service provided to them every other week. This less than weekly service shall only be permitted if the senior citizen has no more solid waste than one 32 gallon can and that can shall not exceed 60 pounds gross loaded weight.

Section 8. SUPERVISION. Service provided under the franchise may be under the supervision of the Council. Franchisee shall, at reasonable times, permit inspection of its facilities, equipment and personnel providing service.

Section 9. COMPLAINT - FRANCHISE REVOCATION.

1. In the event that a written complaint is made by any customer of the franchisee that collection service is not being performed in the manner required by this franchise, or if the Council on it's own motion registers a complaint, unless the complaint is withdrawn, a public hearing shall be held by the Council upon such complaint. The Council shall give written notice of such complaint, specifying the nature of the violation of the franchise to the franchisee not less than ten (10) days prior to the date of hearing. At such hearing the Council shall determine if the collection service is being performed in accordance with this franchise. The franchisee and other interested persons shall have an opportunity to present oral, written or documentary evidence to the Council. If after the hearing it is the opinion of the Council that such service is not being performed as required

by this franchise, the Council shall have the power to require compliance with the franchise within a thirty (30) day period. If in the opinion of the Council the franchisee fails to comply with the Council's order within such 30 day period then the Council shall have the power to suspend, modify or revoke the franchise held by the franchisee in addition to imposing any other penalties which may be imposed under the terms of this franchise.

2. If in the opinion of the Council there is immediate and serious danger to the public through the creation of a health hazard as a result of the franchisee not complying with the terms of the franchise, the Council may take whatever action it deems appropriate within a time specified in a notice to the franchisee explaining the threat and the proposed action by the Council, and may dispense with a public hearing prior to taking such action.

Section 10. PREVENTING INTERRUPTION OF SERVICE.

The franchisee agrees as a condition to this franchise that whenever the Council determines that the failure of service or threatened failure of service would result in creation of an immediate and serious health hazard or serious public nuisance, the Council may, after a minimum of 24 hours actual notice to franchisee and a public hearing if franchisee requests it, authorize another person to temporarily provide the service or use and operate the land, facilities or equipment of the franchisee through leasing to provide emergency service. The Council shall return any seized property and business upon abatement of the actual or threatened interruption of service.

Section 11. 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 for any such blocking of access, or

2. Excessive weather conditions render providing service unduly hazardous to persons providing service or such termination is caused by accidents or casualties caused by an act of God or a public enemy, or

3. A customer has not paid for service provided after a regular billing and after a 15 day written notice to pay, or

4. Ninety days written notice is given to the Council and to affected customers and written approval is obtained from the Council.

Section 12. SUBCONTRACTS. The franchisee may subcontract with others to provide a portion of the service where franchisee does not have the necessary equipment or service if the franchisee first obtains the written consent of the Council, which may be given or not in Council's discretion. Any subcontract allowed shall not relieve the franchisee of total responsibility for providing and maintaining service or from compliance with this franchise.

Section 13. RATES. The Council shall have the power to determine rates for service provided in the city by the franchisee. Initial rates shall be those which are on file with the City Recorder as of the effective date of this franchise. The Council shall have the right to make changes in rates by resolution after a hearing has been held. Notice of a rate hearing

shall be given in not less than two consecutive publications in a weekly newspaper published in the city.

In establishing or modifying rates, the Council shall give due consideration to ORS 459.200; current and projected revenues and expenses; overhead expense; the cost of acquiring and replacement of equipment; the services of management; the cost of providing for future, added or different service; a reasonable return to the franchisee for doing business based on a percentage of gross receipts; the net costs of reuse and recycling together with the cost of notice, promotion, and education of and for recycling and reuse; research and development; and such other factors as the Council deems relevant. The Council may consider rates established by other jurisdictions for similar service under the same or similar service conditions.

Section 14. PUBLIC RESPONSIBILITY. In addition to compliance with ORS Chapter 459 and regulations promulgated pursuant thereto persons utilizing the franchisee's services shall comply with the following standards:

1. To prevent recurring back and other injuries to collectors and other persons and to comply with the safety instructions to collectors from the State Accident Insurance Fund.

a. No garbage can shall exceed 60 pounds gross loaded weight nor 32 gallons in size. Only round garbage cans shall be used. Cans should be tapered with a smaller bottom than top opening.

b. Sunken refuse cans or containers shall not be used in new construction.

c. To protect against injuries to users or collectors, to protect against damage and spilling during cold weather, all cans

shall be rigid, rodent and fireproof.

d. The user shall provide safe access to the pickup point so as not to jeopardize the safety of the driver of a collection vehicle or the motoring public or to create a hazard or risk to the person providing service. Where the Council 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. The user shall provide a safe alternative access point or system.

2. To protect the privacy, safety, pets and security of customers and to prevent unnecessary physical and legal risk to the collectors, a residential customer shall place the container to be emptied outside of any locked or latched gate and outside of any garage or other building.

3. No stationary compactor or other container for commercial or industrial use shall exceed the safe loading design limit or operation limit of the collection vehicles provided by the franchisee serving the service area. Upon petition of a group of customers reasonably requiring special service, the Council may, where economically feasible, require the franchisee to provide subcontract provision for vehicles capable of handling specialized loads.

4. To prevent injuries to users and collectors, stationary compacting devices for handling solid wastes shall comply with applicable federal and state safety regulations.

5. Any vehicle used by any person to transport solid wastes shall be so loaded and operated as to prevent the wastes from dropping, sifting, leaking, blowing or escaping from the vehicle onto any public right-of-way or lands adjacent thereto.

6. Any person who receives service shall be responsible for payment for such service. When the property owner of a single or multiple dwelling unit or mobile home or trailer space has been previously notified in writing by the franchisee of his contingent liability, the property owner shall be responsible for payment for service provided to the occupant of such unit if the occupant does not pay for the service.

7. No person shall place hazardous waste out for collection by the franchisee nor place hazardous waste in any container, box or vehicle owned or operated by the franchisee or by the City without the prior permission of the franchisee and of the City Administrator.

8. No unauthorized person shall place material in or remove material from a solid waste collection container without permission of the owner of the container. For the purpose of this section, the franchisee is the "owner" of containers supplied by the franchisee.

9. No unauthorized person shall remove solid waste or recyclable material placed out for collection and resource recovery by the franchisee.

10. Unless permitted by the franchisee, no person shall install or use any container of one cubic yard or greater in capacity for pickup by franchisee other than those supplied by franchisee. The purpose of this subsection is to insure safe equipment, sizes and weights and facilitate the franchisee utilizing the most efficient collection equipment and methods. Rates for use of franchisee's containers and drop boxes shall be included in the adopted rate schedule.

11. All garbage and putrescible materials shall be stored in cans supplied by the generator or producer or in containers supplied by the franchisee. When cans are used, they shall be covered except during loading and emptying.

12. The producer or generator of waste shall clean both cans and containers and shall keep the area around such cans or containers free of accumulated wastes. The franchisee shall provide periodic maintenance to containers supplied by franchisee.

13. No person shall throw, place or scatter any refuse or garbage over or upon any premises, street (public or private) or adjacent area either with or without the intent to later remove or burn such refuse or garbage, nor suffer or permit accumulation of such refuse and garbage, nor allow the premises owned, occupied or controlled by such person to become or remain offensive, unsanitary, unsightly, or unsafe to public health or be a fire hazard.

14. It shall be unlawful for any person to store or permit the storage of garbage on or about the premises or the premises occupied by him unless such refuse is kept in proper containers as required by this franchise.

15. No cans shall be kept or stored on any public street in the City except cans may be stored and maintained in alleys adjacent to and for the use of business establishments. In blocks in which there are alleys such cans shall be kept on private property in a convenient and accessible location to such alley. In blocks which there are no alleys such cans shall be placed on private property in such location as is most readily accessible to the street without interfering with the convenient, sightly and sanitary enjoyment of such property.



Section 15. CONSTRUCTION. Any finding by any court of competent jurisdiction that any portion of this franchise ordinance is unconstitutional or invalid shall not invalidate any other provision hereof.

Section 16. ENFORCEMENT. The City shall enforce the provisions of this franchise ordinance by administrative, civil or criminal action as it deems necessary to obtain compliance. The franchisee may also institute proceedings necessary to obtain compliance.

Read for the first time: June 24, 1985.  
Read for the second time: June 24, 1985.

PASSED by the Council of the City of Hood River this 24<sup>th</sup> day of June, 1985.

Dorothy M. Sumpers  
City Recorder

APPROVED by the Mayor of the City of Hood River this 24<sup>th</sup> day of June, 1985.

James S. Oralley  
Mayor

The terms and conditions of the franchise are hereby accepted.

DATED 7/2, 1985.

HOOD RIVER GARBAGE SERVICE, INC.

By Donald R. Durr  
Name  
Pres.  
Title

By Ralph Rath  
Name  
Sec. - Treas  
Title

By Katherine M. Durr  
Name  
Vice-President  
Title

By Sharon E. Rath  
Name  
Vice-President  
Title