

## ORDINANCE 1725

An Ordinance Regulating The Collection And Disposal Of Solid Waste; Providing For The Collection Of Recyclable Material; Providing For Franchises For Persons Who Collect And Dispose Of Solid Waste And Recyclable Materials; And Granting Of Non-Exclusive Franchise Hereunder To Hood River Garbage Service, Inc.

The City Of Hood River Ordains As Follows:

Ordinance 1562 is hereby repealed.

Chapter 8.04 of the Hood River Municipal Code is amended to read as follows:

### Sections:

- 8.04.010 Grant of Non-Exclusive Franchise
- 8.04.020 Definitions
- 8.04.030 Compliance With State Laws
- 8.04.040 Franchise Required
- 8.04.050 Franchise -- Application and Franchise Fee; Granting and Transfer of Franchises
- 8.04.060 Facilities and Records of Franchisees
- 8.04.070 Insurance
- 8.04.080 Hold Harmless
- 8.04.090 Service Requirements--Generally
- 8.04.100 Recycling Requirements
- 8.04.110 Recycling Notification and Education
- 8.04.120 Rates and Charges
- 8.04.130 Suspension, Modification or Revocation of Franchise
- 8.04.140 Preventing Interruption of Service
- 8.04.150 Termination of Service
- 8.04.160 Submerged Containers Prohibited
- 8.04.170 Container Weight Limits
- 8.04.180 Solid Waste to be Hauled to Designated Sites Only
- 8.04.190 Vehicle Requirements For Haulers
- 8.04.200 Violations

### Section 8.04.010. Grant of Non-Exclusive Franchise.

(1). The City hereby grants to Hood River Garbage Service, Inc., an Oregon Corporation, a non-exclusive right, privilege and franchise to operate and conduct a collection service within the service area, subject to the terms and conditions contained herein.

(2). A franchise to a person other than Hood River Garbage Service, Inc., shall be granted only after the Council determines that a need for the service exists.

Section 8.04.020. Definitions. The following terms shall have the meaning given them by ORS 459.005 and OAR 340-90-010: "Collection service", "Recyclable material", "Energy recovery", "Material recovery", "Recycling", "Reuse", "Source separate" and "Solid waste management," and "Yard debris." The term "Opportunity to recycle" shall be as defined by ORS 459A.005 and the applicable regulations.

"City" shall mean the City of Hood River.

"Collectible solid waste" shall mean solid waste collected and hauled by a franchisee, including special wastes in a limited quantity, but does not include sewage sludge, septic tank and cesspool pumpings or other sludge; discarded or abandoned vehicles or parts thereof; manure, vegetable or animal solid and semisolid wastes; hazardous wastes as defined in ORS 466.005; and materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals.

"Council" shall mean the City Council of the City of Hood River.

"Franchisee" shall mean a person who is granted a franchise pursuant to the provisions of this ordinance.

"Multi-Family Housing" shall mean a dwelling of five (5) or more units.

"Hazardous Waste" shall have that meaning in ORS Chapter 459; that meaning given by another governmental unit having jurisdiction; or waste found by the collector to be hazardous to its service providers, to service equipment or the public.

"Person" shall mean a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate, or any other legal entity, and may include the plural if the context requires.

"Resource Recovery" shall mean the process of obtaining useful material or energy resources from solid waste, including energy recovery, materials recovery, recycling or reuse of solid waste.

"Service" shall mean the collection, transportation, reuse, recycling or other resource recovery from or disposal of solid waste.

"Service Area" shall mean the City and any area annexed hereafter.

"Solid waste" shall mean all putrescible and nonputrescible wastes, including, but not limited to, garbage, rubbish, refuse, ashes, waste paper and cardboard; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction wastes; discarded or abandoned vehicles or parts thereof; discarded home and industrial appliances; manure, vegetable or animal solid and semisolid material, dead animals, infectious waste as defined in ORS 459.386; but the term does not include:

(a). Hazardous waste as defined in ORS 466.005.

(b). Material used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals.

"Yard debris" shall mean tree trimmings less than six (6) inches in diameter, prunings, shrubbery, and other similar material.

Section 8.04.030. Compliance With State Laws. All franchisees shall comply with all applicable statutes and administrative regulations concerning the collection, storage, and disposal of collectible solid waste and recyclable material enacted by the State of Oregon. In the event the State statutes or regulations impose duties upon collectors which are in addition to or different from the duties imposed by this ordinance, the State statutes and regulations shall be fully complied with.

Section 8.04.040. Franchise Required. It shall be unlawful for any person to provide a collection service upon the streets and public ways of the City, without having first obtained a franchise as hereinafter provided, except under the following circumstances:

(a). Non-profit religious, charitable, youth, community service, or other benevolent organizations shall be exempt from the requirements of this section 8.04.040 when collecting recyclable materials for fund raising purposes. Any collection of recyclable materials by such organizations shall be carried out in a manner which will assure the recyclable materials are transported in a secure manner to prevent littering of the streets and highways of the City and adjoining areas.

(b). Any person may transport collectible solid waste produced by the person or recyclable material produced by the person upon the streets of the City without procuring a franchise therefor

and without complying with the regulations imposed upon collectors under this ordinance; provided that such collectible solid waste material or recyclable material must be hauled in such a manner as to prevent leakage or litter upon the streets, and must be transported directly to an authorized disposal site or transfer station. The manner and place of disposal shall be as designated by the person or persons in charge of the disposal site or the transfer station.

(c). Recyclable material or collectible solid waste transported by employees of the City, while on duty.

(d). The collection, transportation or redemption of returnable beverage containers under ORS Chapter 459A and that portion thereof commonly known as the "Bottle Bill".

Section 8.04.050. Franchise--Application and Franchise Fee; Granting and Transfer of Franchises.

(1). Any person desiring to provide a collection service, shall apply to the City for a franchise on a form provided by the City. Attachments required by the form shall be included with the application form. The application shall be accompanied by a non-refundable application fee of \$150.00.

A. The franchisee shall pay a franchise fee equal to three percent (3%) of the franchisee's gross revenue from the collection service. The fee shall be payable on either a quarterly basis, on the fifteenth days of April, July, October, and January of each year, or on a monthly basis by the 20th of each month, at the option of the franchisee. The amount of the annual franchise fee shall be reviewed on an annual basis, and may be increased upon the Council's determination that an increase is in the public interest.

(2). The City Council may increase or limit the number of franchises which may be in effect at any given time, to protect the public health and welfare, and ensure the ability of existing franchisees to operate in an efficient and successful manner. Franchises shall be transferable only upon the express approval of the transferee by the City Council.

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

(4). A franchise granted by the City shall be for a continuing five (5) year term from and after the issuance date. Unless the franchisee notifies the City in writing thirty (30) days prior to the annual anniversary of the issuance date of its election not

to extend the franchise, the franchise shall automatically extend an additional five (5) years on the same terms and conditions as provided in this ordinance, as it may from time to time be amended.

A. Upon delivery of the notice required in subsection (4) above, the remaining term for the franchise shall be for a period of four (4) years from the anniversary of the issuance date of that year.

B. The City may elect not to extend a franchise by written notice to the franchisee ninety (90) days prior to the anniversary of the issuance date, in which case, the franchisee shall have a flat term of four (4) years remaining following the anniversary of the issuance date.

Section 8.04.060. Facilities and Records Of Franchisee.

(1). Franchisee shall, at reasonable times, permit inspection of its facilities, equipment and personnel providing service.

(2). Franchisee shall maintain a proper set of books or records of account in accordance with sound accounting principles and practices applicable in the industry. The books and records shall show:

- a. An accurate reflection of income and expenses from service provided pursuant to the license and/or franchise, and financial condition of the licensee or franchisee;
- b. Address of each recipient of the service;
- c. Dates of service;
- d. Types of service provided, including, but not limited to, collectible solid waste service and/or recyclable material service;
- e. Rates charged for each service.

(3). If the franchisee operates an integrated collection and disposal system serving the City of Hood River and adjacent areas, the records shall reflect the income, expenses and financial conditions of the integrated operation. The books and records shall be open to the inspection of the Finance Director or the Director's authorized designee at all reasonable times.

(4). On or before March 31, of each year, all franchisees shall file a sworn statement with the City Recorder summarizing the income, expenses and financial condition of the franchisee as reflected in the books and records described above. The release of any financial information contained in such statement shall be governed by OAR 340-90-120 and applicable state law.

(5). Franchisee shall keep records of the information required to be reported under OAR 340-90-100 and shall assist Hood River County in complying with the reporting requirements therein.

Section 8.04.070. Insurance. Before beginning to operate the service, franchisee shall procure, and during the term of the franchise, the franchisee shall continue to carry comprehensive general liability insurance in a responsible company with a combined single limit of not less than \$500,000.00 for bodily injury/property damage, or in the 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. The policy or policies of insurance shall name the City as an additional insured and the franchisee shall file evidence of such insurance with the City Recorder. The policy or policies shall be without prejudice to other existing coverage and shall provide that the City shall be given thirty (30) days advance written notice if a policy's limits are reduced or if a policy is terminated or altered.

Section 8.04.080. Hold Harmless. Each franchisee shall hold harmless the City, its officials, agents and employees, and shall indemnify the City, its officials, agents and employees for any claims of injury to property or person that may arise as a result of any activity carried on by the collector.

Section 8.04.090. Service Requirements--Generally.

(1). Franchisees shall provide sufficient collection vehicles, containers, facilities, personnel and finances to provide service or subcontract with others, if prior consent to do so is given by the Council, and to provide such service pursuant to the terms and conditions of this ordinance.

(2). Franchisees shall furnish and maintain at its own expense, or by contract, an authorized disposal site for collectible solid waste and/or recyclable materials. Consent of counsel is not required in this subsection.

(3). Franchisees shall transport collectible solid waste and/or recyclable materials in compliance with all applicable state laws and regulations governing collection, loading and transport of collectible solid waste.

(4). Franchisees shall respond to any written complaint on service in accordance with the collector's complaint procedure policies.

(5). Franchisees shall respond to all calls for service within a reasonable period of time, in addition to providing regular

service. Franchisees shall provide weekly residential collection service and service to commercial, industrial and governmental entities at least once per week. Additional service shall be provided if necessary to prevent the creation of a nuisance or health hazard.

Section 8.04.100. Recycling Requirements. The following requirements are intended to comply with the opportunity to recycle requirements set forth in ORS 459A.005, et seq., and the applicable regulations. Franchisee acknowledges that failure to meet or comply with the recycling requirements may result in a penalty against the City. Franchisee shall pay any such penalty if the reason the penalty was imposed was due to any non-compliance by franchisee of the provisions of Sections 8.04.100 and 8.04.110.

(1). Franchisees shall provide all residential customers with curbside recyclable material service on the same day and with the same frequency that collectible solid waste is collected from those customers. At least one durable container for use in curbside recyclable material service shall be provided by the collector to each residential service customer.

A. At a minimum, the franchisee shall pick up the following recyclable materials: newspaper, ferrous scrap metal, non-ferrous scrap metal, used motor oil, corrugated cardboard and kraft paper, aluminum, container glass, hi-grade office paper and tin cans.

(2). Franchisees shall provide all commercial customers and all multi-family housing customers regular on-site collection service of at least the following four (4) recyclable materials: newspaper, container glass, tin cans, and corrugated cardboard and kraft paper. The franchisee shall provide durable containers sufficiently sized to accommodate customer recyclable material needs and shall provide regular collection service consisting, at a minimum, of two monthly collections. Multi-family collection shall also include promotion and education directed to the residents of the multi-family dwelling units. This promotion and education requirement may be met by providing the notices specified in Section 8.04.110 directly to the residents.

(3). Franchisee shall operate one or more authorized recycling drop stations where the public may dispose of recyclable materials. Franchisee shall provide at least one of those stations within three (3) miles of City limits. Nothing in this ordinance prevents more than one franchisee sharing a drop station. Written information shall be available at each drop station for distribution to the public containing the following information:

- (a). Reasons why people should recycle;
- (b). List of recyclable materials; and
- (c). Instruction for the preparation of recyclable materials.

A. Franchisee shall provide separate secure containers for paper, cardboard, metals, glass, petroleum products and such other materials as the City or State of Oregon shall designate.

B. The containers shall be maintained in an aesthetically pleasing manner, painted and shall be monitored by the collector to ensure the containers are not filled to such a capacity that additional material is piled in the area of the container. Franchisee may provide containers for recyclable material on any property accessible to the public with the permission of the property owner, or designated person in charge of the property.

(4). At least twice per year, on a date or dates specified by the City, franchisee shall, at no additional charge to its customers or the City, collect residential yard debris for production of compost or other marketable products throughout the service area. The yard debris shall be prepared in accordance with HRMC Chapter 8.43. Franchisee shall also maintain one or more sites at which residents of the City may conveniently, at least once per week, and at no additional charge dispose of yard debris for the production of compost or other marketable products. Franchisee's promotional materials described in Section 8.04.110 below shall include information regarding yard debris disposal opportunities, including and promoting home composting.

(5). The franchisee may impose reasonable requirements for the preparation of recyclable materials for collection which relate to marketing, transportation, storage, or regulatory requirements and which shall be subject to approval by the City Manager prior to implementation.

A. The requirements for preparation shall provide that if a customer improperly prepares recyclable materials and the collector does not pick them up, the collector shall provide the service customer with written notice stating the reason. The written notice shall be on a form that is pre-approved in accordance with Section 8.04.100(5). Franchisee shall not be required to pick up improperly prepared recyclable materials, but franchisee will make every effort to collect all recyclable materials and continue customer education.

(6). Franchisee shall provide any additional recycling or reuse service as designated by the Council as may now or hereafter be



required by law, regulation or order, or by any recycling or reuse plan adopted by the Council.

Section 8.04.110. Recycling Notification and Education.

(1). Franchisees shall educate and inform customers with respect to reducing, reusing and recycling materials by providing:

a. Recycling notification and educational packets for all new residential, commercial and institutional collection service customers specifying, at a minimum, the following specific information:

- i. Reasons why people should recycle;
- ii. Name, address and phone number of person providing collection service; and
- iii. Listing of depots for recyclable materials at all sites serving the service area, including the materials accepted and hours of operation.

b. Monthly notification on the franchisee's customer billing invoice of the availability of recycling at no additional charge to the customer and the means by which further information may be obtained from the franchisee;

c. Quarterly recycling information to all residential, commercial and institutional collection service customers that includes the information in Section 8.04.110 (1)(a).

d. Annually recycling information that includes information regarding the benefits of recycling, proper preparation of recyclable materials for collection, proper handling and disposal of special wastes (household hazardous wastes), and the amount of materials recycled during the past year;

e. Targeting at least one community or media event to promote recycling by providing notification and education materials regarding recycling; and

f. Disseminating information to as many customers as possible using a variety of materials and media formats.

On a quarterly basis, franchisee shall meet with the City Manager to review compliance under this subsection (1).

(2). Franchisee shall file with the City Recorder any schedule it establishes to collect recyclable materials, designating collection date and frequency by area within the service area.

Section 8.04.120. Rates And Charges.

(1). Franchisee's rates for services shall be set by Resolution of the Council and only franchisees are required to charge rates under this Ordinance. The rates in effect at the time of passage of this Ordinance shall remain in effect until they are modified by the Council.

(2). All rates shall be just and reasonable and adequate to provide the necessary collection service and shall comply with OAR 340-90-040 (3)(h).

(3). In determining rates, the Council may consider, but is not limited to, the following factors:

- a. Rates charged for collection service in other cities in Oregon;
- b. The most recent January Consumer Price Index (CPI-W);
- c. Costs and revenues associated with providing the opportunity to recycle and the ability of a rate structure to encourage recycling;
- d. A minimum rate sufficient to provide a reasonable rate of return;
- e. The anticipated change in the cost of providing the service;
- f. The need for equipment replacement and the need for additional equipment to meet service needs and to be in compliance with federal, state and local law;
- g. Increase in population or increase of intensive development within the service area.

(4). Franchisee shall obtain approval from the Council in the same manner as rates are established of proposed changes or additions to service not covered by current rates prior to offering the new service.

(5). Once each year, either the City or the franchisee may initiate a rate change by providing sixty (60) days written notice of the change with accompanying justification of the proposed change.

(6). The franchisee shall not 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 the Council from establishing 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. The franchisee may volunteer service at reduced rates for a charitable, community, civic or benevolent purpose.

Section 8.04.130. Suspension, Modification or Revocation of Franchise.

(1). A franchisee's failure to comply with the provisions of this Ordinance shall be grounds for modification, suspension or revocation of the franchise, or other action as set forth below.

A. The City shall provide written notice to the franchisee of the grounds for modification, suspension, or revocation and the franchisee shall have not less than twenty (20) days from the date of mailing of the notice in which to comply or request a public hearing before the Council.

B. If the franchisee fails to comply within the period of time designated in the notice or the franchisee requests a hearing, a public hearing shall be held at which all interest persons shall have the opportunity to present oral, written or documentary evidence.

C. Upon making appropriate findings, the Council may suspend, modify or revoke the franchise or make such action contingent upon continued noncompliance, in addition to imposing any other penalties that may be imposed.

(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 Ordinance, 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. Franchisee shall reimburse the City for all expenses the City incurs in taking the action.

Section 8.04.140. Preventing Interruption of Service. Whenever under Section 8.04.130, 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 8.04.150. Termination of Service. Franchisee shall not terminate service to all or a portion of its customers unless:

a. 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;

b. 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;

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

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

Section 8.04.160. Submerged Containers Prohibited. The installation and use of submerged garbage or recycling containers is prohibited, as of the effective date of this ordinance. However, submerged containers in use prior to the effective date of this ordinance, may continue to be used subject to an additional charge to be set by resolution of the City Council. For the purpose of this section, a "submerged container" is any container, the bottom of which is below the elevation of the surrounding surface including, but not limited to, containers located in a concrete, metal or earthen well.

Section 8.04.170. Container Weight Limits. Franchisees shall not be required to pick up collectible solid waste garbage which, together with the container, weighs more than sixty (60) pounds.

Section 8.04.180. Solid Waste to be Hauled to Designated Sites Only. All persons in the City shall dispose of all solid waste before the same shall have become offensive, and not create a nuisance by permitting any solid waste to accumulate on or about premises, and to dispose of solid waste in the manner prescribed by this ordinance by hauling or causing the same to be hauled to an authorized disposal site or drop station.

Section 8.04.190. Vehicle Requirements For Haulers. It shall be unlawful for any franchisee to transport collectible solid waste in the City except in a vehicle which complies with State Department of Transportation requirements, is equipped with a

covered, watertight and drip-proof metal box with welded seams, and is thoroughly washed; provided, however, that non-liquids and innocuous substances may be conveyed in suitable conveyances with provision against litter by having a covered waterproof and closable box. All vehicles of a licensee shall comply with all applicable local, state and federal vehicle regulations, and be equipped with a covered waterproof closable box.

Section 8.04.200. Violations. Any person violating any of the terms of this ordinance shall, upon conviction thereof in the Municipal Court, or upon a plea of guilty before such Court, be subject to a fine not exceeding \$2,500.00 or to imprisonment in the County jail for a period not exceeding one (1) year, or to both such fine and imprisonment, and for the costs of prosecution.

Read for the first time MAY 12, 1997.

Read for the second time and passed: JUNE 9, 1997 to become effective thirty (30) days hence.

  
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Paul Cummings, Mayor

Attest:

  
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Anita R. Smith, City Recorder