

ORDINANCE NO. 402

AN ORDINANCE GRANTING TO BROOKINGS SANITARY SERVICE A FRANCHISE TO PROVIDE ALL SOLID WASTE MANAGEMENT AND RESOURCE RECOVERY SERVICES WITHIN THE CITY OF BROOKINGS; REPEALING ORDINANCES NOS. 199, 263 and 300; AND, DECLARING AN EMERGENCY.

The City of Brookings ordains as follows:

Section 1. Short Title. This Ordinance shall be known as the "Solid Waste Management Ordinance".

Section 2. Purpose, Policy and Scope. It is declared to be the public policy of the City of Brookings to regulate Solid Waste Management to:

- (1) Insure safe, economical and comprehensive solid waste service.
- (2) Insure rates that are just and reasonable and adequate to provide necessary public service.
- (3) Prohibit rate preferences and any other practice that might be discriminatory.
- (4) Provide for technologically and economically feasible resource recovery by and through the Franchisee.

Section 3. Definitions.

- (1) City. The City of Brookings.
- (2) Compensation. Includes:
 - (a) Any type of consideration paid for service including, but not limited to rent, the proceeds from resource recovery, and any direct or indirect provision for payment of money, goods, services or benefits by tenants, lessees, occupants or similar persons;
 - (b) The exchange of service between persons; and
 - (c) The flow of consideration from the person owning or possessing the solid waste to the person providing service, or from the person providing service to the person owning or possessing the solid waste.
- (3) Council. The city Council of the City of Brookings.
- (4) Franchisee. The person granted a Franchise by

Section 4. of this Ordinance and subcontractors or assignees of said Franchisee, if any and as so permitted hereunder.

(5) Person. An individual, partnership, association, corporation, trust, firm, estate or other private legal entity.

(6) Service. Collection, transportation or disposal of or resource recovery from Solid Waste.

(7) 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 (including education and promotion and all other costs required by the "Opportunity to Recycle" as set forth in ORS 459.165 - .200 and .250) of the same material.

(8) 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.

(9) Solid Waste. All putrescible and non-putrescible waste, including but not limited to garbage, rubbish, refuse, ashes, waste paper and cardboard; grass clippings; compost; residential, commercial, industrial demolition and construction wastes; discarded residential, commercial, and industrial appliances, equipment and furniture; tires; manure, vegetable or animal solid waste of semi-solid waste, dead animals and all other wastes not excepted by this sub-section. Solid waste does not include:

(a) Environmentally hazardous waste as defined in ORS 466.055.

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

(c) Reusable beverage containers as defined in ORS 459.005(18)(b).

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

(11) Waste. Useless or discarded materials.

Section 4. Exclusive Franchise and Exceptions.

(1) Exclusive Franchise. There is hereby granted to

Brookings Sanitary Service the exclusive right, privilege and franchise to provide solid waste management and resource recovery services within the incorporated limits of the City of Brookings as of the effective date of this Ordinance and in any area that may be hereafter annexed to the city. For the purpose of this Franchise, the Franchisee has the exclusive right to use the streets of the City of Brookings. No other person shall provide such services for compensation or offer to provide or advertise for the performance of such services to any owner, tenant, lessee, or occupant of any real property in the City of Brookings.

(2) Exceptions. Nothing in this Ordinance shall:

(a) Prohibit any person from transporting solid waste he produces himself to an authorized disposal facility or recycling or resource recovery facility. The solid waste produced by a tenant, licensee, occupant or person other than the owner of the premises is produced by such person and not by the landlord or property owner.

(b) Prohibit any person from contracting with the state or a federal agency to provide service to such agency under a written contract with such agency.

Section 5. Franchisee Responsibility.

(1) The Franchisee shall:

(a) Dispose of solid waste collected at a disposal facility approved by the local government unit having jurisdiction of or recover resources from the solid waste, in compliance with Chapter 459 of Oregon Revised Statutes and any regulations adopted under said legislation.

(b) Provide and keep in force general liability insurance against injury to person or property, vehicle liability insurance to include damage to persons or property, and Worker's Compensation Insurance. All insurance premiums shall be paid by the Franchisee and shall be without cost to the city.

(c) Provide sufficient collection vehicles, containers, facilities, personnel and finances to provide all types of necessary service; but where necessary, the Franchisee may subcontract with others to provide certain types of specialized service, in accordance with the provisions of this Ordinance.

(d) Trucks shall be equipped with a leakproof metal body of the compactor type. If the Franchisee uses a

specially designed, motorized local collection vehicle for transporting solid waste 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 the 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.

(e) The Franchisee is not obligated to provide service to non-owners of property, where the landlord does not request and pay the bill, unless payment for said service has been guaranteed in advance by the property owner or a satisfactory cash deposit or advance payment has been made by such non-owner requesting service.

(f) The Franchisee may terminate service to a customer for non-payment by a customer within 45 days of the mailing of the bill. In the event of such termination for non-payment, the Franchisee may require advance payment in the future from said customer before beginning service.

(g) The Franchisee shall, within thirty (30) days from the date of his acceptance of this franchise, furnish and file with the City Recorder a performance bond acceptable to the City, which Bond shall be in the amount of One Thousand Dollars (\$1,000), and the premium therefor shall be paid by the Franchisee. Said Bond shall be kept in full force during the life of this Franchise.

(h) The Franchisee shall respond to any written complaint on service.

(i) The Franchisee shall collect and dispose of a one and one-half yard (1-1/2) container for the benefit of the City each week, without making any charge for said service.

(j) The Franchisee shall provide the Opportunity to Recycle in accordance with Senate Bill 405 (Chapter 729, Oregon Laws 1983), known as the "Opportunity to Recycle Act" now incorporated in Oregon Revised Statutes 459.165 through .200 and .250.

(2) 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,

time 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.

(b) This Franchise and anything pertaining thereto may be assigned or transferred to a third party only after approval by the City of Brookings expressed by a Resolution passed by the City Council. The City Council shall approve the assignment or transfer if the new Franchisee meets all applicable requirements met by the original Franchisee. A pledge of this Franchise as financial security shall not be considered a transfer or assignment for the purpose of this sub-section.

Section 6. Supervision. Service provided under this Franchise shall be subject to the supervision of the City Manager or persons designated by the City Council. The Franchisee shall, at reasonable times, permit inspection of its facilities, equipment, personnel and records in relation to the service under this Franchise.

Section 7. Suspension, Modification or Revocation of Franchise.

(1) Failure to comply with written notice from the Council to provide necessary service or otherwise comply with the provisions of this Ordinance, after written notice and reasonable opportunity to comply, shall be grounds for modification, revocation or suspension of this Franchise.

(2) After receipt of the aforementioned written notice from the City Council, the Franchisee shall have 30 days from the date of mailing of the Notice in which to comply or to request a public hearing before the City Council. In the event of a public hearing, the said Franchisee and other interested persons shall have an opportunity to present information and testimony in oral or written form.

(3) If the said Franchisee fails to comply within the specified time or fails to comply with the order of the City Council entered upon the basis of findings at the public hearing, the City Council may suspend, modify or revoke the Franchise or make such action contingent upon continued noncompliance with this Ordinance. The said Franchisee shall have the right to appeal any such action by the City Council to the Circuit Court.

Section 8. Preventing Interruption of Service. In the event the City Council finds an immediate and serious danger to the public creating a health hazard or serious public nuisance, the City Council may, after a minimum of 24 hours actual

notice to the Franchisee and a public hearing if said Franchisee requests it, authorize another person to temporarily provide service under this Ordinance, or the City may provide such service. In either event, the Franchisee agrees as a condition of this Franchise that any real property, facilities or equipment may be used to provide such emergency service. The City Council shall return any such property of the Franchisee upon abatement of the health or nuisance hazards created by the general interruption of service. In the event the power under this section is exercised, the usual charges for service shall prevail and the said Franchisee shall be entitled to collect such usual services, but shall reimburse the City for its actual cost, as determined by the City.

Section 9. Service to be Provided; When Such Service May be Interrupted or Terminated.

(1) The Franchisee shall collect the solid waste at the various residences, business establishments and other places within the corporate limits of the City where such service is requested and required, promptly and with dispatch, and haul such solid waste from the City upon the payment of not more than the maximum rates authorized by the most recent rate schedule approved by the City Council.

(2) The Franchisee shall not terminate service to any or all of its customers served under this Franchise except in accordance with provisions of this Ordinance. Service may be interrupted or terminated when:

(a) The street or road access is unavoidably blocked through no fault of the Franchisee and if there is no reasonable alternate route or routes to serve all or a portion of its customers; but in either event the City of Brookings shall not be liable for any such blocking of access, or

(b) Adverse weather conditions render providing service unduly hazardous to persons or equipment providing such service or if such interruption or termination is caused by an act of God or a public enemy.

Section 10. Subcontracts. The Franchisee may subcontract with others to provide specialized service or temporary service under this Ordinance. Such subcontracts shall not relieve the Franchisee of total responsibility for compliance with this Ordinance.

Section 11. Rates. Rates for service under this Ordinance shall be those currently approved for the Franchisee as set forth in Exhibit A attached hereto. Said Rates shall remain

in effect until any change in Rates shall be approved by the City Council by Resolution. In determining the appropriate rate to be charged by the Franchisee, the Council shall consider:

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

(2) The anticipated increases in the cost of providing the service.

(3) The need for equipment replacement and the need for additional equipment to meet service needs; compliance with federal, state and local law, ordinances and regulations; or technological change.

(4) The investment of the Franchisee and the value of its business and the necessity that the Franchisee have a reasonable rate of return.

(5) The rates in other jurisdictions for similar service.

(6) The public interest by assuring reasonable rates to enable the Franchisee to provide efficient and beneficial service to the residents and other users of the service.

Section 12. Public Responsibility.

(1) Both the Franchisee and the public shall comply with Oregon Revised Statutes Chapter 459, the regulations promulgated pursuant thereto including those regulations issued by the Department of Environmental Quality, Workers' Compensation Board, and the State Accident Insurance Fund. The following requirements shall pertain to service under this Ordinance:

(a) No garbage can shall exceed 32 gallons in size and shall not weigh more than 60 pounds gross loaded weight.

(b) Only round garbage cans shall be used and cans shall be tapered so that they are larger at the top, and cans shall have handles at the top and a place for a handhold at the bottom.

(c) Sunken refuse cans or containers shall not be installed.

(d) To protect against injury to employees of the Franchisee, and to protect against rodent and fire dangers, cans shall be rigid and of material that will not split or crack in cold weather.

(e) The user shall provide safe access to the pickup point so as not to jeopardize the persons or equipment supplying service or the motoring public.

(2) A residential customer shall place the container to be emptied outside any locked or latched gate and outside any garage or other building.

(3) 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 such person is going to acquire shall acquire a compactor approved by the Franchisee as compatible with the equipment of the Franchisee or the equipment the Franchisee is willing to acquire.

(4) Any person who receives service shall be responsible for payment for said service.

Section 13. Franchisee's Service Requirements. The Franchisee may, subject to review and revision by the City Council, establish reasonable rules concerning the size, weight and location of containers or compactors and on other matters directly affecting the safety of a Franchisee's employees and his ability to perform the service with available technology and equipment. Such reasonable rules may be established so the Franchisee can comply with weight limits, disposal facility requirements recycling requirements and general requirements of the Department of Environmental Quality of the State of Oregon. Where economically feasible, the Council may require the Franchisee to provide special types of service or to subcontract the providing of such special service, if a Franchisee shall not find it economically feasible to provide such special service with its equipment and personnel.

Section 14. Franchise Term. The rights privilege and franchise herein granted shall be a continuing ten (10) year term, subject to termination as follows:

Beginning on January 1 of each year, this Franchise shall be considered renewed for an additional year unless at least thirty (30) days prior to January 1 of any year the City shall notify the Franchisee of intent to terminate the Franchise. Upon the giving of such Notice of Termination, this Franchisee will terminate ten years from the date of notice of termination. The city may then later extend the term or reinstate the continuing term upon mutual agreement with the Franchisee. Any termination may be with or without cause.

In the event the Franchise shall desire to terminate service given under the terms of this Franchise, then it shall give the City not less than two (2) years' notice of its 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 the first right and option to purchase all or any part of the equipment of the Franchisee at a price to be agreed upon between the parties. If the parties cannot agree on 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 arbitrator, 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. The cost of arbitration shall be borne equally.

Section 15. Franchise Fee. In consideration of the franchise granted by this Ordinance, the Franchisee shall pay to the City of Brookings the sum of \$100 per year franchise fee.

Section 16. Construction. Any finding by any Court of competent jurisdiction that any portion of this Ordinance is unconstitutional or invalid shall not invalidate any other provision of this Ordinance.

Section 17. Annexations. Immediately upon the annexation to the City of any additional territory, the City shall take such steps as may be necessary, if any, to give the Franchisee the exclusive right to collect solid waste within such area that has been annexed, and the City shall notify any other solid waste collector to cease such collection on or before 90 days from the date of such notice; provided, however, the Franchisee shall endeavor to arrive at a mutually satisfactory agreement with any other solid waste collector who has been serving any such newly annexed area, concerning the collection of solid waste in said annexed area.

Section 18. Penalties. Violation by any person of the provisions of this Ordinance shall be deemed to be a civil violation subject to the jurisdiction of the Municipal Court of the City of Brookings. Each event or each day's violation shall constitute a separate offense. The maximum penalty is and shall be a fine of \$500 for each such offense.

Section 19. Repealing Clause. Ordinance Nos. 199, 263 and 300 shall be and herein are repealed in their entirety and are of no further force or effect.

Section 20. Emergency Clause. It is hereby determined that it is in the interest of the public welfare, peace and safety of the City of Brookings that this Ordinance be immediately

adopted because continued solid waste collection and disposal is a necessity and a break in the continuation of said services would pose health hazards, and therefore an emergency is declared to exist, and that this Ordinance shall be in full force and effect from and after the date of its passage.

First Reading: June 9, 1986

Second Reading: June 9, 1986

Passage: June 9, 1986

Signed by me in authentication of its passage this 10th day of June, 1986.

Bob Kern
Mayor

ATTEST:

Judy Pestol
City Recorder

EXHIBIT A

COMMERCIAL RATE SCHEDULE

Container service - \$5.50 per yard

Roll out containers - 10% extra

Ramp roll out containers - 20% extra

Monthly rates for 30 gallon can (weekly pick up) - \$6.00

Accounts more than ten feet from truck access \$.55 each trip plus additional \$.55 through each gate, fence, hallway, stairs - weight limit: 60 lbs.

RESIDENTIAL RATE SCHEDULE

Set Out Service

\$6.00 per month for one 30-gallon can each week plus \$2.50 per month for each additional can per week

Occasional extra can pick up - \$2.00 each

Customer requested special pick up - \$4.00 minimum

Other than Set Out Service

\$.55 per trip plus \$.55 additional for each gate, fence, hallway, stairs - weight limit : 60 lbs. per can

ACCEPTANCE OF FRANCHISE

I, a duly authorized representative of and for Calvin Gorte, DBA Brookings Sanitary Service, do hereby acknowledge that I have read and studied Ordinance No. 402 which grants a franchise to Brookings Sanitary Service for solid waste and recyclable resource recovery and management services; and, on behalf of said Brookings Sanitary Service I do hereby accept said franchise in said Ordinance, and I do hereby covenant and agree that said Franchisee shall perform and fulfill all of the terms and conditions therein contained and faithfully comply with the same.

DATED this 11th day of June, 1986.

BROOKINGS SANITARY SERVICE

By Calvin J. Gorte
Authorized Representative