

ORDINANCE NO. 165

AN ORDINANCE GRANTING TO R SANITARY SERVICE AN EXCLUSIVE FRANCHISE TO CONDUCT A SOLID WASTE COLLECTION AND TRANSPORTATION BUSINESS WITHIN THE CITY OF GARIBALDI; PROVIDING FOR THE REGULATION AND EXERCISE OF A FRANCHISE FOR TEN YEARS; REPEALING ORDINANCE NO. 88 AND 140, AND DECLARING AN EMERGENCY.

The City of Garibaldi ordains as follows:

Section 1. DEFINITIONS. As used in this Ordinance:

- A. The word "City" means the city of Garibaldi, Oregon, a municipal corporation.
- B. The word "Grantee" means George J. and Jaqueline M. Reding, dba as R Sanitary Service, its successors and assigns.
- C. The words "solid waste" mean all putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, waste paper, cardboard, plastic products, vegetable and animal solid and semi-solid material, fish and seafood waste products, glass and any other material discarded by an individual or by a commercial or industrial enterprise; provided, however, the term does not include the following:
 - 1. Hazardous waste as defined by ORS 466.005;
 - 2. Beverage containers subject to reuse and refund provision of ORS 459.810 et seq;
 - 3. Materials used for fertilizer or for other productive purposes or which are salvageable for use on land for agricultural purposes;
 - 4. Manure;
 - 5. Dead animals;
 - 6. Discarded or abandoned vehicles;
 - 7. Tires;
 - 8. Used batteries;
 - 9. Demolition and destruction wastes;
 - 10. Septic tank and cesspool pumpings;
 - 11. Liquid petroleum products or other flammable liquids from a commercial or industrial activity; and
 - 12. Other materials from a commercial or industrial activity which, due to volume, characteristics or content are incompatible with the feasible, economical or practical operation of Grantee's business, after such material has been exempted by City Council after a public hearing thereon.

Section 2. FRANCHISE. City grants to Grantee the exclusive right and privilege to conduct a solid waste collecting and transporting business within the limits of the City of Garibaldi, Oregon.

The franchise of Grantee is subject to the following exceptions:

- A. Collection of paper by a public service organization;
- B. Noncontinuous collection drives by a public service organization approved by the City after a finding by the City Council that such a collection drive will not materially alter or affect Grantees's business;
- C. Pumping, transportation and disposal of septic tank and cesspool pumpings or other sludge by a person or entity lawfully engaged in such activity; and
- D. Transportation and disposal of wastes produced incidental to an occupation such as a gardener, landscaper, groundskeeper or construction contractor.

Section 3. TERM. This franchise shall become effective 30 days after enactment by City Council if within such 30 day period Grantee files with the City Recorder an unconditional written acceptance of all provisions contained herein. If Grantee fails to file such an unconditional written acceptance within such 30 day period, then this ordinance shall be of no further force and effect. If the franchise is accepted by Grantee as provided herein, the rights and privileges granted herein shall terminate at the end of ten (10) years from the date of acceptance.

Upon expiration of the franchise, Grantee shall be given consideration by City for a new franchise, provided that Grantee has performed satisfactorily all conditions and obligations imposed under this ordinance. Grantee shall apply to City for a new franchise at least 6 months and not more than 1 year prior to the expiration of the term thereof.

Section 4. FRANCHISE FEE. In consideration of the rights and privileges granted herein, Grantee shall pay to City during the term hereof a franchise fee equal to 3% of the gross local service receipts derived from the operation of Grantee's business. Payment of the franchise fee shall be accompanied by an accounting from Grantee, and shall be made on or before the 15th of April, July, October and January following a quarterly period for each year during the term thereof.

No expenditures of any kind shall be deducted from the gross income in determining gross local service receipts, except for charges by Tillamook County for use of its solid waste facility. City or its authorized agent shall be entitled to inspect Grantee's books to ascertain the accuracy of such an accounting and franchise fee payment.

Section 5. INDEMNITY AND INSURANCE. Grantee shall forever defend, indemnify and hold City, its officers, agents and employees, harmless from any and all demands, claims, losses or liabilities arising out of or in any way connected with any act, omission or condition created by grantee, its officers, agents and employees, associated with any right, privilege or franchise granted by City. In the event of any litigation or proceeding brought against Grantee and arising out of or in any way connected with any of the above events, demands, claims, losses or liabilities, against which Grantee agrees to defend City, Grantee

shall, upon notice from City, resist and defend such litigation or proceeding through legal counsel reasonably satisfactory to City.

Grantee shall maintain public liability and property damage insurance with limits of not less than \$500,000.00 for injury to one person, \$1,000,000.00 for injury to two or more persons in one occurrence and \$500,000.00 for damage to property. Such insurance shall cover all risks arising directly or indirectly out of Grantee's activities hereunder, whether or not related to an occurrence caused or contributed to by Grantee's negligence; and shall protect City and Grantee against claims of third persons. Such policies shall be written in such form, with such terms and by such insurance companies reasonably acceptable to City. Grantee shall deliver to City certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of 10 days' written notice to City.

Within 10 days after request from City, Grantee shall provide City with proof of the insurance mentioned above, and in the absence thereof, City may obtain such coverage or supplemental coverage as City deems reasonably necessary and to demand reimbursement from Grantee for sums expended to obtain such coverage or supplemental coverage.

Section 6. COMPLAINT PROCEDURES. Complaint procedures for investigation and resolution of all complaints regarding the quality of service, and resolution of all complaints regarding quality of service, billing practices, procedures and problems and other similar matters shall be as follows:

- A. Grantee shall maintain a bill paying station within Tillamook County, Oregon and shall maintain a locally listed toll-free telephone by which complaints or billing adjustments can be requested between 8:30 AM and 4:00 PM on Monday through Friday of each week during the term hereof.
- B. Upon the receipt of a written complaint from a subscriber, Grantee shall cause such complaint to be entered on a report form which shall contain the date, time, name, address and nature of complaint. Records of subscriber complaints shall be maintained at Grantee's local business office for a period of at least 5 years and shall be available for inspection by City.
- C. Within 24 hours after receiving a written complaint, Grantee shall supply reasonably necessary information, service or adjustments to resolve the complaint without delay.
- D. In the event a subscriber's complaint is not resolved as set forth above, Grantee shall provide such subscriber with the opportunity to discuss the complaint with management staff who shall expedite the handling of the complaint.
- E. In the event a subscriber's complaint is not resolved as set forth above, the subscriber may notify the City Recorder and the City may investigate and attempt to resolve a complaint made within 30 days from the date of occurrence.
- F. If any interruption of service, which is not remedied within 24 hours after notice thereof, shall result in a credit from Grantee to all affected subscribers for the week in which such interrupted service occurred.

G. Grantee shall provide notice of the above complaint procedure to its subscribers. Sending a copy of the complaint procedure annually to each subscriber is sufficient notice by Grantee.

Section 7. RATES. Rates charged by Grantee to its subscribers shall be regulated, determined and established as follows:

- A. A schedule of subscriber rates and charges for installations and services are attached hereto and incorporated herein as Exhibit A, by resolution.
- B. No change in rates or charges shall be made or charged by Grantee, except as authorized by City under the terms of this ordinance after an application therefor from Grantee or any interested party. Changes by Tillamook County for use of its solid waste facility shall be passed through to subscribers without action by the City.
- C. Before any determination is made concerning a proposed change of rates or charges, a public hearing before the City Council shall be conducted within 45 days after application by Grantee. Notice of such a public hearing shall be provided at least 10 days prior thereto by publication in a newspaper of general circulation in the City stating time, date, place and purpose of such public hearing.
- D. The City Council may request from Grantee financial information, including financial statements, profit and loss statements and other records, reasonably related to its expenses, rates and charges for the Garibaldi area. The City may require the production of such financial information prior to calling or conducting a public hearing concerning a change of rates or charges; and City may defer any hearing until 15 days after production of such financial information.
- E. Grantee and any interested party may appear at such a public hearing to present testimony, documents, other information and comments concerning a change of rates or charges.
- F. The public hearing may be recessed from time to time for the purpose of affording the City Council a fair and reasonable opportunity to obtain and receive sufficient information concerning a change of rates or charges.
- G. The applicant for a change of rates and charges shall pay the costs of advertising and reporting the public hearing before such hearing is conducted.
- H. Rates and charges for services by Grantee shall be just, reasonable and adequate; giving due consideration to the Grantee and the subscribing public. A documented increase in the franchise fee and dumping fees paid by Grantee are sufficient reasons for a proportionate increase of rates and charges at a public hearing.
- I. Within 60 days after the conclusion of a public hearing as provided herein, the City Council shall make a decision concerning the proposed change of rates and charges. If no decision is made by the City Council within 60 days after the conclusion of such a public hearing, the Grantee may implement the change of rates and charges in its next billing period.

Section 8. FRANCHISE VALUATION. The City may disregard any value given to this franchise in any public hearing concerning changes to rates and charges. However, Grantee shall be entitled to a reasonable return on its investment.

Section 9. QUALITY OF SERVICE. The Grantee shall operate within the schedule of rates approved by the City Council and shall exercise every effort to provide the inhabitants of the City with prompt and efficient service at all times. In the event of a dispute concerning this franchise, the Grantee shall be entitled to a hearing before the City Council to explore means of resolving such dispute. As special terms and conditions of this franchise, Grantee shall:

- A. Provide collection and transportation of solid waste service to all adult residents who request and subscribe for such service within the corporate limits of City.
- B. Provide each subscriber with a copy of the current rate schedule, collection rules, collection schedule and complaint procedure.
- C. Provide each subscriber with the "opportunity to recycle" as defined and regulated by ORS 459.165 et seq, and shall not mix source separate recyclable material with any other solid waste.
- D. Provide sufficient vehicles, containers, facilities, personnel and finances required for all types of collection and transportation services under by this ordinance.
- E. Except as otherwise provided in this subsection, all vehicles used in the collection and transportation of solid waste shall be equipped with a leak-proof metal body of the compacter type. Other vehicles may be used in the collection and short-haul transportation of solid waste; provided, however that such vehicles shall be equipped with a leak-proof metal body and with a cover sufficient to prevent the scattering of its contents.
- F. All vehicles shall be equipped, registered, licensed and operated in conformity with all applicable laws ordinances. All vehicles and shall be maintained in as clean and sanitary a condition as possible and that portion of used for the collection and transportation of solid waste shall be steam cleaned at least once every week.
- G. Maintain regular collection schedule and collect no residential solid waste before 5:00 AM or after 7:00 PM, except during Daylight Savings Time, when no collection shall be made after 9:30 PM. All putrescible solid waste shall be removed from a subscriber's premises at regular intervals not to exceed seven (7) days pursuant to OAR 340-61-070.
- H. Respond to all subscriber requests for special collection and transportation service within 96 hours, unless a later date is agreed upon by subscriber.
- I. Transport all collected solid waste to approved disposal site on the same date that such solid waste is collected, whenever vehicles are parked overnight within the City limits.
- J. Dispose of collected solid waste at a site which has been approved by the City and which complied with Chapter 459 of Oregon Revised Statutes and any regulations promulgated thereunder.

- L. Within 10 days after receipt by Grantee of any correspondence from a regulatory authority concerning or affecting Grantee's ability to perform the services required under this ordinance, Grantee shall provide City with a copy of such correspondence.

Section 10. PUBLIC RESPONSIBILITY. The Grantee, City and the public shall comply with the provisions of State Law, including but not limited to ORS Chapter 459, ORS Chapter 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 for the administration of the Oregon Occupational Safety and Health Code shall be complied with. The following requirements shall pertain to service under this ordinance:

- A. 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 a hand hold at the bottom. Grantee shall not be required to service underground cans unless the property owner places the cans above ground for pickup.
- B. To protect against injury to employees of the Grantee, 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.
- C. The subscriber shall provide safe access to the pickup point so as not to jeopardize the persons or equipment supplying service or the motoring public.
- D. To protect the privacy, safety, pets and security of the subscribers, and to prevent unnecessary physical and legal risk to the Grantee and its employees, a residential paying subscriber shall place the container to be emptied outside any locked or latched gate and outside any garage or other building. Nothing contained herein shall prevent or discourage the use of site obscuring waste receptacle screening for commercial or industrial containers.
- E. Stationary compacters for handling solid waste shall comply with applicable federal and state safety regulations. No such compacter shall be loaded so as to exceed the safe loading design limit or operation limit of the collection vehicles used by the Grantee. A person who wishes services for a compacter shall, prior to acquisition of such compacter, inquire of the Grantee as to compatibility with Grantee's equipment.
- F. 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 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. ASSIGNMENT, TRANSFER, OR CHANGE OF CONTROL. The franchise hereby granted shall not be assigned or transferred, in whole or in part, without the consent of City evidenced by an ordinance duly passed and approved. Any consent hereunder shall not be unreasonably withheld; provided, however, that City may impose reasonable conditions on the assignment or transfer to protect the subscribing public. All rights, privileges, duties and obligations created by this franchise shall unto and be binding upon the successors and assigns of Grantee.

This section shall not be construed to prohibit Grantee from effecting a reorganization to obtain capital to meet legitimate business needs or to prohibit an assignment or transfer to a corporation or parent company of Grantee. If there is a transfer of stock by Grantee, City shall be notified immediately in writing concerning the nature of the transfer and the identity of the transferee.

Any sale, assignment or transfer of stock which result in a change of controlling interest is subject to the above restrictions on assignment, transfer or change of control.

Any violation of this section may be grounds for City to terminate the rights and privileges granted by this ordinance.

Section 12. TERMINATION OF FRANCHISE. This franchise may be terminated by City prior to its expiration as follows:

In the event that a violation or failure to comply with a material provision of this franchise shall continue 30 days after receipt by Grantee of written notice describing such violation or failure to comply, City may terminate this franchise by resolution adopted by the City Council after a public hearing. Notice of such a public hearing shall be provided at least 30 days prior thereto by written notice to Grantee and by publication in a newspaper of general circulation in the City stating the time, date, place and purpose of such public hearing. The Grantee shall be given the opportunity to present evidence and to be heard at such public hearing.

Upon mutual agreement of City and Grantee, this franchise may be terminated by resolution of the City Council approving such agreement.

Section 13. RESPONSIBLE OFFICIAL. The City Recorder shall be responsible for administering this franchise and for implementing complaint procedures.

Section 14. REPEAL OF ORDINANCES. Ordinances No. 88 and 140 and any other inconsistent ordinance(s) hereby are repealed.

Section 15. EMERGENCY CLAUSE. The City Council deems an emergency to exist, and this ordinance shall become effective immediately.

PASSED by the City Council and APPROVED by the Mayor this 22nd day of August, 1989.

ATTEST:


SAUNDRA JONES, CITY RECORDER

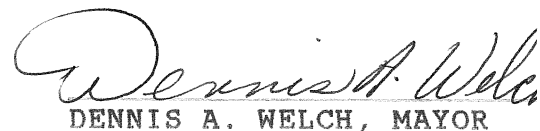

DENNIS A. WELCH, MAYOR

EXHIBIT A

RESOLUTION 89-6

A RESOLUTION OF THE GARIBALDI CITY COUNCIL SETTING RATES FOR COLLECTION SERVICES FOR R SANITARY SERVICE UNDER THE FRANCHISE GRANTED FOR BY GARIBALDI ORDINANCE NO. 165.

MINIMUM MONTHLY RATES FOR ONCE A WEEK SERVICE

<u>CURB/ROADSIDE</u>		<u>NOT CURB/ROADSIDE</u>
1 CAN	\$10.50	\$11.00
2 CANS	21.00	22.00
EACH ADDITIONAL CAN	10.50	11.00

FOR ACCOUNTS REQUIRING MORE FREQUENT PICKUPS, THE MINIMUM RATE SHALL BE MULTIPLIED BY THE NUMBER OF PICKUPS.

<u>ROADSIDE</u>		<u>NOT ROADSIDE</u>
STRAIGHT HANDLING CHARGE PER CAN	\$ 4.25	\$ 4.50

HOURLY HAULING RATE

TRUCK AND 1 MAN	\$37.50 PER HOUR
TRUCK AND 2 MEN	52.50 PER HOUR
MINIMUM CHARGE	37.50

CHARGES FOR CONTAINER SERVICE

THE GRANTEE SHALL RETAIN OWNERSHIP OF THE CONTAINERS AND MAKE THE FOLLOWING CHARGES TO THE CONSUMER. THE CHARGES SHALL BE FOR THE FULL CAPACITY OF EACH CONTAINER FURNISHED AND ARE BASED ON YEAR-ROUND SERVICE.

ONE 1-YARD CONTAINER ONCE A WEEK	\$ 52.00
ONE 1-YARD CONTAINER TWICE A WEEK	91.50
ONE 1-YARD CONTAINER THREE TIMES WEEKLY	131.00
ONE 1.5-YARD CONTAINER ONCE A WEEK	\$ 72.50
ONE 1.5-YARD CONTAINER TWICE A WEEK	131.00
ONE 1.5-YARD CONTAINER THREE TIME WEEKLY	187.50
ONE 2-YARD CONTAINER ONCE A WEEK	\$ 99.75
ONE 2-YARD CONTAINER TWICE A WEEK	180.00
ONE 2-YARD CONTAINER THREE TIMES WEEKLY	260.00

ALL CHARGES INCLUDE LANDFILL CHARGES. THE LANDFILL CHARGE IS \$4.50 PER MONTH ON THE ONE CAN RATE, SUBJECT TO CHANGE.

THE GRANTEE MAY PASS TO THE CONSUMER THE EXACT COST OF THE LANDFILL FEE CHARGED BY TILLAMOOK COUNTY LANDFILL. THE GRANTEE SHALL NOT BE REQUIRED TO PAY A FRANCHISE FEE ON THE AMOUNT COLLECTED FOR THE LANDFILL FEE.