

ORDINANCE NO. 464

AN ORDINANCE REGULATING AND PROVIDING FOR THE COLLECTION AND DISPOSAL OF SOLID WASTE WITHIN THE CITY OF CRESWELL; GRANTING AN EXCLUSIVE FRANCHISE FOR THE COLLECTION AND DISPOSAL OF SOLID WASTE AND DEFINING THE TERMS THEREOF; PROHIBITING UNLAWFUL ACCUMULATION, TRANSPORTATION OR DISPOSAL OF SOLID WASTE; PROVIDING PENALTIES; REPEALING ORDINANCE 463; AND DECLARING AN EMERGENCY

THE CITY OF CRESWELL ORDAINS AS FOLLOW:

Section 1. Purposes, Policy and Scope. It is declared to be the public policy of the City of Creswell to regulate solid waste management to:

1. Insure safe, efficient, economical and comprehensive solid waste service.
2. Insure fair and equitable consumer rates and to prohibit illegal and/or discriminatory rate preferences or other illegal and/or discriminatory practices.
3. Conserve energy and material resources, reduce solid wastes and promote material and energy recovery in all forms, including curbside collection and separation of recyclable materials.
4. Provide for technologically and economically feasible resource recovery.
5. Eliminate or prevent overlapping service and thereby increase efficiency and to decrease truck noise, street wear, energy waste, air pollution and public inconvenience.
6. Protect public health and the environment and provide public education regarding solid waste management and recycling.
7. Provide public service standards.
8. Protect against improper and dangerous handling of hazardous wastes.
9. Provide a basis and incentive for investment in solid waste equipment, facilities, sites and technology.

Section 2. Definition of Terms.

1. **Hazardous Waste:** Any waste defined as hazardous waste by or pursuant to ORS 466.005; or any waste defined as hazardous waste by a governmental unit having jurisdiction over the subject matter; or any waste found to be hazardous to the Franchisees' service workers, to service equipment, or to the public. Such determination may be made by the Franchisee upon consultation with the City.
2. **Person:** Any individual, partnership, association, corporation, trust, firm, estate, joint venture or other private legal entity or any public agency.
3. **Resource Recovery:** The process of obtaining useful material or energy resources from solid waste, including reuse, recycling and other materials recovery or energy recovery of or from solid waste.

4. Service: The collection, transportation or disposal of, or resource recovery from solid waste.

5. Solid Waste: All solid waste or semi-solid waste, including without limitation, garbage, rubbish, refuse, trash, ashes or swill, newsprint or wastepaper, corrugated or cardboard, grass clippings, compost, residential, commercial, industrial, governmental or institutional wastes, equipment or furniture, vegetable or animal wastes and other wastes.

6. Solid Waste Management: The prevention of or reduction of solid waste; management of service; and, facilities and equipment necessary or convenient to such activities.

7. Waste: Material that is no longer directly usable by the source, generator or producer of the material, which material is to be disposed of or to be resource recovered by another person.

a. The fact that all or any part of the material may have value and thus be recovered does not remove it from this definition.

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

Section 3. Public Responsibilities. In order to facilitate the collection and disposal of solid waste, the following regulations shall apply to all persons in the City of Creswell.

1. The Franchisee may make reasonable rules and regulations regarding collection service subject to prior written approval of the City.

2. Except for storage in a proper container, no person shall accumulate garbage or other putrescible material on any premises in the City of Creswell.

3. Every person who generates or produces solid waste shall remove or have removed all putrescible wastes at least monthly, or earlier upon request by the City. More frequent removal may be required where the facility, activity, use, or collection schedule involves or negatively affects the public health. All wastes shall be removed with sufficient frequency so as to prevent health hazards, nuisances, including offensive odor, or pollution.

4. No person shall dump or dispose of any solid wastes on any lands or any facilities in the City of Creswell except for a disposal site or transfer station approved by the Oregon Department of Environmental Quality or the City or in containers provided for by the City.

5. No person shall burn or incinerate solid waste within the City of Creswell unless they have been issued a valid burn permit as provided for in the Creswell Municipal Code.

6. No person shall haul, transport or convey sawdust, shavings, hog fuel, or solid wastes by any conveyance upon any street, alley or thoroughfare in the City of Creswell unless such vehicle is constructed, loaded, operated and maintained so as to prevent its contents from dropping, sifting, leaking or otherwise escaping therefrom.

7. No container designed for manual pickup shall exceed 35 gallons in size or 50 pounds in loaded weight. Such containers shall be made of metal or rigid plastic and shall be fireproof, rodent proof and not subject to cracking or splitting. Containers shall be round, tapered from top to bottom and have proper handholds, lids and bales.

8. No container designed for automated pick up shall exceed 95 gallons in size or 150 pounds in loaded weight. Such containers shall be made of metal or rigid plastic and shall be fireproof, rodent proof and not subject to cracking or splitting. Containers shall be round, tapered from top to bottom and have proper handholds, lids and bales.

9. Unless special service or service equipment is provided by the Franchisee for handling unconfined waste, materials such as rubbish and refuse, brush, leaves, tree cuttings and other debris for manual pickup and collection shall be in securely tied bundles or in any box, sack or other receptacles. Solid waste so bundled, tied or contained shall not exceed 50 pounds in weight.

10. No unauthorized person shall place material in or remove material from a solid waste collection container without permission of the owner of the container. No unauthorized person shall remove solid waste placed out for collection and resource recovery by the Franchisee or a person exempted by this ordinance and operating solely within the exemption. Such solid waste belongs to the Franchisee or exempted person, respectively.

11. No person shall place any hazardous waste out for collection or disposal by the Franchisee nor place it into any solid waste container or drop box supplied by the Franchisee or the city without prior notice to and prior written approval from the Franchisee or the City, respectively.

Section 4. Limited Exemptions to Franchise. No franchise is required for (a) the collection of repairable discards; (b) the collection of recyclable materials by religious, charitable, benevolent or fraternal organizations, except as may be further limited by the Council; (c) transportation of waste generated by a person in carrying on another business; (d) a person transporting his or her own waste; (e) the purchase of totally source-separated recyclable solid waste for fair market value; (f) providing service for hazardous waste; and (h) any other practice, business or activity withdrawn by a resolution and order of the Council.

A resolution and order of exemption shall be granted only after a public hearing thereon, and be based upon written findings. Prior to granting such an exception, the City shall give 30 days prior written notice to the Franchisee of the public hearing and the proposed basis of the exception. Prior to granting such an exception, the Council must find that the exception carries out the purposes of Section 1 of this Ordinance; that there is a need for the proposed service; that the Franchisee cannot or will not provide the required service; and that the applicant has the necessary equipment, experience, finances and personnel to provide adequate service; and, that the granting of the exception will not be materially detrimental or have a substantial impact on service, consumer rates or the business franchised under this ordinance.

Section 5. Practices Prohibited Without a Franchise. Unless exempted by or under Section 4 of this ordinance or granted a franchise under Section 6 of this ordinance, no person shall solicit customers for solid waste collection and disposal services, or advertise the providing of services, or provide services within the City.

Section 6. Franchise Granted. The franchise granted by this section is based upon the prequalification of the applicant on the basis of demonstrated knowledge of the service business, the ability of the applicant to continue to furnish all required and necessary equipment, personnel and service; the financial responsibility and viability of the applicant; the ability of the applicant to indemnify the City and its inhabitants against the failure on his part to fulfill the terms of the franchise or against injuries occurring to the City or any of its inhabitants in the performance of such franchise; and the prior experience of the applicant in maintaining exemplary public service in the City and the surrounding area.

There is hereby granted to **Waste Connections of Oregon, Inc.** the exclusive right, privilege and franchise to provide solid waste collection and disposal services within the city limits and within any area that may hereafter be annexed to the city, subject to the provisions of ORS 459.085. This franchise grants Franchisee the exclusive right to utilize the rights-of-way, streets, and facilities of the city for the limited purposes expressed herein during the term of this agreement.

Section 7. Franchise Term. The rights, privileges and franchise herein granted shall commence on the date this ordinance is signed by both parties and shall continue until **June 30, 2017**. The agreement shall automatically renew for an additional five (5) year term, unless the City provides a Notice of Intent Not to Renew at least six months prior to the expiration of the original term. The Franchisee shall have six months from the date of the City's Notice of Intent Not to Renew within which to terminate Franchisee's activities, give notice to city customers, and make other such arrangements as may be reasonable to stop operations.

Section 8. Franchisee Responsibilities. The Franchisee shall:

1. Provide collection, disposal, and recycling services throughout the City at such reasonable times as may be required by the Council and in the manner required by Oregon statutes and administrative rules and respond with reasonable promptness to all calls for special hauling of solid wastes.
2. Construct, load, operate or maintain any vehicle or conveyance used in providing service so that solid wastes shall not drop, sift, leak or escape from such vehicle.
3. Keep sufficient equipment on hand to promptly and adequately provide service required by this ordinance and any such further levels of service as may later be required by the Council. Such services shall include, but are not limited to: required curbside collection, resource recovery, recycling; and the establishment of a multi-family dwelling recycling program which collects at least four principal recyclable materials or collects the number of materials required to be collected under the residential on route collection program an

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4. On all but emergency or interim rates, the Franchisee shall provide 60 days written notice to the Council of the proposed rate change together with accompanying justification. An emergency or interim rate for a new or altered service may be adopted by written order of the Council and be valid for a stated period not to exceed six months.

5. The Council may require such information as it determines to be necessary to justify changes in rates. The Council may require an investigation and report by the City Administrator on any proposed rate changes.

6. A proposal to change rates may be initiated either by the Franchisee or the Council.

Section 13. Penalties. Persons violating this ordinance maybe assessed a fine of not more than \$100.00 for each violation. Violations that constitute criminal activity shall be referred to the proper authorities and criminal sanctions may be applied. Each day that a violation of this ordinance continues shall be considered a separate offense.

Section 14. City Enforcement. The City shall enforce the provisions of this ordinance by administrative, civil or criminal action or any combination as necessary to obtain compliance with this ordinance. The Council shall take such legislative action as is necessary to support the ordinance and any franchise granted. The Franchisee may also enforce payment or protect its rights by appropriate civil action.

Section 15. Miscellaneous.

1. **Indemnification and Insurance.** The Franchisee shall indemnify, save harmless and defend the City of Creswell, its employees, officers and agents from any loss or defense of any loss claim arising out of the operation of this franchise and the collection of solid waste in the franchise area. During the term of this franchise, Franchisee shall maintain continuously in effect a public liability insurance policy, including vehicle, personal injury and property damage coverage, with a combined single limit coverage of not less than the amounts set in ORS 30.270 or its successor statute. The policy shall be approved as to form and surety by the City and shall name the City as an additional insured and bear endorsement entitling the City to 30-day prior written notice of any material change, non-renewal, or cancellation. The policies shall be written as primary policies, not contributing with or in excess of any coverage the City may have and shall have loss payable clauses in favor of and reasonably satisfactory to the City. A copy of the policy and certificate of Insurance shall be delivered to the City within ten days of the approval of this franchise.

2. **Work Stoppages.** Interruptions of service shall not be longer than one week. Customers may be due refunds or rebates as a result of loss of service.

3. **Refusal of Service.** The Franchisee will offer service to all households and businesses in the franchise area. Service may be refused to people who do not comply with collection service rules. Franchisee may not discriminate or refuse service by reason of race, sex, national origin, religion, age or other arbitrary factors unrelated to solid waste.

4. **Office.** The Franchisee shall operate an office where people may call or write at reasonable hours regarding collection service.

5. Identification of Employees. The vehicles and employees of the Franchisee shall be identifiable as working for the Franchisee, by badge, cap, uniform or similar device.

6. Complaints.

a. The Franchisee shall retain records of service complaints and the disposition of such complaints for a period of one year. These shall be made available for the City quarterly.

b. Complaints will be handled by Franchisee fairly, timely, and in a manner that recognizes the public service nature of solid waste collection. Complaints to the City shall be reported to the Franchisee in a timely manner so that the Franchisee may address and resolve the complaint. Repeated, founded, and unresolved complaints may be the basis for suspension, modification or revocation of this franchise as provided in Section 8 of this agreement.

7. Ownership of Solid Waste Materials. Prior to the time of collection, the materials set out for collection are the property and responsibility of the resident or occupant. At and after collection, the material is the sole responsibility of the Franchisee. The Franchisee will not be held responsible for the loss of materials placed on or in the can or container at the time of collection.

8. Temporary and Promotional Pricing. Proposals for temporary and promotional pricing arrangements shall be made in writing to the City Administrator. City Administrator may approve or deny the proposal. The proposal shall specify the price mechanism, duration, and the classification of customers to which the arrangements shall apply. The Franchisee is limited to two such proposals per year of a reasonable nature that meet the spirit of the franchise agreement, other ordinances, and municipal policies.

9. Inspections. Franchisee shall, at reasonable times and without required notice, permit inspection of its facility, equipment, and personnel providing service under this ordinance.

10. Repeal of Conflicting Ordinance. Ordinance Number 305 and 341 are hereby repealed.

11. Severability. The sections and subsections of this ordinance are severable. The invalidity of any one section or subsection shall not affect the validity of the remaining sections or subsections.

12. Franchisee Suspension of Service. The Franchisee shall not suspend service to all or a portion of the customers unless:

a. The street or road access is blocked and there is no alternate route and provided that the Franchisee shall restore service not later than one week after street or road access is opened;

b. As determined by the Franchisee, excessive weather conditions render providing service unduly hazardous to persons providing service or to the public or such termination is caused by accidents or casualties caused by an act of God, a public enemy, or a vandal, or road access is blocked;

c. A customer has failed to pay for 90 days of service and has received at least one 1) separate notice of such delinquency prior to suspension of service.

d. The customer repeatedly does not comply with the service standards of the Franchisee.

Section 16. Emergency Clause. Inasmuch as it is necessary to provide for service to protect the health, safety and welfare of the people of the City of Creswell, this ordinance shall have immediate effect and an emergency is hereby declared to exist; and this ordinance shall be in full force and effect from and after its passage and approval.

PASSED by a vote of the Creswell City Council of ____ for and ____ against, and

APPROVED by the Mayor this 15th day of March, 2010.

Robert A. Hooker, Mayor

APPROVED this ____ day of _____, 20____.

Waste Connections of Oregon Inc.

By: _____

Title: _____

ATTEST:

Roberta J. Tharp, City Recorder