

CITY OF COOS BAY CITY COUNCIL
Agenda Staff Report

MEETING DATE May 21, 2013	AGENDA ITEM NUMBER
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TO: Mayor Shoji and City Councilors

FROM: Rodger Craddock, City Manager *RC*

ISSUE Solid Waste Franchise

BACKGROUND

Most Oregon cities license or franchise private companies to collect garbage and other solid waste from residences and commercial buildings, and they transport it to an approved sanitary landfill or incinerator. Cities have a clear and historic role in the approval of franchises. These franchises tend to be exclusive, at least in practical effect, to avoid duplication of service and excess truck traffic and to meet a city's typical requirement that the franchised hauler offer service to everyone who wants it within a defined service area. City franchises typically limit the rates charged by franchised haulers to their customers in exchange for allowing the hauler both a unique service area and a certain rate of return, similar to the state's role in regulating other private utility providers.

Coos Bay has an exclusive solid waste franchise agreement with Coos Bay Sanitary Service and Les' Sanitary (Waste Connections) as allowed by Ordinance 242 which was established in 1999, and it is codified in Coos Bay Municipal Code (CBMC) 8.02. As is outlined in CBMC 8.02.060, the term of the franchise provides for a 7 (seven) year agreement. In addition, at the end each year, the franchise will automatically be extended so that the term of the franchise remains a seven year agreement (also known as a rolling seven year agreement). If the City notifies the franchisee in writing at least 30 days prior to July 1st, the franchise will not automatically be extended; thereafter, the franchise would terminate in seven years.

During the Council's 2013 Goal Setting Work Session, Council Daily requested a review of the City's Solid Waste Franchise. The interest in reviewing the franchise was not related to performance, but in his belief that the citizens are best served by allowing a periodic competitive bidding process to ensure that citizens of Coos Bay receive the best serves at the best price.

In an effort to aid the Council's discussion on this matter, staff has conducted a rate survey in which 27 (twenty-seven) jurisdictions, include Coos Bay, provided the current monthly rate for weekly curbside pickup of a 32/35 can of garbage in their respective jurisdictions which revealed the following:

City	Residential Monthly fee for 32/35 Gallon Can	Results Summary
Bandon	\$16.61	The Average Monthly Fee for 32/35 Gallon Can for all the jurisdictions listed in the survey is \$21.83
Banks	\$21.60	
Beaverton	\$21.00	

City	Residential Monthly fee for 32/35 Gallon Can	Results Summary
Brookings	\$21.07	The Average Monthly Fee for 32/35 Gallon Can for all the jurisdictions listed, excluding the cities of Drain (\$10.10) and Lafayette (\$64.20) is \$21.01
Cannon Beach	\$25.00	
Coquille	\$18.10	
Coos Bay	\$19.06	
Coos County	\$19.51	
Curry County	\$22.67	
Drain	\$10.10	
Florence	\$21.75	
Gold Beach	\$21.07	
Gresham	\$27.30	
Hood River	\$17.97	
Independence	\$20.55	
Lafayette	\$64.20	
Lakeside	\$17.58	
Gresham	\$27.30	
Newport	\$20.35	
North Bend	\$18.75	
Nyssa	\$22.00	
Port Orford	\$20.73	
Philomath	\$16.45	
Sandy	\$21.25	
Stayton	\$23.30	
Toledo	\$20.75	
Veneta	\$18.75	
Wood Village	\$22.10	

It should be noted that through the Franchise, the Council has the ability to control rates. As rate increases are requested by the Franchisees, they require a public hearing and ultimately the Council's approval.

The chart below reveals that many other communities utilize a multi-year term in their franchise agreements.

OTHER CITIES ROLLING FRANCHISE SUMMARY							
	City or County	Less than 5yrs	5yrs	6yrs	7yrs	8yrs	10yrs
1	Adair Village			√			
2	Albany		√				
3	Astoria				√		
4	Amity		√				
5	Aumsville				√		

OTHER CITIES ROLLING FRANCHISE SUMMARY							
	City or County	Less than 5yrs	5yrs	6yrs	7yrs	8yrs	10yrs
6	Aurora		√				
7	Canby						√
8	Cannon Beach		√				
9	Carlton		√				
10	Clackamas Co.						√
11	Coos Bay				√		
12	Cornelius				√		
13	Corvallis						√
14	Dallas				√		
15	Dayton		√				
16	Donald						√
17	Durham		√				
18	Falls City				√		
19	Gates				√		
20	Gearhart				√		
21	Gervais				√		
22	Grants Pass				√		
23	Hubbard			√			
24	Independence				√		
25	Jefferson						√
26	Josephine Co.				√		
27	Keizer						√
28	King City		√				
29	Lafayette		√				
30	Lebanon		√				
31	Lyons				√		
32	Marion Co.				√		
33	Maywood Park				√		
34	McMinnville		√				
35	Mill City				√		
36	Monmouth				√		
37	Monroe			√			
38	Mt. Angel			√			
39	Newport				√		
40	North Bend				√		
41	Nyssa				√		
42	Pendleton						√
43	Philomath			√			
44	Polk Co.				√		
45	Prairie City				√		

OTHER CITIES ROLLING FRANCHISE SUMMARY							
	City or County	Less than 5yrs	5yrs	6yrs	7yrs	8yrs	10yrs
46	Salem				√		
47	Seaside		√				
48	Scotts Mills				√		
49	Sheridan		√				
50	Sherwood						√
51	Silverton				√		
52	St. Paul				√		
53	Stayton		√				
55	Tangent			√			
56	Tillamook County						√
57	Tigard				√		
58	Tualatin		√				
59	Turner				√		√
60	Union				√		
61	Washington Co.						√
62	West Linn					√	
63	Willamina					√	
64	Woodburn			√			
65	Yamhill		√				
66	Yamhill County						√
Totals		0	16 (24%)	7 (11%)	29 (44%)	2 (3%)	12 (18%)

Prior to 1999 Coos Bay franchise agreement provided for a 5 (five) year rolling agreement. In 1999 the rolling franchise was increased to 7 (seven) years and in exchange the franchisees (Coos Bay Sanitary Services and Les' Sanitation) agreed to provide a semi-annual brush pickup at no cost to the City or its citizens. Prior to the change, the City provided the semi-annual brush pickup at an annual cost of \$50,000 (1999 dollars). In addition the current franchise agreement allows for free disposal of solid waste from the City's municipal buildings, as well as 5% franchise's gross revenues.

Both franchisees provide services to the City above and beyond what is required by the franchise agreement. Coos Bay Sanitary Service provides weekly solid waste services to the Coos Art Museum and Mingus Park at no cost. Les' Sanitation allows the City to drop off solid waste and brush at their transfer station year round and participates with the City's annual cleanup day at no cost.

While the rate survey suggests the rates charged to customers within the City are below the average of rates charged in other communities.

Should the Council wish to entertain proposals for solid waste providers in the near future, the Council would need through Council Action to notify the current franchisees of its decision not to allow the Franchise to automatically extend. The Franchise would then end after seven years, prior

to which staff would conduct an RFP process. It should be noted that nothing prevents the Council from conducting a performance review or terminating the Franchise if the franchisees fail to perform their duties as required by the Franchise.

RECOMMENDATION

Please advise how the Council wishes to take on the current Franchise.

Attachments:

CBMC 8.02
Oregon Refuse & Recycling Letter
Calculation of Services provided by Coos Bay Sanitary Service
Calculation of Services provided by Les' Sanitation

Chapter 8.02 SOLID WASTE MANAGEMENT FRANCHISE

Sections:

- [8.02.010](#) Policy.
- [8.02.020](#) Definitions.
- [8.02.030](#) Requirement of franchise – Exemptions.
- [8.02.040](#) Grant of exclusive franchise.
- [8.02.050](#) Exemptions.
- [8.02.060](#) Franchise term.
- [8.02.070](#) Franchise fee.
- [8.02.080](#) Franchisees' duties.
- [8.02.090](#) Hazardous waste disposal service not required.
- [8.02.100](#) Rate regulation.
- [8.02.110](#) Rate preferences prohibited.
- [8.02.120](#) Transfers – Subcontracting.
- [8.02.130](#) Performance review.
- [8.02.140](#) Termination, suspension, modification or revocation of franchise.
- [8.02.150](#) Right to lease franchisees' equipment.
- [8.02.160](#) New or expanded resource recovery services.
- [8.02.170](#) Termination of solid waste disposal service.
- [8.02.180](#) Prohibited acts.
- [8.02.190](#) Payment of service.
- [8.02.200](#) Oversight.
- [8.02.210](#) Enforcement and penalties.

8.02.010 Policy.

It is the public policy of the city of Coos Bay to regulate the management of solid waste to:

- (1) Provide a means whereby the city carries out its responsibility for solid waste management in compliance with statutes, regulations and the policy of the state of Oregon relating to the planning for and management of solid waste;
- (2) Ensure safe, efficient, economical and comprehensive solid waste disposal service;
- (3) Ensure fair and equitable consumer rates and prohibit rate preferences or other discriminatory practices;
- (4) Increase efficiency and decrease truck noise, street wear, energy use, air pollution and public inconvenience by the elimination of overlapping solid waste disposal service;
- (5) Protect public health and the environment;
- (6) Protect against improper or dangerous handling of hazardous wastes;

(7) Provide public service standards;

(8) Provide a basis and incentive for investment in solid waste management equipment, facilities, sites and technology;

(9) Conserve energy and material resources, reduce solid waste, and promote material and energy recovery in all forms;

(10) Provide the opportunity to recycle as part of an overall solid waste management system, taking advantage of coordinated area-wide service, promotion, marketing and education. [Ord. 272 § 1, 1999].

8.02.020 Definitions.

For the purposes of this chapter, the following mean:

“Franchisees” means Coos Bay Sanitary Service and Waste Connections of Oregon dba Les’ Sanitary Services, Inc.

“Hazardous waste” means any substance defined as hazardous waste pursuant to state or federal law.

“Person” means any individual, partnership, association, corporation, trust, firm, estate, joint venture or other legal entity or public agency.

“Resource recovery” means the process of obtaining useful materials or energy resources from solid waste, including reuse, recycling and other recovery of materials or energy resources from solid waste.

“Solid waste” means all residential, commercial, industrial, governmental or institutional wastes in a solid or semisolid state including, but not limited to, garbage, rubbish, refuse, trash, ashes or swill, newsprint or wastepaper, cardboard, grass clippings, compost, discarded home or industrial appliances, equipment or furniture, vehicle parts or tires, medical wastes and vegetable or animal wastes.

“Solid waste disposal service” means the collection, transportation and disposal of or resource recovery from solid waste.

“Solid waste management” means the prevention, reduction and disposal of solid waste; the management and provision of services, facilities and equipment necessary and convenient to such activities.

“Source-separated materials” means solid waste separated into separate materials by the source, generator or producer in preparation for recycling or reuse.

“Waste” means material that is no longer directly usable by the source, generator or producer of the material and which is to be disposed of or resource-recovered by another person. The fact that all or any part of such material may have value or that the source, generator or producer of materials has separated or segregated such material from other waste does not remove the material from this definition. [Ord. 347 § 1, 2004; Ord. 272 § 2, 1999].

8.02.030 Requirement of franchise – Exemptions.

(1) No person shall provide solid waste disposal service or advertise or offer to provide such service within the corporate limits of the city of Coos Bay unless granted a franchise.

(2) The city council may, after public hearing and by resolution, make exemptions from the requirement of a franchise. The city manager shall give 30 days' written notice to each franchisee of the public hearing and the proposed basis of the exception.

(3) Any grant of an exemption shall be supported by written findings that the exemption carries out the policies set forth in CBMC [8.02.010](#); that there is a need for the proposed service; that the franchisees cannot provide the proposed service; that the person seeking the exemption has the necessary equipment, experience, finances and personnel to adequately provide the proposed service; and that granting of the exemption will not have a material detrimental impact on customer service, consumer rates or business activities of the franchisees. [Ord. 272 § 3, 1999].

8.02.040 Grant of exclusive franchise.

(1) The city of Coos Bay hereby grants to Waste Connections of Oregon dba Les' Sanitary Services, Inc., the exclusive franchise, right, and privilege to provide solid waste disposal service within that portion of the corporate limits of the city of Coos Bay described as "Area I" in "Exhibit A," which is attached to the ordinance codified in this chapter and incorporated herein by reference, and also grants the exclusive right and privilege to extend this franchise to any unincorporated areas adjacent to this area which are hereafter annexed into the city, on and after the date of such annexation.

(2) The city of Coos Bay hereby grants to Coos Bay Sanitary Service the exclusive franchise, right, and privilege to provide solid waste disposal service within that portion of the corporate limits of the city of Coos Bay described as "Area II" in "Exhibit A," which is attached to the ordinance codified in this chapter and incorporated herein by reference, and also grants the exclusive right and privilege to extend this franchise to any unincorporated areas adjacent to this area which are hereafter annexed into the city, on and after the date of such annexation.

(3) Within 30 days after the passage of the ordinance codified in this chapter, or any amendment hereto, each franchisee shall file with the city recorder written acceptance by endorsement of a copy thereof.

(4) The city may enter into franchises for the disposal of medical waste, subject to approval by the franchisees.

(5) If the city of Coos Bay consolidates with the city of North Bend, the franchises granted by this chapter shall not extend to the area embraced within the corporate limits of the city of North Bend prior to the time of consolidation. [Ord. 272 § 4, 1999].

8.02.050 Exemptions.

The following persons and activities are exempt from the requirement of a franchise:

(1) Collection, transportation, reuse, recycling of or operation of a collection center for totally source-separated materials or repairable or cleanable discards by a religious, charitable, benevolent or fraternal organization which was not organized and is not operated for any solid waste management purpose and which is using the activity for fundraising. Organizations within the scope of this subsection include, but are not limited to, the Boy Scouts of America, the Salvation Army, St. Vincent de Paul, Goodwill and churches;

(2) Collection, transportation or redemption by any person of returnable beverage containers under ORS Chapter 459 commonly known as the "Bottle Bill";

(3) Transportation and disposal of wastes generated or produced as an incidental part of regularly carrying on the business or service of auto wrecking licensed by the state of Oregon, or generated or produced by demolition, land clearing or construction, janitorial services, gardening, park maintenance or landscaping service, street sweeping, auto body recovery, septic tank pumping or sludge collection. As used in this subsection, "janitorial service" does not include clean-up of accumulated or stored wastes;

(4) Transportation by a person of solid waste or source-separated recyclable materials generated or produced on his or her own premises to a disposal site, resource recovery site or market;

(5) Purchase of totally source-separated solid waste at fair market value;

(6) Provision of disposal service for hazardous wastes;

(7) Collection of recyclable material from nonresidential sources. [Ord. 272 § 5, 1999].

8.02.060 Franchise term.

Each franchisee's exclusive franchise, right, and privilege shall become effective on July 1, 1999, and shall continue for a period of seven years. At the end of the initial year, and each initial year thereafter, the franchise shall automatically be extended so that the term of the franchise remains seven years, unless the city notifies the franchisee, in writing, at least 30 days prior to July 1st, that the franchise will not thereafter automatically be extended to provide for a seven-year term, in which case the franchise shall terminate in seven years. Nothing in this section restricts the city council from terminating, suspending, modifying or revoking a franchise for cause. [Ord. 272 § 6, 1999].

8.02.070 Franchise fee.

(1) In consideration for the franchises granted by this chapter, each franchisee shall pay to the city five percent of the franchisee's gross revenue. As used in this section, "gross revenue" includes all gross receipts from solid waste disposal service within franchisee's respective service area, less receipts from container or drop box rental. In addition to the five percent franchise fee, each franchisee shall provide, at no cost to the city, solid waste disposal service for all administrative buildings of the city of Coos Bay, the city of Coos Bay public library, and all other solid waste generated by the city placed in the city's containers located within that franchisee's service area. All consideration paid by the franchisees pursuant to this section shall be in addition to any business license or other fee charged or assessed by the city.

(2) On or before June 30th of each fiscal year, each franchisee shall furnish the city with a certified statement of the franchisee's gross revenue generated from solid waste disposal service within the franchisee's service area for the prior calendar year. The statement shall include the number of residential, commercial, industrial and institutional customers and identify any other services performed by the franchisee and the revenue derived from those services. Each franchisee shall pay its franchise fee to the city on or before July 15th of each calendar year for gross revenue received during the first six months of that calendar year and on or before January 15th for gross revenue received during the last six months of that calendar year.

(3) Each franchisee shall keep complete and accurate records of the franchisee's operations in a form acceptable to the auditors of the city and in accordance with generally acceptable accounting practices. By accepting the grant of franchisee, each franchisee hereby consents to an audit at least once yearly to determine compliance with this section. [Ord. 272 § 7, 1999].

8.02.080 Franchisees' duties.

Each franchisee shall:

(1) Dispose of solid waste at a site approved by the local government unit having jurisdiction over solid waste disposal sites or resource recovering such wastes, both in compliance with ORS Chapter 459 and this chapter.

(2) Obtain and maintain public liability insurance in an amount not less than the limits set forth in the Oregon Tort Claims or any successor statute, for public bodies, which shall be evidenced by a certificate of insurance filed with the city recorder.

(3) Provide sufficient collection vehicles, containers, facilities, personnel and finances to provide all necessary solid waste disposal service or demonstrate the ability to subcontract with others to provide such service. Equipment shall be maintained, operated and loaded so that solid waste shall not be spilled, dropped, leaked or otherwise deposited on public ways or private property.

(4) Respond to any customer complaint regarding service.

(5) Provide weekly solid waste disposal service in residential areas and daily solid waste disposal service in commercial areas, Sundays and holidays excepted. Wet or offensive solid waste shall be collected in commercial areas before the hour of 12:00 noon each day, Sundays and holidays excepted.

(6) Furnish solid waste disposal service to all residents requesting and paying for such service in the franchisee's service area.

(7) Provide, at no cost, pick-up for the city's brush pick-up program. This program shall be offered at least twice annually, once in the spring and once in the fall. The city council shall adopt regulations it deems reasonable for users, including but not limited to the following:

(a) Each residence shall be limited to a five-yard maximum;

(b) As defined in this subsection, brush shall not include grass clippings or other similar material;

(c) Brush shall be cut into lengths of not more than five feet;

(d) A fee schedule for any amounts of brush in excess of the five-yard maximum.

(8) Provide the level of recycling service required by Oregon law, including, but not limited to:

(a) Operation of a recycling depot within the corporate limits of the city of Coos Bay or the city of North Bend for the purpose of providing a public facility where residents may take recyclable materials;

(b) Collection each week of source-separated materials from residential customers on the same day solid waste disposal service is provided. Types of materials to be collected shall be periodically designated by the city council;

(c) Expand franchisees' recycling education and promotion program, including mailing information at least once quarterly to all customers and providing comprehensive information on recycling to all new customers;

(d) Any additional recycling and reuse service when the city council finds that such service is required.

(9) Provide to each residential customer at no cost at least one durable recycling container.

(10) Permit inspection at reasonable times by the city of the franchisee's facilities, equipment, and personnel providing service.

(11) When a customer requires disposal of an unusual volume of solid waste or needs a special type of solid waste disposal service requiring a substantial new investment in equipment, the franchisee may enter into a contract with the customer to finance such service and thereby ensure amortization of such equipment. The purpose of this subsection is to ensure franchisee's purchase of equipment shall not become a charge against ratepayers who do not need or are not benefited by the franchisee's investment. [Ord. 272 § 8, 1999].

8.02.090 Hazardous waste disposal service not required.

Franchisees are not required to store, collect, transport, transfer, dispose of or resource recover any hazardous waste; provided, however, that franchisees may provide such service if it does so in compliance with all applicable laws, ordinances and regulations. [Ord. 272 § 9, 1999].

8.02.100 Rate regulation.

(1) Rates for solid waste disposal service provided by each franchisee shall be set by resolution of the city council and may be modified from time to time upon request of a franchisee or the city council's own motion.

(2) Prior to any change in rates, a hearing shall be held before the city council. The franchisees shall be given reasonable notice of time and place of the hearing and an opportunity to appear and be heard. Notice of the hearing shall be published at least once in a newspaper of general circulation within the city, not less than 10 days and not more than 30 days prior to any such hearing, which shall state that a proposed change in the rates for solid waste disposal service is before the city council, and that any resident of the city may appear and be heard. Any revision of rates shall be made by resolution of the city council adopted following such hearing.

(3) In determining rates, the city council shall give due consideration to franchisees' current and projected revenues and expenses; overhead; acquisition and replacement cost of equipment; cost of providing added or different service; reasonable return to the franchisee for doing business; research and development by the franchisee; and such other factors deemed relevant by the city council to determine rates. The city council may consider rates charged by other persons performing the same or similar solid waste disposal service in similar areas under same or similar service conditions.

(4) If approved in the rate schedule, a franchisee may charge an initial fee for new service, a reinitiation fee for recommencing service to any customer who has been terminated for failure to pay, and interest on past due accounts. [Ord. 272 § 10, 1999].

8.02.110 Rate preferences prohibited.

A franchisee shall not give a rate preference to any person or to any locality or for any type of solid waste stored, collected, transported, disposed of or resource recovered. This section shall not prohibit the establishment of uniform classes of rates based upon length of haul, type or quality of solid waste handled or customer location, so long as such rates are reasonably based upon cost and are approved by the city council. [Ord. 272 § 11, 1999].

8.02.120 Transfers – Subcontracting.

(1) A franchisee may not transfer this franchise or any portion hereof to any other person without prior written approval of the city council, which consent shall not be unreasonably withheld. The city council may attach conditions to any such transfer it deems necessary to guarantee maintenance of solid waste disposal service and compliance with this chapter. A pledge of this franchise as financial security shall be considered a transfer for purposes of this subsection.

(2) If a franchisee does not have necessary equipment or personnel, the franchisee may subcontract to provide a portion of its solid waste disposal service; provided, that such subcontracting does not relieve the franchisee from total responsibility for providing and maintaining service under and from compliance with this chapter. [Ord. 272 § 12, 1999].

8.02.130 Performance review.

(1) Within 90 days after the third anniversary of the effective date of the ordinance codified in this chapter, and every three years thereafter, the city may hold a public hearing at which the franchisees shall be present and participate to review the performance of the franchisees and to review the current state of technology available for solid waste management.

(2) Any customer may submit comments or complaints before or during the hearing, orally or in writing, and which shall be considered by the city council in making its performance review.

(3) If, as a result of such performance review, the city council and franchisees agree changes to the franchise are necessary, amendments shall be drafted, reviewed, agreed to by the parties and incorporated into the franchise.

(4) Within 30 days after the date of the performance review, the city council shall issue a report with respect to the franchisees' performance and quality of service. If substantial violations of this franchise are found which the city council determines may be reasonably corrected by the franchisee, the city council may direct that franchisee to correct such violations within a reasonable period of time.

(5) Failure by the franchisee after due notice to correct or to commence correcting any such substantial material violation shall be considered a material breach of this franchise, and the franchise as to that franchisee shall be terminated. [Ord. 272 § 13, 1999].

8.02.140 Termination, suspension, modification or revocation of franchise.

(1) Failure by franchisee to provide necessary solid waste disposal service or otherwise comply with the provisions of this chapter shall be grounds for termination, modification, suspension or revocation of the franchise.

(2) If the city manager determines grounds for termination, modification, suspension or revocation exist, he or she shall send written notice to the franchisee identifying the specific deficiencies, and stating that the franchise has not less than 20 days from date of mailing within which to correct the deficiencies or to request a hearing before the city council.

(3) If a hearing is requested, the city manager shall set the hearing at the earliest practicable opportunity. The franchisee and other interested persons shall have an opportunity to present oral or written evidence at the hearing. Persons presenting evidence may be questioned by the city council. After hearing evidence, the city council shall make findings based on evidence in the record whether the franchisee has violated subsection (1) of this section, and specifying remedial action.

(4) If the franchisee fails to correct deficiencies within the time specified in the notice sent pursuant to subsection (2) of this section or within the time specified in the order entered pursuant to subsection (3) of this section, the franchise may be terminated, suspended, modified or revoked, and any such action may be made contingent upon continued noncompliance.

(5) If the city manager finds a franchisee's violation of subsection (1) of this section poses an immediate and serious danger to public health, he or she may order summary action within a time specified in the notice to the franchisee; provided, however, that the franchisee shall be afforded the opportunity for a hearing before the council at the earliest practicable opportunity. [Ord. 272 § 14, 1999].

8.02.150 Right to lease franchisees' equipment.

(1) If a franchise is revoked or otherwise terminated, the city shall have the right to lease, for a period not to exceed six months, such of the franchisee's equipment necessary to conduct solid waste disposal service within the area previously serviced by franchisee. Such lease shall be at the then-reasonable rental value for equipment so leased, and shall provide for the release of the equipment back to the franchisee by noon on each day so the franchisee may use such equipment in performing services for franchisee's customers, if any, outside the franchisee's former service area.

(2) If the city elects to lease franchisee's equipment and the city and the franchisee are unable to agree on reasonable rental value, then each shall, within 10 days of the first written notice provided to the other, appoint an arbitrator, who together shall, within five days of appointment, name a third arbitrator. The arbitrators shall sit as a panel, and the panel's decision as to the reasonable rental value shall be deemed conclusive upon the parties. If either party or the arbitrators fail to comply with the terms of this subsection, then arbitration shall be pursued under ORS 33.230 et seq. [Ord. 272 § 15, 1999].

8.02.160 New or expanded resource recovery services.

Where a new resource recovery service or substantial expansion of existing resource recovery service is proposed by the city or person other than a franchisee:

(1) The city manager shall provide written notice of the proposed new or expanded service to the franchisee whose service area is affected by such proposed service at least 30 days prior to consideration by the city council.

(2) The city council may, on its own motion, and shall, upon request of an affected franchisee or applicant for an exception, hold a public hearing on the proposed new or expanded service.

(3) In determining whether the service is needed, consideration shall be given to the purposes of this chapter, public need for the service, technological and economical feasibility, effect on consumer rates, effect on other service by the franchisee, costs and justification, applicable laws, ordinances or regulations and any applicable solid waste management plan.

(4) If the city council determines that such new or expanded service is needed, the city council may require the franchisee provide the service within the franchisee's service area within a specified period of time, may allow an exemption from the requirement of a franchise to provide the new or expanded service, and, if applicable, set rates. [Ord. 272 § 16, 1999].

8.02.170 Termination of solid waste disposal service.

A franchisee shall not terminate solid waste disposal service to any of the franchisee's customers unless:

(1) Street or road access is blocked and there is no alternate route; provided, however, that the city shall not be liable for blocking of such access;

(2) Extreme weather conditions render providing solid waste disposal service unduly hazardous or the franchisee is prevented from providing such service by accidents or casualties caused by an act of God or the public enemy;

(3) A customer has not complied with CBMC [8.02.190](#) or is delinquent in making payment for solid waste disposal service after regular billing, written notice of delinquency and demand for payment;

(4) The franchisee has given not less than 90 days' written notice of intent to terminate all or a substantial part of solid waste disposal service to the city council and the city council has given written approval to terminate such service;

(5) The franchisee is ordered to suspend, reduce or terminate all or a portion of its solid waste disposal service by a legislative, administrative or judicial body having competent jurisdiction to make such order. [Ord. 272 § 17, 1999].

8.02.180 Prohibited acts.

In addition to, and not in lieu of, compliance with ORS Chapter 459 and other applicable laws and regulations:

(1) No person shall place hazardous waste for collection or disposal by franchisee without prior notice to the city manager or the franchisee. This requirement shall not apply to minor quantities of hazardous wastes generated at or by a single-family residential unit.

(2) No person shall place material in or remove material from a solid waste collection container without prior authorization from the owner of the container. For the purpose of this subsection, the franchisee is the owner of any container supplied by franchisee.

(3) No person, other than the source, generator or producer, shall take or remove solid waste which has been placed for solid waste disposal service by a franchisee or person provided an exemption pursuant to this chapter.

(4) No person shall install an underground solid waste container for storage or collection of solid waste. A franchisee is not required to service an underground container unless the person responsible for it places the container above ground prior to time of solid waste disposal service.

(5) No container used for residential solid waste disposal shall be located behind any locked or latched door or gate or inside of any building or structure, or shall exceed 32 gallons in volume or 60 pounds in weight, unless approved by the franchisee.

(6) Each customer shall provide safe access to the customer's solid waste container or wastes without risk or hazard to franchisee, its employees or agents, or any other person.

(7) No container designed for mechanical pickup shall exceed a safe loading weight or volume as established by the franchisee to protect service workers, the franchisee's collection equipment, the customer and the public.

(8) Stationary solid waste compacting devices shall comply with federal and state safety standards and provide adequate protection for the user.

(9) Every person who generates or produces waste shall remove or have removed from the person's premises at least once every seven days all waste which may putrefy during that period. More frequent removal may be required where a facility or service involves public health. All waste shall be removed at sufficient frequency to prevent health hazards, nuisances or pollution.

(10) Producers and generators of waste shall clean both waste containers and shall keep the area around such containers free of accumulated wastes. The franchisee shall provide periodic maintenance to containers supplied by franchisee. [Ord. 272 § 18, 1999].

8.02.190 Payment of service.

Persons who receive solid waste disposal service from the franchisee shall be responsible for payment of service. [Ord. 272 § 19, 1999].

8.02.200 Oversight.

Solid waste disposal service provided by franchisees shall be under the oversight of the city manager. [Ord. 272 § 20, 1999].

8.02.210 Enforcement and penalties.

(1) The city or the franchisee may take such legal action as is necessary to ensure compliance with this chapter, including actions to recover payment for services by any customer.

(2) Violation by any person of this chapter shall be punished by a civil penalty not to exceed \$1,000 per violation. Each day a violation persists shall be deemed a separate offense; provided, however, that two or more such continuing offenses may be joined in the same action. Penalties imposed pursuant to this section are not in lieu of other remedies provided by other applicable law, rule or regulation.

(3) Any action or determination by franchisee under or pursuant to this chapter may be appealed to the city manager. Any action or determination of the city manager under this chapter may be appealed to the city council. [Ord. 272 § 21, 1999].

OREGON REFUSE & RECYCLING ASSOCIATION

May 1, 2013

Mr. Roger Craddock, City Manager
Coos Bay City Hall
500 Central Ave.
Coos Bay, OR 97420

via email only to: rcraddock@coosbay.org

Re: Solid Waste and Recycling Collection Franchise

Dear Mr. Craddock:

I am the Executive Director of the Oregon Refuse & Recycling Association (ORRA), the statewide trade association representing solid waste management companies in Oregon. ORRA members collect and process most of Oregon's residential and commercial refuse and recyclables, as well as operate material recovery facilities, compost facilities, and many of Oregon's municipal solid waste transfer stations and landfills.

In Oregon, most cities and counties have chosen to franchise their solid waste collection services. They do this under the authority of state law, found at ORS 459A.085. Among other things, the law states:

(1) The Legislative Assembly finds that providing for collection service including, but not limited to the collection of recyclable material as part of the opportunity to recycle is a matter of statewide concern.

...

(3) It is the intent of the Legislative Assembly that a city or county may displace competition with a system of regulated collection service by issuing franchises which may be exclusive if service areas are allocated. The city or county may recognize an existing collection service. A city or county may award or renew a franchise for collection service with or without bids or requests for proposals.

The solid waste and recycling collection franchises in Oregon are as diverse as the communities in which they are implemented. Even with this diversity, franchises do have a number of beneficial reasons in common, such as:

For the Local Governments

1. Provide a uniform basis for comprehensive waste management and planning to meet current and changing needs, laws and technologies. Rather than the local governments having scattered ordinances and resolutions to cover solid waste collection, solid waste disposal, recycling and nuisance abatement, all regulations and standards are contained in one Solid Waste Management

Plan for each government that easily can be referenced, implemented, enforced and amended as needed.

2. Give local government control over rulemaking to be sure that concerns unique to it are addressed. These concerns may be different than those set by state statute or environmental regulations.
3. Assure the local government that it is meeting its responsibility for recycling under state statute and rules, and give the ability to the local government to implement enhanced programs that are unique to its needs by rules that enhance or go beyond those implemented by the state.
4. Make a given solid waste collector accountable to the local government for its performance because the collector must meet local government standards as a condition of the franchise arrangement.
5. Give the local government a revenue source, through a franchise fee, to cover administrative costs of solid waste management program.

For the Customer/Community

1. Assure that all citizens in the community will receive service.
2. Provide equity in the rates through rate regulation for all classes of customers, based on a cost of service.
3. Facilitate energy conservation and reduction of pollution, noise and wear and tear on city and county roads by eliminating duplication of service.
4. Give the flexibility to deliver special services to meet the changing needs of customers.
5. Set a method for adequately resolving customer complaints, with the “right” to continue as the franchisee being at risk if high service standards are not maintained.
6. Provide a public process for direct citizen involvement in the setting of service standards and rates.
7. Assure the community will be given the highest level of recycling service, thereby giving the community the mechanism for meeting its environmental responsibility.

For the Collector

1. Provide rate regulation that will give a stable rate structure to recover fixed costs as well as increased costs imposed by regulatory agencies or increased costs of operation.
2. Allow a reasonable rate of return so that adequate, safe equipment can be used for the most efficient service.

3. Give the solid waste collector the ability to prove the efficiency of its operation through regular rate reviews.
4. Allow the collector to concentrate on good service.
5. Maintain continuity in the relationship between the collector and customer in an exclusive service area.

I hope this background is useful in your deliberations. Please contact me if I may be of further assistance.

Sincerely,



Kristan Mitchell
Executive Director

Coos Bay Sanitary Service

COMMERCIAL

P.O. BOX 1078

COOS BAY, OREGON 97420

PHONE 267-6675

Free services provided by Coos Bay Sanitary Service to the City of Coos Bay.

Mingus Park 5yrd cont. x 3 (times a week) = \$1,580.87

Fire Station 3yrd cont. x1 = \$ 322.48

City Hall 2yrd contx2 = \$ 427.34

City Shop 1 1/2yrd cont.x1 = \$ 165.18

Coos Art Museum 95gl cart x1 = \$ 54.84

Library 1yrd x 1 = \$ 112.74

OMI-grit 1 ½ yrd x3 = \$ 479.78

\$3,143.23 x 12 months \$37,718.76

Blackberry Fest 20yrd=\$502.41 502.41

Brush 15,000.00

2012 Franchise fee \$78,103.71

\$131,324.88

City of Coos Bay Free Services

2011			
F/Fees	Cont Serv	Transfer Station	Brush p/u
\$7,108.32	\$1,046.97	\$945.75	\$18,000
\$4,376.45	\$1,046.97	\$1,824.50	(+) Disp
\$7,554.94	\$1,046.97	\$968.00	
\$4,146.37	\$1,046.97	\$2,151.75	
\$6,965.64	\$1,046.97	\$356.50	
\$4,824.30	\$1,046.97	\$1,034.00	
\$6,571.38	\$962.06	\$842.00	
\$5,021.91	\$962.06	\$652.72	
\$6,419.02	\$962.06	\$1,072.52	
\$5,009.67	\$962.06	\$669.77	
\$7,909.58	\$962.06	\$580.50	
\$4,139.66	\$962.06	\$1,849.01	
\$70,047.24	\$12,054.18	\$12,947.02	\$18,000.00
	Total	\$113,048.44	

2012			
F/Fees	Cont Serv	Transfer Station	Brush p/u
\$7,565.09	\$962.06	\$2,413.75	\$18,000
\$4,576.20	\$962.06	\$988.50	(+) Disp
\$7,444.15	\$962.06	\$4,294.89	
\$4,820.77	\$962.06	\$3,443.52	
\$7,366.63	\$962.06	\$1,878.14	
\$5,690.61	\$962.06	\$431.75	
\$8,190.87	\$962.06	\$2,209.33	
\$4,391.46	\$982.36	\$1,183.00	
\$7,034.14	\$983.21	\$835.50	
\$5,583.76	\$983.21	\$612.75	
\$7,144.85	\$983.21	\$1,216.25	
\$4,747.62	\$983.21	\$1,133.25	
\$74,556.15	\$11,649.62	\$20,640.63	\$18,000.00
	Total	\$124,846.40	

YTD 2013			
F/Fees	Cont Serv	Transfer Station	Brush p/u
\$7,387.44	\$983.21	\$378.50	\$9,000
\$4,547.81	\$983.21	\$2,537.72	(+) Disp
\$7,332.67	\$983.21	\$1,033.75	
\$19,267.92	\$2,949.63	\$3,949.97	\$9,000.00
	YTD Total	\$35,167.52	