

**CITY OF COOS BAY CITY COUNCIL**  
**Agenda Staff Report**

MEETING DATE	AGENDA ITEM NUMBER
January 15, 2013	

TO: Mayor Shoji and City Councilors

FROM: Rodger Craddock, City Manager *REC*

ISSUE: Star of Hope Recycling Program Request

BACKGROUND:

The City has a Solid Waste Franchise Agreement (Ordinance 272) with Coos Bay Sanitary Service and Waste Connections. The franchise agreement regulates recycling and trash collection and fees for those services within the City. The franchise agreement also provides exclusive rights, with some exceptions, in regards to recycling and trash collection within the City.

One of the exceptions allowed within the franchise agreement and if approved by the Council is the collection and recycling programs of charitable originations. On November 26, 2012, I received a letter from LouAnn Dewater, the Deputy Director of Star of Hope, advising of their intention to expand / resume their recycling program here in Coos Bay. Star of Hope has been engaged in a recycling program for several decades; and although those efforts were scaled back in recent years, they wish to expand their recycling efforts once again. Star of Hope is a non-profit (501c3) organization; and their recycling efforts provide jobs for handicapped individuals and a source of revenue used in part to fund their organizations charitable activities.

The current franchise agreement contains the following regarding exemptions from the requirements of the franchise agreement:

*Section 5. Exemptions. The following persons and activities are exempt from the requirement of a franchise:*

- (a) 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;*
- (b) Collection, transportation or redemption by any person of returnable beverage containers under ORS Chapter 459 commonly known as the "Bottle Bill";
- (c) 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 cleanup of accumulated or stored wastes;

- (d) 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;
- (e) Purchase of totally source-separated solid waste at fair market value;
- (f) Provision of disposal service for hazardous wastes;
- (g) Collection of recyclable material from non-residential sources.

While our franchise agreement provides for an exception for an organization such as Star of Hope from the requirements of a franchise agreement, the agreement also provides the following requirements for any new or **expanded** proposed resource recovery services:

*Section 16. 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:*

- (a) 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 thirty (30) days prior to consideration by the City Council.*
- (b) 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.*
- (c) In determining whether the service is needed, consideration shall be given to the purposes of this ordinance, 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.*
- (d) 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.*

On December 14, 2012, I contacted Dan Jensen of Coos Bay Sanitation and Bill Richardson of Waste Connections to advise them of Star of Hope's intentions to expand their recycling program here in Coos Bay and as required by the Solid Waste Franchise Agreement that a public hearing was scheduled for January 15, 2013.

**ACTION REQUESTED:**

It is staff's recommendation the City Council hold a public hearing; and if it pleases the Council, allow Star of Hope to expand their recycling program.



# City of Coos Bay

## Office of the City Manager

500 Central Avenue, Coos Bay, Oregon 97420 • Phone 541-269-8912  
Fax 541-267-5912 • <http://www.coosbay.org>

December 14, 2012

Dan Jensen,  
Coos Bay Sanitation  
60648 Hwy 101  
Coos Bay, OR 97420

Bill Richardson,  
Waste Connections  
3432 Cedar  
North Bend, OR 97459

RE: Star of Hope Recycling Program Request

Greetings,

This letter is to advise you as the Coos Bay Solid Waste Collection Franchise Holders that the City of Coos Bay recently received a letter from LouAnn Dewater the Deputy Director of Star of Hope advising of their intentions to expand / resume their recycling program here in Coos Bay. As you may know, Star of Hope has been engaged in a recycling program for several decades; and although those efforts were scaled back in recent years, they wish to expand their recycling efforts once again. In my discussion with Ms. Dewater, I learned that Star of Hope is a non-profit (501c3) organization; and their recycling efforts provide jobs for handicapped individuals and a source of revenue used in part to fund their organizations charitable activities.

While our franchise agreement provides for an exception for an organization such as Star of Hope from the requirements of a franchise agreement, the agreement also provides the following requirements for any new or expanded proposed resource recovery services:

*Section 16. 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:*

- (a) 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 thirty (30) days prior to consideration by the City Council.*
- (b) 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.*

- (c) *In determining whether the service is needed, consideration shall be given to the purposes of this ordinance, 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.*
- (d) *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.*

As such, a public hearing has been scheduled for January 15, 2013 to take comments and consider Star of Hope's request to expand their resource recovery program here in Coos Bay. The public hearing will take place in the Coos Bay City Council Chambers during the Council meeting which is scheduled to begin at 7:00 p.m. After the public hearing, the Council will consider Star of Hope's request to expand their resource recovery program. Please feel free to contact me should you have any questions.

Regards,



Rodger Craddock,  
City Manger



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President  
First Presbyterian Church  
of North Bend

Sheila Banks-Vice President  
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Dr. Gerald H. Miller Ph. D.  
Executive Director

LouAnn Dewater  
Deputy Director  
Oregon Connection  
Vocational & Community  
Inclusion

Kathy Upchurch  
Administrative Assistant

Lisa Montez  
Director of Residential and  
Community Supports

James Adams  
Financial Director

Rodger Craddock  
City Manager  
City of Coos Bay  
500 Central  
Coos Bay, OR 97420

Dear Mr. Craddock,

This letter is intended to inform the City of Coos Bay that Star of Hope a 501 3c non-profit agency will be expanding/resuming our recycling program. We have used our recycling program for the past 30 years as a revenue source to help fund our programs. As our state funded revenue streams decrease we must look at ways to increase other revenue to ensure that Star of Hope continues to operate and provide services to the most vulnerable population in Coos County. Please feel free to contact me with any questions you may have regarding this matter.

Respectfully,

LouAnn Dewater  
Deputy Director  
Star of Hope



Star of Hope is a United Way Agency

## ORDINANCE NO. 272

### AN ORDINANCE FOR THE MANAGEMENT OF SOLID WASTE GENERATED WITHIN THE CORPORATE LIMITS OF THE CITY OF COOS BAY AND GRANTING FRANCHISES

The City of Coos Bay ordains as follows:

**Section 1. Policy.** It is the public policy of the City of Coos Bay to regulate the management of solid waste to:

- (a) 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;
- (b) Insure safe, efficient, economical and comprehensive solid waste disposal service;
- (c) Ensure fair and equitable consumer rates and prohibit rate preferences or other discriminatory practices;
- (d) Increase efficiency and decrease truck noise, street wear, energy use, air pollution and public inconvenience by the elimination of overlapping solid waste disposal service;
- (e) Protect public health and the environment;
- (f) Protect against improper or dangerous handling of hazardous wastes;
- (g) Provide public service standards;
- (h) Provide a basis and incentive for investment in solid waste management equipment, facilities, sites and technology;
- (i) Conserve energy and material resources, reduce solid waste, and promote material and energy recovery in all forms;
- (j) 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.

**Section 2. Definitions.** For the purposes of this ordinance, the following mean:

**Franchisees.** Coos Bay Sanitary Service and Les' Sanitary, Inc.

**Hazardous Waste.** Any substance defined as hazardous waste pursuant to state or federal law.

**Person.** Any individual, partnership, association, corporation, trust, firm, estate, joint venture or other legal entity or public agency.

**Resource Recovery.** 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 Disposal Service.** The collection, transportation and disposal of or resource recovery from solid waste.

**Solid Waste.** 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 Management.** 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.** Solid waste separated into separate materials by the source, generator or producer in preparation for recycling or reuse.

**Waste.** 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.

### **Section 3. Requirement of Franchise; Exemptions.**

(a) 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.

(b) The City Council may, after public hearing and by resolution, make exemptions from the requirement of a franchise. The City Manager shall give thirty (30) days' written notice to each Franchisee of the public hearing and the proposed basis of the exception.

(c) Any grant of an exemption shall be supported by written findings that the exemption carries out the policies set forth in Section 1 of this ordinance; 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.

### **Section 4. Grant of Exclusive Franchise.**

(a) The City of Coos Bay hereby grants to Les' Sanitary, 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 hereto 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.

(b) 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 hereto 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.

(c) Within 30 days after the passage of this ordinance, or any amendment hereto, each Franchisee shall file with the City Recorder written acceptance by endorsement of a copy thereof.

(d) The City may enter into franchises for the disposal of medical waste, subject to approval by the Franchisees.

(e) If the City of Coos Bay consolidates with the City of North Bend, the franchises granted by this ordinance shall not extend to the area embraced within the corporate limits of the City of North Bend prior to the time of consolidation.

**Section 5. Exemptions.** The following persons and activities are exempt from the requirement of a franchise:

(a) 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;

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

(c) 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 cleanup of accumulated or stored wastes;

(d) 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;

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

(f) Provision of disposal service for hazardous wastes;

(g) Collection of recyclable material from non-residential sources.

**Section 6. 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 thirty days prior to July 1, 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.

**Section 7. Franchise Fee.**

(a) In consideration for the franchises granted by this ordinance, each Franchisee shall pay to the City five percent (5%) 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 5% 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.

(b) On or before June 30 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 the July 15 of each calendar year for gross revenue received during the first six months of that calendar year and on or before January 15 for gross revenue received during the last six months of that calendar year.

(c) 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.

**Section 8. Franchisees' Duties. Each Franchisee shall:**

(a) 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 ordinance;

(b) 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.

(c) 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.

(d) Respond to any customer complaint regarding service.

(e) 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.

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

(g) 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:

- (1) Each residence shall be limited to a five-yard maximum;
- (2) As defined in this subsection, brush shall not include grass clippings or other similar material;
- (3) Brush shall be cut into lengths of not more than five feet;
- (4) A fee schedule for any amounts of brush in excess of the five yard maximum.

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

- (1) 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;
- (2) 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;
- (3) 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;
- (4) Any additional recycling and reuse service when the City Council finds that such service is required.

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

(j) Permit inspection at reasonable times by the City of the Franchisee's facilities, equipment, and personnel providing service.

(k) 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 benefitted by the Franchisee's investment.

**Section 9. 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, ordinance and regulations.

**Section 10. Rate Regulation.**

(a) 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.

(b) 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 ten (10) days and not more than thirty (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.

(c) In determining rates, the City Council shall give due consideration to Franchisees' current and projected revenues and expenses; overhead; acquisition and replacement cost 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 the similar areas under same or similar service conditions.

(d) 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.

**Section 11. 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 subsection 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.

**Section 12. Transfers; Subcontracting.**

(a) 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 ordinance. A pledge of this franchise as financial security shall be considered a transfer for purposes of this subsection.

(b) 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 ordinance.

**Section 13. Performance Review.**

- (a) Within ninety (90) days after the third anniversary of the effective date of this ordinance, 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.
- (b) 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.
- (c) 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.
- (d) Within thirty (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.
- (e) 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.

**Section 14. Termination, Suspension, Modification or Revocation of Franchise.**

- (a) Failure by Franchisee to provide necessary solid waste disposal service or otherwise comply with the provisions of this ordinance shall be grounds for termination, modification, suspension or revocation of the franchise.
- (b) 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 Franchisee has not less than twenty (20) days from date of mailing within which to correct the deficiencies or to request a hearing before the City Council.
- (c) 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 (a) of this section, and specifying remedial action.
- (d) If the Franchisee fails to correct deficiencies within the time specified in the notice sent pursuant to subsection (b) of this section or within the time specified in the order entered pursuant to subsection (c) of this section, the franchise may be terminated, suspended, modified or revoked, and any such action may be made contingent upon continued noncompliance.
- (e) If the City Manager finds a Franchisee's violation of subsection (a) 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.

**Section 15. Right to Lease Franchisees' Equipment.**

(a) If a franchise is revoked or otherwise terminated, the City shall have the right to lease, for a period not to exceed six (6) 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.

(b) 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 ten (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.

**Section 16. 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:

(a) 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 thirty (30) days prior to consideration by the City Council.

(b) 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.

(c) In determining whether the service is needed, consideration shall be given to the purposes of this ordinance, 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.

(d) 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.

**Section 17. Termination of Solid Waste Disposal Service.** A Franchisee shall not terminate solid waste disposal service to any of the Franchisee's customers unless:

(a) 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;

(b) 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;

(c) A customer has not complied with Section 19 of this ordinance or is delinquent in making payment for solid waste disposal service after regular billing, written notice of delinquency and demand for payment;

(d) The Franchisee has given not less than ninety-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;

(e) 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.

**Section 18. Prohibited Acts.** In addition to, and not in lieu of, compliance with ORS Chapter 459 and other applicable laws and regulations:

(a) 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.

(b) 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.

(c) 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 ordinance.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

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

(i) 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.

(j) 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.

**Section 19. Payment of Service.** Persons who receive solid waste disposal service from the Franchisee shall be responsible for payment of service.

**Section 20. Oversight.** Solid waste disposal service provided by Franchisees shall be under the oversight of the City Manager.

**Section 21. Enforcement and Penalties.**

(a) The City or the Franchisee may take such legal action as is necessary to ensure compliance with this ordinance, include actions to recovery payment for services by any customer.

(b) Violation by any person of this ordinance shall be punished by a civil penalty not to exceed \$1,000.00 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.

(c) Any action or determination by Franchisee under or pursuant to this ordinance may be appealed to the City Manager. Any action or determination of the City Manager under this ordinance may be appealed to the City Council.

**Section 22. Severability.** Any finding by any court of competent jurisdiction that any section, subsection or other provision of this ordinance is unconstitutional or otherwise invalid shall not invalidate any other section, subsection or other provision of this ordinance.

**Section 23. Repeal.** Ordinance No. 2906 is repealed, such repeal to become effective at such time that this Ordinance takes effect.

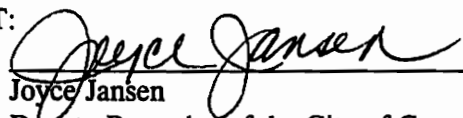
**Section 24.** This ordinance shall take effect 30 days after enactment by the Council and signature of the Mayor.

The foregoing ordinance was enacted by the City Council of the City of Coos Bay this 18<sup>th</sup> day of May 1999, by the following vote:

Yes: Mayor Verger and Councilors Jeff McKeown, Cindi Miller, Don Spangler, Kevin Stufflebean, and Judy Weeks

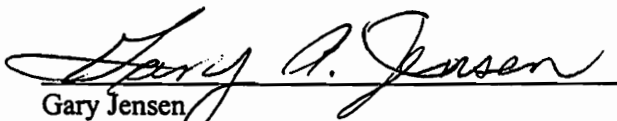
No: None  
Absent: Councilor Joe Benetti

  
Joanne Vergé  
Mayor of the City of Coos Bay  
Coos County, Oregon

ATTEST:   
Joyce Jansen  
Deputy Recorder of the City of Coos Bay  
Coos County, Oregon


The franchisees accept the franchise granted by this ordinance:

COOS BAY SANITARY SERVICE

  
Gary Jensen

5/27/99  
Date

LES' SANITARY, INC.

  
Les Golbek

5/26/99  
Date



**Exhibit "A" to Ordinance No. [\*]**

**AREA I - Area to be served by Les' Sanitary, Inc.**

**FOR BOTH COMMERCIAL AND RESIDENTIAL CUSTOMERS:**

All that part of the City of Coos Bay situated North and West of a line drawn as follows: Begin at the Southwest corner of the boundary of the City of North Bend situated in Section 21, Township 25 South, Range 13 West; run thence Southerly along the center of said Section 21 to the Southerly quarter corner of Section 21 from said point; run thence due South through the center of Section 28, Township 25 South, Range 13 West.

**AND FOR BOTH COMMERCIAL AND RESIDENTIAL CUSTOMERS:**

Beginning at the Quarter Section corner on the East boundary line of Section 36, Township 25 South, Range 13 West of the Willamette Meridian, Coos County, Oregon; thence West to the mid channel of Isthmus Slough, in Township and Range aforesaid; thence Northwesterly along the mid channel of said Isthmus Slough to Coos Bay and to the line on East boundary to the previous city limits of the incorporated City of Marshfield (now Coos Bay) thence Northerly along said East line of the former City of Marshfield (now Coos Bay) and along the channel of Coos Bay to the mouth of Coos River, at mid channel; thence Northeasterly to a point on the Harbor Line as established by the Port of Coos Bay, which point is on the East side of Coos Bay channel and on the North side of the Coos River channel; thence Northerly along the Harbor Line as established by the Port of Coos Bay to a point due West of the meander post on the East shore of Coos Bay on the line between Sections 12 and 13, Township 25 South, Range 13 West of the Willamette Meridian; thence East to the said meander post between Sections 12 and 13, which point is the Northwest corner of the plat of Townsite of the former City of Coos Bay, Coos County, Oregon; according to the map and plat thereof on file and of record in the office of the County Clerk of said County; thence Southerly and Southeasterly along the Westerly boundary of said Townsite of the former City of Coos Bay to the Southeast corner of Lot B, Block 37 of said plat; thence South for a distance of 329 feet to the Northwest corner of Block 55 of the said Townsite of the former City of Coos Bay; thence South along the West boundary of said Block 55 to the high water line of Coos Bay; thence Southwesterly, Southerly and Southeasterly along the said high water line of Coos Bay to the meander post on the East shore of Coos Bay on the line between Sections 13 and 24 of said Township and Range; which point is the Northwest corner of the plat of Crawford Point Addition to the former City of Coos Bay, Coos County, Oregon, according to the map and plat thereof on file and of record in the office of the County Clerk of said County; thence Southerly and Easterly along the West and South boundaries of said plat of Crawford Point Addition to the former City of Coos Bay to the meander post on the line between Section 19, Township 25 South, Range 12 West of Willamette Meridian and Section 24, Township 25 South, Range 13 West of Willamette Meridian, which point is the Southeast corner of said plat; thence in a straight line Southeasterly to the meander post on the East shore of Coos Bay on the line between Sections 19 and 30, Township 25 South, Range 12 West of Willamette Meridian, thence South 60 degrees West to the mid channel of Coos River, thence upstream along the mid