

ORDINANCE NO. 1142

AN ORDINANCE GRANTING AN EXCLUSIVE SOLID WASTE FRANCHISE TO HOLLIDAY ENTERPRISES, LLC; PROVIDING PENALTIES FOR VIOLATION THEREOF; AND REPEALING ORDINANCE NO. 1118.

THE PEOPLE OF THE CITY OF PRINEVILLE ORDAIN AS FOLLOWS:

Section 1. Purposes, Policy, and Scope. It is declared to be the public policy of the City of Prineville 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 rate preferences or other practices that might be discriminatory.
- (3) Conserve energy and material resources, reduce solid wastes, and promote material and energy recovery in all forms.
- (4) Provide for technologically and economically feasible resource recovery.
- (5) Eliminate overlapping service and thereby to increase efficiency and to decrease truck noise, street wear, energy waste, air pollution, and public inconvenience.
- (6) Protect public health and the environment.
- (7) Provide public service standards.
- (8) Protect against improper and dangerous handling of hazardous wastes and infectious wastes.

Section 2. Definitions.

- (1) City: The City of Prineville.
- (2) City Council: The City Council of the City of Prineville, Oregon.
- (3) Compensation: Compensation includes:
 - (a) Any type of consideration paid for service including, but not limited to, rent, the proceeds from resource recovery, any direct or indirect provision for the payment of money, goods, services or benefits by tenants, lessees, occupants or similarly situated persons; and
 - (b) The exchange of service between persons; and
 - (c) Notwithstanding anything in 3(a) or (b) above, this Ordinance does not intend to include as compensation the normal time-to-time assistance to one's friend or neighbor in hauling said friend's or neighbor's solid waste.
- (4) Franchisee: The person or persons granted a franchise by this Ordinance and a subsequent Ordinance or a subcontractor to such person or persons.
- (5) Hazardous Waste: Any Waste:
 - (a) Defined as hazardous waste by or pursuant to ORS 466.005, or

- (b) Defined as hazardous waste by another governmental unit having jurisdiction; or
 - (c) Determined by competent authority to be hazardous to service workers, to service equipment, or to the public.
- (6) Infectious Wastes: Infectious as defined by ORS 459.386 as now adopted or as hereafter amended.
 - (7) Person: Any individual, partnership, association, corporation, limited liability company, trust, firm, estate, joint venture or other private legal entity or any public agency.
 - (8) Recyclable Material: Any material or group of materials that can be collected and sold for recycling at a net cost, equal to or less than the cost of collection and disposal of the same material.
 - (9) 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.
 - (10) Service: The collection, transportation, or disposal of resource recovery from solid waste.
 - (11) Solid Waste: All solid waste or semi-solid waste including, without limitation, garbage, rubbish, refuse, trash, ashes or swill, newsprint or waste paper, corrugated or cardboard, grass clippings, compost, residential, commercial, industrial, governmental or institutional waste, discarded home or industrial appliances, equipment or furniture, vehicle parts or tires, vegetable or animal wastes, confidential document destruction and removal, infectious wastes, and other wastes.
 - (12) Solid Waste Management: The prevention of or reduction of solid waste; management of service, and facilities and equipment necessary or convenient to such activities.
 - (13) Waste: Material that is no longer directly useable 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 materials may have value and thus be recovered does not remove them 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. Persons and Practices Exempt from Franchise. Nothing in this Ordinance requires a franchise from the following persons for the following businesses or practices:

- (1) The collection, transportation and reuse of repairable or cleanable discards by a private charitable organization regularly engaged in such business or activity, i.e. Neat Repeat or similar organization.

- (2) The collection, transportation and reuse or recycling of totally source separated materials by a fraternal or charitable organization which is using the activity for fund raising; including, without limitation, scouts, and churches
- (3) The collection, transportation or redemption of returnable beverage containers under ORS Chapter 459 and the portion thereof commonly known as the “Bottle Bill.”
- (4) The generator or producer who transports and disposes of waste created as an incidental part of regularly carrying on the business or service of auto wrecking, to the extent licensed by the State of Oregon; demolition, land clearing or construction; janitorial service; gardening, park maintenance or landscaping service; street sweeping, auto body recovery; or septic tank pumping or sludge collection. “Janitorial Service” does not include cleanup of accumulated or stored wastes.
- (5) The transportation by a person of solid waste generated or produced by such person to a disposal site, resource recovery site or market. The transportation by a property owner of residential property of solid waste left upon such owner’s property by tenants or occupants to a disposal site, resource recovery site or market, but may not provide solid waste collection service for a tenant on a regular or continuing basis.
- (6) The purchase of totally source separated solid waste for fair market value; however, the City Council may require that anyone making such purchase apply for an exemption as described in subsection (9) below.
- (7) The providing of service to a state or federal agency under written contract with such agency.
- (8) The providing of service for wastes determined by competent authorities to be hazardous.
- (9) Any practice, business or activity may be exempted by the City Council after public hearing thereon. In considering whether the City Council shall exempt such practice, business or activity, it may consider the purposes and standards of this ordinance and may require terms and conditions, as it deems necessary in the public interest.

Section 4. Practices Prohibited Without a Franchise. Unless exempted by Section 4 or franchised pursuant to Section 6 of this Ordinance, no person shall:

- (a) Solicit customers for service; or
- (b) Advertise the providing of service; or
- (c) Provide service in the City.

Section 5. Grant of Exclusive Franchise. There is hereby granted to Holliday Enterprises, LLC, the exclusive right, privilege, and franchise to provide service within the City limits as of date of this

Ordinance and any area that may hereafter be annexed to the City, and, for that purpose, to utilize the streets of the City.

Section 6. Franchise Term. The right, privilege, and Franchise herein granted shall be considered as a continuing six (6) year Franchise subject to termination as follows:

- (1) Unless grounds exist for suspension, modification, or revocation of the Franchise under Section 9 of this Ordinance, this Ordinance shall be considered as a continuing six-year term. That is, beginning on July 1 of each year, the Franchise shall be considered renewed for an additional six-year term unless at least 30 days prior to July 1 of any year the City shall notify the Franchisee of intent to terminate the Franchise. Upon the giving of such Notice of Termination, the Franchisee shall have a Franchise, which will terminate six years from the date of Notice of Termination.
- (2) In the event the Franchisee shall desire to terminate service given under the terms of this Franchise, then it shall give not less than two years notice of the intent to terminate service and obligations under the Franchise. In the event of a voluntary termination of service by the Franchisee, the City shall have a right and option to purchase all or any part of the equipment of the Franchisee at a price, which will be agreed upon between the parties. If the parties cannot agree to a purchase price, then the same shall be submitted to arbitration. Each party shall select one arbitrator and the two arbitrators selected shall select a third party, and the three arbitrators shall determine a fair and equitable price to be paid by the City to the Franchisee for all equipment to be purchased. The cost of arbitration shall be borne equally. After arbitration the City shall have the right to refuse any or all equipment.
- (3) There shall be an annual review of this franchise, and operations under it, in May of each year. Said annual review shall be in the form of a work session between the City's Public Works Committee and the Franchisee or his designated representative.

Section 7. Franchise Fee. Franchisee shall pay to the City a Franchise fee or charge equivalent to three percent of Franchisee's gross operating revenue as the same is defined herein.

- (1) "Gross operating revenue," as used herein shall be defined as the gross revenue from solid waste collection services within the corporate limits of the City.
- (2) The franchise fee due hereunder shall be paid annually, by May 1 of each year for the calendar year preceding, January 1 through December 31.
- (3) The City acknowledges that under the terms of this new franchise, the City should pay for services provided to the City by Franchisee. In lieu of this, however, the City and Franchisee may reach a mutually agreed upon level of services to the City and mutually agreed upon

level of charges for these services. This mutually agreed upon amount may then be deducted from the annual franchise fee due to the City by Franchisee.

Section 8. Franchise Responsibility.

(1) The Franchisee shall:

- (a) Dispose of solid waste at the site approved by local government unit having jurisdiction and comply with all applicable laws, rules and regulations.
- (b) Provide and keep in force public liability insurance in amounts and for coverages reasonably determined by City. All insurance stated in this paragraph shall be subject to review and revision on a yearly basis. Such insurance shall be evidenced by a Certificate of Insurance filed with the City Recorder.
- (c) Within 30 days after the effective date of this Ordinance, file with the City Recorder a written acceptance of this franchise by endorsing acceptance on a copy of this Ordinance.
- (d) Provide sufficient collection vehicles, containers, facilities, personnel and finances to provide good service.
- (e) Except as otherwise provided, all vehicles used in the collection and/or transportation of waste shall be equipped with a leak-proof metal body of the compactor type. If a franchisee uses a specially designed, motorized local collection vehicle for transporting solid waste over short distances from residential or commercial stops to waiting trucks, the container portion of such vehicle shall be equipped with a cover, adequate to prevent scattering of the load. If any pickup truck or open bed truck is used by a franchisee, the load shall be covered with an adequate cover to prevent scattering of the load. All vehicles shall be operated in conformity with all ordinances of the City. All vehicles shall be properly licensed, registered, and equipped in compliance with the motor vehicle laws of the State of Oregon.
- (f) Respond promptly and effectively to any complaint on service.
- (g) Provide a performance bond in an amount reasonably acceptable to with a surety licensed to do business in the State of Oregon conditioned upon the full and faithful performance of this Agreement and franchise and this Ordinance. In the event that the City Council finds that the Franchisee has adequate experience and otherwise meets the requirements to guarantee service, it may waive, by City Council action, all or part of the bond requirements and may attach any necessary condition to the waiver.
- (h) The Franchisee shall provide the Opportunity to Recycle in accordance with ORS 459 and 459A as now enacted or as hereafter amended. In addition, the franchisee shall

comply with any and all rules and regulations adopted by the Department of Environmental Quality together with any additional rules adopted by this City.

- (2) The Franchisee is not required to store, collect, transport, transfer, dispose of or resource recover any of what is determined by competent authorities to be hazardous waste; provided, however, that the Franchisee may provide such service outside this Ordinance in compliance with all applicable laws, ordinances and regulations.
- (3) The Franchisee may subcontract with others, to provide a portion of the service where Franchisee does not have the necessary equipment or service; however, such subcontract shall be with the approval of the City Council. Such a subcontract shall not relieve the Franchisee of total responsibility for providing and maintaining service and from compliance with this Ordinance.
- (4) The Franchisee shall not:
 - (a) Give any rate preference to any person, locality or type of solid waste stored, collected, transported, disposed of or resource recovered. This Paragraph shall not prohibit uniform classes of rates based upon length of haul, type or quality of solid waste handled and location of customers so long as such rates are reasonably based upon cost of the particular service and are approved by the City Council.
 - (b) Transfer this franchise in any way or any interest therein, or transfer any ownership interest in franchise, including but not limited to the transfer of any membership interest in franchisee to any other person without prior written approval of the City Council, which approval shall not be unreasonably withheld.

Section 9. Suspension, Modification or Revocation of Franchise.

- (1) Failure to comply with written notice from the Council to provide necessary service or otherwise comply with the provisions of this ordinance after written notice and reasonable opportunity to comply shall be grounds for modification, revocation or suspension of this Franchise.
- (2) After receipt of the aforementioned written notice from the City Council, the Franchisee shall have 60 days from the date of mailing of the Notice in which to comply or to request a public hearing before the City Council. In the event of a public hearing, the Franchisee and other interested persons shall have an opportunity to present information and testimony in oral or written form.
- (3) If the Franchisee fails to comply within the specified time or fails to comply with the order of the City Council entered upon the basis of findings at the public hearing, the City Council

may suspend, modify, or revoke the Franchise or make such action contingent upon continued non-compliance with this ordinance. This paragraph shall not restrict Franchisee's appeal rights, if any.

- (4) In the event the City Council finds an immediate and serious danger to the public it may take such action, as it deems necessary in the public interests.

Section 10. Termination of Service. The Franchisee shall not terminate service to any customers unless:

- (1) The street, road, or alley is impassable or access is blocked and there is no reasonable alternative route; or
- (2) Excessive weather conditions render providing service unduly hazardous to persons providing service or such termination is caused by accidents or casualties caused by an act of God, public enemy or vandalism; or
- (3) A customer is not complying with the prohibitions of Section 12 of this Ordinance or has not paid for service provided after a regular billing and after a fifteen days written notice to pay; or
- (4) Ordered by a legislative, administrative or judicial body having jurisdiction.

Section 11. Rate Determination.

- (1) Rates for service shall be those contained in the document marked "Exhibit A," attached hereto and by this reference hereby incorporated in this ordinance.
- (2) The Franchisee may file an application yearly for an adjustment in rates. In a scheduled Public Hearing, the City shall act upon such request for rate adjustment no later than 30 days following receipt of request for adjustment. The new rate increase or decrease will begin immediately following conclusion of the hearing if approval is granted for a rate change. Rates shall be changed by resolution of the City Council.
- (3) In determining the appropriate rate to be charged by the Franchisee, the Council may consider any or all of the following:
 - (a) The cost of performing the service provided by the Franchisee.
 - (b) The anticipated increase in the cost of providing this service.
 - (c) The need for equipment replacement and the need for additional equipment to meet service needs; compliance with federal, state, local law, ordinances and regulations; or technological change.
 - (d) The investment of the franchisee and the value of the business and the necessity that the franchisee has a reasonable rate of return.

- (e) The rates charged in other cities of similar size in surrounding jurisdictions for similar service.
 - (f) The public interest in assuring reasonable rates to enable the franchisee to provide efficient and beneficial service to the residents and other users of the service.
 - (g) The local wage scales, cost of management facilities, and landfill and disposal fees or charges.
 - (h) Any profit or cost savings resulting from recycling, and any additional costs resulting from recycling
 - (i) other factors affecting the cost of providing service.
- (4) Rates charged shall be those set as provided herein. Nonscheduled services may be provided at the reasonable cost of providing the service.
 - (5) Franchisee shall bill and collect on a current billing basis. When Franchisee has experienced collection problems on a particular account, it may require other than current billing basis. Such other procedures will be according to reasonable business practices and if objected to by a customer will be subject to approval or disapproval by the City.
 - (6) If approved in the rate schedule, Franchisee may charge a starting charge to any customer who has been previously terminated for failure to pay for service.
 - (7) Rates shall be uniform or uniform within zones or classes of service.
 - (8) Nothing in the above section shall prohibit Franchisee from allowing qualified senior citizen rates. Qualifications for such senior citizen rates shall be determined by Franchisee.
 - (9) Franchisee may require the owner of rental or leased premises to accept responsibility, upon notification of delinquency, for payment of service to such facilities, as a condition for providing such service.

Section 12. Public Responsibility. In addition to and not in lieu of compliance with ORS 459 and 459A, and other applicable laws and regulations:

- (1) No person shall place hazardous waste or infectious waste for collection or disposal by Franchisee without notice. This shall not apply to minor quantities of hazardous wastes generated at or by a single-family residential unit.
- (2) No unauthorized person shall place material in or remove material from a solid waste collection container without permission of the owner of the container. For the purpose of this section, the Franchisee is the "owner" of containers supplied by Franchisee.

- (3) No unauthorized person shall remove solid waste placed out for collection and resource recovery by the Franchisee or a person exempted by Section 3 of this Ordinance and operating solely within the exemption.
- (4) Unless permitted by the Franchisee, no person shall install or use any container of one cubic yard or greater in capacity for pickup by Franchisee other than those supplied by Franchisee. The purpose of this subsection is to insure safe equipment, sizes and weights and facilitate Franchisee utilizing the most efficient collection equipment and methods. Rates for use of Franchisee's containers and drop boxes shall be included in the adopted rate schedule.
- (5) The Franchisee is not required to service an underground container unless the person responsible for it places the can above ground prior to time of collection.
- (6) The Franchisee is not required to handle containers designed for mechanical pickup exceeding safe loading weights or volumes as established by the Franchisee to protect service workers, the customer, the public and the collection equipment.
- (7) The Franchisee is not required to handle containers designed for manual pickup exceeding thirty-two (32) gallons in size or sixty (60) pounds in loaded weight. Such containers shall be rigid, fireproof, and rodent proof construction and not subject to cracking or splitting. Such containers shall have proper handholds and bales.
- (8) Unless special service or service equipment is provided by the collector for handling unconfined waste, materials such as brush, leaves, tree cuttings and other solid waste for manual pickup and collection shall be in securely tied bundles or in any box, sack or other receptacles and solid waste so bundled, tied or contained shall not exceed sixty (60) pounds in weight.
- (9) Where a customer requires an unusual volume of service or a special type of service requiring substantial investment in equipment, the Franchisee may require a contract with the customer as necessary to finance and assure amortization of such equipment. The purpose of this provision is to assure that such equipment not become a charge against other rate payers who are not benefited.
- (10) Franchisce may charge extra for return service to a container or drop box or roll off box that is blocked by automobiles or other obstacles.
- (11) Every person who generates or produces wastes shall remove all putrescible wastes at least every seven days. More frequent removal may be required where facility or service involves the public health. All wastes shall be removed at sufficient frequency as to prevent health hazards, nuisances or pollution.

- (12) The producer or generator of waste shall clean cans and shall keep the area around both cans and containers free of accumulated wastes.
- (13) Approved disposal methods shall be as follows:
 - (a) No person shall burn, dump, or in any other manner dispose of solid waste upon any street, alley, public place or private property within the City except as provided in this Ordinance.
 - (b) All disposals shall be in accordance with City of Prineville's Ordinances, Rules and Regulations.
- (14) The City reserves the right to require the separation of component parts of materials in or from solid wastes and require the deposit thereof in separate cans, containers, receptacles or places and prescribe the method of disposal or resource recovery thereof.

Section 13. Severability. Any findings by any court of competent jurisdiction that any portion of this Ordinance is unconstitutional or invalid shall not invalidate any other provision of this Ordinance.

Section 14. General offenses and Penalties.

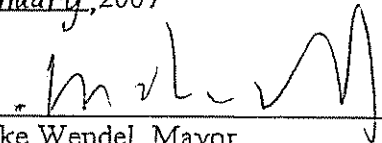
- (1) A person may not:
 - (a) Without the permission of the owner or generator of recyclable material, take recyclable materials set out to be collected by a person authorized by the City to provide collection service for that recyclable material, except in accordance with this Ordinance.
 - (b) Remove any recyclable material from a container, box, collection vehicle, depot or other receptacle for the accumulation or storage of recyclable material without permission of the owner of the receptacle.
 - (c) Mix source separated recyclable material with solid waste in any vehicle, box, container, or receptacle used in solid waste collection or disposal.
- (2) Violation by any person of the provisions of this Ordinance, upon conviction, may be punished by a fine of not more than \$500.00. Each day of violation is a separate offense.

Section 15. Complaints. If either the City or Franchise receives a complaint, such complaint will be handled by filling out the form delineated on Exhibit "B" attached hereto and made a part hereof. Such forms will be filled out in duplicate. If Franchisee receives the complaint, he is responsible for filling out the information required on such form and sending a copy to the City within thirty (30) days of the resolution of such problem. If the City should receive a complaint, they will forward to the Franchisee one copy of the form. Franchisee will be responsible for returning one copy of the form within five (5) days of the receipt of it, indicating the action taken.

Section 16. Ordinance No. 1118 is hereby repealed.

Passed by the City Council this 9th day of January, 2007

Approved by the Mayor this 9th day of January, 2007




Mike Wendel, Mayor



Robb Corbett, City Administrator/Recorder

ACCEPTED BY FRANCHISEE:

Holliday Enterprises, LLC

By: 

Member

Dated: JAN 23, 2007

By: 

Member

Dated: 1/23, 2007