

ORDINANCE NO. 78-O-300

AN ORDINANCE REGULATING THE COLLECTION AND DISPOSAL OF GARBAGE WITHIN THE CITY OF BROOKINGS, OREGON, GRANTING AN EXCLUSIVE FRANCHISE THEREFOR, PROVIDING THE TERMS THEREOF AND THE RATES TO BE CHARGED, AND DECLARING AN EMERGENCY. [June 30, 1978]

[Ordinance No. 78-O-300 repealed by Ordinance No. 86-O-402, effective June 9, 1986.]

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THE CITY OF BROOKINGS DOES ORDAIN AS FOLLOWS:

Section 1. Grant of Franchise. Under and upon provisions and conditions of this ordinance and the payments to be made and the services to be performed and rendered by the franchise holder, and the full and faithful performance by the franchise holder of the terms and conditions and provisions hereof, the City of Brookings, hereinafter known in this ordinance as City, does hereby grant to Brookings Sanitary Service (Calvin J. Gorte), hereinafter known in this Ordinance as Contractor, the exclusive right, privilege and franchise of collecting, gathering and hauling over the streets, alleys and public ways of City garbage, waste matter and refuse, which means and includes rubbish, trash, ashes, tin cans, animal and vegetable waste and any other matter which is unsanitary or which the City may reasonably require to be disposed of, and for the disposal of the same, together with the right to exact charges and collect for such services from persons, firms or corporations served for the period beginning July 1, 1978 and terminating June 30, 1988, all subject, however, to the paramount and superior rights of the City.

Section 2. Franchise Boundaries. The right, franchise and privilege so granted to the contractor shall extend throughout the entire incorporated area of the City of Brookings.

Section 3. Exclusive Franchise. It hereby adjudged and declared that the public peace, health, safety and welfare of the City of Brookings will be best served by the right, franchise and privilege to collect and haul garbage, waste matter and refuse being exclusively in the Contractor. Therefore, no other person, firm or corporation shall engage in the business of collecting and/or hauling, over the City's streets and alleys, garbage, waste matter and refuse, and any person, firm or corporation who shall attempt to engage in such business may be enjoined therefrom at the suit of either the City or the Contractor. The City may refuse to enjoin any such person, firm or corporation and any suit or action taken by the Contractor shall be at his own expense.

Section 4. Garbage and Refuse Dump Required. The Contractor shall at all times during the life of this franchise keep and maintain a garbage and refuse dump at a location outside the limits of the incorporated area of the City of Brookings, the location and maintenance of which dump shall, at all times, meet the approval of the City Council.

Section 5. Proper and Suitable Equipment Required. The Contractor shall use proper and suitable equipment for the hauling and transportation of garbage, matter and refuse. The Contractor shall use equipment in his handling of garbage, waste matter or refuse which will not permit garbage, waste matter or refuse to drop therefrom upon any of the City streets or alleys and one of the conditions upon which this franchise, right and privilege is so granted is that the Contractor shall, at no time, allow any garbage, waste matter or refuse to fall or drop upon the City streets or alleys or upon any highway or road traveled by his equipment to and from said dump. The Contractor shall keep all equipment used by him for handling liquids in a clean and sanitary condition at all times. The Contractor shall, at all times, keep and maintain an adequate amount of equipment to enable him at all times to promptly and adequately remove all garbage, waste matter and refuse in the City of Brookings.

Section 6. Compliance with rules and regulations required. The Contractor will, in the disposal and collection of the garbage, trash, rubbish and other refuse, comply with all the laws, rules and regulations of the State of Oregon and any bureau or agency of the State of Oregon having jurisdiction of the Contractor's operations and the sanitary regulations and ordinances of the City of Brookings applicable to the Contractor's operations. The Contractor's trucks and other equipment and his operation of the garbage dump shall also comply with the laws, rules and regulations and ordinances of the same regulatory bodies.

Section 7. Rules and Regulations for Dump. The Contractor shall permit any and all residents of the City of Brookings to use said dump between the hours of 1:00 4:00 p.m. on Saturday of each week. The Contractor may make reasonable rules and regulations governing the use of such dump by residents of the City of Brookings, which rules and regulations shall be for the purpose of enabling him to properly care for and operate said dump in compliance with the terms of this ordinance and the health and sanitary rules and regulations of the City of Brookings and the State of Oregon. Said dump shall be clearly signed so as to enable those desiring to use it to be readily advised of its location, and the driveway leading to and from said dump shall be maintained in a suitable condition so as to be safe for vehicular traffic at all times. The Contractor shall not, at any time or in any way whatsoever, indicate by any means or lead any person, firm or corporation to believe that said dump or said business is in any way operated or maintained as an enterprise of the City of Brookings.

Section 8. Collection of City of Brookings garbage. The Contractor shall, without making any charge therefor, collect and haul to said dump for the City of Brookings, six 32 gallon cans of garbage, waste matter and refuse each week during the life of this franchise.

Section 9. Franchisee Responsibility. The Contractor shall not refuse to collect and haul to said dump garbage, waste matter and refuse from any person, firm or corporation desiring such service, and the Contractor shall, at least once each week, collect and haul to said dump the garbage, waste matter and refuse of all persons, firms or corporations desiring such service. The Contractor shall, in such manner as is convenient to him divide the incorporated area of the City of Brookings into districts, and he shall apprise all persons desiring his service within any one of such districts as to the day or days of the week on which he will collect and remove their garbage, waste matter and refuse, which day or days shall not be changed without one week's prior due notice to the persons within said respective districts who use or desire such service. The Contractor shall, by 5:00 p.m., on each day set for collecting the same, complete the collection of all offensive or wet garbage in the business district. The Contractor shall respond to all calls made upon him for collecting and removing so called upon, whether or not the person, firm or corporation so calling upon him is a regular customer.

Section 10. Exceptions to Exclusive Franchise. Nothing in this ordinance, is to be construed so as to prevent any person, firm or corporation in the City of Brookings from hauling his or its own garbage, waste matter or refuse to said dump and disposing of the same in a lawful manner, nor shall it be construed so as to prevent any person who has been hired or engaged to clean up any premises from hauling garbage, waste matter or refuse to said dump; provided, however, that this section shall not be deemed to authorize any other person than the Contractor to engage in the business of collecting and transporting garbage, waste matter and refuse as that business is contemplated by this ordinance

Section 11. Rates. The rates to be charged by the Contractor to all persons, firms or corporations for collecting and transporting garbage, waste matter and refuse shall be reasonable and uniform, shall be based upon consideration of the service rendered and shall not be in excess of the rates hereinafter set forth without the prior approval of the City as shown by official action of the City Council, taken by a majority of all Council members as distinguished from a majority of a quorum of the Council, at a regular meeting of the Council.

SCHEDULE OF RATES

Class	Calls	Rules to Which Rate is Subject
Individual residence	Once per week, \$3,00 per month for 1 can and \$4,.50 per month for 2 cans plus \$1.00 for each can above 2	A,B,C,E
Special call for residence	\$1.00 per call	A,B,E
Commercial	Once a week \$3.00 for one can plus \$3.00 for each additional can	A,B,E
Container Service	1 yard = 7-30 gallon cans, 1 yard once a week \$15.00 per month, Each additional time \$2.50, 1-1/2 yards once a week \$17.50 per month. Each additional time \$3.50	

"CAN" as used in this ordinance shall mean any container having a capacity of 32 gallons.

Section 12. Rules for Setting Rates. The rates set forth in Section 11 above shall be subject to the following rules:

A. The rates set forth in Section 11 hereof are the established rates for the services specified in said Section 11.

B. When the Contractor is called upon to haul an unusual amount or kind of garbage, waste matter and refuse, he may make an additional charge therefor, which charge shall, however, be reasonable in amount. The Council shall entertain, at any of its regular meetings, the complaint of any customer who asserts that the charge assessed by the Contractor under this rule is unreasonable, provided that such customer has filed his complaint in writing, setting forth the reasons therefor, with the City Recorder not less than 15 days prior to such meeting, and has served a true copy of such complaint upon the Contractor not less than 10 days prior to such meeting. The Contractor shall file a written answer to such complaint with the City Recorder at least 5 days prior to said meeting and at said meeting the Contractor and the customer shall each be entitled to be heard for a time not to exceed 7 minutes each. A majority of the Council present at such meeting shall determine what is a reasonable charge for the service in question and the Contractor and the customer shall be bound thereby.

C. When the Contractor is called upon to remove garbage, waste matter and refuse more frequently for any customer than is set out in Section 11 hereof, he may make an additional charge therefor, which additional charge shall be reasonable and based upon a consideration of all the circumstances and the rights and procedure set out in rule B above shall be applicable thereto,

D. The Contractor may charge 25 cents for every can over two which he shall haul for any resident customer.

E. The Contractor may make an additional charge when any can weighs in excess of 100 pounds or the container is unusually large, cumbersome or bulky, which additional charge shall be reasonable and the rights and procedures set forth in rule B shall be applicable

Section 13. Rate Changes. The City shall, at all times the life of this franchise, have the right to change, modify and regulate the rates to be charged by the contractor, and the methods used by him in collecting garbage, waste matter and refuse, as well as the classification thereof; provided, however, that the City shall make no such change without at least 30 days notice of its intention to make a change being served upon the contractor either in person or by mailing the same to him at his last known address; provided, further, that any change so made by the City shall be reasonable and in keeping with the conditions then prevailing

Section 14. Stipulations of Franchise. By his acceptance of this franchise, the Contractor shall undertake to render such service and conduct said business in keeping with good health and sanitary standards, and if the Contractor shall either fail, refuse or neglect to fulfill any or all of the terms and stipulations in this franchise contained, then the City shall have the right to cancel and terminate this franchise, the City shall cause to be served upon the Contractor a written notice by registered mail setting forth wherein the Contractor has failed or neglected or refused to fulfill any or all of the terms and stipulations of this franchise, and setting forth a time, not less than 15 days after the mailing of such notice, when the matter will be heard before the City Council. The Contractor shall file an answer to such notice with the City Recorder not later than 5 days prior to the time set for such hearing. At any such hearing the Contractor shall have the right to be present in person and to be represented by counsel, and to present such witnesses and evidence as may be proper in the premises. The City may also and in like manner present such evidence as may be proper in the premises. All witnesses shall be heard under oath and subject to cross examination. The procedure to be followed in such hearing shall, as nearly as practicable, follow that which is ordinarily followed by an administrative body hearing similar matters.

Section 15. Franchise Not to be Assigned or Transferred. The franchise hereby granted and all rights and privileges of the Contractor under this ordinance are exclusive to the Contractor. Neither said franchise nor the Contractor's right under this ordinance, either in whole or in part, shall be assigned, transferred or leased, nor attempted to be assigned, transferred, leased nor attempted to be assigned, transferred, leased or otherwise disposed of, either voluntarily or involuntarily, by the Contractor without the written consent of the City be first had and obtained. The City's consent can only be taken by official action by a majority of the Council at a regular meeting or special meeting called for that purpose, and not then until the proposed assignee or transferee shall have filed with the City Recorder his written acceptance and agreement to abide by the terms and provisions of this ordinance.

Section 16. Selling of Franchise. In the event that the Contractor shall at any time during the life of this franchise desire to sell his garbage collecting equipment and shall receive a bona fide written offer to purchase the same for a definite sum of money from a third party, he shall first offer said equipment to the City upon the same terms and for the same sum of money contained in said third party's written offer, and the City shall have a period of 30 days in which to accept the Contractor's said offer. In the event the City Hall shall fail or refuse to accept the Contractor's said offer within said 30 days, then the Contractor may sell said equipment to such third party, but the City's failure or refusal to accept said offer shall not be construed as a consent on its part to an assignment of this franchise to such third party or any other party,

Section 17. Public Service Business. By his acceptance of this franchise, the Contractor acknowledges that he is being given the exclusive right to conduct a public service business and that he will conduct said business to the best interests of the City, his customers and himself alike.

Section 18. Performance Bond Required. The Contractor shall, within 30 days from the date of his acceptance of this franchise, furnish and file with the City Recorder a performance bond of a surety company acceptable to the Council, which bond shall be in the amount of \$1,000.00 and the premium therefor shall be paid by the Contractor. Said bond shall be kept in full force and effect during the life of this franchise,

Section 19. Franchise Term. Following the passage of this ordinance by the Council, the franchise shall become effective on the day that it is accepted by the Contractor and his acceptance shall be indicated in writing on this ordinance below the signatures of the Mayor and the Recorder. The contractor shall accept this franchise and the terms of this ordinance within ten days from its passage by the Council or he shall be conclusively deemed to have refused the franchise and there shall be no franchise.

Section 20. Franchise Fee. The Contractor shall pay the City the sum of \$100.00 per year in advance for its rights under this franchise and as a part of the consideration therefor. The first \$100.00 shall be paid upon his acceptance of the franchise and \$100.00 shall be paid on or before the first day of July of each year thereafter, starting July 1, 1978.

Section 21. Termination of Franchise. In the event the Contractor's property used in the performance of this franchise and his obligations under this ordinance, or his rights and privileges hereunder, shall be attached or otherwise levied upon or the Contractor should take bankruptcy or become insolvent, then the City may, at its option, terminate and end this franchise and the Contractor's rights hereunder.

Section 22. Waiver. Time is of the essence of this franchise and the Contractor's rights hereunder, The failure to the City to insist upon the strict and literal performance of the Contractor's obligations under this franchise and ordinance shall not constitute a waiver of the provision that time is of the essence of this franchise nor require any further or new notice that time thereafter shall again be of the essence of this franchise and a waiver of any breach of this franchise and ordinance by the Contractor shall not be deemed nor construed to be a waiver by the City of any subsequent default or breach.

Section 23. Failure to Pay Annual Fee or Performance Bond Failure. Failure of the Contractor to supply and keep in force the performance bond herein required or to pay the annual fee hereunder within 10 days from the due date thereof shall be grounds for termination of this franchise without further notice or hearing of any kind, notwithstanding any of the other terms or provisions of this ordinance.

Section 24. Emergency Clause. Whereas, there is no existing franchise for garbage collection in the City of Brookings, it is necessary that there be immediate and full regulations for garbage collection in the interest of the public peace, health and safety of the City of Brookings and the inhabitants thereof, an emergency is hereby declared to exist and this ordinance may be placed upon all of its readings and passed at any one meeting of the Council and shall be in full force and effect from and after its passage by the Council and approval by the Mayor-

PASSED by the Council of the City of Brookings, Oregon, this 26th day of June, 1978.

SUBMITTED to and approved by the Mayor of Brookings, Oregon this 26th day of June, 1978.

The franchise provided by the foregoing ordinance and the terms of the ordinance are hereby accepted this 30th day of June, 1978.

Signed BY CALVIN JOHN GORTE
Brookings Sanitation Service