

## ORDINANCE NO. 216

AN ORDINANCE RELATING TO SOLID WASTE MANAGEMENT IN THE CITY OF DETROIT, OREGON, INCLUDING BUT NOT LIMITED TO, GRANTING TO PACIFIC SANITATION INC., THE EXCLUSIVE FRANCHISE TO COLLECT, TRANSPORT AND CONVEY SOLID WASTE OVER AND UPON THE STREETS OF THE CITY; TO RECYCLE, REUSE, DISPOSE OF OR RECOVER MATERIALS OR ENERGY FROM SUCH SOLID WASTE; CREATING NEW PROVISIONS; REPEALING ORDINANCE NO. 168 AND ALL AMENDMENTS THERETO; AND DECLARING AN EMERGENCY.

### THE CITY OF DETROIT, OREGON ORDAINS AS FOLLOWS:

**Section 1 – Short Title.** This ordinance shall be known as the “Solid Waste Management Ordinance” and may be so cited and pleaded and shall be cited herein as “this ordinance”.

### **Section 2 – Purpose, Policy and Scope.**

1. It is declared to be the public policy of the City of Detroit to regulate solid waste management to:
  - a. Ensure safe, economical, financially stable, reliable and comprehensive solid waste service;
  - b. Ensure rates that are just, fair reasonable and adequate to provide necessary public service and to prohibit rate preferences and other discriminatory practices;
  - c. Provide technologically and economically feasible resource recovery by and through the franchisee; and
  - d. Provide the opportunity to recycle.
2. Except for the franchisee under this ordinance, no person shall:
  - a. Provide service for compensation or offer to provide or advertise for the performance of such service;
  - b. Provide service for compensation to any tenant, lessee or occupant to any real property of such person.

**Section 3 – Definitions.** As used in this ordinance the following words mean:

Compensation. Includes:

1. Any type of consideration paid for service, including but not limited to, rent, the proceeds from resource recovery and any direct or indirect provision for payment of money, goods, services, or benefits by tenants, lessees, occupants, or similar persons.
2. The exchange of service between persons; and
3. The flow of consideration from the person owning or possessing the solid waste to the person providing service, or from the person providing service to the person owning or possessing the same.

Council. The City Council of the City of Detroit.

Franchisee. The person granted the franchise by Section 4 of this ordinance, or a subcontractor to such person.

Person. An individual, partnership, association, corporation, trust, firm, estate, or other private legal entity.

Resource Recovery. The process of obtaining useful material or energy resources from solid waste, including energy recovery, materials recovery, recycling or reuse of solid waste.

Service. Storage, collection, transportation, treatment, utilization, processing and final disposal of, or resource recovery from, solid waste; and providing facilities necessary or convenient to such activities.

Solid Waste. All putrescible and non-putrescible waste, including but not limited to garbage; rubbish; refuse; ashes; swill; waste paper and cardboard; grass clippings; compost; residential, commercial, and industrial demolition and construction waste; discarded residential, commercial, and industrial appliances; equipment and furniture; discarded, inoperable, or

abandoned vehicles or vehicle parts and vehicle tires; manure; vegetable or animal solid or semisolid waste; dead animals, and all other waste not excepted by this subsection. Solid waste does not include:

1. Hazardous waste as defined by or pursuant to ORS 466.005
2. Sewer sludge and septic tank and cesspool pumping or chemical toilet waste.
3. Reusable beverage containers as defined in ORS 459A.725.

Solid Waste Management. Management of service.

Waste. Material that is no longer usable by or that is no longer wanted by the last user, producer or source of the material, which material is to be disposed of or be resource recovered by another person.

**Section 4 – Exclusive Franchise and Exceptions.** There is hereby granted to Pacific Sanitation Inc., the exclusive right, privilege and franchise to provide service in, and for that purpose to utilize the streets and facilities of the City of Detroit. Nothing in this franchise or this section or ordinance shall prohibit any person from transporting solid waste they produce themselves to an authorized disposal site or resource recovery facility providing they comply with section 14 (5) of this ordinance. Solid waste produced by a tenant, licensee, occupant, or similar person is produced by such person, not the landlord or property owner.

**Section 5 – Franchise Term.** The rights, privilege and franchise herein granted shall begin on the effective date of this ordinance and shall be considered as a continuing ten (10) year franchise. Beginning on January 1 of each year the franchise shall be considered renewed for a ten (10) year term, unless at least 30 days prior to December 31 of any year, either party shall notify the other, in writing, of intent to terminate the franchise. Upon giving such notice of termination, the franchisee shall have a franchise which will terminate ten (10) years from the date of the notice of termination. The parties may later extend the term or reinstate a continuing renewal upon mutual agreement. If the City notifies the franchisee of its intent to terminate the franchise, the franchisee shall have the right for a hearing before the City Council before any termination is made, provided such hearing is requested by the franchisee within thirty (30) days of the notice, in writing. Nothing in this section restricts the city from suspending, modifying or revoking the franchise for reasonable cause as provided in Section 9.

**Section 6 – Franchise Fee.** In consideration of the rights granted by this ordinance, franchisee shall pay to the City of Detroit an amount equal to 5% of the gross compensation collected by franchisee for its operation of such service.

**Section 7 – Franchise Responsibility.**

1. The franchise shall:
  - a. Dispose of solid waste collected at a site approved by the local government unit having jurisdiction of the site or recover resources from the solid waste, both in compliance with ORS Chapters 459 and 459A, and regulations promulgated thereto.
  - b. Provide the opportunity to recycle consistent with ORS 459A and regulations promulgated thereto.
  - c. Provide and keep in force public liability insurance in the amount of not less than \$100,000 for injury to a single person, \$300,000 to a group of persons, and \$25,000 property damage, all relating to a single occurrence, which shall be evidenced by a certificate of insurance filed with the City Recorder. Such increases in coverage for public liability insurance will be provided for as the law requires.
  - d. Within 30 days after the effective date of this ordinance, file with the City Recorder a written acceptance of this franchise.
  - e. Provide sufficient collection vehicles, containers, facilities, personnel, and finances to provide all types of necessary service, or subcontract with others to

provide such service pursuant to Section 12 of this ordinance. Where one or a few large customers require substantial investment in new or added equipment not otherwise necessary to service the franchised service area, the collector may require a contract with such sources providing that the customer will require and pay for service for a reasonable period of time. This contract exception is intended to assist in financing the necessary equipment and in protecting the integrity of the remaining service should the source or sources terminate collection service.

- f. Respond to any written complaint on service
2. 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 quantity of solid waste handled, and location of customers so long as such rates are reasonable based upon costs of the particular service and are approved by the Council in the same manner as other rates, nor shall it prevent any person from volunteering service at reduced cost for a charitable, community, civic, or benevolent purpose.
  - b. Transfer of this franchise or any portion thereof to other persons without the prior written approval of the Council, which consent shall not be unreasonably withheld. However, Council has the final discretionary authority to approve a new operator based on the best evidence available at the time of request, including but not limited to tax returns and financials as requested. A \$1000 refundable deposit towards actual cost of gathering such evidence is required.

**Section 8 – Supervision.** Service provided under the franchise shall be under the supervision of the Council. Franchisee shall, at reasonable times, permit inspection of its facilities, equipment, and personnel providing service.

**Section 9 – Suspension, Modification, or Revocation of Franchise.**

1. Failure to comply with a written notice to provide necessary service, or otherwise comply with the provisions of this ordinance after written notice and a reasonable opportunity to comply shall be grounds for modification, revocation, or suspension of the franchise.
2. After written notice from the Council that such grounds exist, the franchisee shall have 15 days from the date of mailing of the notice in which to comply or to request a public hearing before the Council
3. If the franchisee fails to comply within the specified time or fails to comply with the order of the 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.
4. At a public hearing, the franchisee and other interested persons shall have an opportunity to present oral, written, or documentary evidence to the Council.
5. In the event that the Council finds an immediate and serious danger to the public through creation of a health hazard, it may take action within time specified in the notice to the franchisee and without a public hearing prior to taking such action.

**Section 10 – Preventing Interruption of Service.** The franchisee agrees as a condition to its franchise that whenever the Council determines that the failure of service or threatened failure of service would result in creation of an immediate and serious health hazard or serious public nuisance, the Council may, after a minimum of 24 hours actual notice to franchisee and a public hearing if franchisee requests it, authorize another person to temporarily provide the service or to use and operate the land, facilities, or equipment of the franchisee through leasing to provide emergency service. The Council shall return any seized property and business upon abatement of the actual or threatened interruption of service.

**Section 11 – Termination of Service.** The franchisee shall not terminate service to all or a portion of its customers unless:

1. The street or road access is blocked and there is no alternate route, and provided that the City of Detroit shall not be liable for any such blocking of access.
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 or a public enemy.
3. A customer has not paid for service provided after a regular billing and after a seven day written notice to pay; or
4. In the event of any other reason, ninety days written notice shall be given to the Council and to affected customers, and written approval will be obtained from the Council.

**Section 12 – Subcontracts.** The franchisee may subcontract with others to provide a portion of the service where franchisee does not have the necessary equipment for service. Such a subcontract shall not relieve the franchisee of total responsibility for providing and maintaining service and from compliance with this ordinance.

**Section 13 – Rates.** Rates for service shall be those contained in the document marked “Exhibit A”, attached hereto and by this reference hereby incorporated in this ordinance. Changes in rates shall be made only by ordinance amending “Exhibit A”.

**Section 14 – Public Responsibility.** In addition to compliance with ORS Chapters 459 and 459A, all applicable city ordinances and regulations apply.

**Section 15 – Penalties.** Violations by any person of the provisions of this ordinance shall be considered an infraction punishable by a base fine of up to \$250.00 as set forth in Detroit Ordinance No. 207. Each day and/or occurrence of violation shall constitute a separate offense.

**Section 16 – City Enforcement.** The City of Detroit shall enforce the provisions of this ordinance as set forth in Detroit Ordinance No. 207 and may seek any and all other legal remedies, including, but not limited to, injunction, mandamus, abatement or other appropriate proceedings to prevent, temporarily or permanently enjoin or abate the ordinance violation. However, if the city incurs uncollectible costs and expenses in enforcing this ordinance at the request of franchisee, the city requires the franchisee to reimburse the city for 50% of said costs and expenses which include, but are not limited to, actual court costs, cost of the city attorney, filing fees, administrative fees, publication of summons or notices, postage, and the expense of copying any public record, book, or document used as evidence in a hearing (*Ordinance No. 207 Section 21 and Section 24*).


**Section 17 – Repeal.** Ordinance No. 168, granting garbage franchise to Pacific Sanitation Inc., and all amendments thereto, is hereby repealed.

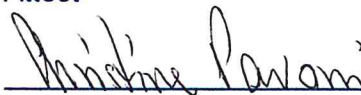
**Section 18 – Severability.** Should any section, subsection, paragraph, sentence, clause or phrase of this ordinance be declared invalid, such declaration shall not affect the validity of any other section, subsection, paragraph, sentence, clause or phrase; and if this ordinance or any portion thereof should be held to be invalid on one ground but valid on another, it shall be construed that the valid ground is the one upon which the ordinance or such portion thereof was enacted.

**Section 19 – Emergency.** Because prompt and continuous disposal of solid waste is necessary for the peace, health and safety of the people of the City of Detroit and the surrounding area, an emergency is declared to exist, and this ordinance is effective upon its passage by the Council and signature of the Mayor.

Passed by the Common Council of the City of Detroit, Oregon and signed by the Mayor this 13<sup>th</sup> day of JANUARY, 2009.

Ayes: 7 Nays: 0 Absent: 0

  
Mayor

Attest  
  
Christine Pavoni, City Recorder