

ORDINANCE NO. 260

**AN ORDINANCE GRANTING TO SANFORD AND SON, LLC, d.b.a HUMBERT REFUSE A
FRANCHISE TO PROVIDE SOLID WASTE COLLECTION SERVICE WITHIN THE CITY OF
ADAMS, OREGON.**

THE CITY OF ADAMS ORDAINS AS FOLLOWS:

Section 1: Definitions.

Collection vehicles: Any vehicle regularly used to collect or transport solid waste or recyclable material or used for that purpose for compensation.

Collector, Franchise Collector, or Franchise Holder: May be used interchangeably. Any person holding a franchise issued by the City and thereby authorized and designated by the City to collect, handle, and transport any solid waste or recyclable material.

Disposal Site: Any land used for the disposal of solid wastes, including but not limited to dumps, landfills, sanitary landfills, transfer stations and composting plants.

Hazardous Waste: "Hazardous waste" as defined in ORS 466.005.

Landfill: A disposal site operated by means of compacting and covering solid waste at specific designated intervals.

Resident: any individual, business, or otherwise that occupies real property within the City limits.

Owner, Occupant or Tenant: May be used interchangeably. Every person in possession, charge or in control of any dwelling, flat, rooming house, or eating place, shop, place of business, manufacturing or business establishment or other place, where solid waste is created or accumulated.

Person: Any person natural or otherwise, including and individual, corporation, association, firm, partnership, joint stock company, estate, or other private legal entity.

Putrescible Material: Organic material that can decompose and that may give rise to foul smelling products.

Rubbish: Solid waste other than garbage, consisting of but not limited to ashes, wooden boxes, brush, leaves, weeds, and cuttings from trees, lawns, shrubs, and gardens or other waste materials provided in normal course of everyday living.

Sanitary Landfill: A disposal site operated by means of compacting and covering solid waste at least once each business day.

Service: The collection, transportation, or disposal of or resource recovery from solid waste for compensation.

Solid Waste: All putrescible and non-putrescible waste, including, but not limited to, garbage, rubbish, refuse, ashes, and swill; grass clippings; compost; residential; commercial; industrial; demolition and construction wastes; discarded residential, commercial, and industrial appliances,

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equipment and furniture; discarded, inoperable or abandoned vehicles or vehicle parts and vehicle tires; manure, vegetable, or animal solid or semisolid waste, and all other wastes to excepted by the subsection. Solid Waste does not include:

- (1) Hazardous waste as defined in Oregon Revised Statutes 466.005 or elsewhere.
- (2) Sewer sludge and septic tank and cesspool pumping or chemical toilet waste;
- (3) Reusable beverage containers as defined in Oregon Revised Statutes 459A.725 or elsewhere.

Section 2: Grant of Franchise.

A. . There is hereby granted to Humbert Refuse, a non-exclusive right, privilege, and franchise to provide solid waste collection service to any person within the corporate limits of the City or areas later annexed thereto, subject to any other valid franchise rights held by other parties within the corporate limits or annexed areas.

- (1) The franchise granted herein is for ten (10) years, beginning on July 1, 2021.
- (2) Such franchise shall renew annually for ten (10) years on July 1 of that current year unless the City or Franchisee gives notice by January 1 of that year to terminate the franchise ten (10) years hence.
- (3) Such franchise shall not be transferable without written permission of the City Council which permission shall not be unreasonably withheld.

B. The City Council may grant another collection service franchise, but only after notice to the existing Franchisee and after a public hearing on the proposed additional franchise, together with written findings on the qualifications of the applicant.

- (1) The applicant must prove to the City Council that the applicant has:
 - (a) The necessary collection service experience, personnel, equipment, and financial capability required to assure collection services.
 - (b) That granting an additional franchise would benefit the customers served by the existing franchise holder.
 - (c) That an additional franchisee is needed to keep the service adequate.
- (2) A Subsequent Franchisee shall be required to provide all of the same types of collections service(s) within the current geographic area served by the existing Franchisee(s), and to be subject to all of the same requirements.
- (3) All Franchisees shall fully cooperate with the existing Franchisees and shall carefully adapt scheduling and performing the solid waste collection under this contract to accommodate the other franchisees. A franchisee shall not commit or permit any act that will interfere with the performance of work by the other franchisees.

Section 4: Public/Customer responsibilities.

A. Garbage Containers:
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- (1) If provided container is damaged beyond repair or stolen while in the customer's possession the customer will be charged \$85.00 for the replacement of the container. If the container is repairable labor and parts will be charged to the customer.
 - (2) On collection day each person receiving solid waste collection service shall place the container along the curb with the lid facing the street by 6:00am. To protect the privacy, safety, pets, and security of customers and to prevent unnecessary physical and legal risk to the collectors, a residential customer shall place the container to be emptied outside of any locked or latched gate and outside of any garage or other building.
 - (3) The customer shall provide safe access to the pickup point so as not to jeopardize the safety of the driver of the collection vehicle or the motoring public or to create a hazard or risk to the person providing service. Whenever the City, in consultation with the Franchisee, finds that a private bridge, culvert, or other structure, or road is incapable of safely carrying the weight of the collection vehicle, the collector shall not enter on such structure or road. The customer shall provide a safe alternative access point or system.
 - (4) No containers for commercial or industrial use shall exceed the safe loading design limit or operation limit of the collection vehicles provided by the Franchisee serving the service area.
- B. Vehicles Transporting Solid Wastes: Any vehicle used by any person to transport solid wastes shall be so loaded and operated as to prevent wastes from dropping, sifting, blowing, or other escapement from the vehicle onto any public right-of-way or adjacent lands.
- C. Payment for Services: Any person who receives service shall be responsible for payment for such service. If payments are delinquent service may be terminated at the discretion of the franchise holder.
- D. Removal of Solid Waste:
- (1) All solid waste shall be removed from private residences not less than once a week.
 - (2) Every owner, occupant, or tenant of a single family, duplex or triplex dwelling within the City limits having or accumulating solid waste which may create a nuisance shall remove or have the same removed by a franchised collector. Every owner, occupant or tenant shall arrange for collection of such solid waste with the franchised collector or provide such service personally as scheduled herein. Disposal of solid waste shall be made only at a disposal site permitted by state regulatory authorities or in a way consistent with State Law.

Section 5: Franchisee Duties/Responsibilities.

A. Solid Waste Collection:

- (1) Franchisee(s) shall dispose of solid wastes collected at a site permitted by state regulatory authorities or in a way consistent with State Law or recover resources from the solid wastes in compliance with the Oregon Revised Statutes and Oregon Administrative Rules.

- (2) Franchisee(s) shall within thirty (30) days after the effective date of this agreement file with the City Recorder a written acceptance of the franchise.
- (3) Franchisee(s) shall provide sufficient collection vehicles, containers, facilities, personnel, and finances to provide all types of required service.
- (4) Franchisee(s) shall respond to any written complaint on service.

B. Disposal Sites:

- (1) All solid waste, other than recyclable materials, shall be delivered to a site permitted by state regulatory authorities or in a way consistent with State Law.
 - (a) The Franchisee shall NOT accept and is not responsible for the disposal of hot ashes or currently burning material at disposal site.
- (2) The disposal site shall be maintained and operated in a safe and sanitary condition and in compliance with the minimum functional standards of the State of Oregon.
- (3) The franchise holder may make reasonable charges for depositing solid waste by other persons at the disposal site, which charges shall be subject to approval by the Board of County Commissioners of Umatilla County.
- (4) Any person arriving at the disposal site with solid waste for deposit which is not adequately covered to prevent any portion of the load from falling or blowing off the vehicle will be required to pay a surcharge set by Franchisee in addition to the regular fee for depositing solid waste at the disposal site.

C. Franchise Transfer(s): Franchisee(s) shall not transfer its franchise or any portion thereof to other persons without the prior written approval of the City Council, which approval shall not be unreasonably withheld. The City Council may approve the transfer if the transferee meets all applicable requirements.

D. Insurance:

- (1) Each franchise holder shall carry at a minimum with an insurance company liability insurance on its franchise operation as follows:
\$ 50,000-Property Damage
\$100,000-For death or injury to any one person in any one accident; \$500,000-For death or injury to two or more persons in any one accident.
Certificate of coverage must be kept current and filed with the City as a condition of any franchise and shall provide for thirty (30) days written notice to the City prior to cancellation of the required coverage.
- (2) Franchisee shall hold the City harmless and indemnify the City from any liability or claim arising from any operation allowed by its franchise.
- (3) Vehicles: Franchisee shall keep all its vehicles fully insured with public liability.

F. Collector Vehicles:

(1) No Franchisee shall remove any solid waste or carry it through the streets except in City approved collector vehicles. Any person who shall carry solid waste through the City or to the disposal site shall provide the vehicle carrying such solid waste with a suitable cover, securely fastened or the load sufficiently bound do as to prevent scattering or dropping or the solid waste or dust in or upon public streets, public ways, or private property.

(2) Collection vehicles shall at all times be kept in good and safe operating condition and shall be kept clean. Franchise collectors shall at all times operate adequate equipment to maintain efficient collection service to the citizens of Adams.

Section 6: Rates and Schedules.

A. All rates, fees, or charges of Franchisee(s) shall be subject to the approval of the City Council and established by resolution of the City Council. Said rates shall be on file at the City Recorder's office for public inspection. The City reserves the right, at any time during the period of this franchise, to examine the rate structure of the Franchisee(s) and to direct any rate changes which in the discretion of the City Council are reasonable in view or the following considerations:

(1) The Franchisee shall have the right to charge and collect reasonable compensation from persons and groups to whom it shall furnish franchised services: and the term "reasonable compensation" may be defined at the discretion of the City after a study and consideration of rates for similar service under similar service conditions in other areas, and as affected by local conditions in the area, and to earn a reasonable rate of return.

(2) To facilitate considerations as in this section provided, the Franchisee shall furnish to the City a copy of the published rate schedule, which rate schedule shall contain the rates and charges made for all its operations. Said rate schedule, having been filed as provided, shall be kept current; and Franchisee shall file with the City, at least ninety (90) days prior to any contemplated change, a new and revised rate schedule which shall be examined by City in an appropriate public proceeding affording due process and unless approved by the City as requested or approved by the City in a modified form prior to thirty (30) days before the effective thereof shall be disapproved.

(3) Notification of approval, approval as modified, or disapproval shall be made to Franchisee by certified mail or its equivalent.

(4) In event of disapproval, or in event of non-acceptance of the City's modifications by Franchisee within ten (10) days of the notification of City's written modification, Franchisee shall not put the new rate schedule into effect and may file with the City, either its own motion or in compliance with the City's request, further information to justify the rate schedule changes. Negotiations shall be had in good faith between the parties and the process described in Section A (2), (3) and (4) shall be repeated.

(5) The maximum rates in effect at the time this franchise takes effect and thereafter shall be subject to review and change once annually prior to the performance year of July 1 to June 30, however, an additional application for supplemental adjustment may be made when the cost of collection is increased by governmental regulation or compliance costs.

Section 7: Franchise Fee.

- A. In consideration of the solid waste collection franchise granted to any person the Franchisee(s) shall pay to the City an annual franchise fee of 2% of the total collected revenue per year for, Resident services within city limits. The fee shall be paid by the 30th of July annually.
- B. The Franchisee(s) will charge no collection fee to the City for the following locations:
- (1) City Hall
 - (2) City Park

Section 8: Customer Service-Termination.

The Franchisee shall not terminate service to all or a portion of his/her customers unless:

- A. The street or road access is blocked and there is no alternate route, provided that the City shall not be liable for any such blocking of access.
- B. Caused by an occurrence beyond the reasonable control of the Franchisee and without its fault or negligence such as, acts of God or the public enemy, acts of the City in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, and usually severe weather. The Franchisee shall immediately resume routine services when the conditions noted are alleviated or the City and Franchisee agree to resumption of service that accommodates the continuing conditions that cannot be rectified to accommodate routine service.
- C. A Customer has not paid for service provided after a regular billing and after a ten (10) day written notice to pay.

Section 9: Franchise Service- Interruption.

The Franchisee agrees as a condition to its franchise that whenever the City 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 City Council may, after a minimum of twenty four (24) hours actual notice to the Franchisee and a public hearing after a minimum of twenty-four (24) additional hours' notice if the Franchisee requests it, the City shall have the right to temporarily provide the service or use and operate the land, facilities or equipment of the Franchisee to provide emergency service. The Council shall return any seized property and business upon abatement of the actual or threatened interruption of service. The Franchisee shall be reasonably compensated by the City for the use by the City of the Franchisee's land, facilities, and equipment. If the parties cannot agree on reasonable compensation, the parties shall submit the matter to arbitration. The compensation shall be determined by three (3) arbitrators. After notice by either party to the other party requesting arbitration, one (1) arbitrator shall be appointed by each party. Notice of the appointment shall be given by each party to the when made. If they fail to select a third arbitrator or upon application by either party, the third arbitrator shall be promptly appointed by the presiding judge of the Circuit Court of the State of Oregon for Umatilla County, acting in his individual capacity. Each party shall bear the total expense of its own appointed arbitrator and shall bear all other expenses equally. The reasonable compensation shall be the decision of not less than two (2) of the three (3) arbitrators shall be effective and retroactive to the first day that the City begins using Franchisee's land, facilities, and equipment.

Section 10: Franchise Violations.

If the Franchisee does not comply with the terms of the franchise the City Council shall give the Franchisee written notice setting forth the default or defaults and directing the correction thereof within fifteen (15) days. Failure of the Franchisee to correct such default or defaults within the fifteen (15) day period shall be grounds for termination of the franchise at the option of the City Council. If the default is of such nature that it cannot be completely remedied within the fifteen (15) day period, this provision shall be complied with if Franchisee begins corrections or the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

Section 11: Severability.

The provisions of this Franchise are severable; if any section, subsection, sentence or clause shall be found by a court of competent jurisdiction to be invalid, unconstitutional, or is clearly and specifically preempted by federal or state laws, the remaining sections, subsections, sentences or clauses shall remain in full force and effect, unless the effect of such invalidity, unconstitutionality or preemption effects a material alteration on the benefit of a party's bargain contained herein. Should any provision be declared invalid or unconstitutional, or be preempted, the parties shall enter into negotiations within ten days of final judgement or effective date of the law regarding any such matter and make a good faith effort to reform or replace such provision or part thereof with a valid and enforceable provision that comes as close as possible to providing the parties the benefit of its bargain as originally expressed herein.

Voted upon this 10th day of May 2021 at a regularly scheduled City of Adams Council meeting.


Mayor

Mayor PRO TEM
City Councilor

Katy A. King
Sanford and Son, LLC
DBA Humbert Refuse