

AN ORDINANCE TO GOVERN THE GRANTING OF FRANCHISES, AND THE TRANSFER OF INTERESTS IN FRANCHISES FROM ONE OWNER(S) TO ANOTHER OWNER (S) WITHIN DUNES CITY, SETTING APPLICATION FEES, AND SETTING FORTH THE GENERAL RESPONSIBILITIES OF A FRANCHISEE, THE CITY, AND THE CITIZENS OF THE CITY.

SECTION 1 (a). Franchises and Exemptions.

The below-listed activities are listed as franchised activities which may or may not be exclusive in nature. any person who might engage in such an activity shall apply to the city for a franchise, and shall not engage in such activity until, and unless, such a franchise is granted.

In the event the terms of this Ordinance should conflict with franchises granted before the enactment of this Ordinance, the terms of the former franchising ordinance shall supercede the terms of this Ordinance, but this Ordinance shall govern extensions granted after the enactment of this Ordinance.

Section 1 (b). Fees.

The council shall, by resolution, set application fees for persons applying for a franchise, or receiving a franchise by transfer, and the franchise fee. Notice of any franchise fee increase shall be given to the franchise holder in a timely fashion. If the city should receive a number of applications in quantity such that the application fees would greatly exceed the city's actual costs of processing, and granting such activities, the city may, at its option, and by resolution, return a portion of each application fee, and such amount returned shall be equal in sums to each applicant. In no case shall the fee charged and retained exceed the actual costs to the city.

Section 1 (c). Franchised Activities.

- (1) Electric utility services;
- (2) Telephone services;
- (3) Garbage and refuse collection;
- (4) Cable Television;
- (5) Other such activity as the city may designate by ordinance from time to time.

SECTION 2. APPLICATION, REVIEW AND ISSUANCE OF A FRANCHISE.

Section 2 (a). Applications

Applications for franchise or transfer of franchise shall be on forms provided by the City Recorder. In addition to information required on the forms, the Recorder may require the filing of additional information as deemed necessary to insure compliance with this Ordinance.

Section 2 (b). Minimum Requirements.

If requested, the applicant must show to the satisfaction of the council that that applicant:

- (1) Has available collection vehicles, equipment, facilities and personnel sufficient to meet the standards of equipment and services established by the city. The applicant must detail in his proposal any activity applicant proposed to subcontract.
- (2) Has sufficient experience in providing existing or comparable service to insure compliance with this Ordinance and any regulations thereunder together with all other applicable laws, rules and regulations. If the applicant does not have sufficient experience, the council may require the applicant to submit a corporate surety bond in an amount to be established by resolution, guaranteeing full and faithful performance by the applicant of the duties and obligations of the franchisee under the provisions of the franchise, together with applicable federal, state and local laws, rules and regulations.
- (3) Has in force public liability insurance in an amount of not less than ONE HUNDRED THOUSAND DOLLARS (\$100,000) for injury to a single person, or THREE HUNDRED THOUSAND DOLLARS (\$300,000) for injury to a group of persons and property damage insurance in an amount of not less than FIFTY THOUSAND DOLLARS (\$50,000) which shall be evidenced by a certificate of insurance attached to said application. The certificate shall name the city as an additional insured. The council may, by resolution and order, increase the minimum amount of required insurance to meet the cost of inflation and risks.
- (4) Has, when requesting transfer of franchise, submitted as part of the application, a letter from the current franchisee requesting such transfer.
- (5) Has attached a summary record of "adequate public service," if any.

- (6) Has demonstrated financial ability to the city to perform the obligations of the franchise, or the city may require a performance bond.
- (7) Has submitted any other information which the applicant believes is relevant to determining the applicant's qualifications for the franchise.

SECTION 2(c). Review.

Applications shall be reviewed by a committee appointed by the Mayor. The committee shall make such investigation as deemed appropriate or directed by the council. The committee shall give written notice of any application to an existing franchise.

SECTION 2(d). Issuance.

Upon the basis of the application, evidence submitted and results of said investigation, the city shall make a finding on the qualifications of the applicant and shall determine whether additional or different services or equipment should be provided.

The council may conduct a public hearing to consider the application within thirty (30) days of the receipt of committee's recommendation. The council may consider any previous public hearing on the qualification of the applicant and service provided. Notice of the hearing shall be served on all applicants and any affected existing franchise. The council's decision on the application shall be supported by written findings. The determination of the council, by resolution, shall be final.

A written franchise agreement shall be signed by the city and franchisee. The franchisee's application shall be a part of the franchise agreement.

SECTION 2(e). Interim Applications.

Unless an existing franchise is suspended, modified or revoked pursuant to this Ordinance, or expires at the end of the term, no interim applications will be accepted by the city.

SECTION 3. FRANCHISE TERM

The rights, privileges and franchises granted pursuant to this Ordinance shall begin as specified in the Ordinance. The council may terminate the renewals with or without cause. The council may later extend the terms or reinstate the continuing renewal provision upon mutual agreement with the franchisee. Nothing in this Ordinance restricts the right of the council from suspending, modifying or revoking the franchise for violation of federal, state or municipal statutes and ordinances, or the franchise agreement.

All franchises shall contain provisions for annual review, and public comment at such review.

SECTION 4. FRANCHISEE RESPONSIBILITY.

SECTION 4 (a). Obligations of Franchisee.

The city shall set forth in its Request for Proposals (RFP) or enabling ordinance, the obligations of the applicant, which the franchisee must fulfill. The ordinance granting the franchise shall incorporate obligations set forth in the RFP or enabling ordinance, and said obligations shall be made a part of the ordinance granting the franchise and incorporated therein.

The franchisee shall fulfill all obligations contained therein unless specifically waived by the city. No such obligation shall be waived without notice to the public, a public hearing being held, and only with the approval of an absolute majority of the city council.

SECTION 4 (b). Complaints.

The franchisee shall respond to any complaint within two (2) working days.

If the citizen is not satisfied with the franchisee's response, the citizen may request a hearing before the city council. The city council, or its designee, shall notify both parties of a time at which an administrative hearing shall be held on the matter. At such hearing, both parties, and their agents, may present evidence, arguments, and such, as deemed appropriate by the city or its hearing body or officer. The city council will then direct the franchisee as to the remedial steps required, if any.

SECTION 4 (c). Subcontractors.

If the franchisee should subcontract with others to provide a portion of the franchised service, the franchisee will notify the city. Such a subcontract shall not relieve the franchisee of total responsibility for providing and maintaining service and from compliance with this Ordinance.

The city may, after notice to the franchisee, disapprove of any subcontractor and thereafter the franchisee shall cease utilizing said subcontractor, until a hearing and a finding by the city.

SECTION 4 (d). Prohibited Acts.

The franchisee shall not:

- (1) Give any rate preference to any person or locality. This paragraph shall not prohibit uniform classes of rates based upon length of haul, type or quantity or service rendered, and location of customers so long as such rates are reasonably based upon cost of the particular service and are approved by the council, nor shall it prevent any person or the franchisee from volunteering service for charitable, community, civic or benevolent purposes.
- (2) Transfer franchise or any portion thereof to other persons without prior written approval of the council, which consent shall not be unreasonably withheld.
- (3) Engage in a practice which after notice to the public, and after public hearing, the city should find to be detrimental to the public welfare.
- (4) Fail to allow any agent designated by the city to inspect the facilities, equipment, personnel, books and records of the franchisee. The city must give to the franchisee thirty (30) days notice in writing. All books and records will be produced at City Hall, unless otherwise agreed. Should the franchisee request inspection at any other location, the franchiss agrees to pay the city's expenses incurred.

SECTION 5. SUSPENSION, MODIFICATION OR REVOCATION OF A FRANCHISE.

SECTION 5 (a).

Failure to provide necessary service or otherwise comply with the provisions of the enabling ordinance, after written notice and a reasonable opportunity to comply, shall be grounds for modification, suspension or revocation of the franchise.

- (1) After written notice from the City Recorder that such grounds exist, the franchisee shall have at least twenty (20) days from the date of mailing of the notice in which to comply or request a public hearing before the council.
- (2) At a public hearing, the franchisee and other interested persons shall have an opportunity to present oral, written, or documentary evidence and argument to the council.
- (3) If the franchisee fails to comply within the time specified of, if a council hearing is held with an order of the council entered upon the basis of findings at the public hearing, the council may suspend, modify or revoke the franchise or make such action contingent upon continued noncompliance.

SECTION 5 (b).

In the event the council finds an immediate and serious danger to the public through creation of a health hazard, it may take action within a time specified in the notice to the franchisee and without a public hearing prior to the taking of such action.

SECTION 5 (c).

Except as provided in Section 5 (b) above, this subsection applies to conditions within the control of the franchisee. Where default or failure to comply occurs by reason of lack of specialized equipment, availability of equipment or personnel, or similar reasons not under the control of the franchisee, the franchisee shall be given a reasonable opportunity to comply.

SECTION 6. TERMINATION OF SERVICE.

The franchisee shall not terminate service to all or a portion of his customers unless one or more of the following occurs:

- (1) The street or road access is blocked and there is no alternate route, and provided that the city shall not have caused such blocking of access.
- (2) Excessive weather conditions render providing service unduly hazardous to persons providing service, as determined by the franchisee, or such termination is caused by accidents or casualties caused by an act of God, public

enemy or vandalism.

- (3) Where equipment failure interferes with providing all or a part of the required service. Franchisee shall immediately endeavor to find substitute equipment.
- (4) A customer has not complied with his obligations as set forth in the enabling ordinance and accompanying resolutions.
- (5) Ninety (90) days' written notice of intent to terminate all or a substantial part of service is given to the council and written approval is obtained from the council.
- (6) Franchisee is ordered to suspend, reduce or terminate all or a portion of services by a legislative or judicial body having jurisdiction.

SECTION 7. PREVENTING INTERRUPTION OF SERVICE.

The franchisee agrees, as a condition of holding a franchise, that whenever the council determines that the failure of service or threatened failure of service would result in an interruption of service to the public, the council may, after a minimum of twenty four (24) hours' written notice to the franchisee, and a public hearing if requested by the franchisee, authorize city personnel or other persons to temporarily provide the service or to use and operate the land, facilities or equipment of the franchisee. The council may authorize whatever expenses are necessary to operate such land, facilities or equipment. The council shall return any seized property and the business upon abatement of the actual or threatened interruption of service. The council may assess to the franchisee the costs incurred in such abatement and the franchisee shall reimburse the city for those costs including attorney fees within thirty (30) days of demand unless otherwise agreed.

SECTION 8. RATE REGULATIONS AND BUSINESS PRACTICES.

- (1) Rates for service shall be made by resolution and order of the council.
- (2) Changes in rates shall be made by resolution and order of the council. In determining rates, the council shall give due consideration to current and projected revenue and expenses; actual and overhead expenses; the cost of acquiring and replacing equipment; the services of owner, family and management; the cost of providing for future, added or different service; recycling,

the council shall hold public hearing, and allow reasonable opportunity for the franchisee to appear and present evidence and argument. The public shall be afforded the same right. The council shall reach findings of fact, and conclusions of law after such proceeding. The council, at its option, may designate another body or officer constituted and authorized by the city to conduct the hearing.

SECTION 9. ACCOUNTING, RECORDS AND AUDIT

The franchisee shall keep a complete and accurate set of books which shall reflect capital investments, depreciation, the gross receipts from service, expenses and net profits under the franchise rendered inside the city, which books shall be balanced at least annually. The books and records shall be kept using accepted accounting practices as modified to provide the information required for rate determination. The frequency, detail and disposition of records and the costs of such record keeping shall be reviewed by the city or its designee, who shall make a final determination if the records are sufficient and complete.

SECTION 10. OBLIGATIONS OF THE PUBLIC

Each enabling ordinance granting a franchise to a franchisee shall set forth the obligations of the public, if any, to provide assistance and cooperation to the franchisee and thereby assist the franchisee in providing services.

SECTION 11. PAYMENT FOR SERVICES.

Any person who receives service from the franchisee shall be responsible for paying for that service.

SECTION 12. ADMINISTRATION AND ENFORCEMENT.

SECTION 12 (a). Appeals.

- (1) Any action or determination by the franchisee under or pursuant to this Ordinance may be appealed to the Mayor.
- (2) Any action or determination of the Mayor under this Ordinance may be appealed to the council.

SECTION 12 (b). Construction.

Any findings by any court of competent jurisdiction that any portion of this Ordinance or action taken hereunder is unconstitutional or invalid shall not invalidate any of the

reuse or other resource recovery services; a reasonable return to the franchisee for doing business based on a percentage of the gross receipts; research and development; systems to avoid or recover the cost of bad debts; interest on late payments; and such other factors as the council deems relevant. The council may consider rates charged by other persons performing the same or similar services in the same or similar areas under the same or similar conditions.

- (3) Rate adjustments may be made not more than once per calendar year when provided as below or otherwise herein. In addition to the possible annual adjustment, a supplemental rate adjustment may be requested when the cost of service is increased or decreased by governmental or environmental regulations and compliance therewith; or where there is substantial increase or decrease in a single expense that was not anticipated at the time of the last rate adjustment; or when the total cost of providing services exceeds projected costs by five percent (5%) or more.
- (4) Written notice to rate payers of proposed rate changes is the responsibility of the franchisee and shall be given as directed by the city.
- (5) On all rate changes, the franchisee shall provide sixty (60) days' written notice to the city of the proposed rate changes together with an accompanying justification of the proposed rate changes.
- (6) Nonscheduled services may be provided at the reasonable cost of providing the service, giving due consideration to the guidelines established in this Ordinance. In the event of a request for a rate increase, the city shall, by resolution, establish a reasonable fee to recover expenses incurred.
- (7) In the event it should come to the attention of the council that the franchisee is charging a substantially lower fee for similar services, and under similar circumstances, outside the municipal boundaries, the city council may order the franchisee to appear before the city council after fourteen (14) days' written notice, and show cause, if any, why the rate structure should not be altered to reflect the lower fee being charged elsewhere. In the event of such proceeding,

other provisions of this Ordinance.

SECTION 12 (c). City Enforcement.

Violation of this Ordinance by any franchisee shall constitute a nuisance. The city may abate the nuisance pursuant to the terms of Ordinance 51, may impose fines pursuant to Ordinance 51, collect the surcharge provided therein, and may collect reasonable attorney fees provided therein.

PASSED BY THE CITY COUNCIL OF DUNES CITY, OREGON,
this 8 day of April, 1982.

APPROVED BY THE MAYOR this 6 day of July 1982.



ROBERT D. PETERSDORF
Mayor

ATTEST:



BETTY STOCKING
City Recorder