

SUMMARY OF ORDINANCE 1235

Ordinance 1235 is an ordinance of the City Of Payette, Idaho, adopted October 18, 2004. The ordinance may be descriptively known as the Payette City Solid Waste Franchise Ordinance.

The ordinance creates a new chapter 7 in title 3 of the Payette City Code by creating and granting an exclusive franchise for operating a solid waste collection system. It requires grantee rule setting and prohibits others from hauling solid waste within the City limits. The ordinance sets out a duration of 15 years for the franchise and provides for service for residential and commercial customers. The ordinance sets a franchise fee and establishes a limitation on the number of cans a customer may use. It sets the point of pickup, sets minimum fees and allows the grantee to engage in recycling. The ordinance requires the grantee to be available to its customers and it requires a method to settle disputes. It sets the responsibility of the grantee and prohibits spillage. The ordinance prohibits the hauling of burning or smoking materials and requires the maintenance of cans. Its sets the requirements for apartment complexes and provides for franchise rules in the event of annexation. It sets the responsibility of waste generators and provides the franchisee with ingress and egress to public ways. It requires the franchisee to maintain insurance and requires the franchisee to hold city harmless from the actions of the franchisee. It allows for cancellation in the event of default, defines the relationship of the City and grantee, requires notification when there is a change of ownership and makes the franchise agreement binding. The ordinance requires the grantee to pay the costs of publication, sets an effective date, establishes severability, establishes a repealer and establishes a penalty in the event of a violation.

I, Bert L. Osborn, City Attorney for the City of Payette Idaho, certify that I am familiar with Ordinance 1235 of the City of Payette, Idaho and with the foregoing summary. The summary is true and complete and provides adequate notice to the public. The full text is on file with the Payette City Clerk and shall promptly be made available to any citizen upon request.

Dated this 10th day of November, 2004.

  
\_\_\_\_\_  
Bert L. Osborn

CITY OF PAYETTE

ORDINANCE 1235

AN ORDINANCE OF THE CITY OF PAYETTE, IDAHO CREATING A NEW CHAPTER 7 IN TITLE 3 OF THE PAYETTE CITY CODE BY CREATING AND GRANTING AN EXCLUSIVE FRANCHISE FOR OPERATING A SOLID WASTE COLLECTION SYSTEM; GRANTEE RULE SETTING; PROHIBITING OTHERS FROM HAULING SOLID WASTE; DURATION; SERVICE FOR RESIDENTIAL AND COMMERCIAL CUSTOMERS; SETTING A FRANCHISE FEE; SETTING A LIMITATION ON THE NUMBER OF CANS; SETTING THE POINT OF PICKUP; SETTING MINIMUM FEES; SETTING FEES FOR CUSTOMERS; ALLOWING GRANTEE TO RECYCLE; REQUIRING THE AVAILABILITY OF THE GRANTEE; REQUIRING THE GRANTEE TO SETTLE DISPUTES; SETTING THE RESPONSIBILITY OF GRANTEE; PROHIBITING SPILLAGE; PROHIBITING THE HAULING OF BURNING OR SMOKING MATERIALS; REQUIRING MAINTENANCE OF CANS; SETTING REQUIREMENTS FOR APARTMENT COMPLEXES; PROVIDING FOR FRANCHISE IN THE EVENT OF ANNEXATION; SETTING THE RESPONSIBILITY OF WASTE GENERATORS; PROVIDING FRANCHISE WITH INGRESS AND EGRESS; REQUIRING INSURANCE; REQUIRING THE FRANCHISEE TO HOLD CITY HARMLESS; ALLOWING FOR CANCELLATION IN THE EVENT OF DEFAULT; DEFINING THE RELATIONSHIP OF THE CITY AND GRANTEE; REQUIRING NOTIFICATION WHEN THERE IS A CHANGE OF OWNERSHIP; MAKING THE FRANCHISE AGREEMENT BINDING; REQUIRING THE GRANTEE TO PAY THE COSTS OF PUBLICATION; SETTING AN EFFECTIVE DATE; ESTABLISHING SEVERABILITY; ESTABLISHING A REPEALER; ESTABLISHING A PENALTY:

WHEREAS, This Ordinance is made pursuant to the authority granted to the City by Article XII, Section 2 of the Idaho Constitution and Idaho Code Section 50-344,

WHEREAS, Section 50-344 of the Idaho Code permits a City to operate and maintain a solid waste collection system; and

WHEREAS, Article XII, Section 21 of the Idaho Constitution and Section 50-344 authorize cities to enter into an exclusive franchise that allows a franchisee to operate the waste collection system; and

WHEREAS, the City Council has held a public hearing to consider the granting of an exclusive franchise. After holding a public hearing, the City Council concluded that it is in the best interest of the citizens of the city to grant an exclusive franchise to Hardin Sanitation, Inc., for the operation and maintenance of the solid waste collection system; and

WHEREAS, For the benefit of the public health, safety and welfare, and pursuant to statutory authority set forth under Idaho law, the City Council adopts this Ordinance for the purpose of establishing an exclusive franchise for the regular collection,

hauling and removal of solid waste within the City; and

WHEREAS, the City Council also hereby adopts the Findings of Fact dated October 18, 2004. Sections 50-344(2) and 31-4403(6) provide that upon a finding by the mayor, for the public safety, or necessary protection of public health and welfare and property, the provisions of section 50-341, Idaho Code shall not apply to solid waste collection. On October 14, 2004, the Mayor issued Findings of fact that substantiate and justify the need to avoid the competitive bidding process based upon the following reasons:

A. Such action is necessary because there is an Immediate need for the City to establish a reliable program for the collection, disposal, and management of solid waste within the City.

B. Such action is necessary because there is an immediate need to provide for safe and sanitary accumulation: collection, transportation, storage and disposal of solid waste. Garbage accumulations breed disease transmitting pathogens, rodents, flies and other insects and cause noxious or offensive odors and unsightly litter. There is an immediate need for strict accountability for the collection of solid waste and without the enactment of this Ordinance there is a significant risk to public safety, public health and welfare.

C. Such action is necessary because there is an immediate need to prevent uncontrolled dumping of waste on public and private property.

D. Such action is necessary because there is an immediate need to prevent the unlawful storage, deposit or disposal on private property of wastes that are hazardous to the health and safety of the public, create offensive odors, create a condition of violation of any statute, administrative rule, ordinance, order or resolution, or any provision thereof, or creates a fire hazard. Hazardous wastes, such as paints, automotive fluids, pesticides, fertilizers and cleaning supplies are part of the waste stream and there is an immediate need to properly manage these wastes in accordance with federal and state law.

NOW, THEREFORE:

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF PAYETTE, IDAHO, AS FOLLOWS:

Section 1. There is hereby created a new Chapter 7 in Title 3 of the City Code, which chapter shall read as follows:

CHAPTER 7

SECTION.

- 3.07.010: GRANTING OF EXCLUSIVE FRANCHISE
- 3.07.020: GRANTEE RULES
- 3.07.030: PROHIBITING OTHERS FROM HAULING SOLID WASTE
- 3.07.040: DURATION
- 3.07.050: SERVICE FOR RESIDENTIAL AND COMMERCIAL CUSTOMERS
- 3.07.060: FRANCHISE FEE
- 3.07.070: RESERVED
- 3.07.080: LIMITATION OF NUMBER OF CANS
- 3.07.090: POINT OF PICKUP
- 3.07.100: MINIMUM FEES
- 3.07.110: FEES FOR CUSTOMERS
- 3.07.120: RECYCLING
- 3.07.130: AVAILABILITY OF GRANTEE
- 3.07.140: COMPLAINTS
- 3.07.150: RESPONSIBILITY OF GRANTEE
- 3.07.160: PROHIBITION AGAINST SPILLAGE
- 3.07.170: BURNING OR SMOKING MATERIALS
- 3.07.180: MAINTENANCE OF CANS
- 3.07.190: ANNEXATION
- 3.07.200: APARTMENT COMPLEXES
- 3.07.210: RESPONSIBILITY OF WASTE GENERATOR
- 3.07.220: INGRESS AND EGRESS
- 3.07.230: INSURANCE
- 3.07.240: HOLD HARMLESS
- 3.07.250: CANCELLATION IN THE EVENT OF DEFAULT
- 3.07.260: INDEPENDENT CONTRACTOR
- 3.07.270: CHANGE OF OWNERSHIP
- 3.07.280: NOT A PARTNERSHIP
- 3.07.290: BINDING AFFECT
- 3.07.300: COST OF PUBLICATION

3.07.010: GRANTING OF AN EXCLUSIVE FRANCHISE: There is hereby granted and authorized by the City of Payette (hereinafter referred to as "City") to Hardin Sanitation, Inc., an Idaho Corporation, whose principal place of business is Payette, Idaho, (hereinafter referred to as "Grantee"), the right, privilege and authority to operate and maintain an exclusive franchise solid waste collection and transfer system, and any services that may be incidental thereto, within the City, thereby using the streets of the City for the conduct of their business, (hereinafter referred to as "franchise"). The franchise shall include the exclusive right to place garbage receptacles, dumpsters, garbage cans or other containers to pick up or collect garbage, refuse or solid waste within appropriate portions of the right-of-way. This franchise shall also include the exclusive right to solicit for business to haul, remove or recycle any and all garbage, solid waste or recyclable material .

3.07.020: GRANTEE RULES: The Grantee shall have the authority to make such rules governing its business as may be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under this Franchise and to assure uninterrupted service to each and all of its customers. Provided, however, such rules shall not conflict with the laws of the State of Idaho, the City of Payette nor with the Franchise signed by the Grantee and the City.

3.07.030: PROHIBITING OTHERS FROM HAULING OF SOLID WASTE: No person, firm, company, employee, or other entity, other than the Grantee, shall enter the City and engage in, or attempt to engage in, the business of solid waste collection, hauling or transfer of solid waste, removal of garbage, or removal of solid waste from the residents or businesses of the City. No person, firm, company, employee, or other entity, other than the Grantee, shall solicit, offer to haul, enter into any contract to engage in the business of solid waste collection, hauling or transfer of solid waste or removal of garbage, removal of solid waste from the residents or businesses of the City. No person, firm, company, employee, or other entity other than the Grantee, shall place garbage receptacles, dumpsters, garbage cans or other containers to pick up or collect garbage, refuse or solid waste. No person, firm, company, employee or entity other than the Grantee, shall solicit for business to haul, transfer, remove or recycle any garbage, solid waste or recyclable materials. Such prohibitions shall take effect upon the first publication of this Ordinance in the City's official newspaper.

3.07.040: DURATION: This Franchise and all rights and privileges and authority hereby granted shall take effect immediately upon passage and publication as required by law. This Franchise shall remain in full force and effect for a period of fifteen (15) years after the date it shall go into effect.

3.07.050: SERVICE FOR RESIDENTIAL AND COMMERCIAL CUSTOMERS: Grantee shall provide weekly pickup service in residential areas and, where required, shall provide daily service during weekdays to commercial areas within the City. Grantee shall not deposit solid waste except in solid waste acceptance or disposal facilities approved by the State of Idaho or its political subdivisions in accordance with all applicable federal, state, and local laws, ordinances, and regulations. Grantee shall not manage or dispose of any part of the waste stream collected pursuant to this Franchise within the City or in any manner that results in violation of local, state or federal laws.

3.07.060: FRANCHISE FEE: City shall receive on a monthly basis as a franchise fee, twelve percent (12%) of the gross receipts from residential collections. The franchise fee shall not include any rental income generated from residential or commercial carts or containers. Payment of the twelve percent (12%) fee shall

extend to the Grantee within the City.

3.07.080: LIMITATION OF NUMBER OF CANS: Residential users shall be served by collection of not more than three (3) thirty-two (32) gallon cans (60 pound limit per can) per dwelling (hereinafter referred to as the "Limitation"). This Limitation shall apply even if a residential dwelling is converted into a multi-unit or multi-family dwelling. Grantee may charge additional service fees for volumes of solid waste in excess of this limitation.

3.07.090: POINT OF PICKUP: Cans for pick-up shall be placed at the edge of the street or alley by the owner or resident where Grantee shall be required to pickup the same. In the event that a can or refuse disposal device which is to be picked up and emptied by Grantee is not at curb side on the day set for refuse collection, Grantee shall not be required to pick up the same. Garbage or refuse shall not be placed upon the ground in sacks, garbage bags, boxes or other containers, which containers are not capable of keeping animals from gaining access to the garbage.

3.07.100: MINIMUM FEES: The fee charged for the Limitation shall be considered a minimum fee. In the event that a resident chooses to use in excess of the Limitation, Grantee shall have the right to haul the excess can(s) and make arrangements with the residential user to charge an additional fee. A copy of the fee schedule is attached hereto and incorporated herein by reference as Exhibit "A".

3.07.110: FEES FOR CUSTOMERS: Fees for residential and commercial customers are hereby established at the rate in effect at the time of adoption of this Ordinance. Any subsequent increase in rates shall be subject to City approval.

3.0.120: RECYCLING: Grantee shall have the exclusive right for curb-side recycling. No person or organization shall salvage or recycle from any commercial container or residential container, the user of which is a customer of Grantee without the Permission of Grantee.

3.07.130: AVAILABILITY OF GRANTEE: Grantee shall be available to the public and shall have an office and telephone open from 8:00 a.m. to 4:00 p.m. Monday through Friday. Grantee's business name and telephone number shall be painted in legible characters on both sides of all vehicles used to transport solid waste in the City. Grantee's business name and telephone number shall be printed by use of paint or decal in legible characters on the front of all commercial containers used by Grantee to store and collect solid waste in the City.

3.07.140: COMPLAINTS: Grantee shall respond and attempt to rectify any complaints about Grantee's service. All work or

collection crews operating solid waste collection systems shall take reasonable care to protect the property of customers being served. Any damage or spillage of materials, occurring as a result of Grantee's actions shall be Grantee's responsibility, provided that the reason for such damage or spillage is the fault of Grantee's employees or agents.

3.07.150: RESPONSIBILITY OF GRANTEE: Grantee shall be responsible to insure that its vehicles are water tight, readily emptied, cleaned with sufficient frequency to prevent insect breeding or odors or other nuisances. The vehicles shall be maintained in good repair and safe condition. All waste must be secured to the vehicle or container and enclosed or covered with secured tarpaulins to prevent leakage, spillage, dust or litter. Such enclosures and tarpaulins must remain in place until arrival at the designated unloading or uncovering areas. Grantee shall not cause solid waste, except recyclables, to remain or to be stored in any collection or haulage vehicle. In case of inclement weather, act of God, or emergency such as equipment breakdown or accident, no solid waste shall be allowed to remain or to be stored in any collection or haulage vehicle in excess of twenty four (24) hours. If an emergency arises or inclement weather occurs, Grantee is responsible for having the material removed to its intended destination in a timely manner. All vehicles operated by Grantee shall comply with all state and federal safety standards while operating within the City.

3.07.160: PROHIBITION AGAINST SPILLAGE: Grantee shall not cause a vehicle to be used for the collection or haulage of solid waste if the design of the vehicle is such that any material will be allowed to spill onto any roadway. Grantee shall not cause a vehicle used for hauling solid waste to be used beyond its capabilities or in such a manner that littering or spillage of the contents could occur. Grantee shall not collect, transfer, transport or deliver any solid waste in the City in such a manner as to allow for littering, spillage or the creation of a nuisance in any other manner. All loads shall be secured and covered.

3.07.170: BURNING OR SMOKING MATERIALS: Grantee shall not collect, transfer, transport or deliver to any disposal facility any material that is smoking or showing evidence of smoking, smoldering or burning. In the event Grantee must dump materials in transit in an emergency due to smoking, smoldering or burning, Grantee shall be responsible for immediately notifying the police and fire departments having jurisdiction and shall be responsible for cleanup of materials dumped during the emergency. Clean-up shall be accomplished promptly, but in no event later than twenty-four (24) hours after dumping and the dumped material shall then be properly disposed of.

3.07.180: MAINTENANCE OF CANS: All residential customers shall maintain garbage cans or containers with lids to protect against

spillage or access by animals. Cans or containers that become a health hazard may be disposed of by the Grantee after notice to the customer.

3.07.190: ANNEXATION: The Franchise shall apply to any real property annexed into the City after the first publication of this Ordinance, subject to existing contracts for solid waste hauling in effect at the time of annexation.

3.07.200: APARTMENT COMPLEXES: All apartment complexes with three or more units shall have a commercial container.

3.07.210: RESPONSIBILITY OF WASTE GENERATOR: A residential or commercial generator of solid waste shall bear the responsibility for maintaining waste cans and containers and shall be responsible for maintaining the area around such cans and containers in a clean, sanitary and odor free condition. In the event the generator of waste refuses or neglects to maintain or keep such cans or containers in a clean or sanitary condition, Grantee shall notify the City of the condition. The City shall then notify the generator. The generator of waste shall clean the cans or containers, or clean the area within ten (10) days, as applicable. If the area, cans or containers are not cleaned within ten (10) days, Grantee may assume responsibility for clean up and present it's costs and expenses which are incurred in the clean up to the City Clerk. The City Clerk shall then bill Grantee's costs and expenses to the generator. The Generator shall be responsible for paying The City for any clean up that is necessitated as a result of the producers not complying with the notice from the City.

3.07.220: INGRESS AND EGRESS: This Franchise grants to Grantee the right of ingress and egress, to cross all public streets, alleys, and rights-of-way in the City. It shall be unlawful for any person to deny reasonable access to Grantee to collect solid waste or recyclables from a Commercial premises or residential unit or to fail to place solid waste where it can be accessed from an appropriate public right-of-way. Grantee shall follow the traveled portion of streets, alleys, and roadways, or the regular walks for pedestrians while on private property, and shall take care in loading of such waste so that the material to be collected is not left upon the private property or upon the streets, alleys, or roadways. Grantee shall return the containers with all properly prepared and legal contents removed and replace the lid thereon. Grantee shall not place any obstructions to traffic in any street or alley while carrying out this Franchise. Collections shall be made on the streets and rights-of-way of the City in a manner which creates the least delay and inconvenience to the public. Grantee will use buckeyes and alleys whenever possible.

3.07.230: INSURANCE: Grantee shall obtain and submit certificates of insurance issued by insurers duly licensed by the State of

Idaho providing the following coverage: A) General liability coverage in the amount of \$ 1,000,000 for bodily injury and/or property damage, per occurrence, with a \$2,000,000 aggregate; and B) Automobile liability coverage in the amounts of \$1,000,000 bodily injury and/or property damage. The City shall be named as an additional insured and shall be defended and indemnified regarding all activities carried out pursuant to the Franchise. All policies shall be endorsed to require that the insurer provide at least sixty days (60) notice to the City prior to the effective date of policy cancellation, non renewal or material adverse change in coverage terms. Grantee shall maintain insurance in compliance with this paragraph throughout the term of the Franchise and provide evidence of such coverage to the City upon request.

3.07.240: HOLD HARMLESS: Grantee shall take all reasonable precautions necessary to protect the public from injury and shall defend, indemnify and hold the City harmless from any liability, damages, costs, judgments, expenses, and claims of damages that may arise by reason of any tort claim for bodily or personal injury, disease, death or damage to property resulting directly or indirectly from an act or omission of Grantee, its agents, employees, or independent contractors.

3.07.250: CANCELLATION IN THE EVENT OF DEFAULT: Either the City or the Grantee may cancel or terminate the Franchise if the other is in substantial and material violation or default of the Franchise and the defaulting party fails to cure the default within sixty (60) days of notification. Notification shall be in writing, sent by registered mail, to the City at 700 Center Avenue, Payette, Idaho 83661 and to the Grantee at 141 N. 20th Street Payette, Idaho 83661.

3.07.260: INDEPENDENT CONTRACTOR: Both the City and the Grantee acknowledge that Grantee is an independent contractor and neither party shall make any contrary representations to any other person or entity.

3.07.270: CHANGE OF OWNERSHIP OR NUMBER OF VEHICLES: Prior to the effective date of a change of ownership or a change in the number of vehicles which it operates, the Grantee shall notify the City in writing.

3.07.280: NOT A PARTNERSHIP: Neither the City nor the Grantee shall be responsible for the acts, errors or omissions of the other. Nothing herein contained shall be construed as creating a partnership, joint venture, common undertaking or joint concern of any sort.

3.07.290: BINDING AFFECT: This Franchise shall be binding upon the heirs, assigns and successors of the City and the Grantee hereto.

3.07.300: COST OF PUBLICATION: The Grantee shall bear the cost of publication of this Franchise Ordinance as such publication is required by the laws of the State of Idaho.

Section 2. This Ordinance shall be in full force and effect immediately upon passage and publication as required by the laws of the State of Idaho.

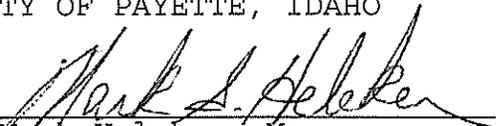
Section 3. Any ordinances or resolutions which are in conflict with this Ordinance are hereby repealed, but only insofar as the conflict exists.

Section 4. If any portion of this Ordinance should be found to be unconstitutional or unenforceable for any reason, the remainder of the Ordinance shall be applied to effectuate the purposes of this Ordinance.

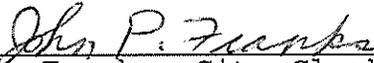
Section 5. Any violation of this Ordinance shall be a misdemeanor punishable in accordance with the general misdemeanor laws of the State of Idaho, including a fine not to exceed \$300 or imprisonment not to exceed 180 days or by both fine and imprisonment. Each day of noncompliance shall constitute a separate violation.

PASSED and APPROVED by the Mayor and City Council of the City Of Payette, Idaho, this 18 day of October, 2004.

CITY OF PAYETTE, IDAHO

by   
Mark Heleker, Mayor

ATTEST:

  
John Franks, City Clerk



*"SERVING PAYETTE COUNTY SINCE 1955"*

# Hardin Sanitation, Inc.

**CONTAINERS — 1 - 8 CUBIC YARDS**

**DROP BOXES — 30 - 40 YARDS**

**141 NORTH 20TH STREET  
PAYETTE, IDAHO 83661**

## **EXHIBIT A**

The minimum monthly fee is \$8.50. This fee permits the residential customer to have three 32 gallon garbage containers or one 95 gallon roll cart. There will be an additional \$2.10 monthly rental fee for the 95 gallon roll cart. This rental fee is paid to Hardin Sanitation.