

CITY OF SPRINGFIELD, OREGON
ORDINANCE NO. 6367 (SPECIAL)

**AN ORDINANCE REGARDING THE EXCLUSIVE GARBAGE COLLECTION FRANCHISE OF THE
CITY OF SPRINGFIELD, TO PROVIDE FOR NEW OPPORTUNITY TO RECYCLE
REQUIREMENTS, AND RESTATING THE FRANCHISE, AMENDING ORDINANCE NO. 6011
(SPECIAL), AS AMENDED BY ORDINANCE NO. 6309 (GENERAL)**

THE COMMON COUNCIL OF THE CITY OF SPRINGFIELD ORDAINS AS FOLLOWS:

Section 1. Previous Ordinances. Ordinance No. 2366 (Special) approved February 10, 1969 granted to Springfield Sanitary Service, an Oregon corporation doing business in Springfield, Oregon, the exclusive right, franchise and privilege of collecting and hauling over the streets of the City of Springfield, all garbage and refuse as defined in Article 4-2-1 of the Springfield Code, 1965 and that franchise was extended by Ordinance No. 3164 (Special) approved May 5, 1975 for the period from March 1, 1979 until March 1, 1989, and was further extended for a rolling five year period by Ordinance 5395 (Special), approved June 22, 1987, and thereafter further amended by Ordinance No. 5621 (Special), approved March 16, 1992, and thereafter further amended by Ordinance No. 6011 (Special) approved May 20, 2002, Sanipac, Inc. is the successor business entity to Springfield Sanitary Service. This Ordinance fully restates the entire franchise granted by the City of Springfield and all prior ordinances are hereby repealed and of no further force and effect.

Section 2. Grant of Franchise. It is hereby granted to Sanipac, Inc., an Oregon corporation, doing business in Springfield, Oregon, hereinafter referred to as "Franchisee", the exclusive right, franchise and privilege of collecting and hauling over the streets within the City of Springfield all garbage and refuse as defined in Section 4.400, et seq., of the Springfield Municipal Code.

Section 3. Exceptions to Grant of Franchise. The exclusive right, privilege, and franchise granted under Section 2 is subject to the following exceptions:

(a) A person may transport solid waste which such person produces, directly to an authorized disposal site or recycling or resource recovery facility; Provided, however, the solid waste produced by tenant, licensee, occupant or person other than the owner of the leased, occupied or licensed premises may be considered produced by the landlord or property owner; but provided further, owners or groups of owners may not join for the purpose of commercially transporting solid waste from properties of differing ownership.

(b) A person may contract with the State or a federal agency to provide service to such agency under a written contract with such agency.

(c) A person may engage in the practice of towing or otherwise removing damaged, discarded or abandoned vehicles or parts thereof, so long as such activity is conducted in compliance with applicable state and local laws.

(d) A person may engage in the practice of pumping, transportation, and disposal of septic tank and cesspool pumpings or other sludge, provided such activity is conducted in compliance with applicable state and local laws.

(e) A person who engages in an occupation, such as gardener, landscaper, grounds keeper, or construction contractor for a property owner or tenant in the City and who produces thereby small volumes of solid waste as a result of such work for a property owner or tenant in the City may transport such solid waste in such person's own equipment where the solid waste produced is incidental to the particular job the person is performing.

Section 4. Fee. In consideration of the granting of the privilege, right and franchise, the Franchisee hereby agrees to pay the City of Springfield a franchise fee, payable quarterly, equal to seven percent of its gross receipts less that portion of user fees collected for remittance to Lane County. That franchise fee is to be computed from certified financial statement from the franchise holder, setting forth the number of residential and commercial accounts in its franchise area and the receipts received therefrom. Payments made hereunder shall be made on or before October 15, January 15, April 15, and July 15. Such payments may be estimated based on information available at the time payments are due and then adjusted following receipt, by the franchise holder, of an audited annual financial statement. City shall have upon reasonable notice right of access to Franchisee's accounts and records relating to the collection of solid waste in Springfield.

Section 5. Additional Fee, Free Service to City. As further and additional compensation, the Franchisee shall remove all garbage and miscellaneous refuse from the following administrative buildings and offices of the City of Springfield: the City Hall/Library/Museum complex, maintenance shops, fire stations, the police and court administration buildings, and other administrative offices, including disposal at the Lane County land fill of material removed from City streets by City street sweepers.

Section 6. Opportunity to Recycle Must be Provided. As a condition of the rights, privilege and franchise given hereunder, the Franchisee shall be required to provide all customers within the City of Springfield the opportunity to recycle and must comply with the requirements of ORS Chapter 459A, together with all applicable rules and regulations promulgated thereunder by the State of Oregon Department of Environmental Quality. Franchisee shall annually prepare a certification report for the Oregon Department of Environment Quality demonstrating Springfield's compliance with the Opportunity to Recycle Act. The City shall approve the program elements utilized by the Franchisee to comply with the Opportunity to Recycle Act.

Section 7. Term. The rights, privilege and franchise herein granted to Franchisee shall be commenced on the 1st day of October, 1987, and shall be considered as a continuing five (5) year franchise as specified in this section. Beginning on October 1 of each year, the franchise will be considered renewed for an additional one (1) year term, unless at least thirty (30) days prior to October 1 of any year the City shall notify Franchisee in writing of the intent to terminate the franchise. Upon the giving of such notice of termination, the Franchisee shall have a franchise which will terminate five (5) years from the date of notice of termination. After such notification, the City may extend the term or reinstate the continuing renewal upon mutual agreement with the Franchisee. Nothing in this section restricts the City of suspending, modifying or revoking the franchise for cause pursuant to Section 14 of this franchise.

Section 8. Annexed Areas. The rights and privileges of this franchise shall not extend to any future additions to the City of Springfield except that this franchise shall automatically extend to include annexed areas to the City of Springfield at such time as the Franchisee shall have as customers 100% of the customers having garbage collection service in said area; said area shall thereupon be covered and governed by this franchise held by the Franchisee and Granted hereby.

Section 9. Termination by Franchisee. In the event the Franchisee shall desire to terminate service given under the terms of this franchise, then it shall give not less than two years' notice of the intent to terminate service and obligations under the franchise. In the event of a voluntary termination of service by the Franchisee, the City shall have a right and option to purchase all or any part of the equipment of the Franchisee at a price which will be agreed upon between the parties. If the parties cannot agree to a purchase price, then the same shall be submitted to arbitration. Each party shall select one arbitrator and the two arbitrators selected shall select a third party, and the

three arbitrators shall determine a fair and equitable price to be paid by the City to the Franchisee for all equipment to be purchased. The costs of arbitration shall be borne equally.

Section 10. Indemnification. Franchisee shall defend, indemnify and hold harmless the City from and against any and all claims, suits, causes of action, loss or liability arising out of or related to any activity of Franchisee, its agents and employees in the performance of this franchise.

Section 11. Emergency Service by City. The Franchisee agrees as a condition of holding the franchise, that whenever the City Council determines that the failure of service or threatened failure of service would result in the creation of an immediate and serious health hazard, the City 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 and/or equipment of Franchisee. The City may authorize expenses which are necessary to provide the service which Franchisee is required to provide under this franchise. The City shall return any seized property and the business of Franchisee, upon abatement of the actual or threatened interruption of service.

If City is required to perform the services pursuant to this Paragraph, City may bill Franchisee for the cost of providing the same and Franchisee shall reimburse the City for the actual cost of providing the services within ten (10) days after receipt of the City's bill. In the event Franchisee fails to reimburse the City within ten (10) days after receipt of the City's cost bill, City may employ all rights and remedies to which it may be entitled under law to secure payment of the cost bill.

Franchisee shall be entitled to all customer account income arising from the provision of the service by the City or other persons pursuant to this Section.

Section 12. Franchisee Assistance to Beautification Activities. Franchisee agrees, as a condition to holding the franchise, to assist City in clean-up and beautification activities by supplying free drop-boxes to City on the following terms:

(1) Franchisee agrees to provide a total of ten (10) drop-boxes to City during each calendar year for a period not to exceed seventy-two (72) hours for each drop-box, which shall be used by City for refuse collection.

(2) Franchisee, upon forty-eight (48) hours' notice by City, shall deliver each box to the site specified by City, and at the end of the seventy-two (72) hour period, Franchisee shall have the right to remove the drop-box and dispose of the material contained in the drop-box at a location of Franchisee's choice.

(3) City shall be responsible for obtaining a waiver of dump fees from Lane County, or paying of such dump fees if Lane County will not waive the dump fees for the ten (10) drop-boxes. All other costs of delivery and removal of the boxes shall be Franchisee's costs.

(4) Franchisee's responsibility for the delivery and removal of the ten (10) drop-boxes shall be limited to the period from November 1 through March 31 of the following calendar year, during the term of Franchisee's franchise. It is understood that if the City requests five (5) or fewer drop-boxes at any one time, Franchisee will probably be able to provide that number at any time during the calendar year.

Section 13. Sanitary Trucks. All trucks for the collection of garbage and refuse used and operated by the Franchisee shall be packer-type enclosed trucks, and shall be designed to be water-tight and drip-proof, so that no garbage or waste water may at any time spill or drip upon the streets of the City. All equipment used by the Franchisee shall be kept and maintained in a clean and inoffensive manner and shall be thoroughly washed, at least once a week or as often as directed by the health officer of the City. It is understood and agreed that the Franchisee shall add

to its equipment as it may become necessary in order to properly and in a sanitary manner collect the garbage and refuse within the City limits and to transport the same as herein provided, and there shall at all times be sufficient equipment to comply with the terms of this franchise.

All storage, collection, transportation and disposal of solid waste shall conform to the applicable requirements of Oregon Revised Chapter 459 and regulations promulgated thereunder by the State Department of Environmental Quality.

Section 14. Termination by City for Cause. In addition to the provision for termination of the franchise as provided in Section 7, it is also understood and a condition of this franchise that should the Franchisee fail, neglect or refuse to perform any of the terms, provisions or stipulations of this agreement by Grantee to be performed, then after providing appropriate notice to the Franchisee and time to correct the failure, or in the event of neglect or refusal to perform by Franchisee, the City shall have the right to cancel this agreement and franchise. Such cancellation may be carried out by the City in the event that there are any repeated uncorrected violations of this franchise, and such cancellation shall be accomplished in the following manner: The City Manager shall keep a record in writing of repeated uncorrected violations, and shall at such time as in the City Manager's discretion the same is warranted, call for an explanation thereof by the Franchisee to the Common Council and thereupon, if the Common Council at its own sole discretion shall deem it in the best interests of the City that this franchise be cancelled, then the same shall be forthwith cancelled by the Council by nothing further than a resolution to that effect, and such findings and actions on the part of the Council shall be conclusive. It is further understood that continued repeated violations, even though corrected, shall constitute evidence of bad faith on the part of the Franchisee, and shall in and of itself be sufficient basis for the City Manager to call upon the Franchisee for an explanation before the Council in the manner above stated to the end that this franchise may thereupon be cancelled.

Section 15. Rates. Rates for the collection of garbage and refuse within the City limits shall be paid and collected as provided in Section 4.408 of the Springfield Municipal Code.

Section 16. Rate Stability.

(1) The Franchisee may, not later than June 30th of any calendar year, apply for an adjustment in rate.

(2) In determining rates the City may give due consideration to all relevant factors including, but not limited to, the following:

- (a) Rates charged by collection services in other Oregon cities;
- (b) The most recent January Consumer Price Index (CPI-U) for Portland, Oregon;
- (c) The current schedule of any rates required by Lane County; and
- (d) Proposals made by Franchisee regarding an appropriate rate schedule.

(3) Non-scheduled services may be provided for a reasonable charge by Franchisee.

(4) Rate adjustments may be made not more often than once per calendar year, provided, however:

(a) A supplemental rate adjustment may be requested when the cost of service is increased or decreased by governmental or environmental regulations in compliance therewith; and

(b) Disposal cost established by a unit of local government having jurisdiction may be immediately passed on to customers.

Section 17. Annual Report. The Franchisee shall submit not later than August 15th of each year during the term of this franchise to the City of Springfield an annual-report regarding the franchise operations which shall include the following:

- (1) Activities in compliance and furtherance of the opportunity to recycle;

(2) Number of customers and changes in number of customers from previous report;
(3) Number of delinquent accounts and methods for collection;
(4) Number of complaints received regarding service and the resolution of those complaints;

(5) Any changes in equipment or disposal and dumping facility or sites;
(6) Summary of assistance to City beautification efforts; and
(7) Accidents or problems encountered in providing the franchise service.

Section 18. Transfer. Franchisee shall not transfer this franchise in any way or any interest therein or transfer any ownership interest in the franchise, including but not limited to the transfer of Franchisee stock without the prior written approval of the City, which consent shall not be withheld if the proposed transferee meets all the requirements imposed by this franchise and applicable requirements of the municipal code relating to sanitation.

Section 19. Insurance. Franchisee shall provide a certificate of insurance to the City demonstrating comprehensive general liability and automobile liability coverage in the combined single limit of \$2,000,000 bodily injury and property damage with the City as a named additional insured.

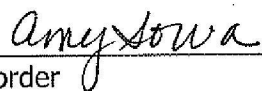
Section 20. Effective Date. This ordinance shall take effect 30-days after adoption by the Council and approval by the Mayor.

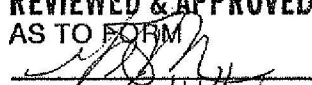
ADOPTED by the Common Council of the City of Springfield this day of, by a vote of 6 for and 0 against.

APPROVED by the Mayor of the City of Springfield this 19 day of JUNE, 2017.


Mayor

ATTEST:


City Recorder

REVIEWED & APPROVED
AS TO FORM

DATE: 6/24/17
OFFICE OF CITY ATTORNEY