

HAILEY ORDINANCE NO. 1103

AN ORDINANCE OF THE CITY OF HAILEY, BLAINE COUNTY, IDAHO, GRANTING OBRAS LLC, D.B.A. CLEAR CREEK DISPOSAL, A FIVE YEAR FRANCHISE WITH AN ADDITIONAL THREE YEAR RENEWAL TERM TO COLLECT SOLID WASTE AND RECYCLABLE MATERIALS IN THE CITY OF HAILEY, IDAHO; PROVIDING FOR DEFINITIONS; PROVIDING FOR MANDATORY SOLID WASTE COLLECTION; ESTABLISHING THE RIGHTS AND OBLIGATIONS OF THE FRANCHISEE AND THE CITY OF HAILEY; ESTABLISHING THE METHODS OF COLLECTION OF SOLID WASTE AND RECYCLABLE MATERIALS; PROVIDING FOR SOLID WASTE AND RECYCLABLE MATERIAL COLLECTION FOR ANNEXED PROPERTIES; PROVIDING FOR A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PENALTIES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Hailey City Council finds that it is in the best interests of the citizens of Hailey to adopt a comprehensive solid waste and recycling programs for residential and commercial properties within the City of Hailey;

WHEREAS, the Hailey City Council finds that it is in the best interests of the citizens of Hailey to grant a franchise for residential customers and a franchise to commercial customers within the City of Hailey to provide such services; and

WHEREAS, the Hailey City Council has accepted a bid by Obras LLC, d.b.a. Clear Creek Disposal to be the franchisee to perform the solid waste and recycling services for both residential and commercial properties within the City of Hailey, subject to the terms and conditions of franchise agreements and this Ordinance.

BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HAILEY, BLAINE COUNTY, IDAHO:

**Section 1. DEFINITIONS**

For the purposes of this ordinance, the following capitalized terms have the meanings set forth herein:

A. "Commercial Customer(s)" shall mean those owners and/or occupants of commercial, light industrial, industrial, governmental and institutional uses, schools, all other

businesses, and Multi-Family Residential Complexes consisting of five or more dwelling units, and those owners of new or remodeled construction sites and /or their agents.

B. "Franchise Agreements" shall mean those agreements executed by Franchisee and the City of Hailey for residential and commercial Solid Waste and Recyclable Materials collection for the term of the Franchise granted hereunder, and as subsequently amended.

C. "Franchisee" shall mean Obras LLC, an Idaho limited liability company, d.b.a. Clear Creek Disposal.

D. "Hazardous Materials" shall mean any chemical, compound, mixture, substance or article which is designated by the United States Environmental Protection Agency or appropriate agency of the State of Idaho to be "hazardous" as that term is defined by or pursuant to federal or state law.

E. "Multi-Family Residential Complex" shall mean a building or property containing two (2) or more dwelling units and includes duplexes, apartments, townhomes and condominiums.

F. "Recyclable Materials" shall mean products or substances designated by Hailey and the Blaine County Resource Recovery Center, including but not necessarily limited to paper, cardboard, aluminum, tin cans, glass, motor oil, plastic, newspaper and magazines, excluding food waste.

G. "Residential Customer(s)" shall mean those owner(s) and/or occupant(s) of single family residences and Multi-Family Residential Complexes consisting of four or less dwelling units.

H. "Self-Hauling" shall mean the collection, hauling and disposal of Solid Waste, Recyclable Materials, Hazardous Materials or medical waste by generator or generator's agent of

the Solid Waste, Recyclable Materials, Hazardous Materials or medical waste in the generator's or generator agent's container and vehicle directly to the transfer station or a landfill; provided, the generator's agent is not in the business of collecting, hauling and disposing of Solid Waste or Recyclable Materials.

I. "Solid Waste" shall mean any garbage, refuse or other discarded material generated by Residential and Commercial Customers that are not or cannot be recycled or diverted from the landfill.

**Section 2. GRANT OF FRANCHISE**

Pursuant to Idaho Code §50-329, the City of Hailey hereby grants to the Franchisee the authority, right, privilege and exclusive franchise for a term of five (5) years, with an additional three (3) year renewal term, beginning April 11, 2012, to engage in the business of collecting, transporting, processing and disposing of Solid Waste and separated Recyclable Materials kept or accumulated and placed for collection by all Residential and Commercial Customers within the corporate limits of Hailey, Idaho, and to perform all of the work described in the Franchise Agreements; provided, however, this authority, right, privilege and exclusive franchise does not extend to the Self-Hauling of Solid Waste, Recyclable Materials, Hazardous Materials or medical waste. It shall be unlawful for any person or legal entity to engage in the business of Solid Waste and Recyclable Materials collection and transportation over and upon the public right-of-ways within the City of Hailey, except as otherwise provided herein.

**Section 3. MANDATORY SOLID WASTE COLLECTION**

No Residential or Commercial Customer shall be permitted to refuse to accept the Solid Waste collection and Recyclable Materials services to be provided by the Franchisee in accordance with the Franchise Agreements. Residential and Commercial Customers shall not be

exempt from the payment of a mandatory weekly minimum charge established for Solid Waste and Recyclable Materials collection services in accordance with this Ordinance and the Franchise Agreements. Multi-Family Residential Complexes consisting of five or more dwelling units shall use container(s) provided by the Franchisee in excess of the 95 gallon roll carts, while Multi-Family Residential Complexes of four or less dwelling units may use 32, 68 or 95 gallon roll carts for each dwelling unit.

**Section 4. RIGHTS AND OBLIGATIONS OF THE FRANCHISEE AND CITY**

A. The Franchisee shall have the right and privilege to use the streets, alleys and other public right-of-ways within the City of Hailey, and to collect Solid Waste and Recyclable Materials, in accordance with this Ordinance and the Franchise Agreements.

B. The Franchisee shall collect all Solid Waste and Recyclable Materials from Residential and Commercial Customers within the City of Hailey.

C. The City of Hailey is responsible for maintaining the streets, its alleys and its public ways in a passable condition. If such streets, alleys and public ways are not passable, then the Franchisee shall be excused from not making a proper timely pickup of the Solid Waste and Recyclable Materials.

D. The Franchisee shall make pickups only if the Solid Waste and Recyclable Materials are placed within the public right-of-way at the edge of any pavement adjacent to a curb, in alleys or in a convenient location, on designated days as established by the Franchise Agreements.

E. The City of Hailey shall charge all Residential and Commercial Customers located within the City of Hailey standard weekly rates for collection and transportation of Solid Waste and Recyclable Materials. The City of Hailey shall also charge standard rates for extra

pickups of Solid Waste and Recyclable Materials and other services. The standard rates shall be established by resolution, filed with the City Clerk. All charges for Solid Waste and Recyclable Materials collection shall be due and payable to the Hailey City Clerk on or before the twenty-fifth of each month for which the service was rendered, and upon failure to pay within the time as prescribed herein, each Residential or Commercial Customer shall pay, in addition to the amount due, the sum of fifty cents, and interest on the delinquent amount at the rate of twelve percent (12%) per year. Upon collection, the fee and interest on the delinquent amount shall be remitted to the Franchisee. In addition to the above, the City shall be entitled to disconnect the municipal water service where the property or premises is served by municipal water and such valve shall not be opened or placed back into service until all delinquent charges and fees have been paid in full.

F. The Franchisee shall comply with all ordinances of the City of Hailey and all laws of the State of Idaho, and shall follow strictly a procedure of operation as to be sanitary. Franchisee shall replace all containers upright where found with lids on them. Containers and lids shall not be placed or thrown on the streets, alleys or adjoining property. The Franchisee shall not permit containers to be thrown from its truck to the pavement or parkway, nor in any other way permit damage to occur by rough or improper handling thereof. The Franchisee shall not permit Solid Waste or Recyclable Materials to be spilled during collection and shall be responsible for cleaning up and removing such spillage.

G. Franchisee and its agents and employees, shall not enter enclosed structures, such as garages, enclosed porches, sheds, buildings or otherwise for the purpose of collecting Solid Waste and Recyclable Materials.

H. Unless otherwise provided in this Ordinance, the specific duties and obligations of the City of Hailey and Franchisee are more particularly described in the Franchise Agreements.

**Section 5. DUTIES AND OBLIGATIONS OF RESIDENTIAL AND COMMERCIAL CUSTOMERS**

A. Residential and Commercial Customers shall place all containers for collection of Solid Waste and Recyclable Materials within the public right-of-way at the edge of any pavement adjacent to a curb, in alleys or in a convenient location, while still allowing public access on the public right-of-ways. The containers shall be placed adjacent to the Residential or Commercial Customer's property or premises on designated days as established by the Franchise Agreements. The containers for Solid Waste and Recyclable Materials must be clearly visible to the Franchisee from the street or alley from which collection is made.

B. Residential and Commercial Customers shall not permit any Solid Waste and Recyclable Materials to be deposited or left in the public right-of-way or on private property, where the deposit of the Solid Waste or Recyclable Materials was caused by the Residential or Commercial Customer, or caused other than by the Franchisee's mishandling or spilling of Solid Waste and/or Recyclable Materials. The Residential and Commercial Customer shall be responsible for cleaning up and removing such deposit of Solid Waste or Recyclable Materials.

C. The Residential and Commercial Customers shall not place or permit to be placed any Hazardous Material in any container placed for collection of Solid Waste or Recyclable Materials by Franchisee.

D. Residential and Commercial Customers shall place containers for Solid Waste or Recyclable Materials for collection no later than 7:00 o'clock a.m. on the designated day of collection, but no sooner than the evening before the designated day of collection. Following

collection by Franchise, the Residential and Commercial Customers shall remove the containers from the public right-of-way as soon as possible on the same day of collection.

E. No container used in the collection of Solid Waste or Recyclable Materials shall be loaded beyond its volume or weight capacity, or in such a manner to be unstable or likely to cause damage or create litter.

**Section 6. ANNEXATIONS**

In the event the City of Hailey annexes additional territory during the term of this Ordinance, the Franchisee shall have the exclusive authority and privilege to engage in the business of collecting, transporting, processing and disposing of Solid Waste and Recyclable Materials, as described in Section 2 of this Ordinance, in the annexed territory for the remainder of the term of this Agreement, unless the additional territory annexed by Hailey is served by another solid waste and/or recycling company, in which case the Franchisee shall have the non-exclusive authority and privilege to engage in the business of collecting, transporting, processing and disposing of Solid Waste and Recyclable Materials, as described in Section 2 of this Ordinance.

**Section 7. SEVERABILITY**

Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

**Section 8. REPEALER**

Hailey Ordinance Nos. 459, 628, 656, 840, 866 and 1053 are hereby repealed in their entirety and all ordinances or parts of ordinances in conflict herewith are hereby repealed.

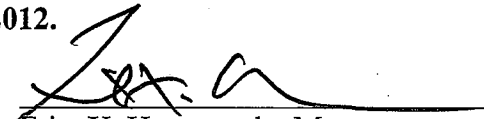
**Section 9. PENALTY**

Any person, firm or other legal entity violating any provision of Sections 2 and 5 of this Ordinance shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars (\$300.00) or imprisonment in the county jail for a period not to exceed six (6) months, or both such fine and imprisonment. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

**Section 10. EFFECTIVE DATE**

Except as otherwise provided herein, this Ordinance shall be in full force and effect from and after its passage, approval, and publication according to law. The rates adopted under Section 4(E) of this Ordinance for Solid Waste and Recyclable Materials collection services shall be effective beginning May 1, 2012; the rates in effect on the effective date of this Ordinance shall continue in effect through midnight, April 30, 2012.

**PASSED AND ADOPTED BY THE HAILEY CITY COUNCIL AND APPROVED BY THE MAYOR THIS 9<sup>th</sup> DAY OF APRIL, 2012.**

  
Fritz X. Haemmerle, Mayor

Attest:   
Mary Cone, City Clerk

Publish Idaho Mountain Express April 11, 2012

