

ORDINANCE No. 185892

Consent to transfer of the residential solid waste, recycling and composting collection franchise from J.M. Boitano Sanitary Service to Hoodview Disposal and Recycling (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. In 2008, the Council approved Ordinance No. 181666, granting a residential solid waste, recycling and composting collection franchise to J.M. Boitano Sanitary Service, Inc. dba City Sanitary Service. The franchise established terms and conditions for the delivery of residential solid waste and recycling services within a specified geographic territory of the City. In December 2012, the Council approved Ordinance No. 185830, renewing the franchise under modified terms for a ten year term. Under Charter Section 10-208, Ordinance No. 185380 goes into effect 60 days after passage by Council.
2. On December 19, 2012, J.M. Boitano Sanitary Service, Inc. notified the City's Bureau of Planning and Sustainability that Boitano was being acquired by Hoodview Disposal and Recycling, Inc., another City franchisee
3. Portland City Charter Section 10-216 provides that no franchise shall be sublet or assigned, nor shall any of the franchise rights or privileges be leased, assigned, sold or transferred, without the consent of the City expressed by non-emergency ordinance. Under Section 14.1(A) of the franchise, Boitano agreed not to sell, lease, mortgage, assign, merge or otherwise transfer the franchise without the prior written consent of the City as expressed by ordinance.
4. The proposed franchise transfer has been reviewed by the staff of the Bureau of Planning and Sustainability with regard to the technical, legal and financial qualification of the acquiring corporation to deliver additional residential waste collection services under the franchise. The transaction is structured as a corporate stock acquisition. The stock transaction was scheduled to close as of January 1, 2013. The sellers will retain a security interest in the corporate stock, as well as in the corporate assets. The corporate name of J.M. Boitano Sanitary Service will be changed to Kahut City Sanitary Service, which will operate under the assumed business name of City Sanitary Service.
5. Hoodview Disposal and Recycling, Inc. has demonstrated to the satisfaction of City staff that under Hoodview's new control, the corporation will be able to adequately provide residential service to the area previously served by J.M. Boitano Sanitary Service, Inc.
6. Based upon the information and assurances provided by both J.M. Boitano Sanitary Service, Inc. and Hoodview Disposal and Recycling, Inc., the Bureau of Planning and Sustainability staff recommends that the Council consent to the franchise transfer.

NOW, THEREFORE, the Council directs:

- a. In reliance upon the representations of J.M. Boitano Sanitary Service, Inc. and Hoodview Disposal and Recycling, Inc., consent is hereby given to the transfer of the residential solid waste, recycling and yard debris collection franchise from J.M. Boitano Sanitary Service Inc. to Hoodview Disposal and Recycling, Inc, under the new corporate name of Kahut City Sanitary Service, Inc..
- b. J.M. Boitano Sanitary Service, Inc. shall provide the City with written notice when the actual transfer of the franchise has occurred and Hoodview Disposal and Recycling, Inc. has undertaken responsibility for performing, complying with and assuming all of J.M. Boitano Sanitary Service, Inc.'s covenants, duties, obligations and liabilities under the franchise. In response to the written notice, the City may request additional documentation for clarification of any questions regarding assumption of franchise obligations and responsibilities for future performance of such obligations.
- c. Within 30 days after this Ordinance becomes effective, Hoodview Disposal and Recycling, Inc. shall file in the Office of the Auditor of the City of Portland a written acceptance of this Ordinance meeting the approval of the City Attorney. Such acceptance shall be unqualified and shall be construed to be an acceptance of all the terms, conditions and restrictions contained in this Ordinance and the franchise. The written acceptance shall be accompanied by documentation demonstrating compliance with the franchise requirements, such as insurance and bonding, in a form acceptable to the City Attorney. Any failure on the part of Hoodview Disposal and Recycling, Inc. to file such written acceptance and accompanying documentation within such time shall be deemed a rejection and abandonment, and this ordinance shall thereupon be null and void.
- d. Upon the filing of an acceptance under subsection c. of this Ordinance by Hoodview Disposal and Recycling, Inc. in a form satisfactory to the City Attorney, J.M. Boitano Sanitary Service, Inc. shall be released and discharged from any further performance obligations or liabilities under Ordinance No. 185830.

Passed by the Council:

FEB 20 2013

Mayor Charlie Hales

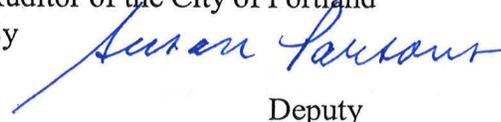
Prepared by: Kevin Veaudry Casaus

Date Prepared: January 28, 2013

LaVonne Griffin-Valade

Auditor of the City of Portland

By



Deputy

