



## OREGON REFUSE & RECYCLING ASSOCIATION

December 28, 2017

Via email only to: [psc@portlandoregon.gov](mailto:psc@portlandoregon.gov)

Ms. Katherine Schultz, Chair  
Portland Planning and Sustainability Commission

Re: City of Portland Franchise Renewal

Dear Ms. Schultz:

I am the Executive Director of the Oregon Refuse & Recycling Association (ORRA), the statewide trade association representing solid waste management companies in Oregon. ORRA members collect and process most of Oregon's residential and commercial refuse and recyclables, as well as operate material recovery facilities, compost facilities, and many of Oregon's municipal solid waste transfer stations and landfills. I've been asked to provide some background and history about franchising that might be helpful in the ongoing Portland franchise renewal discussion.

**Franchising in Oregon:** Historically, solid waste management has been a primary responsibility of cities and counties. It is based on the need to protect the public health, safety and welfare of citizens, and it stems from the Police Powers of the Constitution. Initially, cities and counties worked to manage garbage to keep it from accumulating, becoming a nuisance, and attracting vermin which spread disease. Over time, the additional goals of energy conservation and preserving natural resources were recognized as important to protecting and promoting public health and welfare. The costs of addressing all of these issues (collection, recovery and final disposal) have risen accordingly, and cities and counties have had to determine the best way to manage and fund solid waste programs.

Most Oregon cities and counties have chosen to franchise the solid waste collection services in their communities. Franchising allows the city or county to provide these services to residents more efficiently and cost effectively through companies that specialize in this work, rather than having government-owned and operated waste and recycling services. In order to have the private sector own and operate the system and assume the risk and expense of doing so, it was crucial that a structure be developed that provides the private sector certainty to make considerable investments in the necessary equipment and infrastructure to remain in operation so that the public can rely on this service, and that public health is not put at risk by the loss or disruption of service. Franchising meets this goal, and also ensures that no matter where one lives in a community, service will be provided with the same rates and same quality. Under an open market system, rates and services can result in inequities among residents, as service providers are not required to offer service to all, the result of which could be higher rates or poorer service to already disadvantaged communities.

Most Oregon citizens receive solid waste and recycling collection services through the franchised collection system, and have done so for many years. Franchises were first recognized as a lawful tool in Oregon as early as 1929, in a case decided by the Oregon Supreme Court. The system was reviewed and affirmed by the Oregon Legislature in 1983 when it adopted and enacted ORS 459A.085, which authorizes city and

county governments to displace competition with a system of regulated collection service by issuing franchises.

Among other things, ORS 459.085 states:

(1) The Legislative Assembly finds that providing for collection service including, but not limited to the collection of recyclable material as part of the opportunity to recycle is a matter of statewide concern.

...

**(3) It is the intent of the Legislative Assembly that a city or county may displace competition with a system of regulated collection service by issuing franchises which may be exclusive if service areas are allocated. The city or county may recognize an existing collection service. A city or county may award or renew a franchise for collection service with or without bids or requests for proposals. (Emphasis added.)**

This section of the law sometimes gives rise to questions about “monopolies.” This term can have negative connotations because there is a general bias in favor of competition. However, when it comes to the provision of certain vital services, it has long been recognized that government regulation is essential to ensuring the availability of the services as needed.

It is also important to note that solid waste franchises are regulated monopolies - regulated by the government for the benefit of the citizens. The city or county authorizing the franchise determines what services will be offered to all citizens and sets the rate that will be charged for that service: it also has the power to review the financial information of the service provider to determine if its costs are appropriate. Government oversees the quality of the services and has the right to require increases or changes to services to respond to changing needs and policies, in accordance with the terms of the governing franchise agreement. Through a franchise, the government limits the number of trucks on the road, increasing traffic safety and decreasing wear on the roads, traffic congestion, and diesel emissions.

In exchange, the service provider has the opportunity to make a reasonable rate of return on its investment as the only service provider in a certain geographical area. This restriction is an important element in making the franchise work – if the franchised company makes the significant investment necessary to provide the required services, and another company is allowed to enter the market to “cherry pick” certain desirable customers, then the net result is that costs will go up in the system overall to cover the loss of the revenue from the lost customers. Unless there is a need that cannot be met by the franchised company, adding a new collector merely increases system costs.

Regulated collection services are the norm on the West Coast, and while these systems are not competitive in the traditional sense of the word, they are efficient, equitable and available to all customers, not just those who are the easiest and most lucrative to serve. Franchised collection service is the backbone of the expanded recovery programs that were put in place in Oregon in 1991, and Oregon would not have the recovery rates and programs in place that it has today without it.

Franchised collection serves the customers, the local governments and the collectors. It has been a consistent solution for protecting public health, safety and welfare, and it has evolved to meet the needs of environmental conservation.

**Franchising in Portland:** The City of Portland commissioned a Residential Franchise Review Equity Options Report, and the draft dated 11/29/17 has a well-stated history of Portland's franchise. I've quoted it here:

In 1992, Portland franchised residential garbage service in order to introduce high-quality curbside recycling and yard debris collection in compliance with Oregon's Opportunity to Recycle Act. In addition to improving recycling collection, the franchise approach accommodated the dozens of small businesses that provided residential collection at the time. All companies with residential customers were awarded a franchise territory commensurate with their current customer base; 69 companies were initially issued franchises. The franchise also enabled standardized rates, facilitated more efficient collection routes, and reduced truck traffic on neighborhood streets. Finally, the franchise system provided a predictable revenue stream that allowed franchisees to invest in vehicles and equipment as well as sell their franchises. Over the past 25 years, most of the small hauler haulers have elected to sell their franchises, often when an owner retired. These sales have resulted in the consolidation of franchises, and today 13 companies hold franchises to provide residential service.

The residential franchise system has performed well in achieving its original intent. The partnership between the City of Portland and the private service providers has resulted in an excellent recycling, composting, and waste reduction system. Portland's recycling rate for curbside materials is 67 percent, almost double the average recycling rate in the United States. Franchisees have made continual investments to provide more efficient, cost-effective, comprehensive curbside service in an environmentally-friendly manner. According to the City Auditor's 2016 Community Survey, more than three quarters of Portland residents rate the quality of their garbage and collection service as good or very good.

**Benefits of Franchising:** Franchises are as unique as the communities in which they are implemented. Even with this variety, franchises do have a number of beneficial reasons in common:

#### For the Local Governments

1. Provide a uniform basis for comprehensive waste management and planning to meet current and changing needs, laws and technologies. Rather than the local governments having scattered ordinances and resolutions to cover solid waste collection, solid waste disposal, recycling and nuisance abatement, all regulations and standards are contained in one Solid Waste Management Plan for each government that easily can be referenced, implemented, enforced and amended as needed.
2. Give local government control over rulemaking to be sure that concerns unique to it are addressed. These concerns may be different than those set by state statute or environmental regulations.
3. Assure the local government that it is meeting its responsibility for recycling under state statute and rules, and give the ability to the local government to implement enhanced programs that are unique to its needs by rules that enhance or go beyond those implemented by the state.

4. Make a given solid waste collector accountable to the local government for its performance because the collector must meet local government standards as a condition of the franchise arrangement.
5. Give the local government a revenue source, through a franchise fee, to cover administrative costs of managing and supporting the solid waste management program.

#### For the Customer/Community

1. Assure that all citizens in the community will receive the same quality and level of service.
2. Provide equity in the rates through rate regulation for all classes of customers, based on a cost of service.
3. Facilitate energy conservation and reduction of pollution, noise and wear and tear on city and county roads by eliminating duplication of service.
4. Give the flexibility to deliver special services to meet the changing needs of customers.
5. Set a method for adequately resolving customer complaints, with the “right” to continue as the franchisee being at risk if high service standards are not maintained.
6. Provide a public process for direct citizen involvement in the setting of service standards and rates.
7. Assure the community will be given the highest level of recycling service, thereby giving the community the mechanism for meeting state statutory requirements as well as its environmental responsibility.

#### For the Collector

1. Provide rate regulation that will give a stable rate structure to recover fixed costs as well as increased costs imposed by regulatory agencies or increased costs of operation.
2. Grant a sufficient term to allow collectors to seek the financing necessary to continue to make the capital investments required (7-10 year rolling franchises make access to capital more feasible).
3. Allow a reasonable rate of return so that adequate, safe equipment can be used for the most efficient service.
4. Give the solid waste collector the ability to prove the efficiency of its operation through regular rate reviews.
5. Allow the collector to concentrate on good service.
6. Maintain continuity in the relationship between the collector and customer.

I hope this information is useful in your review. Please do not hesitate to contact me if I may be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristan S. Mitchell". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kristan S. Mitchell  
Executive Director

c: All Members of the Portland Planning and Sustainability Commission  
The Honorable Ted Wheeler, Mayor, City of Portland  
Susan Anderson, Director, Portland Bureau of Planning and Sustainability  
Portland Haulers Association  
ORRA Steering Committee