

**ORDINANCE NO. 2246**

**AN ORDINANCE AMENDING BEND CODE CHAPTER 11.16 SOLID WASTE  
MANAGEMENT**

Findings:

- A. Portions of the language in Chapter 11.16 are difficult to read and/or outdated. Updating and streamlining this chapter will provide greater readability and increased clarity, which benefits the City, current and future solid waste collection franchisees, and members of the community.
- B. The City Council has expressed a desire to update the terms and conditions of solid waste franchise agreements without altering the existing structure of franchise terms.

Based on these findings, the City of Bend ordains as follows:

Section 1. Bend City Code Chapter 11.16 Solid Waste Management is revised to read as shown on the attached Exhibit A.


Section 2. All other provisions of the Bend Code remain unchanged and in full effect.

First Reading Date: June 17, 2015

Second Reading Date: July 15, 2015

Yes: Jim Clinton, Mayor  
Victor Chudowsky  
Doug Knight  
Sally Russell  
Nathan Boddie  
Casey Roats  
Barb Campbell

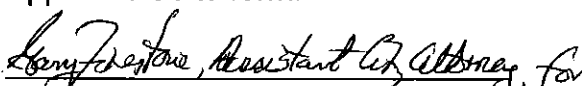
No: None

  
\_\_\_\_\_  
Jim Clinton, Mayor

ATTEST:

  
\_\_\_\_\_  
Robyn Christie, City Recorder

Approved as to form:

  
\_\_\_\_\_  
Mary Winters, City Attorney

**EXHIBIT A**  
**Chapter 11.16**  
**SOLID WASTE MANAGEMENT**

Sections:

- 11.16.020 Purposes, Policy and Scope.**
- 11.16.030 Definitions.**
- 11.16.040 Persons and Practices Exempt from Franchise.**
- 11.16.050 Practices Prohibited without a Franchise.**
- 11.16.060 Grant of Exclusive Franchise.**
- 11.16.070 Franchise Term.**
- 11.16.080 Franchisee Responsibility.**
- 11.16.090 Suspension, Modification or Revocation of Franchise.**
- 11.16.100 Termination of Service.**
- 11.16.110 Rate Determination.**
- 11.16.120 Public Responsibility.**
- 11.16.130 Penalties.**
- 11.16.140 Complaints.**
- 11.16.150 Franchise Fee.**

Exhibits

**11.16.020 Purposes, Policy and Scope.**

The City of Bend regulates solid waste service to:

- A. Ensure safe, efficient, economical and comprehensive solid waste service.
- B. Ensure fair and equitable consumer rates and to prohibit rate preferences or other practices that might be discriminatory.
- C. Conserve energy and material resources, reduce solid wastes and promote material and energy recovery in all forms.
- D. Provide for technologically and economically feasible resource recovery.
- E. Eliminate overlapping service and thereby increase efficiency and decrease truck noise, street wear, energy waste, air pollution and public inconvenience.

- F. Protect public health and the environment.
- G. Provide public service standards.
- H. Protect against improper and dangerous handling of hazardous wastes.
- I. Provide a basis and incentive for investment in solid waste equipment, facilities, sites and technology. [Ord. NS-1272, 1980]

**11.16.030 Definitions.**

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- A. **Franchisee** means a person granted a franchise by this chapter, including that person's employees, agents and subcontractors.
- B. **Generator or producer** means a Person who generates and produces Solid Waste as a result of that Person's household, business, agricultural, or governmental activities. Generator or producer does not include any third party who transports Solid Waste, without having generated or produced it.
- C. **Hazardous waste** means any waste defined as hazardous waste by federal or Oregon law. Conditionally exempt hazardous waste is waste generated in quantities below the threshold adopted by the Environmental Quality Commission under the terms of ORS 466.020.
- D. **Resource recovery** means the process of obtaining useful material or energy resources from solid waste, including reuse, recycling, and other materials recovery or energy recovery of or from solid waste.
- E. **Service** means the collection, transportation or disposal of or resource recovery from solid waste within the City of Bend.
- F. **Solid waste** means all putrescible and nonputrescible wastes including, without limitation, garbage, rubbish, refuse, trash, ashes or swill, newsprint or waste paper, corrugated paper or cardboard, grass clippings, compost, residential, commercial, industrial, governmental or institutional wastes, discarded home or industrial appliances, equipment or furniture, vehicle parts or tires, vegetable or animal wastes, infectious waste as defined by ORS 459.387, food waste and other wastes.

G. **Solid waste management** means the prevention of or reduction of solid waste; management of service; and facilities and equipment necessary or convenient to those activities.

H. **Waste** means solid waste and any other material that is no longer directly usable by the source, generator or producer of the material, which material is to be disposed of or to be resource recovered by another person.

1. The fact that all or any part of a material may have value and thus be recovered does not remove it from this definition.
2. The fact that the source, generator or producer of materials has separated or segregated such material from other waste does not remove the material from this definition.

**11.16.040 Persons and Practices Exempt from Franchise.**

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Nothing in this chapter requires a franchise for the following businesses or practices:

- A. The collection, transportation and reuse of repairable or cleanable discards by a private charitable organization regularly engaged in such business or activity.
- B. The collection, transportation and reuse or recycling of totally source separated materials or operation of a collection center for totally source separated materials by a religious, charitable, benevolent or fraternal organization which organization was not organized or operated for any solid waste service or management purpose and which organization is using the activity for fund raising.
- C. The collection, transportation or redemption of returnable beverage containers under ORS Chapter 459A.
- D. The generator or producer who transports and disposes of waste created as an incidental part of regularly carrying on the business or service of licensed auto wrecking, demolition, land clearing, construction, gardening or landscaping; street sweeping, auto body recovery, or septic tank pumping or sludge collection. Janitorial service does not include cleanup of accumulated or stored wastes as a stand-alone service.

- E. The transportation by a person of solid waste generated or produced by such person to a disposal site, resource recovery site or market. The transportation by a landlord of residential property of solid waste generated or produced by tenants or occupants to a disposal site, resource recovery site or market.
- F. The purchase of totally source separated solid waste for fair market value.
- G. The providing of service to a State or Federal agency under written contract with such agency.
- H. The providing of service for hazardous wastes conditionally exempt under Oregon Environmental Quality Commission rules.
- I. The burning of clean combustible waste products (wood, paper) in a residential fireplace, wood stove, or furnace.

**11.16.050 Practices Prohibited without a Franchise.<sup>2</sup>**

Unless exempted by BC 11.16.040 or franchised pursuant to BC 11.16.060, no person shall provide service in the City.

**11.16.060 Grant of Exclusive Franchise, Franchise Territories.**

A. Bend Garbage Company, Inc., and Waste Connections, Inc., were granted franchises by Ordinance NS-2092, and amended by Ordinances NS 1416 and NS 1272 granting them the exclusive right, privilege and franchise to provide service within the City limits, including any area that is added to the City, and to use the streets of the City for that purpose. Their respective exclusive franchise areas are shown on Exhibit A and the dividing line between the two areas is shown in Subsection B.

B. The dividing line between the two exclusive franchise areas from the western and eastern city limits (present and future). Bend Garbage services the city limits north of this line and Cascade Disposal services the city limits south of this line.

1. The Southerly line of Section 30, 29, 28, 27, 26, and 25, T17S, R10 and 11E W.M. easterly to the intersection of the centerline of NW Shevlin Park Road.

2. The centerline of NW Shevlin Park Road from the intersection with the southerly line of Section 25, T17S, R11 W.M to its easternmost point.
3. The centerline of NW Newport Avenue from its westernmost point to the intersection with NW Nashville Avenue (centerline of Nashville Avenue).
4. The centerline of NW Nashville Avenue from the intersection with NW Newport Avenue (centerline) to NW Nashville Avenues southeaster most point (edge of right of way).
5. A straight line connecting the centerline of the southeastern most point of NW Nashville Avenue to the midpoint of the intersection of NW Louisiana Avenue and NW Riverside Boulevard.
6. The centerline of NW Riverside Boulevard from the intersection with NW Louisiana Avenue to the point where NW Riverside Boulevard becomes NW Franklin Avenue.
7. The centerline of NW Franklin Avenue from NW Riverside Avenue to the intersection with Oregon Trunk Railway tracks.
8. The Oregon Trunk Railway tracks north to the intersection with the centerline of Greenwood Avenue.
9. The centerline of Greenwood Avenue (Highway 20) from the intersection of the Oregon Trunk Railway easterly to the intersection of a line being the projection of Eagle Road south to the intersection with the centerline of Greenwood Avenue (Highway 20).
10. The line being the projection of Eagle Road north from the centerline of Greenwood Avenue (Highway 20) north to the intersection of Eagle Road and Neff Road and the southerly line of Section 26, T17S, Range 13E W.M.
11. The southerly line of Section 26, T17S, Range 13E W.M. from the intersection with Eagle Road easterly along the southerly line of Section 26, 25, 30, 29, 28, 27, 26, 25 of T17S, Ranges 13E and 14E W.M. to the easterly Deschutes County Line.

### **11.16.070 Franchise Term.**

The franchises described in Section 11.16.060 began on April 15, 1980, and are continuing seven-year franchises. That is, beginning on April 15 of each year, the franchise is renewed for one additional year, unless at least 30 days prior to March 15 of any year the Council notifies the franchisee in writing of intent to terminate the franchise. The franchise will terminate six years from the date of the notice of termination. The Council may alter, extend the term or reinstate continuing renewal with the mutual agreement with the franchisee. Nothing in this section restricts the City from suspending, modifying or revoking the franchise for cause under BC 11.16.090.

### **11.16.080 Franchisee Responsibility.**

A. The franchisee shall:

1. Dispose of solid waste at a Department of Environmental Quality-approved solid waste disposal or transfer site and comply with all applicable laws, rules and regulations.
2. Provide and maintain liability insurance in the amount of not less than \$500,000 for injury to a single person, \$500,000 to a group of persons and \$100,000 property damage, all relating to a single occurrence. In addition to the above-described insurance, franchisee shall keep and maintain "umbrella coverage" in the amount of \$2,000,000. Each franchisee shall annually provide the City a certificate of insurance evidencing the required insurance.
3. Provide sufficient collection vehicles, containers, facilities, personnel and finances to provide good service.
4. Respond promptly and effectively to any complaint on service.
5. Provide collection of infectious waste as defined in ORS 459.387, either directly or through a subcontract consistent with all applicable laws and regulations. Any subcontractor must agree to comply with this Chapter as if the subcontractor were a franchisee.

6. At the second Council meeting of January, 2016 and every three years afterwards, provide an operations report to the Council in open session describing its activities for the prior three calendar years and a plan for future operations. The report shall include, at a minimum, the following information: disposal and recycling volumes, customer counts, rate comparisons, number and type of hauling and other major equipment, recycling program updates and proposed service plans. This report may be combined with any report required under Section 11.16.110.

B. The franchisee is not required to store, collect, transport, transfer, dispose of or resource recover any of hazardous waste other than household amounts at typical household strength; provided, however, that the franchisee may provide hazardous waste collection and transportation service outside this chapter in compliance with all applicable laws, ordinances and regulations.

C. The franchisee may, with City approval, subcontract with others to provide a portion of the franchised service. A subcontract does not relieve the franchisee of total responsibility for providing and maintaining service and complying with this chapter.

D. The franchisee shall not:

1. Give any rate preference to any person, locality or type of solid waste stored, collected, transported, disposed of or resource recovery. This subsection does not prohibit uniform classes of rates based upon length of haul, type, quantity or quality of solid waste handled and location of customers so long as such rates are reasonably based on the cost of the particular service. Franchisees shall charge only rates approved by the City Council. Franchisees may volunteer service at no or reduced cost for a charitable, community, civic or benevolent purpose. If a franchisee is requested to provide a service for which a rate has not been approved, the franchisee may charge a reasonable rate to cover its cost and a reasonable rate of return.

2. a. Transfer this franchise in any way or any interest therein, or transfer any ownership interest in franchise, including but not limited to the transfer of franchisee stock to any other person without prior written approval of the Council.



- b. A pledge of the franchise or any interest in franchisee or its stock as financial security shall be considered as a transfer for purposes of this section.
- c. The Council may impose conditions on the approval of transfers.

**11.16.090 Suspension, Modification or Revocation of Franchise.**

- A. Failure to comply with the provisions of this chapter after 60 days' written notice by the City of the deficiency shall be grounds for modification, suspension or revocation of the franchise.
- B. The franchisee who has received a notice of deficiency may request a public hearing before the Council.
- C. At a public hearing, the franchisee and other interested persons shall have an opportunity to present oral, written or documentary evidence to the Council.
- D. The Council may uphold, modify or withdraw the notice. If the Council upholds the notice, the time for compliance shall not be extended, but the Council may modify the notice and extend the time for compliance.

**11.16.100 Termination/Failure to Provide Service.**

The franchisee shall not terminate or fail to provide service to any customers unless:

- A. The street or road access is blocked, and there is no alternate route;
- B. Excessive weather conditions render providing service unduly hazardous to persons providing service or the failure to provide service is caused by accidents or casualties caused by an act outside franchisee's control;
- C. A customer is not complying with BC 11.16.120 or has not paid for service provided after a regular billing and after a 15-day written notice to pay.
- D. A customer fails to comply with a franchisee's reasonable requirements concerning the packaging of infectious waste.

**11.16.110 Rate Determination.**

A. The City has approved rates for service for each franchisee by resolution. The rates may be obtained from the City Recorder's office, and each franchisee shall post the rates on its website and make hard copies available to the public at no charge.

B. By May 15 of each year, each franchisee shall file a financial report.

C. A franchisee may, not later than May 15 of any year, apply for an adjustment in rates to take effect on July 1 of that year. The franchisee shall provide the City income and cost information sufficient to demonstrate franchisee's profit and profit margin for the previous five years and projected profit and profit margin for the next three years. The City reserves the right to inspect documents that support the information required to be provided under this section. The Council may approve, disapprove or modify an application for rate adjustment. Any modification in rates shall be by Council resolution.

D. Franchisees shall keep accurate accounting records throughout the term of the franchise and shall maintain those records for three years after termination of the franchise. The City may require an audit of the franchisee's books, to determine the accuracy of the franchisee's financial reporting. The cost of the audit shall be borne by City, unless the audit results reveal an underpayment of more than eight percent of the franchise fee for the period audited. In the case of an 8% or greater underpayment, the full cost of the audit shall be paid by the franchisee. Franchisee shall, within 30 days of receiving the audit report, pay the underpayment determined by an audit to City together with 9 percent per annum interest from the date payments should have been made to the date the payment is actually made, as well as the costs of the audit, if applicable.

E. Franchisees shall bill and collect on a current billing basis. If a franchisee has experienced collection problems on a particular account, the franchisee may require a reasonable deposit, advance payment, restart fee, or other security as a condition of continuing or restarting service.

F. Rates shall be uniform or uniform within zones and classes of service. The City may approve class discounts.

G. Franchisee may require the owner of rented premises to accept responsibility for the payment for service to those facilities as a condition for providing such service.

### **11.16.120 Public Responsibility.**

In addition to and not in lieu of compliance with ORS Chapters 459 and 459A and other applicable laws and regulations:

- A. No person shall place hazardous waste for collection or disposal by franchisee without notice. This shall not apply to minor quantities of hazardous wastes generated at or by a single-family residential unit.
- B. No person other than the person producing the materials, an officer or employee of the City, or an employee of a franchisee, shall remove the lid from any solid waste container, molest or scatter solid waste stored in such container, or deposit solid waste into a solid waste container. For the purpose of this section, the franchisee is the "owner" of containers supplied by the franchisee.
- C. No unauthorized person shall remove solid waste placed out for collection and resource recovery by the franchisee or a person exempted by BC 11.16.040 and operating solely within the exemption.
- D. Unless permitted by the franchisee, no person shall install or use any container for pick up by franchisee other than those supplied by franchisee. Any solid waste that does not fit in the container may be set out in plastic bags or other containers approved by the franchisee and shall be subject to an additional charge. The purpose of this subsection is to ensure safe equipment, sizes and weights and facilitate franchisee utilizing the most efficient collection equipment and methods.
- E. Franchisees are not required to collect solid waste from underground containers or containers located behind any locked or latched door, gate or inside of any building or structure.
- F. Franchisees may establish maximum weights for each size of container and may refuse to collect from containers that exceed the maximum weight.
- G. Except as provided in this section, all waste and recyclables placed for collection shall be placed in the solid waste, recycling or yard debris container or in the bins supplied for glass collection. Excess solid waste shall be placed in securely closed plastic bags or other containers approved by the franchisee, customers with franchisee-

provided yard debris containers shall place excess yard debris may be placed in large compostable sacks designed for that purpose, and flattened corrugated cardboard may be set out in neatly stacked, securely tied, bundles. Any such sacks or bundles shall not exceed 60 pounds in weight.

H. Where a customer requires an unusual volume of service or a special type of service requiring substantial investment in equipment, the franchisee may require a contract with the customer to finance and assure amortization of the equipment. The purpose of this provision is to assure that such equipment not become a charge against other rate payers who are not benefited.

I. Franchisee may charge extra for return service to a container or drop box or roll off box that is blocked by automobiles or other obstacles.

J. Every person who generates or produces wastes shall remove or have removed all putrescible wastes at least every seven days. More frequent removal may be required where facility or service involves the public health. All wastes shall be removed at sufficient frequency as to prevent health hazards, nuisances or pollution.

K. The producer or generator of waste shall keep the area around such cans or containers free of accumulated wastes.

L. Except as otherwise exempted in this Chapter, no person shall burn, dump, or in any other manner dispose of solid waste anywhere other than in an approved solid waste disposal facility or transfer station.

M. All customers of franchisees shall use reasonable efforts to separate recyclable matter from solid waste and set out the recyclable matter in designated recyclable containers. For purposes of this section, "recyclable matter" means materials accepted by the franchisee as part of its curbside recycling program.

N. Customers shall place solid waste, recycling, yard debris and glass recycling containers for collection in locations that do not block bike lanes, driveways or sidewalks. Containers may be placed at the edge of streets that do not have bicycle lanes. Containers may be placed on sidewalks if at least a three foot passage area is maintained. Customers shall consult with their service provider if complying with these

standards does not appear possible and comply with the service provider's direction. Customers should normally set out solid waste containers for collection no earlier than 5:00 pm the day before collection is scheduled and should normally retrieve them within 24 hours after collection; however additional time is allowed when customers will not be present to comply with these timelines.

O. Customers should normally set out solid waste and recycling containers for collection no earlier than 5:00 p.m. the day before the next scheduled collection and should normally retrieve them within 24 hours after collection. Additional time is allowed when customers will not be present to comply with these timelines.

P. Persons who set out exempt wastes, including but not limited to oils and grease, for recycling or reuse by persons other than franchisees shall ensure that they are set out in leak-proof containers and are placed so as to not block passage of any street, sidewalk, bike lane or alley. Persons collecting oils and grease for recycling or reuse shall provide their customers with secure, lockable, leak-proof containers with secured lids that are designed to be stable and resistant to spillage. No person shall spill, damage or interfere with such containers or in any way cause their contents to be released onto the surface of any street, sidewalk, bike lane or alley. The City Manager may adopt regulations governing oil and grease waste containers.

Franchisees are not responsible for enforcing the provisions of this Section 11.16.120.

#### **11.16.130 Penalties.**

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Violation of any provision of this chapter is a class A civil infraction. Each day of violation is a separate infraction.

#### **11.16.140 Complaints.**

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If the City receives a complaint concerning a franchisee, the City will inform the franchisee and the franchisee shall provide a written response to the complaint within two weeks of being notified of the complaint.

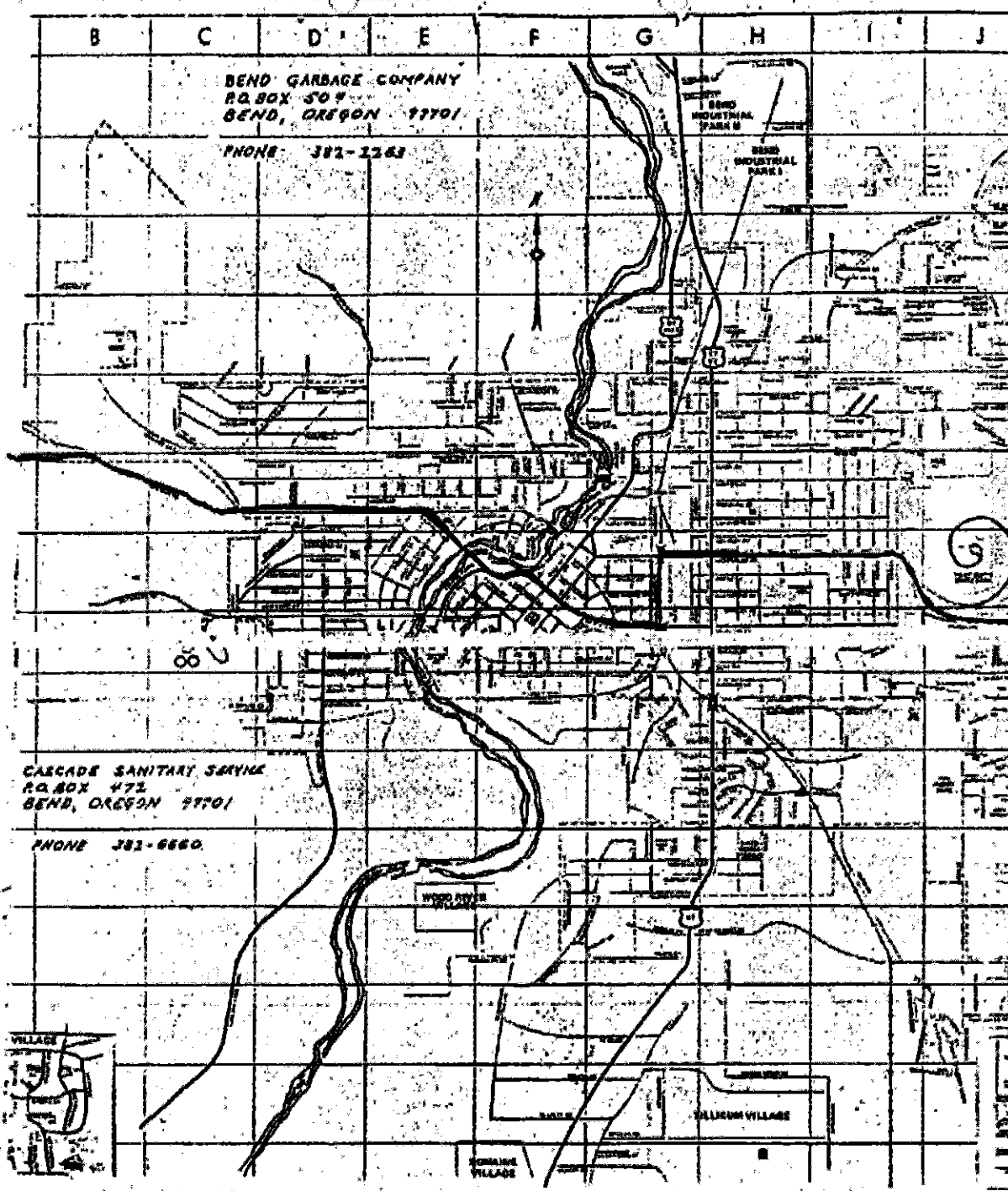
#### **11.16.150 Franchise Fee.**

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Each franchisee shall pay the City of Bend franchise fee of five percent of the gross receipts of the franchisee from all customers served under its franchise. Gross receipts

include all amounts collected by the franchisee for franchise services from City franchise customers. The franchise fee for each month shall be due and payable on or before the fifteenth day of the following month. The franchise fee will be used by the City for street maintenance or other purposes that benefit the City-administered rights of way.

EXHIBIT "A"



BEND GARBAGE COMPANY  
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BEND, OREGON 97701  
PHONE 382-2263

CASCADE SANITARY SERVICE  
RQ. BOX 472  
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