ORDINANCE NO. 2031

An Ordinance Amending the Hood River Municipal Code, by deleting Title 8 (Health and Safety), Chapter 04 (Garbage Regulations) in its Entirety and replacing it with a new Title 8 (Health and Safety), Chapter 04 (Solid Waste and Recycling Franchise Required).

The Hood River City Council adopts the following findings:

WHEREAS, the City of Hood River is an Oregon home-rule charter municipal corporation with a City Charter that grants it all the powers and authority that the constitution, statutes and common law of the United States and this State expressly or impliedly grant or allow as though each such power was specifically enumerated; and

WHEREAS, as the City has required entities to obtain a franchise for the curb-side collection of all solid waste, recyclables, yard debris and similar materials from homes and businesses throughout the city, and that franchise traditionally has been codified as Title 8 (Health and Safety), Chapter 04 (Garbage Regulations) of the Hood River Municipal Code (HRMC); and

WHEREAS, the Council continues to require any entity engaged in curbside collection of solid waste, recyclables, yard debris, organics and similar waste materials from residential, commercial, institutional and industrial waste generators anywhere in the city to obtain a franchise from the City, but no longer desires those contractual agreements to be codified in the HRMC; and

WHEREAS, the City has negotiated an Exclusive Solid Waste and Recycling Collection Service Franchise Agreement with Waste Connections of Oregon, Inc., dba Hood River Garbage Service, for the exclusive right to collect, transport and dispose of at a suitable transfer station all solid waste, recyclable materials and organics from all residential, commercial, institutional and industrial waste generators in the city, a copy of which is attached as Exhibit A, and incorporated herein by this reference; and

WHEREAS, the current HRMC Chapter 8.04 sets forth the current solid waste franchise, which is not a necessary element of the municipal code; whereas, a general authorization of and requirement for a franchise by a solid waste utility is a necessary provision of the municipal code; and

WHEREAS, the general requirement for a franchise agreement as a prerequisite for use of the public rights-of-way is set forth in a proposed new HRMC Chapter 8.04, entitled Solid Waste and Recycling Franchise Required, is attached and incorporated herein by this reference as Exhibit B; and

WHEREAS, the City Council discussed this matter, the specific terms of service and all other elements of an exclusive franchise at open public meetings on January 23, 2017, concluding with a public hearing on the draft proposed exclusive franchise on January 23, 2017, at which time, the Council accepted final public testimony, deliberated and voted to execute the

proposed exclusive franchise with Waste Connections of Oregon, Inc., and amend the HRMC to remove the franchise from the code, but maintain in the Code the City's authority to require an exclusive franchise for collection, transport and disposal of solid waste.

NOW THEREFORE, the City Council for the City of Hood River ordains as follows:

Section 1. Incorporation of Recitals: The foregoing recitals are adopted and incorporated herein by this reference and made a part hereof as findings in support of the City Council's action taken herein.

Section 2. Repeal of HRMC Chapter 8.04. Title 8 (Health and Safety), Chapter 04 (Garbage Regulations) of the Hood River Municipal Code is hereby repealed in its entirety.

Section 3. Adoption of new HRMC Chapter 8.04. The regulations set forth in Exhibit B, attached hereto and incorporated herein by this reference, are hereby adopted and shall be codified as Title 8 (Health and Safety), Chapter 04 (Solid Waste and Recycling Franchise Required) of the Hood River Municipal Code.

Section 4. Franchise Adoption and Approval. The Exclusive Solid Waste and Recycling Collection Service Franchise Agreement with Waste Connections of Oregon, Inc., dba Hood River Garbage Service, for the exclusive right to collect, transport and dispose of at a suitable transfer station all solid waste, recyclable materials and organics from all residential, commercial, institutional and industrial waste generators in the city, forth in Exhibit A attached hereto and incorporated herein by this reference, is hereby adopted and approved, and the City Manager is hereby authorized to execute the same on behalf of the City.

Section 5. Severability. If any provision, paragraph, word, section, or article of this Ordinance, HRMC Chapter 8.04 set forth in Exhibit B, or the Exclusive Solid Waste and Recycling Collection Service Franchise Agreement, attached as Exhibit A is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections and chapters shall not be affected and shall continue in full force and effect.

READ FOR THE FIRST TIME on January 23, 2017.

READ FOR THE SECOND TIME and adopted on February 13, 2017. This Ordinance shall take effect 30 days after the second reading.

Paul Blackburn, Mayor

ATTEST:

Jennifer Gray, City Recorder

APPROVED AS TO FORM:

Daniel Kearns, City Attorney

EXHIBIT B

Chapter 8.04
SOLID WASTE AND RECYCLING FRANCHISE REQUIRED

Sections

8.04.010 Franchise Required for Use of the Public Right-of-Way.
8.04.015 Utility tax levied and franchise fee authorized.

8.04.010 Franchise Required for Use of the Public Right-of-Way. The City owns and maintains all public rights-of-way within the City for the benefit of the public. Any utility, as defined herein, or provider of a utility service, including solid waste collection, transportation or disposal, shall obtain from the City a franchise for the privilege of using the public right-of-way for utility purposes. No utility shall use the public right-of-way or place its facilities in the public right-of-way without first obtaining a franchise from the City. For purposes of this Chapter, the following definitions shall apply:

1. "City" means the City of Hood River, Oregon and all areas within its corporate boundaries as may be modified or expanded in the future.
2. "Council" means the Hood River City Council.
3. "Facilities" includes all wires, cables, fiber optic lines, poles, antennas, transmitters, receivers, switches or other equipment located on, over, or under the public right-of-way within the city.
4. "Gross revenue" means revenues received or derived by a utility from operations within the city less net uncollectibles. Gross revenues of gas and electric utilities shall include revenues from the user, rental or lease of water heating equipment. Gross revenues shall not include proceeds from the sale of bonds, mortgages or other evidence of indebtedness, securities or stocks, sales at wholesale by one public utility to another when the utility purchasing the service is not the ultimate consumer, revenue from joint pole use, or revenue paid directly by the United State of America or any of its agencies. Gross revenues of telephone utilities means revenues derived from exchange access services as defined in ORS 401.710 less net uncollectibles and revenue paid directly by the Unit State of America or any of its agencies.
5. "Right-of-way" includes all streets, alleys, avenues, roads, boulevards and highways within the city that are owned by, or dedicated to, a governmental entity for public use, whether in fee by deed, easement, plat or any instrument of public dedication.
6. "Utility" includes every public utility as defined in ORS 757.005 as amended, any corporation, person or other entity providing cable television, video programming, telephone or telecommunication services over wires in the city. Utility also includes any business that installs, maintains or uses any facility in, under or over the public rights-of-

way, regardless of whether the entity derives any gross revenues from, or has any customers in, the city. This chapter also applies to any service provider that uses the rights-of-way to provide regularly scheduled collection, transport or disposal of solid waste, recyclable materials, yard debris or organics from properties in the City. With regard to these activities related to solid waste, the definitions set forth in ORS 459.005 and OAR 340-90-010 are adopted and incorporated herein by this reference. For purposes of this chapter, all entities that are subject to this chapter shall be referred to as a "utility."

8.04.015 Utility tax levied and franchise fee authorized. A utility tax is hereby levied upon the every utility that uses the public rights-of-way in the city. Alternatively, the city may impose a franchise fee on any utility that uses the public rights-of-way as compensation to the city for use of the public rights-of-way. The tax or franchise fee shall be no greater than 7% of gross revenues derived from the utility's business in the city, unless a different rate is required or allowed by state or federal law. In addition, the city may impose a per lineal foot tax or franchise fee on utilities that own or maintain wires or fiber optic cables in the city, to which there are no service connections within the city. The city may, but is not required to, impose this tax or franchise fee on municipal utilities, such as public water and sanitary sewer service, doing business in the city and using public rights-of-way for pipes, conduits, pumps and other equipment and facilities.