ORDINANCE NO. 1085

AN ORDINANCE OF THE CITY OF KETCHUM, IDAHO, AMENDING TITLE 8, CHAPTER 8.04, GARBAGE COLLECTION AND DISPOSAL, BY AMENDING SECTION 8.04.110, RELATING TO FRANCHISE FEES; AMENDING SECTION 8.04.120, RELATING TO THE RESPONSIBLE BILLING PARTY; AMENDING SECTION 8.04.160, RELATING TO LIQUIDATED DAMAGES; REPEALING SECTION 8.04.130, INVOLUNTARY DISCONTINUANCE OF SERVICE, IN ITS ENTIRETY; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; PROVIDING A REPEALER CLAUSE; PROVIDING A CODIFICATION CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Idaho Code §§50-329 and 50-344 authorize and empower the City to maintain and operate solid waste collection systems through franchise or other contractual agreements; and

WHEREAS, Title 8, Chapter 4, Ketchum City Code, regulates the City's solid waste collection system and franchises granted pursuant thereto; and

WHEREAS, the Ketchum City Council adopted Ordinance No. 960 on August 26, 2005, which granted a residential solid waste franchise to Obras, LLC dba Clear Creek Disposal and set the franchise fee at six percent (6%) of collected charges; and

WHEREAS, the Ketchum City Council finds that it is in the best interest of the general health, safety and welfare to codify the existing franchise fee; and

WHEREAS, the Ketchum City Council finds that it is in the interest of the general health, safety and welfare to otherwise update its solid waste collection code to allow a franchisee to bill for the solid waste collection services it provides and to provide for the enforcement of delinquent accounts.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF KETCHUM:

SECTION 1. Amends Section 8.04.110, Ketchum Municipal Code, by adding thereto the underlined language hereinbelow and deleting wherefrom the stricken language hereinbelow, to wit:

8.04.110: FRANCHISE FEE:

As compensation for the nonexclusive franchise to engage in the business of solid waste collection and transportation for hire over and upon the public ways within the city, the franchisee shall pay city ~~the nonrefundable annual amount of seven hundred fifty dollars ($750.00)~~ a franchise fee of six percent (6%) of gross receipts collected in the service area or such other amount as may be prescribed by the city council and reflected in the franchise agreement. The franchisee fee shall be payable quarterly or as otherwise reflected in the franchise agreement.

SECTION 2. Amends Section 8.04.120, Ketchum Municipal Code, by adding thereto the underlined language hereinbelow and deleting wherefrom the stricken language hereinbelow, to wit:

8.04.120: COMPENSATION AND BILLING; DELINQUENT ACCOUNTS:

A. The franchisee shall establish monthly rates for collection and transportation of solid waste. Such rates are to be reasonable to allow for a fair profit to the franchisee for its investment and services. Such rates are to be filed with the city clerk. If such rates are ever increased, the franchisee shall so file the new rates with the city clerk thirty (30) days pervious to the effective date of increase. The city has the privilege to request the franchisee to review the reasonableness of such rates and shall approve or disapprove such increase based upon the above standard of fair profit to the franchisee.

B. Charges for collection and transportation of solid waste ~~for all single family, duplex and triplex dwelling units~~ shall be billed ~~by the city and carried on the quarterly city utility bill, and the same shall be paid to the city with the water and sewer bills~~ according to the terms of the franchise agreement. ~~If any portion of the water, sewer and solid waste bill is not paid when due, such charges shall become delinquent, and in addition to the amount due, a delinquency charge of ten percent (10%) of the outstanding amount shall be assessed. All delinquent charges of fees not paid within thirty (30) days of the date when first due shall be imposed as a lien against and upon the property or premises against which such charge or fee is levied or assessed, and the city clerk shall, at the time of certifying the city taxes, certify such delinquencies, together with all penalties, to the tax collector of Blaine County, and will be collectible as other taxes. In addition to the above, the city shall disconnect the municipal water service line where such property or premises is served by municipal water pursuant to section 8.04.130 of this chapter.~~ All delinquent accounts are subject to stoppage of service without notice. If a delinquent account is not paid after three (3) consecutive months, the franchisee shall cease all refuse collection for that account unless otherwise directed by the city administrator. Service shall be resumed thereafter only on payment of the accumulated fees for the period of collection. Stoppage of service hereunder for nonpayment shall be in addition to the right of the franchisee to proceed for the collection of such unpaid charges in a manner provided by law for the collection of amounts due and owing and the right of the city to levy a special assessment as provided by section 8.04.120(C) of this chapter.

C. ~~The city shall turn over to the franchisee the amount received for solid waste collection and transportation including proportionate delinquency charges and penalty charges applicable to solid waste collection and transportation, except the amount of seventy five cents ($0.75) per month per amount to cover the cost of the city billing. The amounts collected by the city for solid waste collection service, excepting the seventy five cents ($0.75) per month per account service charge, or such other amount as may be prescribed by the city council from time to time, are to be turned over to the franchisee at the end of each month for monies collected from customers during that month. The city is responsible to initiate discontinuation of municipal water service where applicable and to place liens on property of delinquent customers, but the city is not obligated to reimburse the franchisee for delinquent accounts until the city has received payment from the delinquent customer.~~ The franchisee shall notify the city on at least a

quarterly basis of delinquent customer accounts for which the franchisee has been unable to collect for a period of thirty (30) days. Upon such notification, the city may levy a special assessment against the premises for failure to pay charges and delinquency charges fixed by the franchisee, in the same manner provided by law for the foreclosure and collection of other city special assessments. The city clerk shall, at the time of certifying city taxes, certify such delinquencies, together will all penalties, to the tax collector of Blaine County, which will be collectible as other taxes.

~~D. Charges for collection of solid waste service for all customers, except single-family, duplex and triplex dwelling units, shall be billed and collected by the franchisee.~~ (Ord.800 §2, 1999: Ord. 672 §9, 1995: Ord. 670 §12, 1995)

SECTION 3. Repeals Section 8.04.130, Ketchum Municipal Code, in its entirety.

SECTION 4. Amends Section 8.04.160, Ketchum Municipal Code, by adding thereto the underlined language hereinbelow and deleting wherefrom the stricken language hereinbelow, to wit:

8.04.160: LIQUIDATED DAMAGES:

In view of the difficulty of ascertaining the loss which the city will suffer by reason of breach in the performance of the requirements stated in this chapter, ~~the following liquidated damages may be assessed by the city:~~liquidated damages may be assessed by the city in the amount of one thousand dollars ($1,000.00) per day

~~A. F~~for discontinuance of collection and disposal service on any route for more than seventy two (72) hours beyond the scheduled day, after written notice, for any reason, except for causes beyond the control of the franchisee, and except for situations covered by section 8.04.100, "Emergency Provision", of this chapter~~, liquidated damages may be assessed by the city in the amount of one thousand dollars ($1,000.00) per day~~.

~~B. For each complaint of failure to make collection from complainant's container in accordance with the prescribed schedule of collections, when correction of such complain is not made within twenty four (24) hours, the city shall withhold from money due the franchisee the sum of ten dollars ($10.00) per service. Complaints of this nature will be referred in writing to the franchisee, who shall remedy the faulty condition within twenty four (24) hours after receipt of such notice.~~ (Ord. 800 §4, 1999: Ord. 672, §10, 1995: Ord. 670 §15, 1995).

SECTION 5. SAVINGS AND SEVERABILITY CLAUSE. It is hereby declared to be the legislative intent that the provisions and parts of this Ordinance shall be severable. If any paragraph, part, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid for any reason by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 6. CODIFICATION CLAUSE. The City Clerk is instructed to immediately forward this ordinance to the codifier of the official municipal code for proper revision of the code.

SECTION 7. PUBLICATION. This Ordinance, or a summary thereof in compliance with Section 50-901A, Idaho Code, substantially in the form attached hereto as Exhibit "A," shall be published once in the official newspaper of the City, and shall take effect immediately upon its passage, approval, and publication.

SECTION 8. REPEALER CLAUSE. All City of Ketchum code sections, ordinances or resolutions or parts thereof, which are in conflict herewith are hereby repealed.

SECTION 9. EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage, approval and publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO, and approved by the Mayor this 2nd day of May, 2011.

Randy Hall, Mayor

ATTEST:

Sandra E. Cady, CMC
City Treasurer/Clerk

EXHIBIT A
SUMMARY OF ORDINANCE NUMBER 1085
OF THE CITY OF KETCHUM, IDAHO

PUBLIC NOTICE IS HEREBY GIVEN that the City of Ketchum, Idaho, adopted at its regular meeting of May 2, 2011, that Ordinance No. 1085 entitled:

AN ORDINANCE OF THE CITY OF KETCHUM, IDAHO, AMENDING TITLE 8, CHAPTER 8.04, GARBAGE COLLECTION AND DISPOSAL, BY AMENDING SECTION 8.04.110, RELATING TO FRANCHISE FEES; AMENDING SECTION 8.04.120, RELATING TO THE RESPONSIBLE BILLING PARTY; AMENDING SECTION 8.04.160, RELATING TO LIQUIDATED DAMAGES; REPEALING SECTION 8.04.130, INVOLUNTARY DISCONTINUANCE OF SERVICE, IN ITS ENTIRETY; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; PROVIDING A REPEALER CLAUSE; PROVIDING A CODIFICATION CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

This ordinance amends existing city code relating to franchise fees, compensation, billing, liquidated damages and enforcement of charges for collection and transportation of solid waste. It codifies the existing six percent (6%) franchise fee and provides that the franchise fee is payable on a quarterly basis or as otherwise provided in the franchise agreement. The ordinance also allows the billing services for both residential and commercial solid waste collection services to be determined by the franchise agreement, while preserving the city's right to stop service for delinquent accounts and levy a special assessment against the premises for failure to pay solid waste collection service charges. The ordinance repeals Section 8.04.130, Ketchum Municipal Code, which allowed the city to shut off water service for nonpayment of solid waste collection service charges. Enforcement mechanisms are now set forth in Section 8.04.120. The ordinance also amends Section 8.04.160 by eliminating the imposition of liquidated damages for failure to cure complaints of non-collection within twenty-four (24) hours of receipt of such complaint.

The effective date of Ordinance No. 1085 is the date of its passage, approval and publication. A copy of the full text of the Ordinance is available at the Office of the City Clerk, Ketchum City Hall, 480 East Avenue North, Ketchum, Idaho 83340, and will be provided to any citizen upon personal request during normal office hours pursuant to Idaho Code §50-901A(4).

DATED this 2nd day of May 2011.

CITY OF KETCHUM, IDAHO

Randy Hall, Mayor

ATTEST:

Sandra E. Cady, CMC
Clerk/Treasurer

STATEMENT OF LEGAL ADVISOR

I, the undersigned attorney at law, duly licensed in the State of Idaho and serving as City Attorney to the City of Ketchum, Idaho, hereby certify that I have read the attached Summary of Ordinance No. 1085 of the City of Ketchum and that the same is true and complete and provides adequate notice to the public of the contents of said Ordinance.

Dated this 2nd day of May, 2011.

Stephanie Bonney,
Ketchum City Attorney

Publish: Idaho Mountain Express
Date: May 11, 2011