Ordinance No. 2870

(Amending or Repealing Ordinances)

CONO=738 – Solid Waste
Passed – 8/22/1989
Establishing a System of Solid Waste Collection and Disposal for the Entire City

Amended by Ords. 3541;3779;3832
AN ORDINANCE of the City of Kent, Washington, relating to public health, safety and general welfare; establishing a system of solid waste collection and disposal for the entire city; providing for solid waste collection and disposal under direction of the city; amending Kent City Code sections KCC 7.08.010, KCC 7.08.020, and KCC 7.08.200; repealing Kent City Code section KCC 7.02.200; authorizing contracts for solid waste collection; declaring an emergency therefor.

THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Recitals and Findings.

1.1 The State Constitution authorizes the City to enact ordinances in furtherance of the public health, safety, morals and general welfare. The constitutional grant of authority is a direct delegation of police power as extensive as is possessed by the state legislature. For eighty years the courts of the State have recognized that city ordinances conferring the exclusive right to collect garbage and refuse ("solid waste") upon a city department or contractor are clearly within the police power.

1.2 The broad grant of authority contained in the State Constitution is carried forward to cities by state statute. RCW 35.21.120 provides that every city or town may by ordinance provide for the establishment of a system of solid waste collection and disposal for the entire city or town or portions thereof, and award contracts for solid waste collection and disposal or provide for collection and disposal under the direction of officials and employees of the city or town.
1.3 The City of Kent ("City") has maintained and operated a system of sewerage pursuant to Chapter 35.67 RCW, consisting of a sanitary sewage collection and disposal system, a storm and surface water utility, and a system and plant for garbage and refuse collection and disposal.

1.4 In 1986, the City was faced with a crisis in solid waste management, and potential pollution of its neighborhoods and environment from the City of Seattle ("Seattle") Midway and Kent Highlands landfills. The City sought to divert solid waste from the Kent Highlands landfill to the King County Cedar Hills landfill. The efforts of the City were delayed by protracted negotiations between Seattle and King County. Faced with the closure of the Kent Highlands landfill and no site for disposal of City solid waste, the City determined to provide for the public health, safety and general welfare of the City by terminating its system and plant for garbage and refuse collection and disposal ("solid waste system").

1.5 The termination of the City solid waste system was premised on the availability of a company to begin immediately the collection of solid waste, and disposal of solid waste at other than Kent Highlands landfill. The Rabanco Companies, a Washington general partnership, d/b/a Kent Disposal Company ("Kent Disposal"), and other collection companies represented their availability to serve areas of the City based on previous authority granted by the Washington Utilities and Transportation Commission ("WUTC").
1.6 In October 1986, the City removed the solid waste system from the City of Kent system of sewerage. (Ordinance 2665). The City also adopted Kent City Code ("KCC") 7.02.200 providing for discontinuance of the solid waste utility effective January 1, 1987. (Ordinance 2671, § 1). The City reserved specifically the right to reestablish the solid waste utility, and provided that no vested rights were created by the City's action. (Ordinance 2671, §§ 2 and 3).

1.7 In December 1986, Chapter 7.08 KCC was amended to authorize solid waste collection by collection companies as authorized by the WUTC pursuant to Chapter 81.77 RCW. Again, the City reserved the right to reestablish its solid waste system and provided that no vested rights were created by its action. (Ordinance 2689, § 2 and 3). Ordinance 2689 and Chapter 7.08 KCC established certain minimum local public health, safety and welfare regulation of collection company operations within the City, including Fall and Spring cleanups, Christmas tree pickup, solid waste collection at public parks and facilities, and senior citizen rates.

1.8 Collection companies were clearly aware of the City's continuing right to exercise its police power and reestablish its solid waste system, and that termination of the system established no rights in collection companies to continuing operation within the City.

1.9 Following January 1, 1987, Kent Disposal has provided approximately 96 percent of residential solid waste collection and approximately 50 percent of commercial and other solid waste
collection in the City. RST Disposal Company, Inc., a Washington corporation d/b/a Tri-Star Disposal ("Tri-Star"), has provided approximately 4 percent of residential solid waste collection and approximately 50 percent of commercial and other solid waste collection in the City.

1.10 The WUTC has considered the applications of Kent Disposal and Tri-Star to serve as solid waste collection companies within the City of Kent. On September 27, 1988 the WUTC was advised of the policy and position of the City of Kent, that both commercial and residential customers within the City would suffer if they lost the services of either company. The overlap of service and the competition created thereby has been extremely beneficial to the City of Kent and all of its residents. The loss of either service, therefore, would be detrimental. The WUTC was urged to preserve the status quo by permitting both companies to operate throughout the City.

1.11 On October 31, 1988, the City and Kent Disposal entered into a WASTE REDUCTION AND COLLECTION OF SOURCE SEPARATED RECYCLABLE MATERIALS CONTRACT, providing an extensive program throughout the City for waste reduction, and collection and distribution of recyclable materials.

1.12 By Order M.V.G. No. 1402 (July 28, 1989) the WUTC has granted the application of Tri-Star to serve all of the City, and has denied the application of Kent Disposal to serve other than a limited area of the City. In its Order the WUTC has, in part, criticized collection company compliance with City Ordinance 2689 and has challenged the authority for or
enforceability of local regulation by the City of solid waste collection. The WUTC has further determined not to consider the position of the City regarding solid waste collection service, or that the position of the City would affect its decision.

1.13 In Chapter 431, Laws of 1989, and RCW 70.95.010, the State finds specifically that it is the responsibility of county and city governments to assume primary responsibility for solid waste management and to develop and implement aggressive and effective waste reduction and source separation strategies. Chapter 431, Laws of 1989, and Chapter 81.77 RCW continues to provide that the WUTC regulation of solid waste collection companies shall not apply to the operations of any solid waste collection company under a contract of solid waste disposal with the City, nor to the City's undertaking of solid waste disposal.

1.14 The implementation of the WUTC order would cause great disruption to the safe, effective and sanitary provision of solid waste handling within the City of Kent, and impair the current and continuing efforts of the City toward waste reduction, source separation and recycling.

1.15 By this Ordinance the City reestablishes a system of solid waste collection and disposal, consistent with RCW 35.21.120 and Chapter 35.67 RCW. Kent Disposal and Tri-Star are authorized, under temporary, non-exclusive, non-franchise authority granted by this Ordinance, to continue existing service at current rates throughout the City of Kent.

Section 2. KCC 7.02.200 be and the same is hereby repealed.
Section 3. KCC 7.08.010 is amended as follows:

7.08.010. DEFINITIONS. As used in this Chapter, the following definitions apply:

A. "Collection company" means the persons, firms or corporations or combination thereof (certified by the Washington Utilities and Transportation Commission pursuant to Chapter 81.77 RCW to engage in the business of operating as both a garbage and refuse collection company) operating under a contract of solid waste disposal with, or under the direction of, the City, including an authorized contractor for the collection of recyclable materials under this Chapter.

B. "Detachable container" means any garbage container compatible with the collection company's equipment that is not a garbage can, garbage unit, or mobile toter.

C. "Director" means the Director of the Public Works Department.

D. "Garbage" means all accumulations of refuse, swill, and other waste matter not intended for recycling or reuse and discharged as of no further value to the owner.

1. "Refuse" means waste matter discarded as of no further value, including ashes, cinders, clinkers, lawn cuttings, grass and leaves, broken up household furnishings and equipment, discarded hot water tanks, bottles, barrels, cartons, shrubs, small trees, small tree limbs, paper and scraps of wooden crates and boxes; but shall exclude large trees, earth, sand, gravel, rock, broken concrete, plaster, brick and other
building materials, automobile bodies, large auto parts, building waste, fire refuse and waste.

2. "Swill" means all accumulations of animal, fruit, or vegetable matter, liquid or otherwise, that attends the preparation, use, dealing in or storing of meat, fish, fowl, fruit, and vegetables.

3. The term "garbage" excludes recyclable materials intended for recycling under this Chapter, manure, sewage, dead animals over fifteen pounds, and cleanings from public and private catch basins, wash racks or sumps. Collection and disposal of matter excluded from the term "garbage" shall be as otherwise provided by law.

E. "Garbage can" means a watertight, galvanized, sheet metal, raised-bottom container or suitable plastic container not exceeding four cubic feet or thirty-two gallons in capacity, weighing not over twenty-two pounds when empty, fitted with two study handles, one on each side, and a tight cover equipped with a handle.

F. "Garbage units" mean secure and tight bundles, none of which shall exceed three feet in the longest dimension and shall not exceed seventy-five pounds in weight. Garbage units may also mean small discarded boxes, barrels or bags, or in securely tight cartons or other receptacles not intended for recycling under this Chapter and able to be reasonably handled and loaded by one person onto a collection vehicle.
G. "Mobile toter" means a movable container which holds at least eighty-five gallons or one hundred eighty pounds of garbage, with a hinged-lid with a tight fit, thick skinned one-piece balanced weight body which sets on tires, which will be picked up at curbside with hydraulic dumpster.

H. "Person" means every person, firm, partnership, business, association, institution, or corporation in the City of Kent accumulating garbage requiring disposal or generating, accumulating, and collecting recyclable materials. The term shall also mean the occupant and/or the owner of any premises for which service herein mentioned is rendered.

I. "Recycle container" means designated 90 gallon mobile toters in which recyclable materials can be stored and later placed at curbside, alleyside, or other location designated by the Director or collection company with the concurrence of the Director. This term also includes but is not limited to designated commercial drop boxes and compactors at locations as may be specified by the Director.

J. "Recyclable materials" means waste materials generated in the City of Kent capable of reuse from a waste stream as designated by the Director, including but not limited to sorted or unsorted newsprint, glass, aluminum, ferrous and non-ferrous cans, plastic materials, mixed paper, and cardboard accumulated and intended for recycling or reuse and collection by a collection company or authorized contractor. This term excludes all dangerous wastes and hazardous wastes defined in
RCW 70.105 and 70.105A, and solid wastes intended for disposal in a landfill, incinerator, or solid waste disposal facility under WAC 173-304. All recyclable materials intended for collection by a City authorized collection company or contractor shall remain the responsibility and ownership of participants until such materials as contained in designated recycle containers are placed out for collection for the authorized contractor. Such materials then become the responsibility and property of the collection company or authorized contractor subject to the right of the participant to claim lost property of value.

K. "Solid Waste" shall be as defined by RCW 70.95.030 and WAC 173-304-100(73), and includes refuse with the exception of sludge from waste water treatment plants and septage, from septic tanks, extremely hazardous waste, hazardous waste, dangerous waste, and problem wastes as defined in WAC 173-303 and 173-204, and RCW 70.105 and 70.105A.

((L. "W.U.T.C." means the Washington Utilities and Transportation Commission.))

Section 4. KCC 7.08.020 is amended as follows:

7.08.020. GARBAGE COLLECTION BY COLLECTION COMPANY.

A. Garbage collections shall be made by garbage and refuse collection companies as authorized by the ((Washington Utilities and Transportation Commission, pursuant to Chapter 81.77 RCW)) City.
B. It shall be unlawful for any person, other than those duly authorized by the City to haul garbage through the streets of the City or to dump garbage; provided, that those commercial and industrial business establishments having permits to haul their own garbage and refuse may continue to haul such garbage by annual permit. Renewal permits shall be issued by the City Clerk upon application and payment of the annual permit fee. The annual permit fee shall be:

Permit holders hauling less than one hundred fifty tons of garbage per month, one hundred dollars;

Permit holders hauling greater than one hundred fifty tons of garbage per month, seven thousand five hundred dollars.

Any permit holder, as provided for in this subsection, shall haul his garbage at least once a week for public health reasons.

C. This section does not apply to the occasional hauling by residential customers of refuse to an approved site; provided, the minimum level of garbage is paid for by the residential customer.

D. Garbage and Refuse Collection - Business License Required. To provide for the public health, safety and general welfare, collection companies operating within the City shall, at no additional cost to the City or its residents:

1. Comply with all provisions of this Kent City Code and Amendments thereof, and applicable federal, state and

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county laws and regulations pertaining to the collection, handling, transportation and disposal of garbage. The City shall be entitled, during regular business hours, to inspect the books and records of collection companies operating within the City of Kent.

2. Pick up Christmas trees each January.

3. Provide for a semiannual residential cleanup in the Spring and Fall of each year to allow for disposal of accumulated garbage. The Director of Public Works shall promulgate administrative rules, following consultation with collection companies, for the implementation of this subsection.

4. Provide service to public buildings and facilities, as designated by the Director. Upon consultation with collection companies, the Director of Public Works may add or delete public facilities from said Attachment A in the interests of public health and safety.

E. Collection companies operating pursuant to and in compliance with this Chapter shall be issued, upon application, a business license pursuant to Chapter 5.02 KCC, without the payment of license fees, permit fees as provided in subsection 7.08.020B, above, or other fees related to solid waste handling established by the City; PROVIDED, however, that this subsection 7.08.020E shall not be construed as a waiver of the utility tax imposed by Chapter 3.04 KCC.
Section 5. KCC 7.08.200 is amended to read as follows:

7.08.200. KING COUNTY SYSTEM DESIGNATED.

A. All solid waste generated within the corporate limits of the City of Kent shall be disposed at a King County Solid Waste Disposal Facility.

B. King County is authorized to designate disposal sites for the disposal of all solid waste generated within the City of Kent.

C. No solid waste may be diverted from the disposal sites designated by King County without King County approval.

D. The provisions of this Section 7.08.200 shall not apply, and shall not affect, the disposal of solid waste which is eliminated through waste reduction or waste recycling activities which have been coordinated with King County pursuant to the AGREEMENT BETWEEN KING COUNTY AND THE CITY OF KENT CONCERNING USE OF KING COUNTY SOLID WASTE DISPOSAL FACILITIES.

E. King County regulations or ordinances regarding levels and types of service for any aspect of solid waste handling shall not apply within the limits of the City except as provided in this Chapter.

Section 6. Current Service and Rates Maintained.

Collection companies operating within the City prior to August 22, 1989 shall have the right to continue to operate in the City, (a) until such time as the City gives ninety (90) days notice of cancellation of this continued right to operate within the City, or (b) under contract with the City for a term
specified in such a contract. Collection companies providing solid waste collection and handling services within the City of Kent shall be subject to and under the direction of the Director of Public Works, and rates shall not be charged in excess of rates in effect on August 22, 1989 until otherwise approved by the City.

Section 7. Contracts Authorized. Contracts, substantially in the form attached hereto, are hereby authorized to be executed by the Mayor for and on behalf of the City.

Section 8. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and confirmed.

Section 9. Declaration of Emergency - Effective Date. In accordance with RCW 35A.11.090, this Ordinance is necessary for the immediate preservation of public peace, health, and safety and for the support of City government and its existing public institutions, and by reason of the facts above stated and the emergency which is hereby declared to exist, this Ordinance shall become effective immediately upon the approval or signing of the same by the Mayor or passage over his veto, as provided by law.

DAN KELLEHER, Mayor

ATTEST:

Brenda Jacober, Deputy City Clerk
APPROVED AS TO FORM:

FOSTER PEPPER & SHEFELMAN

Special Assistant City Attorneys

Passed the 23 day of Aug., 1989.
Approved the 29 day of Aug., 1989.
Published the 31 day of Aug., 1989.

I certify that this is a true copy of Ordinance No. 2870 passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

BRENDA JACOBER (SEAL)
BRENDA JACOBER, DEPUTY CITY CLERK