

ORDINANCE BILL NO. 3 FOR 1998

ORDINANCE NO. 1117

AN ORDINANCE RELATING TO SOLID WASTE MANAGEMENT IN THE CITY OF SWEET HOME, OREGON, INCLUDING BUT NOT LIMITED TO GRANTING TO SWEET HOME SANITATION SERVICE, INC. THE EXCLUSIVE FRANCHISE TO COLLECT, TRANSPORT, AND CONVEY SOLID WASTE OVER AND UPON THE STREETS OF THE CITY, AND TO RECYCLE, REUSE, DISPOSE OF, OR RECOVER MATERIALS OR ENERGY FROM SOLID WASTE; CREATING NEW PROVISIONS; AND REPEALING ORDINANCE NO. 660, AS AMENDED, AND PORTIONS OF OTHER ORDINANCES IN CONFLICT WITH THIS ORDINANCE.

THE CITY OF SWEET HOME DOES ORDAIN AS FOLLOWS:

Section 1: Short Title. This Ordinance shall be known as the "Solid Waste Management Ordinance", it may be so cited and pleaded, and it shall be referred to herein as "this Ordinance".

Section 2: Policy, Purpose, and Scope. It is declared to be the public policy of the City to regulate solid waste management to accomplish the following:

- 2.1 Insure safe, economical, financially stable, reliable, and comprehensive solid waste service;
- 2.2 Insure rates that are just, fair, reasonable, and adequate to provide necessary public service and to prohibit rate preferences and other discriminatory practices;
- 2.3 Provide technologically and economically feasible resource recovery by and through the franchisee; and
- 2.4 Provide the opportunity to recycle.

Section 3: Definitions.

"*Administrator*" means the mayor of the City or the mayor's designee.

"*City*" means the City of Sweet Home, Oregon and the local government of that name.

"*can*" means a receptacle owned by a customer, not to exceed 32 gallons.

"compensation" means and includes:

- (a) Any type of consideration paid for service, including but not limited to rent, the proceeds from resource recovery, and any direct or indirect provision for payment of money, goods, services, or benefits by tenants, lessees, occupants, or similar persons;
- (b) The exchange of service between persons; and
- (c) The flow of consideration from the person owning or possessing the solid waste to the person providing service, or from the person providing service to the person owning or possessing the same.

"container" means a receptacle, at least 1 yard capacity, emptied into a collection vehicle, and provided by the franchisee.

"Council" means the City Council of the City.

"franchisee" means the person granted the franchise by Section 4 of this Ordinance, or a subcontractor to that person.

"person" means an individual, partnership, association, corporation, trust, firm, estate, or other private legal entity.

"recover resources" and *"resource recovery"* means the process of obtaining useful material or energy resources from solid waste, including energy recovery, materials recovery, recycling, or reuse of solid waste.

"service" means storage, collection, transportation, treatment, utilization, processing, and final disposal of, or resource recovery from, solid waste; and providing facilities necessary or convenient to those activities.

"solid waste" means all putrescible and non-putrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, swill, waste paper and cardboard, yard debris, residential, commercial, and industrial demolition and construction wastes, discarded residential, commercial, and industrial appliances, equipment, and furniture, discarded, inoperable, or abandoned vehicles or vehicle parts, and vehicle tires, manure, vegetable or animal solid or semisolid waste, dead animals, and all other wastes not excepted by this Ordinance. Solid waste does not include:

- (a) Hazardous wastes as defined by or pursuant to ORS 466.005;
- (b) Sewer sludge and septic tank and cesspool pumping or chemical toilet waste; or

(c) Reusable beverage containers as defined in ORS 459.860.

"solid waste management" means management of service.

"waste" means material that is no longer usable by or that is no longer wanted by the last user, producer, or source of the material, which material is to be disposed of or be resource recovered by another person.

"yard debris" means grass clippings, leaves, hedge trimmings, and similar vegetable waste generated from residential property or landscaping activities but does not include rocks, soil, concrete, stumps, or similar bulky wood materials.

Section 4: Exclusive Franchise and Exceptions.

- 4.1 There is hereby granted to Sweet Home Sanitation Service, Inc. the exclusive right, privilege, and franchise to provide service in, and for that purpose to use the streets and facilities of, the City.
- 4.2 Except for the franchisee, no person shall:
- 4.2.1 Provide service for compensation, or offer to provide, or advertise for the performance of service for compensation;
- 4.2.2 Provide service for compensation to any tenant, lessee, or occupant of any real property of the person.
- 4.3 Solid waste, whether or not source-separated, and including recyclable material, placed out for collection by the customer, is the property of the franchisee.
- 4.4 Nothing in this Ordinance shall prohibit any person from transporting solid waste he produces himself to an authorized disposal site or resource recovery facility providing he complies with Section 9 of this Ordinance. Solid waste produced by a tenant, licensee, occupant, or similar person is produced by the person, not the landlord or property owner.

Section 5: Franchise Term and Renewal.

- 5.1 The rights and privileges and franchise herein granted begin October 1, 1998 and shall continue and be in full force for a period of 6 years, to and including September 30, 2004, subject to the terms and conditions of this Ordinance.
- 5.2 Unless the Council acts to terminate further renewals of the franchise, on each January 1 the franchise shall be renewed annually for a term of 6 years from each such annual renewal.

Section 6: Rates.

- 6.1 Rates for service shall be as in the attached Exhibit A, by this reference hereby incorporated in this Ordinance. Changes in rates shall be made only by an ordinance amending Exhibit A.
- 6.2 The franchisee shall not give any rate preference to any person, locality, or type of solid waste stored, collected, transported, disposed of, or resource recovered. This Section 6.2 shall not prohibit uniform classes of rates based upon length of haul, type or quantity of solid waste handled, and location of customers so long as those rates are reasonable based upon costs of the particular service and are approved by the Council in the same manner as other rates, nor shall it prevent any person from volunteering service at reduced costs for a charitable, community, civic, or benevolent purpose.

Section 7: Franchise Fee. In consideration of the franchise, the franchisee shall pay to the Treasurer of the City an amount equal to 3% of the franchisee's annual gross cash receipts from the operation of the service. This fee is payable monthly. The franchisee shall, by March 31 each year, furnish to the Administrator a written accounting of its gross cash receipts from the operation of the service for the prior year. At the same time, the franchisee shall pay the difference, if any, by which 3% of those gross cash receipts exceeds its monthly payments for the prior year. If those monthly payments exceeded, however, 3% of those gross cash receipts for the prior year, the franchisee shall receive full credit therefor against the next monthly payments coming due under this Section 7.

Section 8: Franchisee Responsibility. The franchisee shall:

- 8.1 Dispose of solid wastes collected at a site approved by the local government unit having jurisdiction of the site or recover resources from the solid wastes, both in compliance with Chapter 459, Oregon Revised Statutes, and regulations promulgated thereunder.
- 8.2 Provide the opportunity to recycle consistent with ORS Chapter 459 and regulations promulgated thereunder.
- 8.3 Provide and keep in force public liability insurance coverage of not less than \$1,000,000 for injury to a single person, and \$1,000,000 property damage, all relating to a single occurrence, which shall be evidenced by a certificate of insurance filed with the City Recorder. Increases in coverage for public liability insurance will be provided for as the law requires.
- 8.4 Furnish to the City, at the franchisee's own cost, a corporate surety bond in the penal sum of \$1,000 to guarantee the strict observance and performance of this Ordinance.
- 8.5 Collect solid waste from the public waste receptacles maintained by the City, the waste receptacles at the City Hall, at the City library, at the City parks, and at other reasonable

places designated by the City, at no charge to the City for these services, and also collect and dispose of solid waste at such times that the City shall have special problems in disposing of such solid waste, on such terms as may be agreed upon by the franchisee and the Council.

- 8.6 Within 30 days after the effective date of this Ordinance, file with the City Recorder a written acceptance of this franchise.
- 8.7 Provide sufficient collection vehicles, containers, facilities, personnel, and finances to provide all types of necessary service or subcontract with others to provide the service pursuant to Section 14 of this Ordinance. Where one or a few large customers require substantial investment in new or added equipment not otherwise necessary to service the franchised service area, the franchisee may require a contract with those sources providing that the customer will require and pay for service for a reasonable period of time. This contract exception is intended to assist in financing the necessary equipment and in protecting the integrity of the remaining service should the source or sources terminate collection service.
- 8.8 Respond to any written complaint on service.

Section 9: Public Responsibility. In addition to compliance with ORS Chapters 459 and 459A and regulations promulgated thereunder:

- 9.1 To prevent recurring back and other injuries to collectors and other persons and to comply with safety instructions to collectors from the State Accident Insurance Fund:
 - 9.1.1 All customers who subscribe to franchisee's residential rollcart collection service shall use rollcart containers furnished by the franchisee only. All such containers shall remain the property of the franchisee.
 - 9.1.2 To allow proper use of franchisee's pickup equipment for rollcart containers, all residential customers shall, whether on collection days or for on-call service, place all containers at the street, curb, or other pickup point designated by the franchisee. Containers shall not be loaded beyond the manufacturer's recommended maximum load weight.
 - 9.1.3 If any disabled residential customer (with a DMV disabled-parking certification, physician's letter, or other reasonable certification of disability) is unable to roll the container to the street or curb, the franchisee will furnish pick up the container at the customer's residence at the same rate as curb service. All such containers shall remain the property of the franchisee. Any other customer who wants the container picked up at a location other than the curb shall, at franchisee's request, specify the location in writing. The location must be visible

from the street. The franchisee may charge an additional fee for non-curbside service.

9.1.4 Except when containers are furnished by the franchisee to residential customers under sub-section 9.1.1, cans may be provided by customers and shall not exceed 60 pounds gross loaded weight or 32 gallons in size. Only round cans shall be used. Cans shall be tapered with a smaller bottom than top opening, shall have handles at the top, and shall have a place for a handhold at the bottom.

9.1.5 Sunken receptacles shall not be used.

9.1.6 All containers, including containers furnished by the franchisee to residential customers under sub-section 9.1.1, shall be rigid, rodent-proof, and approved by the franchisee.

9.1.7 The user shall provide safe access to the pickup point so as not to jeopardize the safety of the driver of a collection vehicle or the motoring public or to create a hazard or risk to the person providing service. Where the Council finds that a private bridge, culvert, or other structure or road is incapable of safely carrying the weight of the collection vehicle, the collector shall not enter onto the structure or road. The user shall provide a safe alternative access point or system.

9.2 To protect the privacy, safety, pets, and security of customers and to prevent unnecessary physical and legal risk to the collectors, a residential customer shall place the container to be emptied outside of any locked or latched gate and outside of any garage or other building.

9.3 Any vehicle used by any person to transport solid wastes shall be so loaded and operated as to prevent the wastes from dropping, shifting, leaking, blowing, or other escapement from the vehicle onto any public right-of-way or lands adjacent thereto.

9.4 Any person who receives service shall be responsible for payment for the service. When the owner of a single or multiple dwelling unit or mobile home or trailer space has been notified in writing by the franchisee of his contingent liability, the owner shall be responsible for payment for service provided to the occupant of the unit if the occupant does not pay for the service.

Section 10: Supervision. Service provided under the franchise shall be under the supervision of the Administrator. The franchisee shall, at reasonable times, permit the Administrator's inspection of its facilities, equipment, and books and records related to its charges, rates, and receipts.

Section 11: Suspension, Modification, or Revocation of Franchise.

- 11.1 Failure to comply with a written notice to provide necessary service or otherwise comply with the provisions of this Ordinance after written notice and a reasonable opportunity to comply shall be grounds for modification, revocation, or suspension of the franchise.
- 11.2 After written notice from the Council that those grounds exist, the franchisee shall have 30 days from the date of mailing of the notice in which to comply or to request a public hearing before the Council.
- 11.3 If the franchisee fails to comply within the specified time or fails to comply with the order of the Council entered upon the basis of findings at the public hearing, the Council may suspend, modify, or revoke the franchise or make that action contingent upon continued non-compliance.
- 11.4 At a public hearing, the franchisee and other interested persons shall have an opportunity to present oral, written, or documentary evidence to the Council.
- 11.5 If the Council finds an immediate and serious danger to the public through creation of a health hazard, it may take action within a time specified in the notice to the franchisee and without a public hearing prior to taking that action.

Section 12: Preventing Interruption of Service. Whenever the Council determines that the failure of service or threatened failure of service would result in creation of any immediate and serious health hazard or serious public nuisance, the Council may, after a minimum of 24 hours' actual notice to the franchisee and a public hearing if the franchisee requests it, authorize another person to temporarily provide the service or to use and operate the land, facilities, or equipment of the franchisee through leasing to provide emergency service. The Council shall return any seized property and business upon abatement of the actual or threatened interruption of service.

Section 13: Termination of Service. The franchisee shall not terminate service to all or a portion of its customers unless:

- 13.1 The street or road access is blocked and there is no alternate route; *provided, however,* the City shall not be liable for any such blocking of access;
- 13.2 Excessive weather conditions render providing service unduly hazardous to persons providing service, or the termination is caused by accidents or casualties caused by an act of God or a public enemy; or
- 13.3 A customer has not paid for service provided after a regular billing, or does not comply with franchisee's reasonable policies as in effect from time to time.

Section 14: Subcontracts. The franchisee may subcontract with others to provide a portion of the service where the franchisee does not have the necessary equipment for service. Such a subcontract shall not relieve the franchisee of total responsibility for providing and maintaining service and from compliance with this Ordinance.

Section 15: Transfer of Franchise. The franchisee shall not transfer the franchise or any portion of it to other persons without the prior written approval of the Council, which consent shall not be unreasonably withheld. The Council shall approve the transfer if the transferee meets all applicable requirements met by the original franchisee.

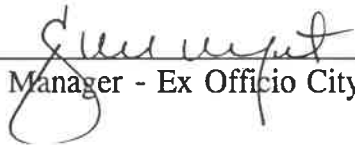
Section 16: Interpretation. Any interpretation or finding by any court of competent jurisdiction that any portion of this Ordinance is unconstitutional or invalid shall not invalidate any other provision of this Ordinance.

Section 17: City Enforcement. The City shall enforce the provisions of this Ordinance by administrative, civil, or criminal action as necessary to obtain compliance with this Ordinance.

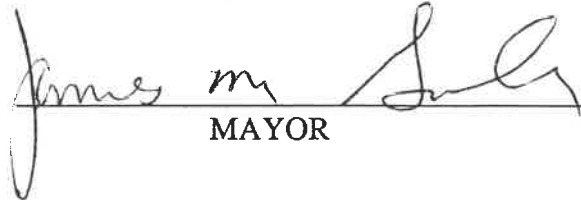
Section 18: Repealer. Ordinance No. 660, adopted by the Council April 13, 1976, all amendments thereto, and portions of other ordinances in conflict with this Ordinance are hereby repealed effective October 1, 1998.

PASSED by the Council and approved by the Mayor this 11th day of August, 1998.

ATTEST:



City Manager - Ex Officio City Recorder



MAYOR