

ORDINANCE NO. 4707

AN ORDINANCE RELATING TO SOLID WASTE MANAGEMENT IN THE CITY OF ALBANY, OREGON, INCLUDING BUT NOT LIMITED TO CONTINUING AND EXTENDING TO ~~SPADY-REDFIELD CORPORATION (DBA ALBANY-LEBANON SANITATION, INC., CO.)~~ AN EXCLUSIVE FRANCHISE TO COLLECT, TRANSPORT AND CONVEY SOILD WASTE AND RECYCLABLE MATERIALS WITHIN THE CITY; TO REUSE, RECYCLE OR OTHERWISE RECOVER MATERIALS OR ENERGY FROM SUCH SOLID WASTE AND TO DISPOSE OF THE REMAINDER; COMPLYING WITH ORS 459.165 THROUGH 459.200; AND REPEALING ORDINANCE NO. 4083.

THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: Albany Municipal Code Chapter 3.28 is hereby amended to read as follows:

3.28.010 Short title. The ordinance codified in this chapter shall be known as the "Solid Waste Management **and Recycling** Ordinance"; and may be so cited and pleaded; and shall be cited as "this ordinance."

3.28.020 Purpose, policy and scope.

~~(1) It is declared to be the public policy of the city to regulate solid waste management to~~

(1) In order to protect the health, safety, welfare and environment and to conserve energy and natural resources within the city of Albany, to provide the Opportunity to Recycle and to otherwise provide for solid waste management, it is declared to be the public policy of the City of Albany to regulate solid waste management to:

(a) Giving due consideration to economic and technical feasibility, establish priorities on managing solid waste from the City as: first, reduce the amount of solid waste generated; second, reuse material for the purpose for which it was originally intended; third, recycle the material that cannot be reused; fourth, to otherwise resource recover material where possible; and, fifth, to assure that remaining wastes will be disposed of in a landfill that fully meets all requirements of state law and the Department of Environmental Quality.

(b) Provide the Opportunity to Recycle as part of the overall solid waste collection system taking advantage of coordinated areawide service, promotion, education and marketing.

(c) Encourage research and demonstration projects in recycling, reuse, resource recovery and solid waste management generally by and through the franchise with technical assistance of other persons.

(d) Ensure safe, economical and comprehensive solid waste service;

(e) Ensure rates that are just, fair, reasonable and adequate to provide necessary public service and to prohibit rate preferences and other discriminatory practices;

(f) Provide for technologically and economically feasible reuse, recycling and other resource recovery.

(2) Pursuant to ORS 459.200(4), this ordinance is adopted for and on behalf of the State of Oregon to carry out the purposes of ORS 459.015; the requiremetns of ORS 459.165 to 459.200; and the State Solid Waste Management Plan. In addition, this ordinance is adopted under the authority of and pursuant to ORS 459.165 to 459.200 and under the municipal authority of the City of Albany.

(3) Except for the franchise under this chapter, no person shall:

(a) Provide service ~~for compensation~~ or offer to provide or advertise for the performance of such service;

(b) Provide service ~~for compensation~~ to any tenant, lessee or occupant of any real property ~~of owned, operated or managed by~~ such person.

**3.28.030 Definitions.** For the purposes of this chapter, the words set out in this section shall have the following meanings:

~~(1) "Compensation" 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~~

(1) **Definitions from State Statutes.** The following terms shall have the meaning given them by ORS 459.005: "Collection Franchise," "Collection Service," "Recyclable Material," "Energy Recovery," "Material Recovery," "Recycling," "Reuse," "Source Separate" and "Solid Waste Management." The "Opportunity to Recycle" shall be as defined by ORS 459.165.

(2) "Council" means the city council of the City of Albany.

(3) "Franchisee" means the person granted a franchise by Section 3.28.040 or a subsequent ordinance or a subcontractor to such person.

(4) "Hazardous Waste" means any wastes defined as hazardous wastes by or pursuant to ORS Chapter 459; or defined as hazardous wastes by another governmental unit having jurisdiction; or found by the franchisee and the City to be hazardous to service workers, to service equipment or to the public.

(5) "Person" means an individual, partnership, association, corporation, trust, firm, estate or other private or public legal entity or agency.

(6) "Service" means the collection, transportation, reuse, recycling or other resource recovery from or disposal of solid waste.

(7) "Service area" means the city of Albany and, subject to ORS 459.185, any area annexed after the effective date of this franchise.

(8) "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.

(9) "Solid waste" means all putrescible and nonputrescible waste, including, but not limited to, garbage, rubbish, refuse, ashes and swill; wastepaper, **corrugated or** and cardboard; grass clippings; compost; residential, commercial, 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 semi-solid waste, dead animal and all other wastes not excepted by this subsection. Solid waste does not include:

~~(a) Environmentally Hazardous waste as defined in Section 3.28.030(4). Oregon Revised Statutes 459.410~~

(b) Sewer sludge and septic tank and cesspool pumping or chemical toilet waste;

(c) Reusable beverage containers as defined in Oregon Revised Statutes 459.860.

~~(10) "Solid waste management" means management of service~~

(10) "Waste" means material that is no longer usable by or that is no longer wanted by the source of the material, which material is to be disposed of or to be reused, recycled or otherwise resource recovered by another person.

(a) The fact that all or any part of the materials, which would otherwise come within the definition of "waste" may have value and thus be reused, recycled or otherwise recovered does not remove them from this definition.

(b) The fact that the source, generator, or producer of materials has separated or segregated such material from other "wastes" does not remove the materials from this definition.

3.28.040 ~~Granted~~ Franchise and Exceptions. (1) The Council finds that, to achieve the purposes of and implement the policy of Section 3.28.020 of this chapter including, without limitation, the Opportunity to Recycle, it is necessary to continue, extend and expand an integrated franchise for collection of recyclables and solid wastes. Upon the basis of adequate public service; having created and implemented the Opportunity to Recycle on an areawide basis together with supporting advertising, promotion, education and recycling marketing; and, further, having met all of the requirements of this chapter, the service of the existing franchisee is recognized, continued and extended.

(2) There is hereby continued and extended ~~granted~~ to Albany-Lebanon Sanitation, Inc., formerly Spady-Redfield Corporation, dba Albany-Lebanon Sanitation Company, pursuant to ORS 459.165 to ORS 459.200 including, without limitation, ORS 459.200, the exclusive right, privilege and franchise ~~granted by Ordinance No. 4083~~ to continue to provide service within the city limits as of the effective date of this franchise codified in this chapter and any area that may hereafter be annexed and for that purpose, to utilize the streets and facilities of the city of Albany.

(3) Pursuant to ORS 459.200(11) the Council further finds that, to improve efficiency of collection of recyclable materials; to provide adequate volume to ensure the economic feasibility of recycling more materials by more participants in the collection system; to take advantage of actual and potential joint notice, promotion and education efforts on recycling; and, to improve the creation, maintenance and availability of markets and stability of markets for recyclable material, the franchisee shall, to the extent feasible, cooperate with others engaged in providing the Opportunity to Recycle in adjacent or other areas.

(4) Nothing in this franchise or this section of this chapter shall:

(a) Prohibit any person from transporting solid waste he produces himself to an authorized disposal site or resource recovery facility, providing he complies with Section 3.28.140(5);

(b) Prohibit any person from contracting with a state or federal agency to provide service to such agency; provided, however, such person shall apply for a franchise for that service only and shall comply with all applicable requirements imposed on the franchise under this chapter with the exception of rates or terms of service set by written contract with such agency where they are in conflict;

(c) Prohibit the Council from withdrawing certain resource recovery practices ~~by amendment to this chapter, attached to the ordinance codified in this chapter, marked "Exhibit B" and thereby incorporated in this chapter~~ upon a written finding that:

(1) Such practice or practices need not be regulated to carry out the purposes of or otherwise implement this chapter; and that

(2) There is not substantial impact on service or any portion thereof including, without limitation recycling and reuse, upon consumer rates or upon the franchised business of the franchisee.

(d) Prohibit any person from ~~engaging in~~ providing service for the benefit of a charitable, civic or benevolent activity. Merely operating as a nonprofit entity does not qualify under this exception. Containers for deposit of waste maintained by a charitable, civic or benevolent activity for the purpose of receiving material for recycling or reuse shall be located on private property;

shall be designed and maintained so that no such material is deposited outside the containers at any time; the immediate site is kept free of materials intended to be within the container; the container is clearly identified with the name of the sponsoring organization and a telephone number to be contacted if problems arise regarding the container.

3.28.050 Franchise term. The rights, privileges and franchise granted in this chapter shall be considered as a continuing five-year franchise subject to termination as follows:

(1) Unless grounds exist for suspension, modification or revocation of the franchise under Section 3.28.090, this franchise shall be considered as a continuing five-year term. **That is**, beginning on January 1st of each year, the franchise will be considered renewed for an additional five-year term, unless at least thirty days prior to January 1st of any year the city notifies the franchisee of intent to terminate the franchise. Upon the giving of such notice of termination, the franchisee shall have a franchise which will terminate five years from the date of notice of termination.

(2) In the event the franchisee desires to terminate service given under the terms of this franchise, then it shall give not less than two years notice of the intent to terminate service and obligations under the franchise. In the event of a voluntary termination of service by the franchisee, the city shall have a right and option to purchase all of the equipment of the franchisee at a price which will be agreed upon between the parties. If the parties cannot agree to a purchase price, then the same shall be submitted to arbitration. Each party shall select one arbitrator, and the two arbitrators selected shall select a third party. The three arbitrators shall determine a fair and equitable price to be paid by the city to the franchisee for all equipment to be purchased.

3.28.060 Franchise fee. In consideration of the franchise granted by this chapter, the franchisee shall pay to the city six percent of gross receipts for this right, privilege and license, to be paid monthly.

3.28.070 Franchisee responsibility. (1) The franchisee shall:

(a) Dispose of solid wastes **not reused, recycled or resource recovered** ~~collected~~ at a site approved by the local government unit having jurisdiction ~~of or recover resources from the solid wastes both either~~ in compliance with Chapter 459 of the Oregon Revised Statutes and regulations promulgated thereunder;

(b) Provide and keep in force public liability insurance in the amount of not less than one **hundred** thousand dollars for injury to a single person, three hundred thousand dollars to a group of persons and ~~twenty-five hundred thousand~~ **thousand** dollars property damage, all relating to a single occurrence which shall be evidenced by a certificate of insurance filed with the city recorder;

(c) Within thirty days after the effective date of this franchise codified in this chapter, file with the city recorder a written acceptance of this **continued and extended** franchise;

(d) Provide sufficient collection vehicles, containers, facilities, personnel and finances to provide all types of necessary service or subcontract with others to provide such service pursuant to Section 3.28.120;

(e) Respond to any written complaint on service.

(f) **Contract for the right to dispose of collected wastes that are not reused, recycled or otherwise resource recovered under and during the term and renewals of the franchise and further for self-hauling by citizens of the city for so long as that is permitted by the City or by regulatory agencies.**

(2) The franchisee shall provide the level of recycling and reuse service required by ORS 459.165 through ORS 459.200 together with applicable existing or

future ordinances, laws, regulations, standards or guidelines promulgated thereunder; provided, however, that the City of Albany will support and assist the franchisee in carrying out this responsibility. The franchisee agrees to:

(a) Operate a recycling depot within the city for the purpose of providing a public facility where residents may take recyclable materials.

(b) Provide at least once-a-week collection of recyclable materials for all single-family residential dwelling units within the city. What materials are recyclable materials shall be periodically determined by the City Council. On the effective date of this franchise, for single-family residential recycling collection service, they are property cleaned and prepared newspapers, cardboard, tinned cans, glass separated by colors, aluminum and waste oil.

(c) Provide collection of recyclable materials from commercial, industrial, institutional, governmental and multi-family residential sources at least monthly or as otherwise directed.

(d) Provide notice to potential and actual recycling and reuse sources and sponsor educational and promotional activities to increase public participation in recycling.

(e) Provide any additional recycling or reuse service as directed by the City Council when the Council finds that it is now or is hereafter required by state laws or regulations or by recycling or reuse plans adopted by the City Council.

(3) The City and the Franchisee mutually agree that:

(a) Pursuant to ORS 459.200, the net cost of required or permitted recycling and reuse together with any notice, educational or promotional service on recycling and reuse shall be considered as a cost of doing business and shall be repaid to the franchisee as part of the rate base and shall be considered in all future rate adjustments.

(b) The franchisee may subcontract all or a portion of the services required by Section 3.28.070(2) pursuant to Section 3.28.120 of this chapter with permission of the City.

(c) The franchisee may impose reasonable requirements on those participating in source separation programs to ensure quality control necessary to assure successful processing and marketing. Such requirements shall be filed with and be approved by the City Manager prior to implementation.

(4) The franchisee shall not:

(a) Give any rate preference to any person, locality or type of solid waste stored, collected, transported, disposed of or resource recovered. This paragraph 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 such rates are reasonably based upon costs of the particular service and are approved by the city council in the same manner as other rates, nor shall it prevent any person from volunteering service at reduced cost for a charitable, community, civic or benevolent purpose;

(b) Transfer this franchise or any portion thereof to other persons without the prior written approval of the city council, which consent shall not be unreasonably withheld. The city council shall approve the transfer if the transferee meets all applicable requirements met by the original franchisee. A pledge of this franchise as financial security shall be considered as a transfer for the purposes of this subsection. The city council may attach whatever conditions it deems appropriate to guarantee maintenance of service and compliance with this chapter.

3.28.080 ~~Service~~ Supervision. Service provided under the franchise shall be under the supervision of the city council. The franchisee shall, at reasonable times, permit inspection of his facilities, equipment and personnel providing service.

3.28.090 Suspension, modification or revocation of franchise.

(1) Failure to comply with a written notice to provide necessary service or otherwise comply with the provisions of this chapter after written notice and a reasonable opportunity to comply shall be grounds for modification, revocation or suspension of the franchise.

(2) After written notice from the city council that such grounds exist, the franchisee shall have twenty days from the date of mailing of the notice in which to comply or to request a public hearing before the city council.

(3) If the franchisee fails to comply with the specified time or fails to comply with the order of the city council entered upon the basis of findings at the public hearing, the city council may suspend, modify or revoke the franchise or make such action contingent upon continued noncompliance.

(4) At a public hearing, the franchisee and other interested persons shall have an opportunity to present oral, written or documentary evidence to the city council.

(5) In the event that the city 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 such action.

3.28.100 ~~Service~~ Preventing interruption of service. The franchisee agrees as a condition to the franchise that whenever the city council determines that the failure of service or threatened failure of service would result in creation of an immediate and serious health hazard or serious public nuisance, the council may, after a minimum of twenty-four hours' actual notice to the franchisee and a public hearing if the franchisee requests it, authorize another person to temporarily provide the service or 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.

3.28.110 Termination of service. The franchisee shall not terminate service to all or a portion of his customers unless:

(1) The street or road access is blocked and there is no alternate route; provided, that the city shall not be liable for any such blocking of access;

(2) Excessive weather conditions render providing service unduly hazardous to persons providing service or such termination is caused by accidents or casualties caused by an act of God or a public enemy;

(3) A customer has not paid for service provided after a regular billing and after a fifteen-day written notice to pay; or

(4) Ninety days' written notice is given to the council and to affected customers and written approval is obtained from the council.

3.28.120 ~~Service~~ Subcontracts. The franchisee may subcontract with others to provide a portion of the service where the franchisee does not have the necessary equipment or service. Such a subcontract shall not relieve the franchisee of total responsibility for providing and maintaining service and from compliance with this chapter.

3.28.130 ~~Service~~ Rates. Rates for service shall be **approved by resolution of the city council.** ~~those contained in the document marked "Exhibit A," attached to the ordinance codified in this chapter, and by this reference incorporated in this chapter. Changes in rates shall be made by resolution amending Exhibit A~~ **In establishing or modifying rates, the council shall give due consideration to ORS 459.200; current and projected revenues and expenses; actual and overhead expense; the cost of acquiring and replacement of equipment; the services of**

management; the cost of providing for future, added or different service; a reasonable return to the franchisee for doing business based on a percentage of gross receipts; the net cost of reuse and recycling together with the cost of notice, promotion and education of and for recycling and reuse; research and development; and, such other factors as the council deems relevant. The Council may consider rates established by other jurisdictions for similar service under the same or similar service conditions.

3.28.140 Public responsibility. In addition to compliance with Chapter 459 of the Oregon Revised Statutes and regulations promulgated pursuant thereto, the following shall apply:

(1) To prevent recurring back and other injuries to collectors and other persons and to comply with **job safety regulations:** ~~the safety instructions to collectors from the State Accident Insurance Fund~~

(a) No garbage can shall exceed sixty pounds gross loaded weight nor thirty-two gallons in size. Only round garbage cans shall be used. Cans should be tapered with a smaller bottom than top opening.

(b) Sunken refuse cans or containers shall not be used in new construction.

(c) To protect against injuries to users or collectors, to protect against damage and spilling during cold weather, all cans shall be rigid, rodent-proof and fireproof.

(d) The user shall provide safe access to the pick-up 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. When 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 on such structure or road. The user shall provide a safe alternative access point or system.

(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.

(3) No stationary compactor or other container for commercial or industrial use shall exceed the safe loading design limit or operation limit of the collection vehicles provided by the franchisee serving the service area. Upon petition of a group of customers reasonably requiring special service, the council may, where economically feasible, require the franchisee to provide subcontract provisions for vehicles capable of handling specialized loads.

(4) To prevent injuries to users and collectors, stationary compacting devices for handling solid wastes shall comply with applicable federal and state safety regulations.

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

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

(7) **No person shall place hazardous waste out for collection by the franchisee nor place hazardous waste in any container, box or vehicle owned or operated by the franchisee or by the City of Albany without the prior permission of the office of the franchisee or of the city manager, respectively.**

**3.28.150 Construction.** Any finding by any court of competent jurisdiction that any portion of this franchise is unconstitutional or invalid shall not invalidate any other provision of this franchise.

**3.28.160 Penalties ~~for violation.~~** Except as otherwise provided in ORS 459.992, violation by an person of the provisions of this chapter shall be deemed to be a misdemeanor and shall be punishable as provided in Section 1.04.010 of the Albany Municipal Code.

**3.28.170 City enforcement.** The city ~~may~~ shall enforce the provisions of this chapter by administrative, civil or criminal action as necessary to obtain compliance with this chapter. The franchisee may institute proceedings necessary to obtain compliance.

Section 2: City of Albany Ordinance No. 4083 is hereby repealed.

Passed by the Council: February 26, 1986

Council President

Approved by the ~~Mayor~~: February 27, 1986

Effective Date: March 28, 1986

*Wala Rouse*

Council President

ATTEST:

*[Signature]*  
City Recorder