

ORDINANCE NO. 532

AN ORDINANCE RELATING TO SOLID WASTE MANAGEMENT IN THE CITY OF MADRAS, OREGON, INCLUDING WITHOUT LIMITATION, GRANTING TO OLIVER ORCUTT, AND JANELLE X. ORCUTT, dba MADRAS SANITARY SERVICE, A FRANCHISE TO COLLECT, TRANSPORT AND TRANSFER SOLID WASTES OVER AND UPON CITY STREETS AND FIRST OPTION TO DISPOSE OF OR RECOVER MATERIALS OR ENERGY FROM SOLID WASTES GENERATED OR PRODUCED IN THE CITY; CREATING NEW PROVISIONS; AND REPEALING ORDINANCE NO. 416.

BE IT ORDAINED BY THE CITY OF MADRAS:

SOLID WASTE MANAGEMENT
ARTICLE I. GENERAL PROVISIONS

SECTION 1.1 **SHORT TITLE**

This Ordinance shall be known as the "Solid Waste Management Ordinance" and may be so cited and pleaded and shall be cited herein as this Ordinance.

SECTION 1.2 **PURPOSES, POLICY AND SCOPE**

It is declared to be the public policy of the City of Madras to regulate solid waste management to:

- 1) Insure safe, efficient, economical, and comprehensive solid waste service.
- 2) Insure fair and equitable consumer rates and to prohibit rate preferences or other practices that might be discriminatory.
- 3) Conserve energy and material resources, reduce solid wastes, promote material and energy recovery in all forms, and provide the opportunity to recycle in accordance with State Statutes and regulations.

- 4) Provide for technologically and economically feasible recycling and resource recovery through the franchisee as provided herein.
- 5) Eliminate overlapping service and thereby increase efficiency and decrease truck noise, street wear, energy waste, air pollution and public inconvenience.
- 6) Protect public health and the environment.
- 7) Provide public service standards.
- 8) Protect against improper and dangerous handling of hazardous wastes.
- 9) Provide a basis and incentive for investment in solid waste equipment, facilities, sites, and technology.

SECTION 1.3 **DEFINITIONS**

City: The City of Madras.

Compensation includes:

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

Council: The City Council of the City of Madras.

Franchisee: The person or persons granted by Section 2.3 of this Ordinance or a subsequent ordinance or a subcontractor to such person or persons.

Hazardous Waste; any waste:

- a. Defined as hazardous waste by or pursuant to ORS Chapter 466; or
- b. Defined as hazardous waste by another governmental unit having jurisdiction; or
- c. Found to be hazardous to service workers, to service equipment, or to the public by the franchisee.

Person: Any individual, partnership, cooperative, association, corporation, trust, firm, estate, joint venture or other private legal entity or any public agency.

Recyclable Materials: Any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

Recycling: Means any process by which solid waste materials are transformed into new products in a manner that the original products may lose their identity.

Resource Recovery: The process of obtaining useful material or energy resources from solid waste, including energy recovery, material recovery, recycling and reuse of solid waste.

Service: The collection, transportation, storage, transfer, disposal of, recycling of or resource-recovery from solid waste, including solid waste management.

Solid Waste: All putrescible and non-putrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, waste paper, cardboard, grass clippings, compost, tires, equipment and furniture; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction wastes, discarded or abandoned vehicles or parts thereof; discarded home or industrial appliances; manure, vegetable or animal solid and semi-solid wastes, dead animals, infectious waste as defined in ORS 459.387, and other wastes; but the term does not include:

- a. Hazardous waste as defined in ORS 466.005.
- b. Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals.

- c. Beverage containers, subject to reuse or refund provisions, contained in ORS 459A.700 to ORS 459A.740.

Solid Waste Management and Solid Waste Management Service:

The prevention or reduction of solid waste; management of the storage, collection, transportation, treatment, utilization, processing and final disposal of solid waste; or recycling of and resource recovery from solid waste; facilities necessary or convenient to such activities; and the service necessary to provide said activities.

Waste: Material that is no longer directly usable by the source, generator or producer of the material, which material is to be disposed of or to be resource-recovered by another person.

- a. The fact that all or any part of the material may have value and thus be 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 waste does not remove the materials from this definition.

ARTICLE II
FRANCHISE AND EXEMPTIONS

SECTION 2.1 **PERSONS AND PRACTICES EXEMPT FROM FRANCHISE**

Nothing in this Ordinance requires a franchise from the following persons for the following businesses or practices:

- 1) The collection, transportation and reuse of repairable or cleanable discards by a private charitable organization regularly engaged in such business or activity including, without limitation, Salvation Army, St. Vincent De Paul, Goodwill and similar organizations.
- 2) The collection, transportation and reuse or recycling of totally source-separated materials or operation of a collection center for totally source-separated materials by a religious, charitable, benevolent, civic, or fraternal organization, which organization was not organized for any solid waste management purpose and which organization is using the activity for fund raising; including, without limitation, scouts, churches, Lions, Kiwanis, Elks, sororities, and Chamber of Commerce.

- 3) The collection, transportation or redemption of returnable beverage containers under ORS Chapter 459A and that portion thereof commonly known as the "Bottle Bill".
- 4) The person who transports and disposes of waste created as an incidental part of regularly carrying on for customers of said person the business or service of: auto wrecking, to the extent licensed by the State of Oregon; demolition, land clearing or construction; janitorial service; gardening, park maintenance or landscaping service; street sweeping; auto body recovery; or septic tank pumping or sludge collection. Such solid waste that is incidental to said person's business shall be hauled in equipment owned by said person and operated by said person or their employees. This exemption does not include the collection, transportation or disposal of accumulated or stored solid waste generated or produced by said customers.
- 5) The transportation in a lawful manner by a person of solid waste, waste or recyclable material generated or produced by such person to a disposal site, resource-recovery site or market, with said transportation being either for the purpose of sale or disposal. In the case of non-owner occupied property, the solid waste, waste and recyclable material that is generated or produced by the occupant is produced and owned by the tenant occupant and not by the landlord, property owner, cooperative or association of property owners, or the agent of such landlord, property owner, cooperative or association. The intent of this provision is that landlords, property owners, cooperatives and associations shall not collect, transport or dispose of their tenants' solid waste.
- 6) The purchase of totally source-separated solid waste for fair market value.
- 7) The providing of service to a state or federal agency under written contract with such agency, provided, however, that the provider shall apply for a franchise for that service only, shall pay the franchise fee on such service; shall comply with all requirements imposed on the franchisee by this Ordinance and shall, unless the written contract with such agency provides otherwise, charge the rates and adhere to the terms of service imposed on the franchisee by this Ordinance and attached schedules.
- 8) The providing of service for hazardous wastes.

- 9) Any other practice, business or activity which is withdrawn by the Council after public hearing thereon and upon a resolution and order finding that withdrawal has no substantial impact on service, consumer rates or the purposes stated in Section 1.2 of this Ordinance. A copy of any such order shall be attached hereto, marked Exhibit "C" and thereby incorporated in this Ordinance.

SECTION 2.2 **PRACTICES PROHIBITED WITHOUT A FRANCHISE**

Unless exempted by Section 2.1 or franchised pursuant to Section 2.3 of this Ordinance, no person who is not presently providing service as of the date of this Ordinance shall:

- a. Solicit customers for service; or
- b. Advertise the providing of service; or
- c. Provide service for compensation in the City.

SECTION 2.3 **GRANT OF FRANCHISE**

There is hereby granted to OLIVER ORCUTT, and JANELLE X. ORCUTT dba MADRAS SANITARY SERVICE, the right, privilege and franchise to provide Service and Solid Waste Management Service within the city limits as of the date of this Ordinance and any area that may hereafter be annexed to the City and, for that purpose, to utilize the streets and facilities of the City.

SECTION 2.4 **FRANCHISE TERM**

The rights, privileges and franchise herein granted shall renew on May 11, 2003, and shall be considered as a continuing seven (7) year franchise. That is, beginning on July 1st of each year, the franchise will be considered renewed for an additional one (1) year term, unless not later than thirty (30) days prior to June 1st of any year, either party shall notify the other party in writing of intent to terminate the franchise. Upon the giving of such notice of termination, the franchisee shall have a franchise which will terminate six (6) years from the date of the notice of termination. The Council may later extend the term or reinstate continuing renewal upon mutual agreement with the franchisee. Nothing in this section restricts the Council from suspending, modifying or revoking the franchise for cause pursuant

to Section 2.8 of this Ordinance. This franchise shall continue until May 11, 2023, unless sooner extended, renewed or terminated.

[Section 2.4 amended by Ordinance No. 705, passed May 13, 2003]

SECTION 2.5 **FRANCHISE FEE**

In consideration of the franchise granted by this Ordinance, the franchisee shall pay the City five percent (5%) of gross receipts as a franchise fee. Payment shall be made monthly on or before the 30th day of the succeeding month to the City Administrator.

The City of Madras shall use the revenues generated by Section 2.5 towards recycling costs, alley maintenance and park maintenance, development, and improvements.

SECTION 2.6 **FRANCHISEE RESPONSIBILITY**

- 1) The Franchisee shall:
 - a. Dispose of solid waste at the site approved by the Department of Environmental Quality and the City in compliance with ORS Chapter 459 and 459A, and with this Ordinance.
 - b. Provide the opportunity to recycle in accordance with ORS 459A, together with the rules and regulations promulgated thereunder by the Department of Environmental Quality and by the City.
 - c. Provide and keep in force public liability insurance in the amount of not less than \$300,000, or such larger sum which may become necessary during the term hereof, for personal injury and property damage, all relating to a single occurrence, which shall be evidenced by a certificate of insurance filed with the City Recorder.
 - d. Within thirty (30) days after the effective date of this Ordinance, file with the City Recorder a written acceptance of this franchise by endorsing acceptance on a copy of this Ordinance.
 - e. Provide sufficient collection vehicles, containers, facilities, personnel and finances to provide all types of necessary service, or subcontract with others to provide such service.

- f. Respond in a timely manner to any complaint on service.
 - g. Provide a performance bond in the amount of \$5,000 with a surety licensed to do business in the State of Oregon conditioned upon the full and faithful performance of this agreement and franchise and this Ordinance. In the event that the City Council finds that the franchisee has adequate experience and otherwise meets the requirements to guarantee service, it may waive, by formal action, all or part of the bond requirements and may attach any necessary condition to the waiver.
 - h. Provide a minimum level of service to any developed property of one collection per week of a solid waste container that conforms to Section 4.1 of this Ordinance. In the case of multi-family dwellings, minimum service is one weekly collection per dwelling of a solid waste container, but the service may be containerized. Minimum service for other developed property is that necessary to prevent the accumulation or storage of solid waste that creates a fire, safety or health hazard or public nuisance and that is necessary to comply with Section 4.1 of this Ordinance.
- 2) The franchisee is not required to store, collect, transport, transfer, dispose of or resource-recover any hazardous waste; provided, however, that the franchisee may provide such service outside this Ordinance in compliance with all applicable laws, ordinances, and regulations.
 - 3) The franchisee may subcontract with others to provide a portion of the service where 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 Ordinance.
 - 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 quality of solid waste handled and location of customers so long as such rates are reasonably based upon cost of the particular service and are approved by the Council, 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 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 franchisee. A pledge of this franchise as financial security shall be considered as a transfer for purposes of this subsection. The Council may attach whatever conditions it deems necessary to guarantee maintenance of service and compliance with this Ordinance.

SECTION 2.7 SUPERVISION

Service provided under the franchise and other requirements of this Ordinance shall be under the supervision of the City Administrator. Franchisee shall, at reasonable times, permit inspection of his facilities, equipment and personnel providing service.

SECTION 2.8 SUSPENSION, MODIFICATION OR REVOCATION OF FRANCHISE

- 1) Failure 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, suspension or revocation of the franchise.
 - a. After written notice from the City Administrator that such grounds exist, the franchisee shall have not less than twenty (20) days from the date of mailing of the notice in which to comply or request a public hearing before the Council.
 - b. At a public hearing, the franchisee and other interested persons shall have an opportunity to present oral, written or documentary evidence to the Council.
 - c. If the franchisee fails to comply within the time specified or, if a Council hearing is held, 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 such action contingent upon continued noncompliance.
- 2) In the event 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 such action.

SECTION 2.9 PREVENTING INTERRUPTION OF SERVICE

The franchisee agrees, as a condition of his franchise, that whenever the Council determines that a 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 (24) hours actual notice to franchisee and a public hearing if requested by franchisee, authorize another person to temporarily provide service, or to use and occupy the land, facilities and equipment of the franchisee. The City shall provide the franchisee reasonable compensation for the use of said land, facilities and equipment. The Council shall return any seized property and business upon abatement of the actual or threatened interruption of service.

SECTION 2.10 TERMINATION OF SERVICE

The franchisee shall not terminate service to a portion of his customers unless:

- 1) The street or road access is blocked and there is no alternate route, and provided that the franchisee shall restore service not later than twenty-four (24) hours after the street or road access is opened; or
- 2) Excessive weather conditions render providing service unduly hazardous to persons providing such service or such termination is caused by accidents or casualties caused by an act of God, public enemy or vandalism; or
- 3) A customer has not complied with Section 4.1 of this Ordinance or has not paid for service provided after a regular billing and after a fifteen (15) day written notice to pay; or
- 4) Ninety (90) days written notice of intent to terminate is given to the Council and written approval is obtained from the Council; or
- 5) Ordered by a legislative, administrative or judicial body having jurisdiction.

SECTION 2.11 OTHER FRANCHISES

A franchise to a person other than the franchisee named in Section 2.3 herein to provide collection of solid waste in all or any portion of the City shall be granted only

after a determination of need for the service. Normally, if one person has been given a franchise to provide such collection, another person shall not be franchised to provide the same service in the same area; however, a determination of need is the responsibility of the City Council which in its consideration of franchise applications shall place primary emphasis upon the following objectives:

- 1) To provide the most efficient collection service for the least cost.
- 2) To avoid duplication of service areas that will cause inefficiency in operation, excessive costs or unnecessary use of energy resources.
- 3) To provide proper service to all properties, including those properties in areas of the City where full development has not yet occurred.
- 4) To give due consideration to the franchise holder and charges necessary for his service operation to promote an orderly and efficient operation which provides the optimum degree of quality service with modern equipment.
- 5) Cooperation with other governmental units to encourage the development of the highest quality and degree of solid waste management possible for the local and regional service areas.
- 6) To give proper consideration at all times to the public interests and considerations for the future, as well as for the present needs of the community.
- 7) No new franchise may be granted that is more favorable than one that is currently in existence.

ARTICLE III **RATE REGULATION**

SECTION 3.1 **RATE DETERMINATION**

- 1) Rates for services shall be those contained in the document marked Exhibit "A", attached hereto and by this reference hereby incorporated in this Ordinance.
- 2) Changes in rates shall be made by resolution and order of the Council amending Exhibit "A". In determining rates, the Council shall give due consideration to current and projected revenue and expenses; actual and

overhead expenses; the cost of acquiring and replacing equipment; the services of owner, family and management; the cost of providing for future, added or different services; a reasonable operating margin to franchisee for doing business; research and development; and such other factors as the Council deems relevant. The Council may consider rates charged by other persons performing the same or similar service in the same or similar areas.

- 3) The franchisee shall provide sixty (60) days written notice of rate change with accompanying justification of proposed rate changes. Unless a governmental unit has raised the cost of providing service or there has been a substantial increase in cost not covered in the preceding adjustment, the rate adjustments, if any, shall be made on the following schedule:
 - a. Application shall be filed by franchisee prior to April 1, of each year.
 - b. Unless there is good cause shown and recorded in the minutes of the Council, the Council shall act upon any rate adjustment by June Council meeting and the adjustment if any shall take effect on July 1.
 - c. An emergency or interim rate for a new or altered service may be adopted by written order of the City Administrator, valid for a stated period not to exceed six (6) months on an emergency or interim basis.
- 4) Rates charged shall be those set, as provided herein. Nonscheduled services may be provided at the reasonable cost of providing the service, giving consideration to the standards in (2) of this section.
- 5) If approved in the rate schedule, franchisee may charge a starting charge for a new service and a restart charge to any customer who has been previously terminated for failure to pay for service.
- 6) Rates shall be uniform or uniform within zones or classes of service.

ARTICLE IV **PUBLIC RESPONSIBILITY**

SECTION 4.1 PUBLIC RESPONSIBILITY

In addition to and not in lieu of compliance with ORS Chapter 459 and 459A, City of Madras Ordinances, and other applicable laws and regulations:

- 1) No person shall place infectious or hazardous waste for collection or disposal by franchisee. Special arrangements shall be made by the customer with franchisee for the collection of infectious waste.
- 2) No unauthorized person shall place material in or remove material from a solid waste collection container without permission of the owner of the container. For the purpose of this section, the franchisee is the "owner" of containers supplied by franchisee.
- 3) No unauthorized person shall remove solid waste placed out for collection and resource-recovery by the franchisee or a person exempted by Section 2.1 of this Ordinance and operating solely within the exemption.
- 4) The franchisee is not required to service an underground container unless the person responsible for it places the can above ground prior to the time of collection.
- 5) No can for residential service shall be located behind any locked or latched door, gate or inside of any building or structure.
- 6) Each customer shall provide safe access to the solid waste container or wastes without risk or hazard to franchisee's employees, the public or franchisee.
- 7) No container designed for mechanical pickup shall exceed safe loading weights or volumes as established by the franchisee to protect service workers, the customer, the public and the collection equipment.
- 8) No container designed for manual pickup shall exceed thirty-two (32) gallons in size or sixty (60) pounds in loaded weight. Such containers shall be made of metal or be rigid, fireproof, rodent proof, and not subject to cracking or splitting, round, tapered at the bottom and have proper handholds and bales.
- 9) Unless special service or service equipment is provided by the collector for handling unconfined waste, materials such as rubbish and refuse, brush, leaves, tree cuttings and other debris for manual pickup and collection shall be in securely-tied bundles or in any box, sack or other receptacles and solid waste so bundled, tied or contained shall not exceed sixty (60) pounds in weight.

- 10) Where a customer requires an unusual volume of service or a special type of service requiring substantial investment in equipment, the franchisee may require a contract with the customer as necessary to finance and assure amortization of such equipment. The purpose of this provision is to assure that such equipment not become a charge against other rate payers who are not benefitted.
- 11) Customers shall not overfill a can, cart or container so that the lid cannot be securely closed. If a can, cart or container is overfilled an additional reasonable fee may be charged. If the contents of a container, cart or drop box are compacted (either mechanically or manually), the compactor rate shall be charged.
- 12) Stationary compacting devices for solid wastes shall comply with federal and state safety standards and provide adequate protection to user.
- 13) Any vehicle used by a person to transport solid waste shall be so loaded and operated as to prevent the wastes from dropping, sifting, leaking, blowing or otherwise escaping from the vehicle onto the public right-of-way or adjacent lands.
- 14) No person shall block access to any container or drop box or roll-off box supplied by franchisee. Franchisee may charge extra for return service to such blocked container or drop box or roll-off box.
- 15) The producer or generator of waste shall clean both cans and containers and shall keep the area around such cans or containers free from accumulated wastes. The franchisee shall provide maintenance to containers supplied by franchisee.
- 16) Customer shall take appropriate actions to ensure that hazardous materials, chemicals, paint, corrosive materials, infectious waste or hot ashes are not put into a can, cart, container or drop box. When materials or customer abuse, fire or vandalism causes excessive wear or damage to a cart, container or drop box, the cost of repair or replacement may be charged to the customer.

ARTICLE V
ADMINISTRATION AND ENFORCEMENT

SECTION 5.1 APPEALS

- 1) Any action or determination by franchisee under or pursuant to this Ordinance may be appealed to the City Administrator.
- 2) Any action or determination of the City Administrator under this Ordinance may be appealed to the City Council.

SECTION 5.2 SEVERABILITY CLAUSE

Any 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 5.3 CITY ENFORCEMENT

The City shall enforce the provisions of this Ordinance by administrative, civil or criminal action or any combination as necessary to obtain compliance with this Ordinance. The Council shall take such legislative action as is necessary to support the Ordinance and the franchise granted. The franchisee may enforce payment or protect its rights by appropriate civil action.

SECTION 5.4 PENALTIES

Violation by any person of the provisions of Section 2.2 or Subsections (1), (2), (3), (13), or (14) of Section 4.1 shall be deemed a violation and upon conviction, shall be punished by a fine of not more than \$300.00. Each day in violation is a separate offense; provided, however, that two (2) or more such continuing offenses may be joined in the same action.

SECTION 5.5 REPEAL OF EXISTING ORDINANCE

Ordinance No. 416 is hereby repealed upon adoption of this Ordinance by the Council and acceptance of this Ordinance by the Franchisee.

SECTION 5.6 EMERGENCY CLAUSE

It is necessary for the preservation of public health, peace and safety that this Ordinance provide for sanitary services and recycling regulation with the City of Madras, therefore, an emergency is hereby declared and this Ordinance shall go into full force and effect as of its date of passage.

Passed by the Council and approved by the Mayor March 22, 1994.