

AN ORDINANCE RELATING TO SOLID WASTE MANAGEMENT IN THE CITY OF STAYTON, OREGON, INCLUDING, WITHOUT LIMITATION, GRANTING TO STAYTON SANITARY SERVICE, INC., AN OREGON CORPORATION, THE EXCLUSIVE FRANCHISE TO COLLECT, TRANSPORT OR TRANSFER SOLID WASTE OVER AND UPON THE CITY STREETS AND FIRST OPTION TO DISPOSE OF OR RECOVER MATERIALS OR ENERGY FROM SOLID WASTE GENERATED OR PRODUCED IN THE CITY; CREATING NEW PROVISIONS; PROVIDING PENALTIES; AND, REPEALING ORDINANCE NO. 496, THE EXISTING FRANCHISE DATED APRIL 19, 1978, AS AMENDED.

BE IT ORDAINED BY THE CITY OF STAYTON:

Section 1. Repeal of Existing Ordinances, Resolution and Franchise. Ordinance No. 496, the existing franchise between the City of Stayton and Stayton Sanitary Service, Inc., dated April 19, 1978, as amended, are hereby repealed and the following ordinance and franchise is adopted and inserted in lieu thereof.

DIVISION I. GENERAL PROVISIONS

Section 1A. 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 the ordinance or this ordinance.

Section 1B. Purposes, Policy and Scope. It is declared to be the public policy of the City of Stayton 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 and promote material and energy recovery in all forms.
- (4) Provide for technologically and economically feasible resource recovery.
- (5) Eliminate or prevent overlapping service and thereby increase efficiency and to decrease truck noise, street wear, energy waste, air pollution and public inconvenience.
- (6) Protect public health and 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 1C. Definitions.

- (1) City: The City of Stayton.
- (2) Council: The City Council of the City of Stayton.
- (3) Franchisee: The person granted a franchise by Section 2C of this ordinance or a subcontractor to such person, namely Stayton Sanitary Service, Inc.
- (4) Hazardous Waste: Any waste defined as hazardous waste by or pursuant to ORS Chapter 459; or defined as hazardous waste by another governmental unit having jurisdiction; or found to be hazardous to service workers, to service equipment, or to the public by the franchisee.
- (5) Person: Any individual, partnership, association, corporation, trust, firm, estate, joint venture or other private legal entity or any public agency.
- (6) Resource Recovery: The process of obtaining useful material or energy resources from solid waste, including reuse, recycling and other materials recovery or energy recovery of or from solid waste.
- (7) Service: The collection, transportation or disposal of or resource recovery from solid waste.
- (8) Solid Waste: All solid waste or semi-solid waste including, without limitation, garbage, rubbish, refuse, trash, ashes or swill, newsprint or waste paper, corrugated or cardboard, grass clippings, compost, residential, commercial, industrial, governmental or institutional wastes, discarded home or industrial appliances, equipment or furniture, vehicle parts or tires, vegetable or animal wastes and other wastes.
- (9) Solid Waste Management: The prevention of or reduction of solid waste; management of service; and, facilities and equipment necessary or convenient to such activities.

DIVISION II. FRANCHISE AND EXEMPTIONS

Section 2A. 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 or fraternal organization, which organization was not organized nor is operated for any solid waste management purpose and which organization is using the activity for fund raising; including, without limitation, scouts and churches.
- (3) The collection, transportation or redemption of returnable beverage containers under that portion of ORS Chapter 459 commonly known as the "Bottle Bill".
- (4) The generator or producer who transports and disposes of waste created as an incidental part of regularly carrying on 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. "Janitorial service" does not include cleanup or collection of accumulated or stored wastes generated or produced by other persons.
- (5) The transportation by a person of solid waste generated or produced by such person to a disposal site, resource recovery site or market.
- (6) The providing of service for hazardous wastes; provided, however, that the franchisee may engage in management of hazardous wastes in compliance with all applicable local, state and federal laws, rules or regulations.
- (7) Any other practice, business or activity which is withdrawn by a resolution and order of the Council, after public hearing thereon, and based upon written findings. Prior to granting such an exception, the City Manager shall give 30 days' prior written notice to the franchisee of the public hearing and the proposed basis of the exception. Prior to granting such an exception, the Council must find that the exception carries out the purposes and policy stated in Section 1B of this ordinance; that, there is a need for proposed service; that the franchisee cannot or will not provide the required service; that the applicant has the necessary equipment, experience, finances and personnel to provide adequate service; and, that the granting of the exception will not be materially detrimental or have a

substantial impact on service, consumer rates or the business franchised under this ordinance.

Section 2B. Practices Prohibited Without a Franchise. Unless exempted by Section 2A or franchised pursuant to Section 2C of this ordinance, no person shall solicit customers for service, or advertise the providing of service, or provide service in the city.

Section 2C. Grant of Exclusive Franchise. The franchise granted by this section is based upon the qualification of the applicant on the basis of demonstrated knowledge of the service business, the ability of applicant to continue to furnish all required and necessary equipment and personnel; the financial responsibility of the applicant; the capacity of the applicant to indemnify the city and its inhabitants against the failure on its part to fulfill the terms of the franchise or against injuries occurring to the city or any of its inhabitants in the performance of such franchise; and, the prior experience of the applicant in maintaining adequate public service in the city and the surrounding area with virtually no public complaint.

There is hereby granted to Stayton Sanitary Service, Inc., an Oregon corporation, the exclusive right, privilege and franchise to provide service within the city limits as of the date of this ordinance and any area that may hereafter be annexed to the city, subject to the provisions of ORS 459.085 and, for that purpose, to utilize the streets and facilities of the city.

Section 2D. Franchise Term. The rights, privileges and franchise herein granted shall begin on November 1, 1982 and shall be considered as a continuing five year franchise. That is, beginning on November 1st of each year, the franchise shall be renewed for an additional five year term, unless prior to that time, the Council shall notify the franchisee in writing of intent to terminate the franchise renewals. The termination of further renewals may be with or without cause. Upon giving of such notice of termination of renewals, the franchisee shall have a franchise which will terminate four years from the date of the notice of termination. The Council may later extend the term or reinstate the continuing renewal upon mutual agreement. Nothing in this section restricts this Council from suspending, modifying or revoking the franchise for cause pursuant to Section 2H of this Ordinance, or pursuing other available remedies.

Section 2E. Franchise Fee. In consideration of the franchise granted by this Ordinance, the franchisee shall pay a fee of two percent (2%) of the gross cash receipts of the franchisee from the franchised service business within the city. This fee shall be in lieu of any other business license fee or other fees charged by the city, but not in lieu of any ad valorem taxation.

Section 2F. Franchisee Responsibility.

- (1) The franchisee shall:

- (a) Dispose of solid waste at a approved disposal site or resource recover such wastes, both in compliance with ORS Chapter 459 and with this ordinance.
 - (b) Contract with a solid waste disposal site for the disposal of municipal wastes collected within the city.
 - (c) Provide and keep in force public liability insurance in the amount of not less than \$300,000 for injury to a single person, \$500,000 to a group of persons and \$100,000 property damage, all relating to a single occurrence, which shall be evidenced by a certificate of insurance filed with the City Recorder.
 - (d) Within 30 days after the effective date of this ordinance, file with the City Recorder a written acceptance of this franchise.
 - (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 pursuant to Section 12 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 collector may require a contract with such 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.
 - (f) Respond to any complaint on service.
 - (g) Provide a transfer station, available to the public at reasonable times and reasonable rates.
- (2) The franchisee is not required to store, collect, transport, transfer, dispose of or resource recover any hazardous wastes.
 - (3) The franchisee may subcontract with others for services or to provide a portion of the service where franchisee does not have the necessary equipment or service. Provided, however, the franchisee shall obtain the consent of the City Council to any such subcontract prior to its effective date unless conditions beyond the control of the franchisee require the employment of a subcontractor prior to obtaining such consent. In the latter event, the consent of the City Council to such subcontract shall be obtained within thirty

(30) days after the effective date of the subcontract. Such a subcontract shall not relieve the franchisee of total responsibility for providing and maintaining service and from compliance with this franchise and 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. 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 franchise and ordinance.

(5) The franchisee shall make its services available to all the inhabitants of the city without discrimination as to cost, frequency of service, or type of service, except, that the holder of such franchise shall have the right to make reasonable rules and regulations relating to the service performed by franchisee, subject to approval of the Council.

(6) The franchisee shall indemnify and hold harmless the City of Stayton, its officers, agents and employees, from any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including attorney's fees, arising out of, connected with, or resulting from the franchisee's operation of the service business.

(7) The franchisee shall maintain collection vehicles in a reasonably clean and sanitary condition and shall maintain them in a good and safe operating condition. If any collection vehicle becomes unsuitable for the purpose for which it is intended by reason of its becoming unsafe, dilapidated, unsightly, unsanitary or obsolete, the City Council may direct the franchisee to remove the vehicle from service until the objections are corrected or to replace it within a reasonable time.

- (8) The franchisee shall conduct its service business at all times in conformity with the laws of the State of Oregon and the rules of the Oregon Environmental Quality Commission and other public agencies having regulatory authority relating to health and sanitation.

Section 2G. Supervision. Service provided under the franchise and other requirements of this ordinance shall be under the supervision of the City Manager. The franchisee shall, at reasonable times, permit inspection by the Council, a Council Committee or the City Manager of its facilities, equipment and personnel providing service.

Section 2H. Suspension, Modification or Revocation of Franchise. The provisions in this section are in addition to and not in lieu of any other remedy of the city.

- (1) Failure to provide necessary service or otherwise comply with the provision of this ordinance after written notice and a reasonable opportunity to comply shall be grounds for modification, suspension or revocation of the franchise.
- (2) After written notice from the City Manager that such grounds exist, the franchisee shall have at least 20 days from the date of mailing of the notice in which to comply or request a public hearing before the Council.
- (3) At a public hearing, the franchisee and other interested persons shall have an opportunity to present oral, written or documentary evidence to the Council.
- (4) 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.
- (5) 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.
- (6) The waiver by the city of one or more defaults or breaches in franchisee's observance of the terms and conditions of this franchise and ordinance shall not be deemed by any court to be a continuing waiver of such default or breach or of any subsequent default or breach thereof.

Section 2I. Termination of Service. The franchisee shall not terminate service to all or a portion of its customers unless:

- (1) The street or road access is blocked and there is no alternate route and provided that the city shall not be liable to the franchisee or franchisee's customers for such blocking of access, or
- (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, public enemy or vandalism, or
- (3) A customer has not complied with Section 4A of this ordinance or has not paid for service provided after a regular billing and after a 15 day written notice to pay, or
- (4) Ninety 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.

DIVISION III. RATE REGULATION

Section 3A. Rate Determination.

- (1) Rates for service shall be set by resolution and order of the Council amending "Exhibit A" which is attached hereto and by this reference hereby incorporated in this ordinance.
- (2) In determining rates, the Council shall give due consideration to current and projected revenue and expenses; actual and overhead expense; the cost of acquiring and replacing equipment; the services of owner, family and management; the cost of providing for future, added or different service; recycling, reuse or other resource recovery services; a reasonable return to the franchisee for doing business based on a percentage of the gross receipts; research and development; systems to avoid or recover the cost of bad debts; interest on late payments; costs of landfill or other disposal sites on their charges; and, such other factors as the Council deems relevant.

The Council may consider rates charged by other persons performing the same or similar services in the same or similar service areas under the same or similar service conditions.

- (3) On all but emergency or interim rates, the franchisee shall provide 30 days' written notice of the proposed rate change

together with accompanying justification. An emergency or interim rate for a new or altered service may be adopted by written order of the City Manager and is valid for a stated period not to extend six months.

- (4) Rates charged shall be those provided in "Exhibit "A". Nonscheduled service may be provided at the reasonable cost of providing the service, giving due consideration to the standards in subsection (2) of this section.
- (5) Franchisee may require payment for residential service and multifamily residential service up to two months in advance. Franchisee may bill up to two months in advance, arrears or any combination thereof. Where billed in advance, the franchisee will refund a prorata portion of the payment for any complete month in which service is not to be provided.
- (6) The following systems may be used by the franchisee to reduce bad debts which would otherwise become a charge against legitimate paying customers:
 - (a) The franchisee may charge at the time service is provided to drop box or roll-off box customers or for any other customer that has not previously established credit with the franchisee. In determining credit, the franchisee may take into consideration nonpayment for service by other service providers in other areas and any other relevant information.
 - (b) Subject to the amount or rate being approved in the rate schedule, the franchisee may charge:
 - 1) A starting charge for a new service;
 - 2) A restart charge or advance deposit or both for any customer who has previously been terminated for failure to pay for service; and
 - 3) Interest on past due accounts, not to exceed legal maximums.
 - (c) In addition to the other provisions of this section and not in lieu thereof, the franchisee may collect the entire cost of billing and collecting bad debts including, without limitation, the cost of professional debt collection.

Section 3B. Business Practices. Except as modified by this ordinance, the franchisee may use normally accepted business practices.

Section 3C. Accounting, Records and Audit. The franchisee shall keep

a complete and accurate set of books which shall reflect the gross receipts from services under the franchise rendered within the city, which books shall be balanced at least annually. Books and records shall be kept using normally accepted accounting practices as modified to provide the information required for rate determination under Section 3A of this ordinance. The frequency, detail and disposition of records and the costs of such record keeping shall be reviewed by and with the City Manager who shall make a final determination, subject to any direction by the Council. The City Manager or a qualified designee shall have the right to inspect and audit the books and records of the franchisee at reasonable times and places.

DIVISION IV. PUBLIC RESPONSIBILITY

Section 4A. Public Responsibility. In addition to and not in lieu of compliance with ORS Chapter 459, and other applicable laws and regulations:

- (1) No person shall place any hazardous waste out for collection or disposal by the franchisee nor place it into any solid waste container or drop box supplied by the franchisee or the city without prior notice to and prior written approval from the franchisee or the city, respectively. A person placing such wastes for collection shall, prior to notice to the franchisee or to the city, obtain approval of the waste disposal site to be used for disposal of such wastes. Where required, an additional approval shall be obtained from the local government unit having jurisdiction over the disposal site. This disposal approval shall be in writing, signed by the person designated by the disposal site or the local government unit affected. Either franchisee, the city of the disposal site or the local government unit having jurisdiction of the disposal site may require written authorization from the Oregon Department of Environmental Quality for handling of such hazardous wastes. This subsection does not apply to household wastes generated at and by a single family residential dwelling unit.
- (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 2A of this ordinance and operating solely within the exemption. Such solid waste belongs to the franchisee or exempted person, respectively.
- (4) Unless permitted by the franchisee, no person shall install

or use any container of one-half cubic yard or greater in capacity for pickup by franchisee other than those supplied by franchisee. The purpose of this subsection is to insure safe equipment, sizes and weights and facilitate franchisee utilizing the most efficient collection equipment and methods. Rates for use of franchisee's containers and drop boxes shall be included in the adopted rate schedule.

- (5) No person shall install an underground solid waste container for storage and collection. The franchisee is not required to service an underground container unless the person responsible for it places the can above ground prior to time of collection.
- (6) No can for residential service shall be located behind any locked or latched door, gate or inside of any building or structure, but shall be placed on the curb except for elderly or infirm.
- (7) 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.
- (8) 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.
- (9) No container designed for manual pickup shall exceed 32 gallons in size or 60 pounds in loaded weight. Such containers shall be rigid, fireproof, rodentproof and not subject to cracking or splitting. Cans shall be round, tapered from top to bottom and have proper handholds and bales.
- (10) Unless special service or service equipment is provided by the franchisee 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 60 pounds in weight.
- (11) 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 benefited.
- (12) Stationary compacting devices for solid wastes shall comply with federal and state safety standards and provide

adequate protection to the 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-ways 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) Every person who generates or produces wastes shall remove or have removed all putrescible wastes at least every seven days. More frequent removal may be required where the facility, activity or use involves the public health. All wastes shall be removed at sufficient frequency as to prevent health hazards, nuisances or pollution.
- (16) All garbage and putrescible materials shall be stored in cans supplied by the generator or producer or in containers supplied by the franchisee. When cans are used, they shall be covered except during loading and emptying.
- (17) The producer or generator of waste shall bear the primary responsibility for maintaining waste cans and containers and the area around such cans and containers in a clean, sanitary and odor-free condition. In the event, however, the producer or generator of waste, in the opinion of the City Health Officer, fails, refuses or neglects to keep such cans and containers clean, the franchisee shall, at the request of the City Manager, clean said cans or containers and impose its costs incurred in cleaning such can or container and in picking up, transporting and returning said can or container against the producer or generator of the waste which is accumulated in said cans or containers. The franchisee shall provide periodic maintenance to containers supplied by franchisee.
- (18) No person shall place or cause to be placed any solid wastes in any street, alley or other public place, or upon any private property, whether owned by such person or not, within the city, except it being in proper containers for collection, or on the express approval granted by the city health officer. Nor shall any person throw or deposit or cause to be thrown or deposited any solid wastes into any stream or other body of water.
- (19) No person shall burn garbage or putrescible solid wastes within the city.

Section 4B. Payment of Service. Any person who received service from the franchisee shall be responsible for payment of service. The owner

of a rental or lease facility shall be liable for payment for services provided to a tenant of such dwelling if the tenant fails to make timely payment for such service.

DIVISION V. ADMINISTRATION AND ENFORCEMENT

Section 5A. Appeals.

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

Section 5B. Construction. 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 5C. City Enforcement. The city may 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 also enforce payment or protect its rights by appropriate civil action.

Section 5D. Penalties. Violation by any person of the provisions of Section 2B or Subsections (1), (2), (12), (13), (14), (15), (16), (17), (18) or (19) of Section 4A shall be deemed a misdemeanor and upon conviction, shall be punished by a fine of not more than \$500. Each day in violation is a separate offense; provided, however, that two or more such continuing offenses may be joined in the same action.

IN WITNESS WHEREOF, this ordinance was passed by the Council by a vote of 4 for and 0 against and approved by the Mayor on this 3rd day of NOVEMBER, 1982, and the City has caused this agreement to be executed by its Mayor and Recorder under authority of the Council and the Franchisee has executed the acceptance by its duly authorized persons, in duplicate, this _____ day of _____, 19____.

BY: _____

Henry A. Patten
MAYOR

BY: _____

RECORDER

Attest:

Ellen Vandenberg
RECORDER City adm.

FRANCHISE GRANTED BY SECTION 2C OF
THIS ORDINANCE IS ACCEPTED BY:

STAYTON SANITARY SERVICE, INC.



V-P
TITLE

DATE ACCEPTED: 10 Nov 1982

EXHIBIT "A"

Rate Schedule as approved by the Stayton City Council for Stayton Sanitary Service on April 14, 1981.

Residential Service

Rate Schedule

1 can (32 gal.)
2nd or additional cans

\$ 5.00
2.50

Container Service

1½ yds.
2 yds.
3 yds.
4 yds.

1 Stop
Per Week

2 Stops
Per Week

\$35.00
44.50
63.00
78.00

\$ 64.00
82.00
114.00
137.30

Drop Box Service

Per yard
30-yard

\$ 2.50
75.00

Senior Citizens & Handicapped

Per can (or will call basis)

2.00

Compacted Yardage

Per yard

5.00 + disposal

Special Pick Up Rates

Per hour with one man
Per hour with two men

27.50
35.00