

ORDINANCE NO. 4083

AN ORDINANCE RELATING TO SOLID WASTE MANAGEMENT IN THE CITY OF ALBANY, OREGON, INCLUDING BUT NOT LIMITED TO, GRANTING TO SPADY-REDFIELD CORPORATION (dba ALBANY SANITATION CO.) AN EXCLUSIVE FRANCHISE TO COLLECT, TRANSPORT AND CONVEY SOLID WASTE OVER AND UPON THE STREETS OF THE CITY; TO DISPOSE OF OR RECOVER MATERIALS OR ENERGY FROM SUCH SOLID WASTE; AND DECLARING AN EMERGENCY.

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

Section 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 as "this ordinance".

Section 2. PURPOSE, POLICY AND SCOPE.

1. It is declared to be the public policy of the City of Albany to regulate solid waste management to:

- a. Insure safe, economical and comprehensive solid waste service.
- b. Insure rates that are just, fair, reasonable and adequate to provide necessary public service and to prohibit rate preferences and other discriminatory practices.
- c. Provide for technologically and economically feasible resource recovery.

2. Except for the franchise under this ordinance, 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, leasee or occupant of any real property of such person.

Section 3. DEFINITIONS.

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, leasees, 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.

2. Council. The City Council of the City of Albany.

3. Franchisee. The person granted a franchise by Section 4 of this ordinance or a subsequent ordinance or a subcontractor to such person.

4. Person. An individual, partnership, association, corporation, trust, firm, estate or other private legal entity.

5. Service. Collection, transportation or disposal of or resource recovery from solid waste.

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

7. Solid Waste. All putrescible and non-putrescible waste, including but not limited to, garbage, rubbish, refuse, ashes, swill; waste paper 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 animals and all other wastes not excepted by this subsection. Solid waste does not include:

a. Environmentally hazardous waste as defined in ORS 459.410.

b. Sewer sludge and septic tank and cesspool pumping or chemical toilet waste.

c. Reusable beverage containers as defined in ORS 459.860.

8. Solid Waste Management. Management of Service.

9. Waste. 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 be resource recovered by another person.

Section 4. FRANCHISE AND EXCEPTIONS. There is hereby granted to Spady-Redfield Corporation, dba Albany Sanitation Company, the exclusive right, privilege and franchise to provide service within the City limits as of the effective date of this ordinance and any area that may hereafter be annexed to; and for that purpose, to utilize the streets and facilities of the City of Albany. Nothing in this franchise or this section or ordinance shall:

1. Prohibit any person from transporting solid waste he produces himself to an authorized disposal site or resource recovery facility providing he complies with Section 14 of this ordinance.

2. 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 ordinance with the exception of rates or terms of service set by written contract with such agency where they are in conflict.

3. Prohibit the Council from withdrawing certain resource recovery practices by amendment to this ordinance, attached thereto, marked "Exhibit B" and thereby incorporated in this ordinance upon a written finding that such practice or practices need not be regulated to implement this ordinance.

4. Prohibit any person from engaging in a charitable, civic or benevolent activity. Merely operating as a nonprofit entity does not qualify under this exception.

Section 5. FRANCHISE TERM. The rights, privileges and franchise herein granted shall be considered as a continuing five year franchise subject to termination as follows:

Unless grounds exist for suspension, modification or revocation of the franchise under Section 9 of this ordinance, this ordinance 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 30 days prior to to January 1st of any year the City shall notify 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.

In the event the franchisee shall desire 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, and 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.

Section 6. FRANCHISE FEE. In consideration of the franchise granted by this ordinance, the franchisee shall pay to the City of Albany, Oregon six percent (6%) of gross receipts for this right, privilege and license, to be paid monthly.

Section 7. FRANCHISE RESPONSIBILITY.

1. The franchisee shall:

a. Dispose of solid wastes collected at a site approved by the local government unit having jurisdiction of or recover resources from the solid wastes, both in compliance with Chapter 459, Oregon Revised Statutes and regulations promulgated thereunder.

b. Provide and keep in force public liability insurance in the amount of not less than \$100,000 for injury to a single person, \$300,000 to a group of persons and \$25,000 property damage, all relating to a single occurrence, which shall be evidenced by a certificate of insurance filed with the City Recorder.

c. Within 30 days after the effective date of this ordinance, file with the City Recorder a written acceptance of this 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 12 of this ordinance.

e. Respond to any written complaint on service.

2. 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 of 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 ordinance.

Section 8. SUPERVISION. Service provided under the franchise shall be under the supervision of the City Council. Franchisee shall, at reasonable times, permit inspection of his facilities, equipment and personnel providing service.

Section 9. 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 ordinance 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 20 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 within 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.

Section 10. PREVENTING INTERRUPTION OF SERVICE. The franchisee agrees as a condition to his 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 24 hours actual notice to franchisee and a public hearing if 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.

Section 11. TERMINATION OF SERVICE. The franchisee shall not terminate service to all or a portion of his customers unless:

a. The street or road access is blocked and there is no alternate route and provided that the City of Albany shall not be liable for any such blocking of access, or

b. 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, or

c. A customer has not paid for service provided after a regular billing and after a 15 day written notice to pay, or

d. Ninety days' written notice is given to the Council and to affect customers and written approval is obtained from the Council.

Section 12. SUBCONTRACTS. 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.

Section 13. RATES. Rates for service shall be those contained in the document marked "Exhibit A", attached hereto and by this reference hereby incorporated in this ordinance. Changes in rates shall be made by resolution amending "Exhibit A".

Section 14. PUBLIC RESPONSIBILITY. In addition to compliance with ORS Chapter 459 and regulations promulgated pursuant thereto:

1. To prevent recurring back and other injuries to collectors and other persons and to comply with the safety instructions to collectors from the State Accident Insurance Fund:

a. No garbage can shall exceed 60 pounds gross loaded weight nor 32 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 and fire proof.

d. 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, colvert or other structure or road incapable of safely carrying the weight of the collection vehicle, the collector shall not enter onto 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 franchise to provide subcontract provision 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 payment for service provided to the occupant of such unit if the occupant does not pay for the service.

Section 15. 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 16. PENALTIES. Violation by any person of the provisions of the ordinance shall be deemed to be a misdemeanor and shall be punishable as provided by Section 1.04.010 of Albany Municipal Code.

Section 17. CITY ENFORCEMENT. The City of Albany may enforce the provisions of this ordinance by administrative, civil or criminal action as necessary to obtain compliance with this ordinance.

Section 18. EMERGENCY CLAUSE. To provide for safe and sanitary solid waste management in the City and thereby preserve the health, safety and welfare of the residents thereof, an emergency is declared to exist and the terms and provisions of this ordinance shall become effective upon passage by the Council and approval by the Mayor.

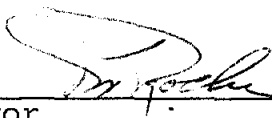
In witness whereof, the City has caused this agreement to be executed by its Mayor and Recorder under the authority of the City Council, and the contractor has executed the instrument by its



duly authorized persons, in duplicate, this 29th day of December, 1977.

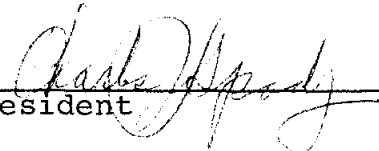
Passed by the Council: December 28, 1977 CITY OF ALBANY

Approved by the Mayor: December 28, 1977

Effective Date: December 28, 1977 by   
Mayor

by   
Recorder

SPADY-REDFIELD CORPORATION, dba  
ALBANY SANITATION COMPANY

by   
President

ATTEST;

  
City Recorder