

ORDINANCE NO. 551

AN ORDINANCE REGULATING AND PROVIDING FOR THE COLLECTION AND DISPOSAL OF SOLID WASTE WITHIN THE CITY OF WILLAMINA OR RECOVERY OF MATERIALS OR ENERGY FROM SUCH SOLID WASTES AND RECYCLING OF RECYCLABLE MATERIALS, AND GRANTING AN EXCLUSIVE FRANCHISE THEREFOR, AND DEFINING THE TERMS THEREOF; PROVIDING PENALTIES FOR THE VIOLATION OF THIS ORDINANCE; AND REPEALING ORDINANCE NO.544 AND ALL OTHER ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH.

THE CITY OF WILLAMINA, OREGON, ORDAINS AS FOLLOWS:

Section 1. Title.

This ordinance shall be known as the "Solid Waste Management Ordinance" and may be referred to herein as "this ordinance."

Section 2. Purpose, Policy and Scope.

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

- (a) Insuring safe, economical and comprehensive solid waste service;
- (b) Insuring service rates and charges that are just and reasonable and adequate to provide necessary public service;
- (c) Prohibiting rate preferences and other discriminatory practices;
- (d) Providing technologically and economically feasible resource recovery by and through the franchisee.

Section 3. Definitions.

Except where the context clearly indicates a different meaning, the definitions appearing in ORS 459.005 and regulations promulgated thereunder are applicable to this ordinance. The singular includes the plural and vice versa. As used in this ordinance, the following words shall be defined as follows:

- (a) City. The City of Willamina.

- (b) Compensation. 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; and (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.
- (c) Franchisee. The person to whom this franchise is granted by the City Council pursuant to this ordinance.
- (d) Person. An individual, partnership, association, corporation, trust, firm, estate or other private legal entity.
- (e) Service. The collection, transportation or disposal of or the resource recovery from solid waste.
- (f) 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.
- (g) 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.
- (h) Solid Waste. All putrescible and non-putrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, fruit refuse, waste paper, cardboard, grass clippings, compost, tires, equipment and furniture; sewage sludge, septic tank and cesspool pumping or other sludge; commercial, industrial, demolition and construction wastes; discarded or abandoned vehicles or parts thereof; discard home or industrial appliances; manure, vegetable or animal solid and semi-solid wastes, dead animals, infectious and other wastes; but the term does not include:
- (1) Hazardous waste as defined in ORS 466.005.
 - (2) Materials used for fertilizer or for other productive purposes or which are salvageable as such when the materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals.

- (3) Beverage containers, subject to reuse or refund provisions, contained in ORS 459.810 to 459.890.

- (i) Solid Waste Management. The prevention or reduction of solid waste; management of the storage, collection, transportation, treatment, utilization, processing and final disposal of solid waste; or resource recovery from solid waste; and facilities necessary or convenient to such activities.
- (j) Waste. Useless or discarded materials.

Section 4. Exclusive Franchise and Exceptions.

There is hereby granted to West County Sanitary Service, Inc., hereinafter called the "franchisee", the exclusive right, privilege and franchise to provide all solid waste management service within the city limits of Willamina as now existing or hereafter expanded and to use the public rights-of-way of the City for the purposes of this franchise. Except as hereinafter provided, it shall be unlawful for any person, firm or corporation to collect solid waste within the corporate limits of the City as now existing or hereafter expanded, without first having procured a franchise from the City of Willamina. Exceptions to the exclusive right, privilege and franchise are:

- (a) A person may engage in the collection of source separated materials for recycling or resource recovery, but only for the purpose of raising funds for a charitable, civic or benevolent activity. Such person or their representative must notify the city in writing of their intent to engage in such activity and specify the time when such activity is to take place. The franchisee shall be furnished with a copy of such notice.
- (b) A person may transport solid waste which such person produces or is produced on such persons' property directly to an authorized disposal site or recycling or resource recovery facility without complying with the regulations imposed upon commercial franchised haulers, providing such solid waste is hauled in such a manner as to prevent leakage or litter upon the streets. Public self-hauling and the preparation, storage and setting

out for collection of solid waste shall be in compliance with rules of the Oregon Environmental Quality Commission. The solid waste produced by a tenant, licensee, occupant or person other than the owner of the leased, occupied, or licensed premises shall be considered produced by the tenant, licensee, occupant or person and not produced by the landlord or property owner.

- (c) A person may engage in the practice of pumping, transporting and disposing of septic tank and cesspool pumpings or other sludge, provided such activity is conducted in compliance with applicable state and local laws.
- (d) A person may engage in the practice of towing or otherwise removing damaged, discarded or abandoned vehicles or parts thereof, so long as such activity is conducted in compliance with applicable state and local laws.

Section 5. Franchise Term.

The rights, privilege and franchise herein granted shall begin on the effective date of this ordinance and shall be considered as a continuing seven (7) year franchise. That is, beginning on January 1 of each year, the franchise shall be considered renewed for a seven (7) year term, unless at least 30 days prior to December 31 of any year the City shall notify the franchisee in writing of the City's intent to terminate the franchise.

Upon giving such notice of termination, the franchisee shall have a franchise which will terminate seven (7) years from the date of the notice of termination. The City may later extend the term or reinstate a continuing renewal upon mutual agreement with the franchisee. If the City notifies the franchisee of its intent to terminate the franchise, the franchisee shall have the right for a hearing before the City Council before any termination is made, provided such hearing is requested by the franchisee within thirty (30) days of the notice, in writing. Nothing in this section restricts the city from suspending, modifying or revoking the franchise for reasonable cause as provided for in section 8.

Section 6. Franchise Responsibility.

- (a) The franchisee shall furnish and maintain at its own expense, or by contract, a disposal site for the solid waste collected within the city.

- (b) The franchisee shall transport all solid waste in compliance with all applicable state laws and regulations governing the collection, loading and transport of said materials.
- (c) The franchisee shall provide sufficient collection vehicles, containers, facilities, personnel and finances to provide all types of necessary service and solid waste management service. Where necessary, the franchisee may subcontract for part of the collection services where more efficient or complete service can be provided by another person; provided, that the franchisee remains responsible for the service provided and; provided further, that the subcontract does not amount to a transfer of ownership. Such subcontracts require the prior written approval of the Council.
- (d) Except as otherwise provided, all vehicles used in the collection and/or transportation of waste shall be equipped with a leak-proof metal body of the compactor type. If the franchisee uses a pick-up truck or open-bed truck, the load shall be covered with an adequate cover to prevent scattering of the load.
- (e) The franchisee shall respond to all calls for service within a reasonable period of time. Except for Acts of God or other conditions out of the control of the franchisee, the franchisee shall have available weekly residential collection service and services to business, industry and government at least two times each week. More frequent service may be required as necessary to prevent the creation of nuisances or health hazards in the City. The franchisee shall supply, by contract, or otherwise, a disposal site for the purpose of disposing of collected solid waste.
- (f) The franchisee shall not give any rate preference to any person, locality or type of solid waste stored, collected, transported, disposed of, or resource recovered, taking into consideration the services rendered. This paragraph shall not prohibit uniform classes of rates based upon length of haul, time of haul, type or quantity of solid waste handled, or location of customers, so long as such rates are reasonably based upon the cost of the particular service.
- (g) The franchisee shall procure and at all times carry in full force and effect, liability and property damage insurance issued by an insurance company authorized to do business in the State of Oregon and acceptable to the City.

- (h) The franchisee shall provide the Opportunity to Recycle in accordance with ORS. 459.165 through 459.200, together with rules and regulations promulgated thereunder. The City may require the franchisee to provide additional levels of recycling if such service is economically and technically feasible.

Section 7. Public Responsibility.

In order to facilitate the collection and disposal of solid waste and the recycling of recyclable materials, the following rules and regulations shall be in force and effect.

- (a) All solid waste, as defined in Section 3. hereof, shall be wrapped and deposited in watertight solid waste receptacles or cans with tight fitting lids and shall be collected at least once every seven (7) days as provided in Oregon Administrative Rules 340-61-070.
- (b) No garbage receptacle for individual residential service shall exceed thirty-two (32) gallons in size nor weigh more than sixty (60) pounds gross loaded weight unless such receptacle is of a mechanical loading type approved by franchisee. Cans shall be tapered so they are larger at the top and shall have a place for a hand hold at the bottom. Sunken refuse cans or containers shall not be installed or used unless they are placed above ground for collection.
- (c) Solid waste collection for commercial establishments must be available upon request of the franchisee, except Saturdays, Sundays and holidays.
- (d) All brush must not exceed four (4) feet in length, and when possible, should be securely bundled and tied.
- (e) It shall be unlawful for any person, firm or corporation within the City to permit the accumulation of solid waste or waste on or about their premises. All such persons, firms or corporations are hereby required to make prompt and sanitary disposal of the solid waste and waste of every kind, nature and character, as herein provided. No solid waste or waste shall be buried within the City.
- (f) It shall be unlawful for any person, firm or corporation within the City to dump solid waste or waste on vacant lots within the City. Incineration of yard debris shall be approved by the Fire Chief of the Willamina Fire District in accordance with Dept. of Environmental Quality regulations.

- (g) It shall be unlawful for any person, firm or corporation to haul, transport or convey sawdust, shavings, hog fuel or other solid waste or waste by truck, automobile, wagon or trailer over and upon any street, alley or thoroughfare in the City unless such vehicle is so constructed or loaded as to prevent its contents from dropping, sifting, leaking or otherwise escaping therefrom.
- (h) The franchisee shall not be required to serve any person, firm or corporation who has made default in payment for any prior service rendered under this ordinance or serve any person who refuses to comply with the requirements set forth in this ordinance; otherwise, all persons, firms and corporations shall be served by the franchisee in an impartial manner. Where service has been terminated to a customer for failure to pay for services rendered, the franchisee may require a reasonable deposit to guarantee payment for future service before reinstating such service.
- (i) Stationary compactors for handling solid waste shall comply with applicable federal and state safety requirements. No such compactor shall be loaded so as to exceed the safe loading design limit or operation limit of the collection vehicles used by the franchisee. A person who wishes services for a compactor shall, prior to acquiring such compactor, inquire of the franchisee as to the compatibility with franchisee's equipment or equipment which the franchisee is willing to acquire.

Section 8. Rights of City.

- (a) The City reserves the right to close any street or streets used by the franchisee during the course of construction or during the course of necessary repairs thereto, or in the event that any street becomes dangerous to the operation of automobiles; it being understood, however, that the City shall not be held liable for damages to the franchisee or any of its servants or employees by reason of defects in streets, or by reason of failure to repair the same.
- (b) Failure to comply with a written notice to provide the service required by this ordinance, or to otherwise comply with the provisions of this ordinance after written notice shall be grounds for the immediate modification, termination or suspension of the franchise herein granted subject to the following subparagraphs.

- (1) After written notice from the Council is served either in person or by certified mail that such grounds exist, the franchisee shall have ten (10) days from the date of mailing or serving of the notice in which to comply, to request a public hearing before the Council or to request an extension of the time allowed for compliance as specified in this subsection. The Council may grant said extension if the franchisee can show reasonable cause.
- (2) In the event the franchisee or the City Council requests a public hearing, the franchisee shall be given twenty (20) days notice in advance of the time, date and place of the hearing.
- (3) At such a public hearing, the franchisee and other interested persons shall be given an opportunity to present oral, written or documentary evidence to the Council. The franchisee shall have the right to be present in person and to be represented by counsel and to present such witnesses and evidence as may be proper concerning the matter. The findings of the City Council thereon shall be conclusive; provided, however, that such action may be appealed to a court of competent jurisdiction.
- (4) If the franchisee fails to comply with the written notice within the specified time or fails to comply with the order of the Council entered upon the basis of written findings at the public hearing, the Council may immediately suspend, modify or terminate the franchise or make such action contingent upon continued non-compliance and such action shall not be subject to the seven (7) year termination contained in section 5.

Section 9. Rates.

The rates for service under this ordinance shall be those rates currently in effect upon the adoption of this Ordinance, unless modified by the Council. Said rates shall remain in effect until a change in rates is approved by the City Council. The City Council shall establish and, as considered necessary from time to time, change rates by resolution.

- (a) The rates to be charged to all persons by franchisee shall be adequate, reasonable, uniform and based upon the level and type of service rendered.
- (b) Nothing in this section is intended to prevent:
 - (1) The reasonable establishment of uniform classes of rates based on the type of waste collected, transported, disposed of, recycled or resource recovered; or the number, type, and location of customers served; or upon other factors so that rates are reasonably based on the cost of the particular service.
 - (2) Franchisee from volunteering service at reduced cost for a civic, community, benevolent or charitable purpose.
- (c) In the event either the City or franchisee proposes a rate change, written notice shall be given to the City or franchisee, respectively.
 - (1) The notice of proposed rates shall include the new proposed rates, a statement including relevant facts or dates justifying the proposed rate, a statement of comparative rate schedules of other Oregon cities of approximate size; an operating statement showing income and a breakdown of costs of operation for the past twelve (12) months; and such other relevant information as the City Council may desire.
 - (2) Within thirty (30) days following the written request for a rate change the Council shall hold a public hearing concerning the requested rate change and shall give due consideration to the following relevant factors:
 - a. The cost of performing the service provided by the franchisee;
 - b. The anticipated increase in the cost of providing this service;
 - c. The need for equipment replacement and the need for additional equipment to meet service needs, compliance with federal, state, local law, ordinances and regulations, or technological change;

- d. The investment of the franchisee and the value of the business and the necessity that the franchisee have a reasonable rate of return;
- e. The rates charged in other cities of similar size within the area for similar service;
- f. The rates will be just, fair, reasonable and sufficient to provide proper service to the public and to provide the level of service that the public finds necessary or desirable;
- g. The local wage scales, cost of management facilities and disposal costs;
- h. Any profit or cost savings resulting from recycling and any additional costs resulting from recycling;
- i. The concentration of customers and the volume of waste available in the area served;
- j. Methods of collection, storage, transportation, disposal, salvage, recycling or reuse of materials;
- k. The future service demands of the service area which must be anticipated in equipment, facilities, personnel or land;
- l. Extra charges for special pickups or pickups on days where service is not normally provided on a collection route, or any other specific type of special or unusual service; and
- m. Extra charges where the type or character of waste or solid waste, including but not limited to, waste with particularly offensive odors, requires special handling or service.

- (3) Immediately following the public hearing, the Council shall:
 - a. Adopt the proposed modification in the rate schedule by enacting an appropriate resolution; or
 - b. Refuse to adopt the amendment through a vote to deny, based upon a stated reasonable cause for denial.
- (d) Rates established by the Council are fixed rates and franchisee shall not charge more than the fixed rate except as provided in this subsection and paragraph (2) of subsection (b) above.
- (e) When no rate has been established for a service which the franchisee can provide at customer request, the franchisee shall charge a rate based on the factors outlined in Section 9(a), and (c)(2)a.
- (f) Until changed by the Council in an appropriate resolution, rates to be charged are those in effect on the effective date of this ordinance.

Section 10. Franchise Fee.

In consideration of the rights, privilege and franchise granted by this ordinance, the Franchisee shall pay to the City, three percent (3%) of the gross cash receipts resulting from any solid waste collection service which specifically requires a franchise under this ordinance. When any other person without a franchise may conduct the same activities, business or service within the City, no franchise fees shall be payable. To stimulate recycling and reuse and to make more materials recyclable, no franchise fee shall apply to gross receipts from collection or sales of recyclables or reusable materials. For the purpose of calculating the franchise fee, gross cash receipts shall not include revenues generated by the lease, rental or sale of any solid waste receptacle such as roll-off compactors, roll-off boxes, containers, carts or garbage cans.

The franchise fee shall be computed on an estimated gross receipts basis beginning April 1, 1991 and shall be payable to the City on or before the 20th day of the month following the end of each quarter thereafter. The payment for the quarter ending March 31 of each year shall be based on actual gross receipts for the preceding year and shall be accompanied by a statement of any adjustments made and the computation thereof to change from an estimated to actual basis.



Section 11. Assignment of Franchise.

This franchise shall not be assignable by the franchisee to any third person without the written consent of the City Council first being obtained (which consent shall not be unreasonably withheld), and until such assignee has filed with the City Recorder its acceptance and agreement to abide by the terms of this ordinance.

Section 12. Amendment of Ordinance.

This ordinance may be amended upon the written agreement of City and Franchisee, and upon a finding by the City that the amendment would be in the public interest.

Section 13. Enforcement.

Any firm, person or corporation violating any of the terms of this ordinance shall, upon conviction thereof, be subject to a fine of not less than \$5.00 nor exceeding \$100. Each separate day is a separate violation; provided, however, that violations of the same section of the ordinance may be joined in a single case.

Section 14. Repealing Clause.

Ordinance No. 544 is hereby repealed and all ordinances and all other ordinances in conflict herewith are hereby repealed.

Section 15. Separability Clause.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holdings shall not affect the validity of the remaining portions thereof.

Section 16. Emergency Clause.

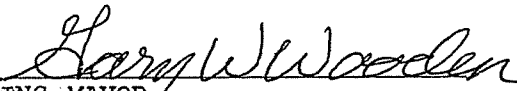
The Council desires and deems it necessary for the preservation of the health, peace and dignity of the City of Willamina that this ordinance take effect at once; and, therefore, an emergency is hereby declared to exist and this ordinance shall be in full force and effect from and after its passage and approval.

Passed by the Council this 27th day of June, 1991.

AYES: Councilors Alger, Branson, Greb, Hill, Horne

NAYS: None

Submitted to and approved by the Mayor this 27th day of
June, 1991.


ACTING MAYOR

ATTEST:


CITY RECORDER

ACCEPTED BY FRANCHISEE: West County Sanitary Service, Inc.

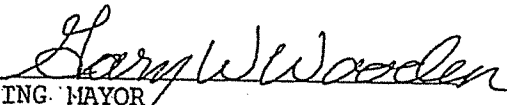
BY: _____

Passed by the Council this 27th day of June, 1991.

AYES: Councilors Alger, Branson, Greb, Hill, Horne

NAYS: None

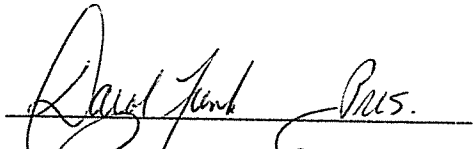
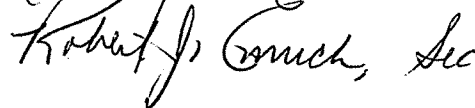
Submitted to and approved by the Mayor this 27th day of
June, 1991.


ACTING MAYOR

ATTEST:


CITY RECORDER

ACCEPTED BY FRANCHISEE: West County Sanitary Service, Inc.

BY:  Pres.
 Sec.