

ORDINANCE NO. 793

AN ORDINANCE GRANTING TO CANBY DISPOSAL COMPANY AN EXCLUSIVE RIGHT, PRIVILEGE AND FRANCHISE, SUBJECT TO CERTAIN EXCEPTIONS, FOR A PERIOD OF FIVE YEARS TO ESTABLISH, OPERATE AND MAINTAIN A BUSINESS OF GATHERING, COLLECTING AND DISPOSING OF ALL SOLID WASTE, WASTE, AND RECYCLABLE MATERIAL AND REPEALING ORDINANCE NO. 401 AND ALL OTHER ORDINANCES AND AGREEMENTS IN CONFLICT HEREWITH, AND DECLARING AN EMERGENCY.

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. Short Title. The ordinance shall be known as the "Solid Waste Management and Recycling Ordinance"; and may be so cited and pleaded; and shall be cited as "this ordinance."

Section 2. Purposes, Policy and Scope. In order to protect the health, safety, welfare and environment and to conserve energy and natural resources within the City, to provide the Opportunity to Recycle, and to otherwise provide for solid waste management, it is declared to be the public policy of the City to regulate solid waste management to:

1. Adopt the priorities and policies specified in ORS 459.015.
2. Provide the Opportunity to Recycle as part of the overall solid waste collection system taking advantage of coordinated area-wide service, promotion, education and marketing and, as provided in ORS 459.200 (6)(c), giving due consideration to those providing recycling or collection service in June, 1983, and continuing to the effective date of this ordinance.
3. Insure safe, efficient, economical and comprehensive solid waste service.
4. Insure fair and equitable consumer rates and to prohibit rate preferences or other practices that might be discriminatory.
5. Conserve energy and material resources, reduce solid waste and promote material and energy recovery in all forms.
6. Provide for technologically and economically feasible solid waste and resource recovery by and through franchises.
7. Eliminate overlapping service and thereby to increase efficiency and to decrease truck noise, street wear, energy waste, air pollution and public inconvenience.
8. Protect public health and the environment.

9. Provide public standards.
10. Protect against improper and dangerous handling of hazardous wastes.
11. Provide a basis and incentive for investment in solid waste equipment and resource recovery, facilities, sites and technology.

Section 3. Definitions.

1. The following definitions from ORS 459.005 and 459.165 are hereby incorporated in this ordinance: "Collection Franchise"; "Collection Service"; "Opportunity to Recycle"; "Person"; "Recyclable Material"; "Resource Recovery"; "Energy Recovery"; "Material Recovery"; "Recycling"; "Reuse"; "Solid Waste"; "Solid Waste Management"; "Source Separate"; and "Waste".

2. Specific Definitions:

- a) "City" is the City of Canby, Oregon.
- b) "Council" is the City Council of the City of Canby, Oregon.
- c) "Franchisee" is Canby Disposal Company which is granted a franchise to do any activity regulated by this ordinance.
- d) "Hazardous Waste" is 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 by the franchisee or a disposal site utilized by the franchisee to be hazardous to service workers, to service equipment or to the public.
- e) "Person" is any individual, partnership, association, corporation, trust, firm, estate, joint venture or other private legal entity or any public agency.
- f) "Resource Recovery" is 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.
- g) "Service" means the collection, transportation and disposal of solid waste and resource recovery from solid waste. For the purposes of this ordinance, service may be divided into appropriate categories for the purpose of granting franchises. The "service area" is the City.
- h) "Solid Waste" is all solid waste or semi-solid waste including, without limitations: garbage, rubbish, refuse, trash, ashes or swill; newsprint or wastepaper; corrugated or cardboard; grass

clippings; compost; residential, commercial, industrial, governmental or institutional wastes; discarded home or industrial appliances; equipment or furniture; vehicle parts or ties; vegetable or animal wastes; and other wastes.

- i) "Source-Separation" is the separation of waste materials by the generator, in preparation for recycling or reuse.
- j) "Solid Waste Management" is the prevention of or reduction of solid waste; management of service; and facilities and equipment necessary or convenient to such activities.
- k) "Waste" is 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.
 - (1) The fact that all or any part of the materials may have value and thus be recovered does not remove them from this definition.
 - (2) The fact that the source, generator or producer of materials has separated or segregated such material from other wastes does not remove the materials from this definition.

Section 4. Franchise. There is hereby granted to Canby Disposal Company the exclusive right, privilege and franchise under the terms of this ordinance, subject to Section 12 herein, to establish, operate and maintain, within the City of Canby, a collection service for solid waste and recyclable material. Except as provided in Section 9 of this ordinance, no person shall operate a collection service or collect solid waste, waste and recyclable materials within the City of Canby.

Section 5. Franchise Term. The rights, privileges and franchise granted in this ordinance shall be considered as a continuing five-year franchise subject to termination as follows:

- 1. Unless grounds exist for suspension, modification or revocation of the franchise under Section 19, this franchise shall be considered as a continuing five-year term. That is, beginning on January 1 of each year, the franchise will be considered renewed for an additional five-year term, unless at least thirty (30) days prior to January 1 of any year the City notifies the franchisee of intent to terminate the franchise. Upon the giving of such notice of termination, the franchisee shall have a franchise which will terminate five years from the date of the Council resolution.
- 2. In the event the franchisee desires to terminate service given under the terms of this franchise, then it shall give not less than two

years notice of the intent to terminate service and obligations under the franchise.

Section 6. Area of Franchise. This franchise extends to the present boundaries of the City of Canby. It is also intended to operate within the City of Canby and to include any portion which may hereafter be annexed to the City of Canby during the term hereof.

Section 7. Franchise Fee. The franchisee shall pay as consideration for the franchise granted by this ordinance an annual franchise fee at the rate of \$1.00 per year per customer. The franchise fee shall be set and payable annually based on the number of residential customers on January 1 of each year. Such payment shall be made within sixty (60) days following such valuation date each year. The City of Canby shall have the right to inspect the books and records of franchisee for the purpose of determining the number of customers if it so wishes to do so. Franchisee shall not make any charge to the City for collecting and transporting of garbage deposited in standard containers and produced or accumulated on CITY property, including though not exclusively, the City Hall, City Parks, Fire Stations, Cemeteries or any other City office or City building; and the Franchisee shall make regular garbage pick-ups at such City buildings, offices, parks, cemeteries or other city facilities as may be required by the City Council.

Section 8. Franchise Fee Fund. There is hereby established a Franchise Fee Fund, a distinct from the General Fund, wherein all franchise fees derived under the provisions of this ordinance shall be accounted for by the following purposes:

1. Research, education and advertising relating to resource recovery and solid waste management.
2. Park maintenance and beautification.

Section 9. Persons and Practices Exempt from this Ordinance. Nothing in this ordinance requires a collection franchise for collection service 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. Any religious, charitable, nonprofit, governmental, educational, benevolent or fraternal organizations, including a church, school, or scout group, which organization is using the activity for fund-raising, may, after applying for and receiving a permit from the City Administrator or his designee, collect, transport and reuse or recycle totally source-separated materials for a limited duration

for a limited activity; provided, such activity has no significant impact on the franchisee under this ordinance.

3. The collection, transportation or redemption of returnable beverage containers under ORS Chapter 459 and that portion thereof commonly known as the "Bottle Bill".
4. The generator or producer who transports and disposes of waste created as a 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 and sludge collection. "Janitorial Service" does not include cleanup of accumulated or stored wastes.
5. The transportation by a person of solid waste or source separated recyclable materials generated or produced by such person to a disposal site, resource recovery site or market. In the case of non-owner occupied property, the waste is generated or produced and is owned by the occupant and not the landlord, property owner, or association of property owners, or the agent of such landlord, property owner or association.
6. The purchase of totally source-separated solid waste for fair market value. The purchase or exchange of source separated recyclable materials as exempted by ORS 459.192 as interpreted by any Rules of the Oregon Environmental Quality Commission.
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 franchise agreement.
8. The providing of collection service for hazardous wastes.

Section 10. Practices Prohibited without a Franchise. Unless exempted by Section 9 of this ordinance, no person shall, within the City limits:

1. Solicit customers for collection service;
2. Advertise the providing of collection service; or
3. Provide collection service in the City.

Section 11. Franchisee Responsibility.

1. The franchisee shall:

- a) Dispose of any solid waste collected that is not to be re-source-recovered at a site approved by the appropriate government unit having jurisdiction and in compliance with ORS Chapter 459 and any regulations adopted under such legislation.
- b) Provide and keep in force public liability insurance in the amount of not less than \$100,000.00 for injury to a single person, \$300,000.00 to a group of persons, and \$50,000.00 property damage all relating to a single occurrence, which shall be evidence by a certificate of insurance filed with the City Recorder within thirty (30) days after the adoption of this ordinance and renewed and filed annually thereafter.
- c) Provide sufficient collection vehicles, containers, facilities, personnel and finances to provide all types of necessary service. Where necessary, the franchisee may subcontract with others to provide certain types of specialized service, but the franchisee shall remain ultimately responsible for the service under the franchise.
- d) Trucks shall be equipped with a leakproof metal body of the compactor type. The franchisee may use a specially designed, motorized local collection vehicle for transporting solid waste for short distances from residences or commercial stops to waiting trucks. Such local collection vehicle shall have a container that adequately prevents the scattering of a load. All vehicles shall be operated in conformity with all ordinances of the City.
- e) Provide notice to potential and actual recycling and reuse sources and sponsor educational and promotional activities to increase public participation in recycling.
- f) Provide any additional recycling or reuse service as directed by the City Council when the Council finds that it is now or is hereafter required by state laws or regulations or by recycling or reuse plans adopted by the City Council.

2. The franchisee may impose reasonable requirements on those participating in source separation programs to ensure quality control necessary to assure successful processing and marketing.

3. The franchisee shall not:

- a) Give any rate preference to any person, locality or type of solid waste stored, collected, transported, disposed of or

resource recovered. This paragraph shall not prohibit uniform classes of rates based upon length of haul, type or quantity of solid waste handled and location of customers so long as such rates are reasonably based upon costs of the particular service and are approved by the City Council in the same manner as other rates, nor shall it prevent any person from volunteering service at reduced cost for a charitable, community, civic or benevolent purpose.

b) Transfer this franchise or any portion thereof to other persons, except as provided in Section 12, 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 franchisee. The Council may attach whatever conditions it deems necessary to guarantee maintenance of service and compliance with this ordinance.

4. The franchisee is not required to store, collect, transport, transfer, dispose of or resource-recover any hazardous waste.

Section 12. Recycling. In consideration of the franchise herein granted, Franchisee agrees to conduct a recycling program as follows:

1. Franchisee shall provide the following services to all citizens of the City of Canby:

a) Establish a pickup schedule for curbside and drop facility collection which schedule shall provide a uniform collection day.

b) Provide all necessary equipment and labor to collect and process the full line of recyclable material required by ORS chapter 459.

c) Provide "on call pickup" for items such as appliances or bulk quantities of other recyclable materials as required by ORS chapter 459.

d) The aforesaid services shall be provided to all citizens of Canby whether or not they are customers of franchisee for normal garbage collection. The services required by ORS chapter 459 will be free of charge to participating citizens.

2. Citizens who desire to participate in the curbside pickup program must place recyclable material promptly on the curb by 8:00 o'clock a.m. on the day of collection. Newspapers and other lightweight material shall be secured against blowing away in normal winds.

Glass containers must be rinsed out and metal cans rinsed out with the ends removed and flattened.

3. Franchisee agrees to keep records of citizen participation in the recycling program and of the volume and types of material collected.
4. Franchisee agrees to pick up recyclable material in a clean and orderly fashion.
5. It is contemplated that franchisee may assign that portion of the franchise obligations of franchisee relating to the recycling program; however, such responsibility shall not be assigned nor transferred by franchisee without the prior approval of the City which approval the City agrees not to unreasonably withhold.
6. Effective July 1, 1986, Franchisee shall provide its customers the opportunity to recycle in accordance with the provisions of Chapter 729, Oregon Laws, 1983, pursuant to the rules and guidelines promulgated thereunder.

Section 13. Supervision. Service provided under the franchise shall be under the supervision of the City Council. The franchisee shall, at reasonable times, permit inspection of his facilities, equipment, accounts, records and personnel providing service.

Section 14. Rate Determination.

1. Rates for service shall be set by resolution of the Council. In determining the appropriate rate to be charged by the franchisee, the Council shall consider:
 - a) The cost of performing the service provided by the franchisee.
 - b) The anticipated increases in the cost of providing the service.
 - c) The need for equipment replacement and the need for additional equipment to meet service needs; compliance with federal, state and local law ordinances and regulations; or technological change.
 - d) The investment of the franchisee, the value of its business, and the necessity that the franchise have a reasonable rate of return.
 - e) The rates in other cities for similar service.
 - f) The public interest by assuring reasonable rates to enable the franchise to provide efficient and beneficial service to the residents and other users of the service.

- g) ORS 459.200.
 - h) Current and projected revenues and expenses.
 - i) The cost of acquiring and replacement of equipment.
 - j) The services of management.
 - k) A reasonable return to the franchisee for doing business based on a percentage of gross receipts.
 - l) The net cost of reuse and recycling together with the cost of notice, promotion and education of and for recycling and reuse.
 - m) Research and development.
 - n) Such other factors as the Council deems relevant.
2. The maximum rates to be charged shall be set in the resolution. Nonscheduled services may be provided at the reasonable cost of providing the service giving consideration to the standard in this section.

Section 16. 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 hazardous waste for collection or disposal by franchisee without prior written notice to and prior written approval of the City Manager and office of the franchisee. This shall not apply to minor quantities of wastes generated at or by a single family residential unit.
- 2. No person shall place material in or remove material from a solid waste collection container without permission of the owner of the container.
- 3. No unauthorized person shall remove solid waste placed out for collection and resource recovery.
- 4. No persons shall install an underground solid waste container for storage and collection after the effective date of this ordinance. The franchisee is not required to service an underground container unless the person responsible for its places the container above ground prior to time of collection.
- 5. 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.

6. Each customer shall provide safe access to the solid waste container or wastes without risk or hazard to the franchisee's employees, the public or the franchisee. When the Council finds that a private bridge, culvert or other structure or road is incapable of safely carrying the weight of the collection vehicle, the collector shall not enter on such structure or road. The user shall provide a safe alternative access point or system.
7. No container designed for mechanical pickup shall exceed safe loading weights or volumes as established by the franchisee's agreement to protect service workers, the customer, the public and the collection equipment.
8. 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.
9. Stationary compacting devices for solid wastes shall comply with federal and state safety standards and provide adequate protection to user and be compatible with franchisee's equipment.
10. No persons shall block access to any container or drop box or roll-off box supplied by the franchisee. The franchisee may charge extra, if applicable, for return service to such blocked container or drop box or roll-off box.
11. Every person who generates or produces waste shall remove or have removed all putrescible wastes at least every seven days. More frequent removal may be required where facility or service involves the public health. All wastes shall be removed at sufficient frequency as to prevent health hazards, nuisances or pollution.
12. 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 periodic maintenance to containers owned by the franchisee.
13. Each customer shall place all cans and containers in an accessible location no more than twenty-four (24) hours prior to collection and shall remove all cans and containers to a place not less than twenty feet (20') from the curb-line abutting the owner's property within twenty-four (24) hours after removal of waste by the franchisee.

14. To prevent recurring back and other injuries to collectors and other persons and to comply with job safety regulations:
 - (a) No garbage can shall exceed sixty pounds gross loaded weight nor thirty-two (32) gallons in size. Only round garbage cans shall be used. Cans should be tapered with a smaller bottom than top opening.
 - (b) To protect against injuries to users or collectors, to protect against damage and spilling during cold weather, all cans shall be rigid, rodentproof and fireproof.

Section 17. Payment of Services.

1. Any person who received service from the franchisee shall be responsible for payment of service in accordance with the approved rates for the service received.
2. When the owner of a rental or lease facility, the owner of a single family of multiple dwelling unit, mobile home or trailer space has been previously notified in writing by the franchisee of his contingent liability, the property owner shall be responsible for service provided to the occupant of such unit if the occupant does not pay for the service. The owner of any multiple unit or rental or lease facility having three or more dwelling units shall be primarily responsible for the services provided to the occupants of such facility and shall be billed for the service.
3. The franchisee may require payment for residential service and multi-family residential service up to three (3) months in advance. The franchisee may bill up to three (3) months in advance, arrears or any combination. Where billed in advance, the franchisee will refund a prorate portion of the payment for any complete month in which service is not provided. The franchisee may charge at the time service is provided to a drop box or roll-off box service customer where the customer has not previously established credit with the franchisee.
4. The franchisee may terminate service to a customer for nonpayment by the customer within forty-five (45) days of the mailing of the bill. In the event of such termination for nonpayment, the franchisee may require advance payment in the future from said customer before beginning service.
5. If approved in the rate schedule, the 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.

Section 18. Termination of Service. The franchisee shall not terminate service to all or a portion of his customers unless:

1. The street or road access is blocked and there is no alternate route; provided, that the City shall not be liable for any such blocking of access;
2. Excessive weather conditions render providing service unduly hazardous to persons requesting service or such termination is caused by accidents or casualties caused by an act of God or a public enemy; or
3. A customer has not paid for service provided after a regular billing and after a fifteen (15) day written notice to pay.

Section 19. Suspension, Modification or Revocation of a Franchise.

1. The City may suspend, modify or revoke franchise agreement upon the following:
 - a) 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.
 - b) After written notice from the City Administrator that such grounds exist, the franchisee shall have at least twenty (20) days from the date of mailing of the notice in which to comply or request a public hearing before the Council.
 - c) At a public hearing, the franchisee and other interested persons shall have an opportunity to present oral, written or documentary evidence to the Council.
 - d) 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.
3. If due to a strike or other event, the City Council finds an immediate, serious danger to the public that creates a health hazard or serious public nuisance, the City Council may, after a minimum of twenty-four (24) hours actual notice to the franchisee authorize

another person to temporarily provide service under this ordinance; or the City may provide such service. In any event, the franchisee agrees as a condition of his franchise to attempt to provide any necessary facilities or equipment that he might have available for providing such service. In the event the power under this section is exercised, the usual charges for the service shall prevail and the franchisee shall continue to bill and collect the usual rate for such services but shall reimburse the City or the person authorized by the City to temporarily provide service for actual cost.

Section 20. 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.
3. Any action or determination of the City Council under this ordinance may be appealed to a court of competent jurisdiction.

Section 21. City Enforcement.

1. The City shall enforce the provisions of this ordinance by administration, 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.
2. Any finding by any court of competent jurisdiction that any portion of this ordinance is unconstitutional or invalid shall not invalidate any other provisions of this ordinance.

Section 22. Penalties. Violation by any persons of the provisions of this ordinance shall be punished by a fine of not more than \$500. Penalties in this section are not in lieu of other remedies as provided in this ordinance. Each day in violation is a separate offense; provided, however, that two or more such continuing offenses may be joined in the same action.

Section 23. Emergency Clause. In view of the necessity for solid waste management and to better promote the safety, health and welfare of the citizens of Canby, an emergency is hereby declared to exist and this ordinance shall take effect immediately upon final reading and passage by the Canby City Council.

Submitted to the Council and read the first time at a regular meeting thereof on the 4th day of June, 1986, ordered posted in three (3) public and conspicuous places in the City for a period of five (5) days as authorized by the Canby City Charter; and to come up for final reading and action by the Canby City Council at a regular meeting thereof on the 18th day of June, 1986, commencing at the hour of 7:30 o'clock p.m., at the Council's regular meeting chambers at the Canby City Hall, in Canby, Oregon.

Marilyn K. Perkett
Marilyn K. Perkett, City Recorder

Passed on the first reading by the Canby City Council at a regular meeting thereof on the 18th day of June, 1986.

VOTE: YEA 6 NAY 0 ABSTENTION 0

Wm. Pulver
William F. Pulver, Mayor

ATTEST:
Marilyn K. Perkett
Marilyn K. Perkett, City Recorder