

# ORDINANCE NO. 697

## **AN ORDINANCE AMENDING CHAPTER 12.10 AND CHAPTER 12.01.020 OF THE TROUTDALE MUNICIPAL CODE TO ESTABLISH PROVISIONS THAT REQUIRE PERSONS PROVIDING SERVICES FOR THE COLLECTION AND/OR TRANSPORTATION OF EXEMPT LOADS OF SOLID WASTE FOR COMPENSATION TO OBTAIN A PERMIT THROUGH THE CITY OF TROUTDALE.**

### **THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:**

1. On May 9<sup>th</sup>, 2000, the United States District Court for the District of Oregon entered its permanent injunction in the case of AGG vs. Washington County where the Court declared that Washington County and the City of Beaverton are permanently enjoined from enforcing their Solid Waste Control Codes to the extent of imposing substantive standards affecting the price, route or service of plaintiff A.G.G. Enterprises, Inc. in the transport of source-separated loads of recyclable materials and mixed loads containing solid waste and recyclable materials for single generator non-residential accounts from, in and through Washington County and the City of Beaverton to manufacturers, recycling facilities or material recovery facilities, but not to a transfer station or a landfill.
2. The City of Troutdale finds that the terms of the injunction and reasoning of the court's opinion in support of the injunction might also apply to the requirements of Chapter 12.10 of the City of Troutdale Municipal Code and the franchise issued pursuant to it, but only to the extent of barring the City from regulating the routes, rates or service of a motor carrier or motor private carrier in transportation of non-putrescible source-separated loads of recyclable materials and mixed loads for single-generator non-residential accounts from, in and through the City to manufacturers, recycling facilities or material recovery facilities, but not to a transfer station or landfill.
3. The City of Troutdale retains the authority and responsibility to regulate all types of solid waste within its jurisdiction to ensure that the public health, safety and welfare of its residents is maintained.
4. Franchised haulers, motor carriers, and motor private carriers will under this ordinance be allowed to compete on an equal basis with one another in the transport of exempt loads as long as they obtain a permit from the City of Troutdale.

### **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TROUTDALE**

1. Chapter 12.10 of the Troutdale Municipal Code is amended to read as shown in Exhibit A.
2. Chapter 12.01, Section .020 of the Troutdale Municipal Code is amended by adding the following definitions:

- “Exempt Load” means a source-separated load of recyclable materials or a mixed load containing solid waste and recyclable materials from single-generator non-residential accounts transported from, in and through the City of Troutdale to a manufacturer, recycling facility or material recovery facility, but not to a transfer station or landfill. Multi-family accounts such as apartment complexes and condominiums are considered to be residential accounts.
- “Material Recovery Facility” means a solid waste management facility that separates materials for the purposes of recycling from an incoming highly recoverable mixed load of non-putrescible waste by using manual and/or mechanical methods and achieves a verifiable minimum 25% recovery rate. It also means a facility that primarily accepts previously separated recyclables.
- “Mixed Load” means a load containing both (1) non-recyclable solid waste, and (2) recyclable material, with no more than a trivial amount of putrescible waste.
- “Multi-family” means any multi-dwelling building or group of buildings that contain(s) five or more dwelling units on a single tax lot. Multi-family also includes certified or licensed residential care housing, such as adult foster care homes and group homes.
- “Putrescible Waste” means solid waste containing organic materials that can be rapidly decomposed by microorganisms, and which may give rise to foul smelling, offensive products during such decomposition or which is capable of attracting or providing food for birds and potential disease vectors such as rodents and flies. (OAR 340-093-0030 (70))
- “Recyclable” means material that still has or retains useful physical, chemical or biological properties after serving its original purpose(s) or function(s) and that can be recycled for the same or other purpose(s).
- “Source-Separate” and “Source-Separated” means that the person who last uses recyclable material separates the recyclable material from solid waste. (ORS 459.005 (26))
- “Source-Separated Recyclable Load” means a load of source-separated recyclable materials that contains less than 5% residual by weight.
- “Transfer Station” means a fixed or mobile facility other than a transportation vehicle where solid waste is deposited temporarily after being removed from the site of generation but before being transported to a final disposal location. (ORS Chapter 459.005 (27))

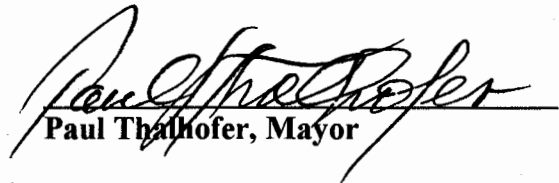
And by amending the definition of “Solid Waste” to read as follows:

- “Solid Waste” means all useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded

commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semi-solid materials, dead animals and infectious waste as defined in ORS 459.386. The term does not include:

1. Hazardous waste as defined in ORS 466.005;
2. Materials used for fertilizer, soil conditioning, humus restoration, or for other productive purposes or which are salvageable for these purposes and are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals, provided the materials are used at or below agronomic applications rates. (ORS 459.005(24))

YEAS: 7  
NAYS: 0  
ABSTAINED: 0

  
Paul Thalhofer, Mayor

Dated: 10-11-00

  
Debbie Stickney, City Recorder

Adopted: 10-10-00

# EXHIBIT A

## Chapter 12.10

### SOLID WASTE

#### Sections:

12.10.010	Title.	
12.10.020	Intent and scope.	
12.10.030	Franchise term.	
12.10.040	Permit Term .	
12.10.50	Franchise Fee	
12.10.060	Permit Fee	
12.10.070	Franchise Agreement	
12.10.080	Permit	
12.10.090	Solid Waste Rates	
12.10.100	Administration	
12.10.110	Compliance	and
	Enforcement	
12.10.120	Private Right of Action	

#### 12.10.010 Title.

This chapter of the code shall be entitled "solid waste." (Ord. 600-94-0 (part), 1994)

#### 12.10.020 Intent and scope.

A. Pursuant to the statutes of the state of Oregon and the powers granted in the Charter of the city, the council declares its intent to insure the safe accumulation, storage, collection, transportation, and disposal or recovery of solid waste in the city.

B. The council finds, determines and declares the necessity of providing for the city's solid waste needs by the establishment of a non-exclusive franchise for solid waste collection and transportation services for compensation.

C. It is unlawful for any person to provide or offer to provide services for the collection and/or transportation of solid waste for compensation without

obtaining a franchise from the city, except for the following wastes:

1. Sewage sludge, septic tank pumpings, cesspool pumpings and the like;
2. Motor vehicles and motor vehicle parts;
3. Construction and demolition debris;
4. Redeemable beverage containers;
5. Wastes that may be repairable or cleanable and are collected by private charitable organizations regularly engaged in such activity;
6. Wastes produced as an incidental part of other business activity such as janitorial services, landscaping services and the like. (Ord. 600-94-0 (part), 1994)
7. Exempt loads so long as such person holds a permit in accordance with the requirements of this Chapter.

D. It is unlawful for any person to provide or offer to provide services for the collection and/or transportation of exempt loads for compensation without obtaining a Permit from the city.

#### 12.10.030 Franchise term.

The franchise agreement provided for by this chapter shall be for a period specified in the franchise agreement but not to exceed ten (10) years. (Ord. 680-99-O, 1999)

#### 12.10.040 Permit term

The permit provided for by this chapter shall be issued for the fiscal year beginning July 1<sup>st</sup> and ending June 30<sup>th</sup> for a term not to exceed one year.

#### 12.10.050 Franchise fee.

A. As compensation for the franchise granted to the franchisee and for the use of city streets, the franchisee shall pay to the city a fee equal to four percent of gross revenues resulting from the solid waste services conducted under this franchise.

B. In the event that the franchisee shall pay a franchise fee of more than four percent to any city or municipal corporation within the Portland-Metro area during the duration of the Franchise Agreement, then the franchisee shall inform the City of the same and the City shall have the right to require and receive the same percentage as said other city or municipal corporation, to be effective upon the next rate change following a rate review process. (Ord. 682-00-O, 2000)

#### **12.10.060 Permit Fee**

As compensation for the permit granted to the permittee, the permittee shall pay a permit fee of \$400. Permit fees shall be paid within thirty days of the beginning of each permit term. Interest shall accrue at 1 ½% per month, compounded daily, on balances which remain unpaid as of July 31<sup>st</sup> of each year.

#### **12.10.070 Franchise agreement.**

The city and the franchisee shall enter into a written franchise agreement describing the duties and responsibilities of each party. This agreement shall be authorized by a resolution of the council and may, from time to time, be changed by resolution of the council. (Ord. 600-94-0 (part), 1994)

#### **12.10.080 Permits.**

A. Permit applications shall be submitted to the city on form provided by the city and shall include the name, street and mailing address, and business telephone number of the applicant; the applicant business ownership information, responsible official and contact person; any other relevant information deemed necessary by the Public Works Director; and an application fee of \$400

B. A permit shall be issued within thirty days of the city's receipt of the

application. The city may deny an application or revoke a Permit for violations of this chapter, including but not limited to failure to pay fees or fines. Permits shall be authorized by the public works director.

#### **12.10.090 Solid waste rates.**

A. Except for exempt loads, the council, by resolution shall establish rates which the franchisee may charge for solid waste services and may, from time to time, by resolution change those rates.

B. Except for exempt loads, when a new or unusual solid waste service not included in the rate structure approved by the council is requested, the franchisee may establish a reasonable cost for providing such service. However, if such service is provided for more than one month, the franchises shall notify the public works director in writing of the service provided, the rate established and the basis for the rate. (Ord. 600-94-0 (part), 1994)

#### **12.10.100 Administration**

The public works director shall be responsible for the administration of this chapter. (Ord. 600-94-0 (part), 1994)

#### **12.10.110 Compliance and Enforcement**

In addition to being a violation of title 12 and subject to sections 12.01.080 and 12.01.090, and notwithstanding the nuisance provisions in chapter 8.28, a violation of this chapter is a nuisance. The City may, in addition to other remedies provided by law, file an action in a court of appropriate jurisdiction seeking a civil penalty, recovery of unpaid fees owed, an injunction for abatement, and court costs.

### **12.10.120 Private Right of Action**

Notwithstanding language to the contrary in section 12.01.090 (A), a private enforcement cause of action is hereby created for any person to bring a civil action alleging violation of this chapter in a State court of appropriate jurisdiction, seeking appropriate judicial remedies, including injunctive relief and damages. A copy of any such suit that is filed shall be mailed or delivered to the City Administrator's Office when it is filed. Any person who prevails in an action under this section, pertaining to private right of action, shall be entitled to his, her or its reasonable costs and attorney's fees, including those on appeal.