

ORDINANCE NO. 725

AN ORDINANCE AMENDING CHAPTER 12.10 OF THE TROUTDALE MUNICIPAL CODE TO REMOVE PROVISIONS THAT ESTABLISHED A PERMIT SYSTEM FOR PERSONS PROVIDING THE SERVICE OF COLLECTING AND/OR TRANSPORTING EXEMPT LOADS OF SOLID WASTE FOR COMPENSATION WITHIN THE CITY OF TROUTDALE AND REVERTING TO AN EXCLUSIVE FRANCHISE.

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The Troutdale City Council adopted Ordinance No. 697 as a result of the injunction placed on Washington County in the Case of AGG vs. Washington County. Ordinance No. 697 added a permit system for exempt loads of solid waste to chapter 12.10 of the Troutdale Municipal Code to comply with the court's injunction.
2. Subsequently, the United States Court of Appeals for the Ninth Circuit decided against AGG in the case of AGG vs. Washington County. This negated the need for the permit system for exempt loads.
3. The City Council formally delineated the solid waste collection service area for the City of Troutdale. This service area will be served by an exclusive franchise agreement with the City's chosen franchised waste hauling contractor. Delineating a service area and serving it through an exclusive franchise is consistent with the City's historical administration of the solid waste program.
4. This ordinance removes the permit system for exempt loads and provides for an exclusive franchise agreement.

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

Section 1. Amendment. Chapter 12.10 of the Troutdale Municipal Code is amended to read as shown in Exhibit A.

Section 2. Retroactive Application. The repeal of the permit system for exempt loads and the establishment of an exclusive franchise agreement provided by this ordinance shall be retroactive and applied beginning October 1, 2002. Permit applications that are pending as of the date the Council adopted this ordinance shall be denied.

YEAS: 7
NAYS: 0
ABSTAINED: 0


Paul Thibodeau, Mayor

Dated: 11-13-02


Debbie Stickney, City Recorder

Adopted: November 12, 2002

Chapter 12.10

SOLID WASTE

Sections:

- 12.10.010 Title.**
- 12.10.020 Intent and scope.**
- 12.10.030 Franchise term.**
- 12.10.040 Franchise fee.**
- 12.10.050 Franchise agreement.**
- 12.10.060 Solid waste rates.**
- 12.10.070 Compliance and enforcement.**
- 12.10.080 Private right of action.**
- 12.10.090 Administration.**

12.10.010 Title.

This chapter of the code shall be entitled "solid waste."

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 an exclusive franchise for solid waste collection and transportation services for compensation within a delineated service area.

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;
- 7. Wastes that are exempt under ORS 459A.075.

12.10.030 Franchise term.

The exclusive franchise agreement provided for by this chapter shall be for a period specified in the franchise agreement but not to exceed ten (10) years.

12.10.040 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 five 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 five 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.

12.10.050 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.

12.10.060 Solid waste rates.

A. 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. 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 franchisee shall notify the public works director in writing of the service provided, the rate established and the basis for the rate.

12.10.070 Compliance and enforcement

If there is a violation of this chapter, 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.

12.10.080 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.

12.10.090 Administration

The public works director shall be responsible for the administration of this chapter.