

A BILL FOR AN ORDINANCE REPEALING)
ORDINANCE NO. 581 AND ORDINANCE)
NO. 606, AND RELATING TO)
SOLID WASTE MANAGEMENT IN THE CITY)
OF LEBANON, OREGON, INCLUDING, BUT)
NOT LIMITED TO, GRANTING TO SPADY)
REDFIELD CORPORATION, AN OREGON)
CORPORATION dba LEBANON SANITATION)
COMPANY, 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.)

ORDINANCE BILL NO. 19
for 1978.
ORDINANCE NO. 1684

THE PEOPLE OF THE CITY OF LEBANON 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 herein as "this Ordinance."

Section 2. Purpose, Policy and Scope. It is declared to be the public policy of the City of Lebanon to regulate Solid Waste Management to:

- (1) Insure safe, economical and comprehensive Solid Waste Service.
- (2) Insure rates that are just and reasonable and adequate to provide necessary public service.
- (3) Prohibit rate preferences and any other practice that might be discriminatory.
- (4) Provide for technologically and economically feasible resource recovery, by and through the Franchisee.

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, lessees, 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 Lebanon.

(3) Franchisee. The person granted the Franchise by Section 4. of this Ordinance, or a subcontractor of 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. Exclusive Franchise and Exceptions. There is hereby granted to Spady-Redfield Corporation, dba Lebanon Sanitation Company, the exclusive right, privilege and franchise to provide service within the city limits as of the effective date of this ordinance and in any area that may be hereafter annexed to the city. For the purpose of the Franchise, the Franchisee shall have the exclusive right to use the streets of the city of Lebanon. No other person shall provide service for compensation or offer to provide or advertise for the performance of such service to any owner, tenant, lessee, or occupant of any real property in the city of Lebanon.

Nothing in this Ordinance shall:

(1) Prohibit any person from engaging in the collection of source separated materials for resource recovery for the purpose

of raising funds for a charitable, civic or benevolent activity, after notice to the Franchisee and permission from the Franchisee or the Council.

(2) Prohibit any person from transporting Solid Waste he produces himself to an authorized disposal site or resource recovery facility. The Solid Waste produced by a tenant, licensee, occupant or person other than the owner of the premises is produced by such person and not by the landlord or property owner. The Solid Waste produced as incidental waste by a contractor may be hauled by the contractor.

(3) Prohibit any person from contracting with the state or a federal agency to provide service to such agency under a written contract with such agency.

Section 5. Franchise Term. The rights, privileges, and Franchise herein granted shall be considered as a continuing five (5) 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 1 of each year, the Franchise shall be considered renewed for an additional five year term unless at least 30 days prior to January 1 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 or any part 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. The costs of arbitration shall be borne equally.

Section 6. Franchise Fee. In consideration of the Franchise granted by this Ordinance, the Franchisee shall pay to the City of Lebanon, Oregon, three per cent (3%) of gross receipts for the rights, privilege and Franchise, and said sum shall be paid monthly.

Section 7. Franchisee 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 \$50,000 property damage, all relating to a single occurrence, which shall be evidenced by a certificate of insurance filed annually by June 1 with the City Recorder.

(c) Provide sufficient collection vehicles, containers, facilities, personnel and finances to provide all types of necessary service; but where necessary, the Franchisee may subcontract with others to provide certain types of specialized service, in accordance with the provisions of this Ordinance.

(d) 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, time 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.

(b) No transfer of this Franchise or any portion thereof shall occur without the prior approval of the City Council. As used in this section, "transfer" includes the sale or transfer of stock in the Franchisee corporation except incidental transfers of stock of a family nature. This Franchise is granted on the basis of present ownership and control of the Franchisee corporation, and any transfer in violation of this subsection shall be grounds for possible termination of the Franchise. A pledge of this Franchise as financial security shall not be considered as a transfer for the purposes of this subsection.

Section 8. Supervision. Service provided under this Franchise shall be subject to the supervision of the City Administrator or such other person or persons designated by the City Council. The Franchisee shall, at reasonable times, permit inspection of his facilities, equipment, personnel and records in relation to the service under this Franchise. The Franchisee shall file an annual report of Gross Receipts.

Section 9. Suspension, Modification or Revocation of Franchise.

(1) Failure to comply with written notice from the Council to provide necessary service or otherwise comply with the provisions

of this Ordinance after written notice and reasonable opportunity to comply shall be grounds for modification, revocation or suspension of the Franchise.

(2) After receipt of the aforementioned written notice from the City Council, the Franchisee shall have 30 days from the date of mailing of the Notice in which to comply or to request a public hearing before the City Council. In the event of a public hearing, the Franchisee and other interested persons shall have an opportunity to present information and testimony in oral or written form.

(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 with this Ordinance.

Section 10. Preventing Interruption of Service. In the event the City Council finds an immediate and serious danger to the public creating a health hazard or serious public nuisance, the City Council may, after a minimum of 24 hours actual notice to the Franchisee and a public hearing if Franchisee requests it, authorize another person to temporarily provide service under this Ordinance, or the City may provide such service. In either event, the Franchisee agrees as a condition to his Franchise that any real property, facilities, or equipment may be used to provide such emergency service. The City Council shall return any such property of the Franchisee upon abatement of the health or nuisance hazards created by the general interruption of service. In the event the power under this Section is exercised, the usual charges for service shall prevail and the Franchisee shall be entitled to collect such usual services, but shall reimburse the City for its actual cost.

Section 11. Interruption or Termination of Service. The Franchisee shall not terminate service to any or all of his customers served under this Franchise unless:

(1) The street or road access is unavoidably blocked through no fault of the Franchisee and if there is no reasonable alternate route or routes to serve all or a portion of his customers; but in either event, the City of Lebanon shall not be liable for any such blocking of access, or

(2) Adverse weather conditions render providing service unduly hazardous to persons or equipment providing such service or if such interruption or termination is caused by act of God or a public enemy, or

(3) For nonpayment by a customer for services rendered if a customer fails to pay within 45 days of the mailing of the bill.

Section 12. Subcontracts. The Franchisee may subcontract with others to provide specialized service or temporary service under this Ordinance. Such subcontracts shall not relieve the Franchisee of total responsibility for compliance with this Ordinance.

Section 13. Rates. Rates for service under this Franchise shall be those currently approved for the Franchisee under Ordinance No. 1425 as amended by subsequent Ordinances and as reflected in the attached document marked "Exhibit A," said "Exhibit A" being the current approved Rates. Changes in Rates shall be approved by the City Council by Resolution. In determining the appropriate rate to be charged by the Franchisee, the Council shall consider:

(1) The cost of performing the service provided by the Franchisee.

(2) The anticipated increases in the cost of providing the service.

(3) 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.

(4) The investment of the Franchisee and the value of its business and the necessity that the Franchisee have a reasonable rate of return.

(5) The rates in other cities for similar service.

(6) The public interest.

Section 14. Public Responsibility.

(1) Both the Franchisee and the public shall comply with ORS Chapter 459, the regulations promulgated pursuant thereto including those regulations issued by the Department of Environmental Quality, Workers Compensation Board, and the State Accident Insurance Fund. The following requirements shall pertain to service under this Ordinance:

(a) No garbage can shall exceed 32 gallons in size and shall not weigh more than 60 pounds gross loaded weight.

(b) Only round garbage cans shall be used and cans shall be tapered so that they are larger at the top, and cans shall have handles at the top and a place for a handhold at the bottom.

(c) Sunken refuse cans or containers shall not be installed after January 1, 1979.

(d) To protect against injury to employees of the Franchisee, and to protect against rodent and fire dangers, cans shall be rigid and of material that will not split or crack in cold weather.

(e) The user shall provide safe access to the pickup point so as not to jeopardize the persons or equipment supplying service or the motoring public.

(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 any locked or latched gate and outside any garage or other building.

(3) Stationary compactors for handling Solid Waste shall comply with applicable federal and state safety regulations. 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 such person is going to acquire, shall acquire a compactor approved by the Franchisee as compatible with the equipment of the Franchisee or the equipment the Franchisee is willing to acquire.

(4) Any person who receives service shall be responsible for payment for said service.

Section 15. City Collections. Nothing herein contained shall be construed as in any way preventing the City of Lebanon from conducting an annual clean-up campaign for the collection of brush, cleaning out of garages or basements, or any other facility or location in the City so as to prevent public nuisances and so as to provide for the beauty of the City and the safety of its citizens.

Section 16. Indemnity and Hold Harmless. The Franchisee shall indemnify the city of Lebanon, the City Council, any employees or agent of the City and hold them harmless from all loss, damage, claim, expense or liability arising out of the operation by the Franchisee under its Franchise. In the event that any suit or action is brought for injury or damage to persons or to property against any of the foregoing, based upon or alleged to be based upon any loss, damage, claim, expense or liability arising out of the operation of the Franchisee under his Franchise, the Franchisee shall defend the same at its own cost and expense; provided, however, that the Council and the City ~~Administrator reserve the right to retain~~ counsel of their own choosing and join in the defense of any such suit or action, with the reasonable cost of such additional counsel to be borne by the Franchisee.

Section 17. Franchisee's Service Requirements. The Franchisee may, subject to review and approval by the City Council, establish reasonable rules concerning the size, weight and location of containers or compactors and on other matters directly affecting the safety of the Franchisee's employees and his ability to perform the service with available technology and equipment. Such reasonable rules may also be established so the Franchisee can comply with weight limits, disposal site requirements, and general requirements of the Department of Environmental Quality of the State of Oregon. Where economically feasible, the Council may require the Franchisee to provide special types of service or to subcontract the providing of such special service, if the Franchisee shall not find it economically feasible to provide such special service with his equipment and personnel.

Section 18. 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 19. City Enforcement. The city of Lebanon shall enforce the provisions of this Ordinance by administrative, civil, or criminal action as necessary to obtain compliance with this Ordinance. The City enforcement does not pertain to enforcing payment by customers. The Franchisee may enforce payment or protect its rights under this Franchise by appropriate civil action.

Section 20. Penalties. Violation by any person of the provisions of the Ordinance shall be deemed to be a misdemeanor.

Section 21. Repealing Clause. Ordinance Nos. 581 and 606 and any other Ordinances in conflict with this Solid Waste Management Ordinance are hereby repealed.

Section 22. Emergency Clause. To provide for the safe and sanitary Solid Waste Management in the City and to thereby preserve the health, safety, and welfare of the residents thereof, an emergency is declared to exist and the terms and conditions of this Ordinance shall become effective upon passage by the Council and approval by the Mayor.

IN WITNESS WHEREOF, this Ordinance was passed by the Council by a vote of 5 for and 0 against and approved by the Mayor on this 24th day of May, 1978.



WILLIAM F. SPIRES, Mayor

ATTEST:



City Recorder

ACCEPTED BY the Franchisee:

The Franchise and all terms thereof are hereby unconditionally accepted on this 26 day of May, 1978, by the Franchisee.

SPADY-REDFIELD CORPORATION
dba LEBANON SANITATION CO.

By 

Franchisee