

A BILL FOR AN ORDINANCE GRANTING)
AN EXCLUSIVE SOLID WASTE FRANCHISE)
TO REPUBLIC SERVICES AND FIXING)
TERMS, CONDITIONS, AND COMPENSATION)
OF SUCH FRANCHISE.)

ORDINANCE BILL NO. 2015-4
ORDINANCE NO. 2860

THE CITY OF LEBANON ORDAINS 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, 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.
5. Minimize duplication of service or routes to conserve energy and material resources, to reduce air pollution and truck traffic, and to increase efficiency, thereby minimizing consumer cost, street wear, and public inconvenience.

Section 3. Definitions

Except where the context clearly indicates a different meaning, the definitions appearing in ORS 459.005, 459A.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:

1. "City" means City of Lebanon. Where the city limits are extended, the City shall include such extended geographic boundaries.
2. "Compensation" includes:
 - (a) Any type of consideration paid for service including, but not limited to, rent, any direct or indirect provision for the payment of money, goods, services or benefits by tenants, lessees, occupants or

similarly situated persons; and

(b) The exchange of service between persons.

3. "City Council or Council" means the City Council of the City of Lebanon.
4. "Franchisee" refers to Republic Services.
5. "Person" includes an individual, partnership, association, cooperative, trust, firm estate or other private legal entity.
6. "Service" refers to the collection, storage, transfer, transportation or disposal of or the resource recovery from solid waste.
7. "Recyclable Materials" means 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.
8. "Resource Recovery" means the process of obtaining useful material or energy resources from solid waste, including energy recovery, material recovery, recycling and reuse of solid waste.
9. "Solid Waste" means all useless or discarded materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sludge, useless or discarded commercial, industrial, demolition and construction materials, 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. "Solid waste" does not include:
 - (a) Hazardous waste as defined in ORS 466.005.
 - (b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals.
 - (c) Beverage containers, subject to reuse or refund provisions, contained in ORS459A.700 through 459A.740.
10. "Solid Waste Management" means the prevention or reduction of solid waste; management of the collection, storage, transfer, transportation, treatment, utilization, processing and final disposal of solid waste; or resource recovery from solid waste; and facilities necessary or convenient to such activities.
11. "Train System" means a group of small receptacles (typically 1 to 2 cubic yard capacity) placed in various locations around a customer's property by the customer and once full, either linked together or placed upon a trailer for

transport and disposal to a larger receptacle or compactor on the premises.

12. "Waste" means useless or discarded materials.

Section 4. Exclusive Franchise and Exceptions

There is hereby granted to Franchisee, an 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. This grant of an exclusive franchise is under the specific authority of ORS 459A.085 and under ORS 459A.085(3), the City recognizes the Franchisee as the existing collection service, and grants this franchise upon the basis that the whole city is one service area.

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 1st of each year, the Franchise shall be considered renewed for an additional five-year term unless at least 30 days prior to January 1st 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, six per cent (6%) 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 Waste collected at a DEQ approved site or recover resources from the Solid Waste, both in compliance with Chapters 459 and 459A, Oregon Revised Statutes, together with rules and regulations promulgated thereunder.
- (b) The Franchisee shall provide the Opportunity to Recycle by providing weekly curbside recycling collection, and shall comply with the provisions of ORS 459A. In addition, the Franchisee shall comply with any and all rules and regulations adopted by the Department of Environmental Quality and Linn County.
- (c) Provide and keep in force public liability insurance coverage in amounts not less than the minimum requirements of the Oregon Tort Claims Act as now enacted or hereafter amended, which shall be evidenced by a certificate of insurance filed annually by June 1st with the City Clerk.
- (d) 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.
- (e) Except as otherwise provided, all vehicles used in the collection and/or transportation of waste shall be equipped to the greatest extent possible with a leak-proof metal body of the compactor type. If a Franchisee uses a specially designed, motorized local collection vehicle for transporting solid waste over short distances from

residential or commercial stops to waiting trucks, the container portion of such vehicle shall be equipped with a cover, adequate to prevent scattering of the load. If any pickup truck or open bed truck is used by a Franchisee, the load shall be covered with an adequate cover to prevent scattering of the load. All vehicles shall be operated in conformity with all ordinances of the City. All vehicles shall be properly licensed, registered, and equipped in compliance with the motor vehicle laws of the State of Oregon.

- (f) The Franchisee may terminate service to a customer for nonpayment by the customer within forty-five (45) days of the mailing of the bill. The Franchisee may require advance payment in the future from a previously non-paying customer before resuming service.
- (g) Respond to any written complaint on service.

2. The Franchisee shall not:

- (a) Except as otherwise provided, the Franchisee shall not give any rate preference to any person. 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.
- (b) No transfer of this Franchise or any portion thereof shall occur without the prior approval of the City Council. Approval by the City shall not be unreasonably withheld. 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 its 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 its 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 the fees for 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 its 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 its 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 an 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. Subcontractors

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 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 return on revenue.
5. The rates in other cities for similar service.
6. The public interest.

Section 14. Public Responsibility

In addition to compliance with ORS Chapters 459 and 459A, regulations promulgated pursuant thereto:

1. To prevent recurring back and other injuries to collectors and other persons and to comply with safety considerations for collectors:
 - (a) No garbage can designed for manual pick up shall exceed 60 pounds gross loaded weight or 32 gallons in size. Only round garbage cans shall be used. Cans should be tapered with a smaller bottom than top opening.
 - (b) No cart designed for mechanized pick up shall exceed 120 pounds gross loaded weight. Only carts provided by the Franchisee shall be used.
 - (c) Sunken refuse cans or containers shall not be used.
 - (d) To protect against injuries to users or collectors, to protect against

damage and spilling during cold weather and to protect against rodent hazards, only garbage cans or cans meeting the standards set forth by the State Accident Prevention Division will be permitted.

- (e) The user shall provide safe access to the pick-up point so as not to jeopardize the safety of the driver of a collection vehicle or the motoring public or to create a hazard or risk to the person providing service. Where the City 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 onto such structure or road. The user shall provide a safe alternative access point or system.
- 2. Every person who generates or produces solid waste or wastes shall remove or have removed all putrescible wastes at least every seven (7) days. All wastes shall be removed at sufficient frequency as to prevent health hazards, nuisances, or pollution
- 3. 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.
- 4. No stationary compactor or other container for commercial or industrial use shall exceed the safe loading design limit or operation limit of the collection vehicles provided by the Franchisee.
- 5. No person shall install or operate a "train system" for the purpose of solid waste collection.
- 6. To prevent injuries to users and collectors, stationary compacting devices for handling solid wastes shall comply with applicable federal and state safety regulations.
- 7. Any vehicles used by any person to transport waste shall be so loaded and operated as to prevent the waste from dropping, sifting, leaking, blowing, or otherwise escaping from the vehicle onto any public right-of-way or lands adjacent thereto.
- 8. Any person who receives service shall be responsible for payment of such service. When the property owner of a single or multiple dwelling unit or mobile home or trailer space has been previously notified in writing by the Franchisee of its contingent liability, the property owner shall be responsible for payment for service provided to the occupant of such unit if the occupant does not pay for the 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 agrees to indemnify, defend and hold harmless the City, its officers, employees, volunteers and agents from any and all claims, demands, actions or suits arising out of or in connection with the City Council's grant of this franchise. Franchisee shall be responsible to defend any suit or action brought by any person challenging the lawfulness of this franchise or seeking damages as a result of or arising in connection with its grant; and shall likewise be responsible for full satisfaction of any judgment or settlement entered against the City in any such action. The City shall tender the defense to the Franchisee and Franchisee shall accept the tender, whereupon the City shall assign to Franchisee the complete responsibility of litigation, including choice of attorneys, strategy and any settlement.

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 their 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 its 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 No. 2241 and any other Ordinances in conflict with this Solid Waste Management Ordinance are hereby repealed.

Section 22. Acceptance

The Grantee shall, within thirty (30) days from the date this ordinance takes effect, file with the City its written unconditional acceptance of this franchise, and if the Grantee fails so to do, this ordinance shall be void.

Passed by the Lebanon City Council and executed by the Mayor on this on this 10th day of June, 2015 by a vote of 6 yeas and 0 nays.

CITY OF LEBANON, OREGON



Paul R. Aziz, Mayor
Bob Elliott, Council President

ATTESTED BY:



Linda Kaser, City Clerk