

ORDINANCE NO. 12-1007

AN ORDINANCE OF THE CITY OF OREGON CITY AMENDING CHAPTER 8.20 OF THE OREGON CITY MUNICIPAL CODE RELATED TO DEFINITIONS FOR SOLID WASTE COLLECTION AND DISPOSAL, EXCEPTIONS FROM FRANCHISE

WHEREAS, the Oregon City Commission is concerned with the solid waste disposal and collection which may be in violation of its exclusive Franchise Agreement with Oregon City Garbage Co;

WHEREAS, the safe collection of solid waste is critical to the public health, safety and welfare in the community;

WHEREAS, the Oregon City Commission finds that clarifying the definitions of the terms "incidental" and "small volumes" will assist the general public in assessing when the limited private removal of solid waste is permitted; and

WHEREAS, the Oregon City Commission finds that landscapers, gardeners, and grounds keepers are excepted from the restriction imposed by the definition of "incidental" due to the relative infrequency and nature of the service provided to customers.

NOW, THEREFORE, OREGON CITY ORDAINS AS FOLLOWS:

Section 1. Section 8.20.020 of the Oregon City Municipal Code is amended to read as follows (where underlined text is new text):

For the purposes of this chapter:

"City" means the city of Oregon City, Oregon.

"Commission" means the city commission of Oregon City, Oregon.

"Compensation" means and includes:

1. Any type of consideration paid for service, including, but not limited to, rent, and proceeds from resource recovery or recycling and any direct or indirect provision for payment of money, goods, services or benefits by tenants, lessees, occupants or similar persons;
2. The exchange of services between persons, including the hauling of solid waste;
3. The flow of consideration from the person owning or possessing the solid waste to the person providing service.

"Franchisee" means the person granted the franchise by Section 8.20.030 of this chapter.

"Incidental" means occurring as a minor accompaniment, not to exceed removal of a single small volume haul removed per business (as identified by one business license or contractor's license issued by Metro) at any one property, per year.

"Person" means an individual, partnership, association, corporation, trust, firm, estate or other legal entity.

"Resource recovery" means the process of obtaining useful material or energy resources from solid waste. Except as limited by state law and city charter, this includes:

1. "Energy recovery" which means recovery in which all or a part of the solid waste materials are processed to utilize the heat content, or other forms of energy, of or from the material.

2. "Material recovery" which means any process of obtaining from solid waste, by presegregation or otherwise, materials which still have useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled for the same or other purpose.

3. "Recycling" which means any process by which solid waste materials are transformed into new products in such manner that the original products may lose their identity. The process includes collection, transportation, storage and transfer of solid waste and placing the solid waste in the stream of commerce for resource recovery.

4. "Reuse" which means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity. Nothing in this definition shall authorize a use not in conformity with the comprehensive plan zoning ordinance or development regulations of the city.

"Service" means the collection, transportation, storage, transfer, disposal of or resource recovery of solid waste, including solid waste management.

"Small volumes" means amount not to exceed 2000 pounds removed in a single haul.

"Solid waste" means:

1. All putrescible and nonputrescible wastes, as defined by ORS 459.005(24), including, but not limited to, garbage, rubbish, refuse, ashes, waste paper, cardboard, grass clippings, compost, scrap metal, glass, storage pallets, equipment and furniture, demolition and construction debris, inoperative vehicles, vehicle parts, except as excluded below, inoperative home or industrial appliances or machinery or parts thereof, manure, vegetable or animal solid and semisolid wastes or infectious wastes, as defined in ORS 459.386(2), but the term does not include:

- a. Environmentally hazardous wastes, as defined in ORS 466.005;

- b. Sewer sludge and septic tank and cesspool pumping, chemical toilet waste and other sludge;

c. Reusable beverage containers, as defined in ORS 459A.700 through 459A.740;

d. Material used for fertilizer or for other productive agricultural operations in growing or harvesting crops and the raising of fowls or animals;

e. Lead-acid batteries, as defined and regulated by ORS 459.420 through 459.437;

f. Waste tires, as defined and regulated by ORS 459.705 through 459.790;

g. Articles kept in a storage area maintained so as to not constitute a safety, health, or fire hazard and screened from public view by means of a solid fence, trees, shrubbery, or other appropriate means;

h. Vehicles kept on the premises of a business lawfully engaged in wrecking and junking of vehicles.

2. The fact that materials that would otherwise come within the definition of solid waste may from time to time have value and thus be used or usable does not preclude such materials from this definition.

"Solid waste management" means the prevention or reduction of solid waste; management of the storage, transfer, collection, transportation, treatment, utilization, processing and final disposal of solid waste; resource recovery from solid waste; and facilities used for those activities.

"Source separation" means the separation or setting aside of waste, by the source generator or producer of the waste, for recycling or reuse. Total source separation means the complete separation by the source generator or producer of the waste by type or kind of waste from all other types or kinds of waste. Total source separation requires each type or kind of recyclable material such as newsprint, computer paper, cardboard, glass, ferrous cans and aluminum cans to be distinctly separated into a separate package, container or stack in preparation for collection. For example, newspaper, cardboard, glass, ferrous cans and waste wood are each placed in a separate container and no two or more recyclables are mixed in the same container.

"Waste" means material that is no longer wanted or usable by the source, the source generator or producer of the material, and the material is to be disposed of or resource-recovered by another person, and includes both source-separated material and nonsource-separated materials.

Section 2. Section 8.20.040 is amended as follows (new text is underlined and strikethroughs are deletions):

The exclusive right, privilege, and franchise granted under Section 8.20.030 of this chapter is subject to the following exceptions:

A. A person may engage in the collection of source-separated materials for recycling or resource recovery, but only for the purpose of raising funds for a charitable, civic, or benevolent activity, under the following conditions:

1. Such activity shall be conducted in accordance with the terms and under the conditions contained in this chapter, regulations adopted hereunder, and the notice submitted to the city, as required.
2. A prior written notice of such activity shall be prepared and signed by the person intending to engage in such activity, or an authorized representative, and delivered to the city, with a copy to the franchisee, which notice shall specify the geographic areas and times in which such activities are intended to take place.
3. Regulations may be adopted to administer these provisions.

B. A person may transport solid waste, which such person produces, directly to an authorized disposal site or recycling or resource recovery facility. However, the solid waste produced by a tenant, licensee, occupant or person other than the owner of the leased, occupied or licensed premises shall be considered produced by the tenant, licensee, occupant or person and not produced by the landlord or property owner. Therefore, except as provided in this chapter, no person shall provide service for compensation to any tenant, lessee or occupant of any property of such person, and the landlord or property owner shall provide service through the franchisee.

C. A person may contract with the state or a federal agency to provide service to such agency under a written contract with such agency.

D. A person may engage in the practice of towing or otherwise removing damaged, discarded or abandoned vehicles or parts thereof, so long as such activity is conducted in compliance with applicable state and local laws.

E. A person may engage in the practice of pumping, transporting, and disposal of septic tank and cesspool pumpings or other sludge, provided such activity is conducted in compliance with applicable state and local laws.

F. A person who engages in the occupation of construction contractor for a property owner or tenant in the city and who produces thereby small volumes of solid waste as a result of such work for a property owner or tenant in the city may transport such solid waste in such person's own equipment where the solid waste produced is incidental to the particular job the person is performing.

G. Collection and transportation of small volumes of solid wastes created in connection with landscaping, gardening, or grounds keeping when the collection and transportation is done by the person employed for that work in such person's own equipment.

H. A person may collect and dispose of tires if that person has been issued a waste tire carrier permit by DEQ pursuant to ORS 459.705 through 459.790, disposes of tires at a licensed repository as set forth in ORS 459.710(2) and otherwise complies with all legal requirements relating to collection and disposal of tires, DEQ regulations and city and county ordinances.

Section 3. Severability is intended throughout and within the provisions of this ordinance. If any section, subsection, sentence, clause, phrase or portion of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this ordinance.

Read for the first time at a regular meeting of the City Commission held on the 15th day of August 2012, and the City Commission finally enacted the foregoing ordinance the 5th day of September 2012.

DOUG NEELEY, Mayor

Attested to this 5th day of September 2012:

Approved as to legal sufficiency:

Nancy Ide, City Recorder

City Attorney