



## **ORDINANCE NO. 21-697**

**AN ORDINANCE OF THE CITY OF WINSTON, OREGON, CITY COUNCIL, GRANTING A COLLECTION SERVICE FRANCHISE; PROVIDING FOR THE OPPORTUNITY TO RECYCLE; CREATING NEW PROVISIONS SUCH AS ORDINANCE 21-693; REPEALING ORDINANCE NOS. 165, 240, 374, 21-693 AND ANY OTHER ORDINANCES OR PORTIONS OF ORDINANCES IN CONFLICT HEREWITH; AND ADDING A NEW SUBSECTION 51 TO THE WINSTON MUNICIPAL CODE.**

**WHEREAS**, the current franchised solid waste collector, Steven Evans, d.b.a. Winston Sanitary Service, has provided all types of solid waste collection service, has done so for an extended period of time, virtually without complaints and within rates, rules and regulations established by the City and applicable state and federal statutes, rules and regulations and franchisee's service should be recognized and continued; and,

**WHEREAS**, said Winston Sanitary Service has agreed to provide or provide for collection service portion of the Opportunity to Recycle, including recycling collection service, with notice and promotion, and to cooperate with the City and other persons in recycling education to the full extent required by State Statutes and applicable regulations, together with the applicable watershed plan approved by the City or such further recycling service as may be required by the City; and,

**WHEREAS**, said Winston Sanitary Service is, where possible and practicable, cooperating in formulation and implementation of area-wide recycling collection service programs for the Opportunity to Recycle; and,

**WHEREAS**, the City has provided for the Opportunity to Recycle and has adopted the priorities on management of solid wastes as provided in ORS 459.015(2); and,

**WHEREAS**, to provide the service necessary for the residents of the City and to provide for the collection portion of the Opportunity to Recycle, together with required notice and promotion, it is necessary to continue, extend and expand the existing integrated and exclusive franchise.

**NOW, THEREFORE, THE CITY OF WINSTON, OREGON, CITY COUNCIL HEREBY ORDAINS AS FOLLOWS:**

**SECTION 1** There is hereby granted a Solid Waste franchise and hereby created a new Code subsection 51 as outlined below:

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**SECTION 51.010 Authority.** This ordinance and the collection service franchise granted herein is adopted for and on behalf of the State of Oregon pursuant to ORS. 459.200 (4) to carry out the purposes of ORS 459.015; the requirements of ORS 459.165 to 459.200; and the State Solid Waste Management Plan. In addition, this ordinance and the collection franchise is adopted under the authority of and pursuant to ORS Chapter 459 including without limitation, ORS 459.200, and under the municipal authority of the City.

**SECTION 51.020. Definitions.** The following terms have the meaning assigned to them by ORS 459.005: "collection franchise," "collection service," "person," "recyclable material," "resource recovery," "solid waste management," "source separate," "waste" and "watershed." *Opportunity to Recycle.* Those portions of ORS 459.165 applicable to the City.

*City.* City of Winston.

*Council.* City Council of Winston.

*Franchisee.* The person granted the franchise by this ordinance or a Council authorized transferee of that franchise.

*Hazardous Waste.* Any wastes defined as hazardous wastes by or pursuant to ORS chapter 459; or defined as hazardous wastes by another government unit having jurisdiction; or found by the franchisee to be hazardous to service workers, to service equipment or to the public.

*Service.* The collection and transportation, recycling or reuse of recyclable materials or solid waste.

*Service Area.* The City and any portion of the area franchised by Douglas County to the franchisee, which is annexed into the City.

**SECTION 51.030. Franchise Required.** Except for the franchisee under this ordinance, no person shall provide service, or solicit service, customers or advertise for the performance of such service.

Nothing in this ordinance requires a franchise from the following persons for the following businesses or practices:

- 1) Transportation of solid waste by a person (generated or produced by such person) to a disposal site, resource recovery site or market so long as such person complies with this ordinance, other City ordinances and ORS chapter 459 relating to solid waste management and regulations promulgated under any of the foregoing. Except as otherwise provided in this paragraph, in the case of a residential dwelling unit (whether individually owned, non-owner occupied or grouped through an association or cooperative of property owners) any waste generated or produced is owned by the individual owner or occupant and not by the landlord, property owner, cooperative or association or property manager or agent of such person.
- 2) A person owning, managing or entitled to possession of the property may haul wastes unlawfully left by a tenant or occupant at the end of the term of the tenancy or occupancy.
- 3) Transporting, disposing of or resource recovering sewage sludge, septic tank pumping and cesspool pumping.
- 4) Any person licensed as a motor vehicle wrecker under ORS 481.345, et seq., from collecting, transporting, disposing of or utilizing motor vehicles or motor vehicle parts.
- 5) A contractor employed to demolish, construct or remodel a building or structure, including, but not limited to, land-clearing operations and construction wastes, when the wastes hauled by such contractor are hauled in vehicles owned by, under the control of or in the possession of the contractor and hauled by contractor's employees as a regular part of their employment.
- 6) The collection, transportation and reuse of repairable or clean able discards by private charitable organizations regularly engaged in such business or activity, including, but not limited to, Salvation Army, Goodwill Industries and similar organizations.
- 7) The collection, transportation or redemption of beverage containers under ORS chapter 459, including and limited to that portion commonly known as the "Bottle Bill," together with other related statutes or regulations promulgated thereunder or under ORS chapter 459.
- 8) A person transporting or disposing of wastes that such person produces as an incidental part of the regular carrying on of business or janitorial service, gardening or landscaping service or, rendering. "Janitorial Service" does not include the collection and pickup of accumulated or stored wastes.
- 9) The collection, transportation and reuse or recycling of totally source-separated materials or operation of a collection center for totally source-separated material by a religious, charitable, benevolent or fraternal organization was not organized for nor is operated for any solid waste management purpose and which organization is using the activities for fundraising, including, but not limited to, Scouts, churches, service clubs and similar organizations.
- 10) Recyclable materials collection, handling, processing, transportation or marketing when the recyclable material is source-separated by the generator and is purchased from or exchanged by the generator for fair market value for recycling and reuse.

- 11) Any recycling or reuse practice withdrawn by resolution and order of the Council upon a written finding that such practice or practices need not be regulated to carry out the purposes of or otherwise implement this ordinance, and further that there is no substantial impact on service or any portion thereof, including, without limitation, recycling and reuse, upon consumer rates or upon the franchised business of the franchisee.

**SECTION 51.040. *Franchise Granted.*** There is hereby granted to Steven Evans d.b.a. Winston Sanitary Service, the exclusive franchise to provide service within the City. Said franchise shall be a ten (10) year franchise. That is, beginning on April 19, 2021 and running until April 19, 2031. The franchisee shall agree to be bound by this franchise, this ordinance and all applicable statutes and regulations by endorsing acceptance on a recorded copy of this ordinance within thirty days of the effective date of this ordinance.

**SECTION 51.050. *Franchise Fee.*** In consideration of the franchise granted by Section 1 of this ordinance, the franchisee shall, annually pay Five (5) percent of the gross receipts from service within the City to the City. The gross revenue shall be computed quarterly using a statement of the gross revenue collected from customers within the City of Winston and a calculation of applicable fee. Payment shall be made to the City Recorder on or before the 30<sup>th</sup> day of the succeeding month.

For the purposes of this subsection, "City" means the area within the corporate limits of the City as now constituted, together with any area hereafter annexed by the City.

City may modify Franchise Fee amount and terms with six (6) months' notice to Franchisee.

Franchisee shall provide free of charge to City the following services:

- (1) Collection of solid waste from City Hall for 12 months for each year of the agreement.
- (2) Collection of Solid Waste from Public Works for 12 months for each year of the agreement.
- (3) Collection of Solid Waste from the Police Station for 12 months for each year of the agreement.

**SECTION 51.060. *Transfer.*** The franchisee shall not sell, assign, pledge, transfer or convey this franchise without first obtaining the written consent by resolution and order of the Council. The Council may attach such terms and conditions as are necessary to guarantee maintenance of service. Approval shall not be unreasonably withheld. Any approved transferee shall enter into a binding agreement accepting all of the obligations of the franchise.

**SECTION 51.070. *Indemnification.*** The franchisee hereby agrees and covenants to defend, indemnify and save harmless the City and the officers thereof against all damages, costs and expenses whatsoever to which it or they may be subjected in consequence of negligence of the franchisee, its agents or employees in any manner arising from the rights and privileges hereby granted.

**SECTION 51.080. *Service of Franchisee.*** The franchisee, upon request of any inhabitant or any solid waste producer within the City, who has complied with the provisions hereof with respect to the preparation of solid waste for storage and for collection and transportation to the disposal site, and who has tendered to the franchisee the collection charges provided

hereinafter, shall pick up and haul any and all solid waste produced by such producer. This section does not apply to any person who has been billed for service and has further been notified that payment is past due, in which event the franchisee may terminate service ten days from the date of notice.

**SECTION 51.090. Rates for Service.** The maximum rates to be charged any person for service shall be those attached to this ordinance, marked "Exhibit A" and, by this reference, hereby incorporated in this ordinance. "Exhibit A" adopted with this ordinance shall govern until amended by Council Resolution and Order. In deciding on rates, the Council shall give due consideration to ORS 459.200; current and projected revenues and expenses; actual and overhead expenses; the cost of acquiring and replacement of equipment; the services of management; the cost of providing for future, added or different service; a reasonable return to the franchisee for doing business based on a percentage of gross receipts; the net cost of reuse and recycling together with the cost of notice, promotion and education of and for recycling and reuse; research and development; and, such other factors as the Council deems relevant. The Council may consider rates established by other jurisdictions for similar service under the same or similar service conditions.

**SECTION 51.100. Truck Maintenance.** Trucks carrying solid wastes shall comply with state statutes and regulations to prevent dropping, sifting or leaking loads. Trucks shall be regularly cleaned and shall be maintained in good and safe condition.

**SECTION 51.110. Storage of Solid Wastes.** Garbage cans shall not exceed 35 gallons in size and 60 pounds gross loaded weight. The generator of putrescible materials placed in such can shall wrap or sack such material or line the can. The generator shall keep the can and the area surrounding it clean and free from solid waste and litter. For dwelling units, garbage cans shall, on collection day, be placed at the curbside outside of any building and outside of any locked gate. Garbage carts for mechanical loading shall be cleaned and properly maintained by the generator. Containers and drop-off or roll-off boxes used for storage of putrescible solid wastes shall be cleaned by the generator, and the container and the area surrounding it shall be kept clean and free from litter. No person shall place hazardous waste out for collection by the franchisee or place hazardous waste into any container box or vehicle owned or operated by the franchisee or by the City without the prior permission of the office of the franchisee or of the City Manager, respectively. No person shall provide any container one cubic yard in size or larger nor any compactor or volume reducer or drop or roll-off box to be collected by franchisee unless the franchisee has approved it in writing as to compatibility with franchisee's equipment. No person shall install any sunken or underground refuse cans. To protect franchisee's collection employees, they shall not service any can which is not placed at ground level on collection day and in time for collection. Putrescible solid waste shall be removed from all premises at regular intervals not to exceed seven days. In addition, more frequent removal is required as necessary to prevent air, water or land pollution; health and sanitation problems; nuisance conditions; or rodent or vector problems.

**SECTION 51.120. Disposal.**

(A) All solid waste collected by the City's solid waste franchisee within the City shall be tipped, (dumped) by such franchisee at the Douglas County Landfill site, or such sites or transfer stations that are approved by Douglas County in accordance with Douglas County Ordinance 2017-07-01.

(B) Such activities shall be conducted in accordance with, and subject to, all the terms, covenants, and conditions for the care, operation and maintenance of the disposal sites provided by Douglas County Oregon Public Health Division partnered with the Oregon Department of Environmental Quality, the Douglas County Solid Waste Department, and the City of Winston.

(C) All charges for the use of the disposal site shall be borne by the franchisee. In accordance with Douglas County Ordinance 2017-07-01, franchisee shall report to the County along with the City the monthly tonnages collected within the City and the identity of the disposal site or transfer station where the solid waste is disposed of and the tonnages of such disposals.

**SECTION 51.130. *Supervision and Enforcement.*** The City Manager shall supervise franchisee's service. The City Manager may inspect or cause to have inspected, the franchisee's equipment and facilities to determine compliance with the franchise, that adequate equipment is provided to serve the community and that equipment meets health and sanitation standards. The City shall incur no liability for required safety standards (worker or vehicle).

Upon violation of the terms of this ordinance and franchise, the Council shall cause to be served upon the franchisee a written notice generally setting forth the default and giving ten days from mailing, or a longer period of time to correct the default. Upon failure to correct such default within the stated time, the Council may take action under section 14 of this ordinance.

**SECTION 51.140. *Suspension, Modification or Revocation of Franchise.*** Upon continued default under section 13, the Council shall serve by mail on the franchisee a written notice of public hearing and action on the franchise. The notice shall specify a time and place, not less than ten nor more than 25 days from date of the notice, for the public hearing on franchisee's default. The franchisee and City shall have the right to counsel and the right to present oral, written or documentary evidence on the alleged default. Witnesses shall be under oath and may be cross-examined.

Upon the basis of the evidence at the public hearing, the Council shall make written findings on whether the default exists, whether or not it has been totally or partially corrected, the severity of the default and whether or not additional time should be permitted. Upon the basis of the findings, the Council may suspend, modify or revoke the franchise or make such action conditional upon continued default not corrected within a stated time.

**SECTION 51.150. *Preventing Interruption of Service.*** The franchisee agrees as a condition to the franchise that whenever the Council determines that the failure of service or threatened failure of service would result in the creation of an immediate and serious health hazard or serious public nuisance, the 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 or use and operate the land, facilities and equipment of the franchisee through leasing to provide emergency service. The Council shall return any seized property and business upon the abatement of the actual or threatened interruption of service.

**SECTION 51.160. *Providing for the Opportunity to Recycle.*** The franchisee shall provide the on-route and on-call collection service portion of the Opportunity to Recycle together with

notice of and promotion of that recycling service at a level determined in the Watershed Plan or another level determined by or permitted by the City Council.

Any net cost of such recycling, notice, promotion or education assigned to and provided by the franchisee shall be included as a cost to be reimbursed in City set rates.

Education for recycling will be a joint responsibility of public and private agencies and local government as determined in the Waste shed Plan. Recycling at or in connection with facilities under permit from the State Department of Environmental Quality is the responsibility of Douglas County which provides the facilities.

The franchisee shall annually prepare a recycling report to DEQ to be presented to the City Manager for signature. The annual report format will be provided by DEQ for completion by the franchisee.

**SECTION 51.170. Subcontracts.** The franchisee may subcontract with others to provide a portion of the service where franchisee does not have the necessary equipment or service. Such a subcontract shall not relieve the franchisee of total responsibility for providing and maintaining service and from compliance with this ordinance.

**SECTION 51.180. Books and Records.** The City reserves the right to inspect the books and records of the franchisee as to the volume of business done within the City. Said inspection to be made at any reasonable time upon due notice to the franchisee.

**SECTION 51.190. Penalties.** Violation of subsection A of Section 3, or of Section 13 of this ordinance, shall, upon conviction, be punished as provided in ORS 459.992. Violation of Section 11-G shall be punished by a fine not to exceed \$100 for each such violation. Each day shall constitute a separate violation.

**SECTION 51.200. Repeal of Existing Ordinances.** Ordinance No. 165, Ordinance No. 240, Ordinance No. 374 and Ordinance No. 21-693 any and all parts of any other ordinance of the City in conflict with this ordinance are hereby repealed.

**SECTION 51.210. Insurance Required.** Company shall at all times maintain a comprehensive liability insurance policy which shall contain the provisions:

- A. Bodily injury policy limits of \$300,000 for each person and \$1 million for each occurrence.
- B. Property damage policy limits of \$300,000.
- C. An endorsement for complete operations coverage.
- D. A designation of City, its officers, agents and employees as additional insured for liability arising from or in connection with this franchise.
- E. A certificate evidencing insurance as described in this ordinance shall be deposited with the City.

**SECTION 51.220. Customer Relations.**

- A. Establish a customer service center that is staffed to receive, and return calls for at least 6 hours between the times of 8 am and 5 pm, Monday through Friday, except Holiday.

- B. Complaint Log. The franchisee shall keep a log of written complaints. This log, including action taken to satisfy a justifiable complaint, shall be available to the City at all reasonable times on request. The City will forward to the franchisee a copy of any written complaints received by the City. The franchisee shall respond to the complaint. The result shall be reported back to the City.
- C. Mediating Complaints. The City Manager shall, on written request from a customer or the franchisee stating the grounds, mediate any complaint and service level, service quality or service rates that cannot otherwise be resolved by the franchisee. The written decision of the City Manager shall be final.

**SECTION 51.230. *Emergency Clause.*** To provide for safe and sanitary solid waste management in the City and thereby preserve the health, safety and welfare of the residents thereof, an emergency is declared to exist, and the terms and provisions of this ordinance shall become effective upon adoption by the Council and approval by the Mayor.

**SECTION 2. Effective Date.** This Ordinance will become effective beginning July 1, 2021.

**FIRST READING BY THE CITY OF WINSTON, OREGON, CITY COUNCIL, ON THIS 5<sup>TH</sup> DAY OF APRIL 2021.**

**SECOND READING BY THE CITY OF WINSTON, OREGON, CITY COUNCIL, ON THIS 19<sup>TH</sup> DAY OF APRIL, 2021.**

**THIRD READING AND ADOPTION BY THE CITY OF WINSTON, OREGON, CITY COUNCIL ON THIS 3<sup>RD</sup> DAY OF MAY, 2021.**

**APPROVED BY THE MAYOR ON THIS 3<sup>RD</sup> DAY OF MAY 2021.**

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*David S. Rutter, Mayor*

Attest:

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*Mark D Bauer, City Manager/Recorder*