

ORDINANCE NO. 204

AN ORDINANCE RELATING TO SOLID WASTE MANAGEMENT IN THE CITY OF WILSONVILLE, OREGON, INCLUDING, BUT NOT LIMITED TO, GRANTING TO UNITED DISPOSAL SERVICE, INC., AN OREGON CORPORATION, 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: REPEALING ORDINANCE NO. 4; AND DECLARING AN EMERGENCY.

THE CITY OF WILSONVILLE 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 Wilsonville to regulate the solid waste management to:

1. Insure safe, economical and comprehensive solid waste management;
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. City. The City of Wilsonville.
2. 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 producing, owning or possessing the solid waste to the person providing service or from the person providing service to the person producing, owning or possessing the solid waste.
- 3. Council. The City Council of the City of Wilsonville.
 - 4. Franchisee. The person granted the franchise by Section 4 of this Ordinance, or a subcontractor of such person. The particular franchisee referred to in this Ordinance is United Disposal Service, Inc.
 - 5. Person. An individual, partnership, association, corporation, trust, firm, a state or other legal private entity.
 - 6. Service. Collection, transportation or disposal of or resource recovery from solid waste.
 - 7. 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.

8. Solid Waste. All putrescible and nonputrescible 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; tires; manure; vegetable or animal solid or semisolid waste, dead animals and 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;
- D. Cardboard produced by a person where the person who is the producer or source, bales and transports the cardboard to a resource recovery facility. Such person shall be deemed to have transported cardboard when it is hauled by a vehicle used in regular deliveries of merchandise to the

cardboard producer's business;

E. Material used for fertilizer or other productive purposes in agricultural operations.

9. Solid Waste and Waste Management. The control and direction of solid waste and waste service, as provided for in this ordinance.

10. 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.

1. Exclusive Franchise. There is hereby granted to United Disposal Service, Inc., 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 Wilsonville. No other person shall provide service for compensation or offer to provide or advertise for performance of such service to any owner, tenant, lessee, or occupant of any real property in the City of Wilsonville.

2. Exceptions. Nothing in this Ordinance shall:

A. Prohibit any person from engaging in the collec-

tion of source separated materials for resource recovery for the purpose of raising funds for a charitable, civic or benevolent activity, or an educational project of a full time elementary school or high school class or classes, after notice to the franchisee and permission from the franchisee or the Council;

- B. Prohibit any person who engages in an occupation such as gardener, landscaper, grounds keeper or remodeler for a property owner or tenant in the City and who produces small volumes of solid waste as a result of his work for a property owner or tenant in the City, from transporting solid waste in his own equipment where the solid waste produced is incidental to the particular job the person is performing for a property owner or tenant in the City;
- C. 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;
- D. 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;

- E. Prohibit any person from selling any source separated material to the franchisee, or making other arrangements mutually acceptable to the franchisee and and customer, providing the franchisee does the transporting of the material to the market or utilization facility for such source separated material. The franchisee shall be entitled to a reasonable charge for taking the material to market. The person who is the immediate source of and producer of the material shall receive credit for the sum received for the resource recovered material as against that person's bill for service from the franchisee during the franchisee's billing period. Any excess of the sum received for the material at the utilization or market facility over the franchisee's bill for service and transporting the source separated material, shall be reimbursed to the customer at the end of the billing period.
3. No person, except the immediate source or producer of solid waste, shall remove any product placed in a container, drop box or other receptacle; nor shall any

person other than the immediate source or producer remove or take possession of any solid waste, whether bundled, tied or loose, placed by the source of the product for collection by the franchisee or its subcontractor, or any other person authorized to collect source separate material under Section 4.(2)(a) of this Ordinance. This provision shall not apply to a government employee acting to remove solid waste or waste because of a present or imminent danger.

4. No person shall place any material in a container, drop box or other receptacle not provided for such person's use, without the permission of the person receiving the service from the franchisee.

5. Violations of any of the provisions of Section 4. shall subject the violator to the penalty provisions of this Ordinance.

Section 5. Franchise Term. The rights, privilege and franchise herein granted shall be considered as a continuing three (3) 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 three (3) year term. That is, beginning on January 1st of each year, the franchise shall be considered renewed for an additional three (3) year term, unless at least thirty (30) days prior to January 1st of any year the City shall notice the franchisee of intent to terminate the franchise. Upon the giving of such notice of termination, the franchisee shall have a franchise which shall terminate three (3) years from January 1st following the date of notification.

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 (2) 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 shall 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 Wilsonville, Oregon, three percent (3%) of the gross receipts collected each year by the franchisee for service within the corporate limits of the City of Wilsonville, for solid waste service or sale of recycled materials, for the right, privilege and franchise granted by this Ordinance. Said franchise fee shall be payable in advance for the twelve month period from April 1st through March 31st, and the first such payment under this franchise shall be due on or before April 30, 1982. Subsequent payments for each twelve month period shall be based on the gross revenue of all the geographic area within the City for the twelve months ending March 31st of each preceding year with payment to be on or before April 30th of each succeeding year. Each annual payment shall be accompanied

by a complete statement setting forth the gross receipts collected for the twelve months.

Section 7. Franchisee Responsibility.

1. The Franchisee shall:

- A. Dispose of solid waste collected at a site approved by the local government unit having jurisdiction of or recover resources from the solid waste, in compliance with Chapter 459 of Oregon Revised Statutes and any regulations adopted under said legislation.
- B. Provide and keep in force public liability insurance in the amount of not less than One Hundred Thousand Dollars (\$100,000.00) for injury to a single person, Three Hundred Thousand Dollars (\$300,000.00) to a group of persons, and Fifty Thousand Dollars (\$50,000.00) property damage all relating to a single occurrence, which shall be evidenced by a certificate of insurance filed with the City Recorder within thirty (30) days after the adoption of this Ordinance and renewed and filed annually thereafter.
- C. Provide sufficient collection vehicles, containers, facilities, personnel and finances to provide all types of necessary service; but when necessary, the franchisee may subcontract with

others to provide certain types of specialized service, in accordance with the provisions of this Ordinance.

- D. Trucks shall be equipped with a leak-proof metal body of the compactor type. If the franchisee uses a specially-designed, motorized local collection vehicle for transporting solid waste short distances from residential or commercial stops to waiting trucks, the container portion of said 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 the 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.
- E. The franchisee shall allow a prorata credit on the regular monthly charge for service where the service is canceled for three weeks or more; but no such prorata shall be allowed for service which is canceled for less than three weeks.
- F. The franchisee is not obligated to provide service to nonowners of residential property, where the landlord does not request and pay the bill, unless payment for said service has been guaran-

teed in advance by the property owner or a satisfactory cash deposit or advance payment has been made by such nonowner requesting service. The reference to residential property in this section does not include trailer parks and apartment buildings.

- G. The franchisee may terminate service to a customer for nonpayment by the customer within 45 days of the mailing of the bill. In the event of such termination for nonpayment, the franchisee may require advance payment in the future from said customer before beginning service.
- H. The franchisee shall give reasonable attention to the needs of physically handicapped customers so that they may avail themselves of the service offered without any additional charge for distance.
- I. The franchisee shall furnish a bond to the City that is acceptable to the City to insure the faithful performance by the franchisee of the service the franchisee is required to provide under this Ordinance. Said bond shall provide that in the event of default, the City shall be entitled to Three Thousand Dollars (\$3,000.00) as

liquidated damages for failure of the franchisee to perform as required.

J. The franchisee shall respond to any written complaint on service.

K. The franchisee shall agree to deposit a minimum of three (3), thirty (30) yard, drop boxes at locations as designated by the City; to be hauled away and replaced as many times as may be necessary for the one (1) week period during which the event "Wilsonville Clean-up Days" shall take place. The event shall take place once a year, in the Spring at a date set by the City, and shall be administered by the City. All cost incurred during Wilsonville Clean-up Days by the franchisee for their portion of the project shall be at the entire expense of the franchisee.

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 resources 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. Transfer or assign this franchise, except upon approval by the City of Wilsonville as a result of a resolution passed by the City Council. The City Council shall approve the assignment or transfer if the franchisee meets all applicable requirements met by the original franchisee. A pledge of this franchise as financial security shall not be considered a transfer or assignment for the purpose 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 this franchise.

2. After receipt of the aforementioned written notice from the City Council, the franchisee shall have thirty (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. The franchisee shall have the right to appeal any such action by the City Council to the Circuit Court.

Section 10. Preventing Interruption of Service. In the event the 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 twenty-four (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 the service. In the event the power under this section is exercised, the usual charges for services shall prevail and the franchisee shall be entitled to collect such usual services, but shall reimburse the City for its actual cost, as determined by the City.

Section 11. Service to be Provided; When such Service may be Interrupted or Terminated.

1. The franchisee shall collect the solid waste at the various residences, business establishments and other places within the corporate limits of the City where such service is requested or required, promptly, and with dispatch, and haul such solid waste from the City upon the payment of not more than the maximum rates authorized by the most recent rate schedule approved by the City Council.
2. The Franchisee shall not terminate service to any or all of his customers served under this franchise except in accordance with the provisions of this Ordinance. Service may be interrupted or terminated when:

- A. 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 Wilsonville shall not be liable for any such blocking of access; or
- B. 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.

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

Section 13. Rates. Rates for service under this Ordinance shall be those currently approved for the franchisee. The maximum rates effective upon the adoption of this Ordinance shall be those rates approved under Resolution No. 176, adopted June 15, 1981. Said rates shall be in effect until any change in rates shall be approved by the City Council by resolution. Except in case of emergency beyond the control of the franchisee, the franchisee shall submit requests for rate changes and supporting data thirty (30) days before the matter is put

on the Council Agenda. 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 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 shall have a reasonable rate of return.
5. The rates in other cities for similar service;
6. The public interest by assuring reasonable rates to enable the franchisee to provide efficient and beneficial service to the residents and other users of the service.

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 Corpo-

ration. The following requirements shall pertain to service under this Ordinance:

- A. No garbage shall exceed thirty-two (32) gallons in size and shall not weigh more than sixty (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 hand-hold at the bottom;
 - C. Sunken refuse cans or containers shall not be installed;
 - D. To protect against injury to employees of the franchisee and to protect to against rodent and fire dangers, cans shall be rigid and of materials 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 compactors shall be loaded so as to exceed the safe loading design limit or operation limit of the collection vehicles used by the franchisee. It shall be the responsibility of a person attending a compactor to ascertain that the compactor is 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 Collection. Nothing herein contained shall be construed as in any way preventing the City of Wilsonville from conducting a semi-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 Wilsonville, 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 this franchise, the franchisee shall defend the same at its own cost and expense; provided, however, that the Council and the City Administrator shall 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 revision 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 its 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, through its appropriate officers, shall take all appropriate steps, within the power of the City to take, to protect the exclusive right of franchise hereby given to the franchisee, and shall cooperate in all particulars with the franchisee in protecting such exclusive right and shall, if deemed necessary, pass such additional ordinances as may be required to maintain the exclusiveness of the franchise.

Section 20. Annexation. Immediately upon the annexation to the City of additional territory, the City shall take such steps as may be necessary to give the franchisee the exclusive right to collect solid waste within such area that has been annexed, and the City shall notify any other solid waste collector to cease such collection or or before ninety (90) days from the date of such notice. Provided, however, the franchisee shall endeavor to arrive at a mutually satisfactory agreement with any other solid waste collector who has been serving any such newly annexed area, concerning the collection of solid waste in said annexed area. In the event the franchisee and other solid waster collector cannot reach an agreement concerning the collection rights in the newly annexed area, the matter may be submitted to arbitrators. The Arbitration Board shall consist of one arbitrator selected by the

franchisee, one selected by the City, and one selected by the solid waste collector in the newly annexed area. The decision of the Board of Arbitrators shall be binding upon all parties to the arbitration and the award of the arbitrators shall be final. In the event of arbitration, it is contemplated that the award will include payment of money by the franchisee to the solid waster collector in the newly annexed area.


Section 21. Penalties. Violation by any person of the provisions of this Ordinance shall be deemed to be a civil violation and shall be subject to a fine not to exceed Two Hundred Dollars (\$200.00). Each day's violation shall constitute a separate offense. The maximum penalty for second and subsequent violators shall be double the penalty for the initial violation committed by the person.

Section 22. Repealing Clause. Ordinance No. 4 is hereby repealed.

Section 23. Emergency Clause. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, and general welfare of the people of the City of Wilsonville, an emergency is declared to exist and this Ordinance shall take effect immediately upon passage by the Council and approval by the Mayor.

Submitted to the Council and read the first time at a regular meeting thereof on the 18th day of January, 1982, and scheduled for second reading at a regular meeting of the Coun-

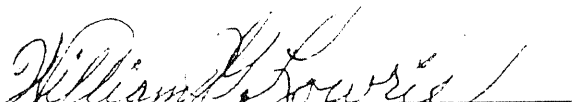
cil on the 1st day of February, 1982, commencing at the hour of 7:30 o'clock p.m., at the Wilsonville City Hall.


Deanna J. Thom, City Recorder

ENACTED by the Council on the 1st day of February, 1982,
by the following votes: YEAS 4 NAYS 0.


Deanna J. Thom, City Recorder

DATED and signed by the Mayor this 3rd day of February,
1982.


William G. Lowrie, Mayor