ORDINANCE NO. 1777

AN ORDINANCE AMENDING CHAPTER 4.40 OF THE EUREKA SPRINGS MUNICIPAL CODE REGARDING SOLID-WASTE MANAGEMENT

WHEREAS, The intent of the City Council of the City of Eureka Springs is to comply with A.C.A. 8-6-211 (a), which states:

All municipalities shall develop a plan to provide a solid waste management system that shall adequately provide for the disposal of solid wastes generated or existing within the incorporated limits of the municipality or in the area to be served and in accordance with the rules, regulations, and orders of the Arkansas Department of Pollution Control & Ecology. And,

WHEREAS, The intent of the City Council of the City of Eureka Springs is to exercise the rights of a municipality established by A.C.A. 8-6-211 (e), which states:

The governing body of a municipality shall have the right to establish policies for and enact laws concerning all phases of operation of a solid waste management system . . . And,

WHEREAS, the City Council of the City of Eureka Springs has passed a comprehensive ordinance and amendment thereto regarding solid waste collection. And,

WHEREAS, the City Council of the City of Eureka Springs has determined that Chapter 4.40 should be amended to correct certain deficiencies.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EUREKA SPRINGS, ARKANSAS:

Section One

That Chapter 4.40 of the Eureka Springs Municipal Code is amended as follows:

4.40.01, Definitions

a. Advisory Committee: A five-member committee including the Authority's representative, the Recycling Department manager, the Public Works/Solid Waste Director or his representative who shall serve as Chair, a residential customer, and a commercial customer. The residential customer, and the commercial customer shall be nominated by the Mayor and approved by the City Council. The responsibilities of the committee shall include: mediating complaints, conducting evaluations, and presenting recommendations to the City Council.

b. Apartment House: A single detached dwelling designed for and occupied by two or more families living independently of each other as separate housekeeping units.

c. Bags, Commercial: Plastic sacks designed for refuse which (1) are used for collecting and transferring solid wastes, (2) have an identifying imprint designated by the City, (3) are made available to customers by the City or sold by a designated agent(s), (4) can be sealed or tied securely at the top, and (5) have a capacity not to exceed 50 pounds.

d. Bed and Breakfast House: A dwelling or area containing one or more contiguous structures occupied by the owner where, for compensation, lodging and meals are provided for transient guests.

e. City of Eureka Springs: The area within the Eureka Springs corporate limits.

f. Commercial Container: A container provided by a solid-waste Authority and used to contain solid-waste materials on site prior to collection and transfer.

g. Carroll County Solid Waste Authority (Authority); a sanitation authority organized pursuant to Act 699 of 1979, whose services are provided through a legally binding Interlocal Governmental Agreement with the City of Eureka Springs for the purpose of collecting and transferring solid wastes, C & D wastes and white goods.

h. Contractor: An individual, partnership, or corporation hired through a legally binding contractual agreement with the City of Eureka Springs for the purpose of collecting and transferring solid waste and white goods.

I. Hand-loaded Solid Wastes: Commercial solid wastes which must be loaded by hand curbside where space for a commercial container is not available or the volume does not justify the use of a commercial container.

j. Hardship Accounts: Residential accounts which may be approved, on a case-by-case basis by the Solid-waste Advisory Committee, for a reduced residential rate as defined in the Agreement between the City and Authority.

k. Hazardous Wastes: Wastes, in any amount, which are defined, characterized, or designated as hazardous by the United States Environmental Protection Agency or appropriate State Agency by or pursuant to Federal or State law, or wastes, in any amount, which are regulated under Federal or State law. For purposes of this ordinance, the term Hazardous Wastes shall also include motor oil, combustible fluids and materials, liquid paint, automotive batteries, and waste tires.

l. On-site Compactor: A commercial container with compaction capability used to contain solid-waste materials on site prior to collection and transfer.

m. Recyclable Materials: Customer-separated materials such as newsprint, unwaxed corrugated cardboard, types of office paper, glass bottles and jars, aluminum cans, high-density polyethylene plastic, polyethylene terephthalate plastic, steel containers, yard wastes or other materials designated for separate collection by the Eureka Springs Recycling Department.

n. Residential Unit: A dwelling within the corporate limits of the City of Eureka Springs occupied by a person or a group of persons comprising not more than one family.

o. Service Charge: A service charge will be charged for beginning or ending solid waste collection services. The fee will be based on account type and decided by the Solid Waste Advisory Committee. Solid Waste collection services can only be terminated in conjunction with the termination of water and sewer services.

p. Solid Wastes, Commercial: Normal garbage generated by businesses, including food refuse, containers, packaging products, and other common rubbish; excludes liquid wastes, gaseous wastes, rock, stone, concrete, dirt, and steel.

q. Solid Waste, Food: Putresible and other organic waste from restaurants, grocery stores, and other food service establishments that may be recycled through organic composting methods.

r. Solid Wastes, Residential: Includes normal household garbage such as food refuse, containers and packaging products.

s. Tags: Tags designed to identify solid wastes and white goods to be collected by the Authority.

t. Tourist Home/Lodging: A dwelling or area containing one or more contiguous units where, for compensation, lodging is provided for transient guests.

u. White Goods (Bulky Waste): Includes common household appliances, furniture, mattresses, tools, large toys or parts thereof, that are too large to be placed in a 35-gallon bag or can and that are larger than a bundle 2 feet by 4 feet in size.

v. Yard Wastes: Includes normal organic yard and garden refuse such as tree, shrub, and brush trimmings; grass and other plant cuttings; dead plants and trees; leaves; etc.

w. C&D Wastes: Construction and demolition debris such as building materials, wires, plumbing fixtures, lumber scrap, masonry scrap, drywall, roofing and similar materials.

4.40.02, Contract Requirement

No individual, partnership, or corporation shall engage in or carry on the business and operation of collecting and transferring residential solid waste, commercial solid waste, recyclable material, hazardous wastes, C& D wastes, or white goods over and upon the streets and public ways of the City or otherwise within the corporate limits of the City unless said individuals, partnership, or corporation shall have a valid contract or interlocal governmental agreement with the City of Eureka Springs. The City has the authority to grant such an exclusive right as delegated to it by A.C.A. 8-6-211, and said contract or interlocal governmental agreement shall be approved by the City Council.

4.40.03, Minimum Contract/ Interlocal Governmental Agreement Requirements

All individuals, partnerships, or corporations desiring to contract or enter into an interlocal governmental agreement with the City for the exclusive right to provide solid waste collection and transfer services shall be required to provide evidence of:

a. Ability to comply with all City, County, District, State, and Federal regulations and laws pertaining to the collection, transfer, and disposal of solid waste.

b. Financial solvency and operational stability.

c. Ability to provide efficient services while maintaining high standards of customer satisfaction.

d. Access to real property and/or a facility approved by the Arkansas State Department of Pollution Control and Ecology, or the equivalent thereof, for the disposal of solid waste, white goods, recyclable materials, and hazardous wastes (if required to transport hazardous waste) and assurance that such real property and/or facility will be used exclusively for the lawful disposal of said waste and materials.

e. Abilities to provide sufficient and adequate office facilities, personnel, vehicles registered with and licensed by the State, operational equipment, etc. to fulfill the terms of a contract or interlocal governmental agreement to the satisfaction of the City Council.

f. Willingness and ability to work cooperatively with the City Council, the Advisory Committee, the Recycling Department, and the customers in fulfilling the terms of a contract or interlocal governmental agreement.

g. Willingness and ability to comply with all the laws enacted to overcome discriminatory practices regarding race, sex, age, creed, color, religion or national origin.

h. Willingness and ability to make reasonable accommodations for disabled employees and customers in compliance with the Americans with Disabilities Act.

I. Agreement to indemnify and save harmless the City, its officers, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorney's fees resulting from a willful or negligent act or omission of the Contractor or party in an interlocal governmental agreement, its officers, agents, servants, and employees in the performance of the contract or interlocal governmental agreement.

j. Willingness and ability to provide workers' compensation insurance coverage for all employees in compliance with applicable state statutes and rules.

k. Willingness and ability to comply with state statutes and rules pertaining to the provisions for providing unemployment compensation for employees.

l. Willingness and ability to maintain liability and property damage insurance in force and effect during the term of the contract or interlocal governmental agreement. The City and the Contractor or party in an interlocal governmental agreement shall negotiate coverage amounts and types of insurance required

m. Willingness and ability to obtain and assume the cost of all City, County, District, and State licenses and to pay all associated property taxes promptly.

n. Willingness and ability to participate cooperatively with the City Council and the Advisory Committee in conducting periodic evaluations of service rendered and the terms of the contract or interlocal governmental agreement.

4.40.04, Residential and Commercial Solid Waste Collection and Transfer Services

a. All individuals, partnerships, or corporations interested in providing residential or commercial solid waste collection and transfer services in the City during a contract term shall be required to respond to a request for proposals and to participate in competitive bidding process governed by A.C.A. 8 - 6 - 211 and negotiation procedures established by City Council or enter into an interlocal governmental agreement governed by A.C.A 25 - 20 - 201 and negotiation procedures established by City Council.

b. 1 Responsible bidders or parties in an interlocal governmental agreement will be asked to propose a monthly service fee to be charged to each residential unit within the corporate limits of the City or as otherwise outlined in the contract or interlocal governmental agreement. The City Council and the prospective Contractor or party in an or interlocal governmental agreement shall negotiate the final contract terms, including a standard monthly service fee for residential units.

b. 2 Responsible bidders or parties in an interlocal governmental agreement will be asked to propose a fee schedule to be charged to each commercial account within the corporate limits of the City or as otherwise outlined in the contract or interlocal governmental agreement. The City Council and the prospective Contractor or party in an interlocal governmental agreement shall negotiate the final contract terms, including a fee schedule for commercial accounts.

c. During the term of the contract or interlocal governmental agreement, the contractor or party to an or interlocal governmental agreement may petition the City annually for fee adjustments on the basis of changes in the actual cost of operation as determined by 100 percent of the net change in the U. S. Department of Labor, Bureau of Labor Statistics, Consumers Price Index for Urban Wage Earners and Clerical workers, All Items, for the U. S. Cities average. At least one month prior to the start of each Agreement year, the Contractor or party to an interlocal governmental agreement shall be responsible for submitting to the City evidence of such change in the Consumers Price Index which would justify a change in rates. Computation of the net change shall be based on the twelve (12) month period immediately preceding the request for change.

In addition to the above, the Contractor or the party to an interlocal governmental agreement may petition the City at any time for additional rate and price adjustments at reasonable times on the basis of very large and unusual changes in its cost of operations, such as revised laws, ordinances, or regulations.

In the event of a dispute regarding rate adjustments, the dispute shall be submitted to the Solid Waste Advisory Committee who shall make a recommendation to the City Council whose decision shall be binding and not subject to further arbitration.

d. Residential and commercial customers shall apply for services at the City of Eureka Springs City Hall, and the City's clerks shall notify the contractor or party in an interlocal governmental agreement of all applications for services.

e. Residential and commercial solid waste collection and transfer services shall be mandatory for all residential and commercial units with a City water meter or as outlined in the contract or interlocal governmental agreement.

f. **1.** Residential customers shall be required to contain their solid waste in bags embossed with the City's logo. The City, through its offices or designated agent(s), shall make [redacted] bags available to customers at a cost determined by the City council. The contractor or party in an interlocal governmental agreement shall provide residential solid waste collection and transfer services for all residential units located within the corporate limits of the city or as agreed to by contract or interlocal governmental agreement one (1) time per week: and the customer shall be responsible for placing bags and bundles curbside, or as close as possible to collection vehicle routes, by 5:00 a.m. on the designated collection day(s). Curbside refers to the portion of the right-of-way adjacent to paved or traveled roadways. Bags and bundles may be placed curbside after sunset on the evening(s) preceding the collection day(s).

2. Commercial customers will use bags, bundles, private containers, or commercial containers prior to collection. If not using a commercial container, the customer is responsible for placing bags, bundles, or other containers curbside, or as close as possible to collection vehicles by 5:00 a.m. on the designated collection day(s). Bags and bundles may be placed curbside after sunset on the evening preceding the collection day(s). Curbside refers to the portion of the right-of-way adjacent to paved or traveled roadways. If using a commercial container(s) provided by the Contractor or party in an interlocal governmental agreement for disposal of solid waste, the customer is responsible for placing solid waste to be collected in the container prior to 5:00 a.m. on the designated collection day(s).

g. Normal hours of collection are to be from 5:00 a.m. to 6:00 p.m. on the City-approved collection day(s) of each week.

h. The contractor or party in an interlocal governmental agreement shall provide the City with maps and schedules of residential and commercial collection routes and keep such information current at all times. In the event of changes in routes or schedules, the contractor or party in an interlocal governmental agreement shall promptly notify each resident or commercial account affected within five (5) days.

I. In accordance with the Americans with Disabilities Act and exceptional customers' needs, the contractor or party in an interlocal governmental agreement shall make reasonable accommodations for collecting some bags and/or bundles of customers with disabilities.

j. The Contractor or party in an interlocal governmental agreement may decline to collect any bag or bundle not placed curbside. Where the Contractor or party in an interlocal governmental agreement has reason to leave solid waste uncollected at a residential or commercial location, the Contractor or party in an interlocal governmental agreement shall inform the customer within seven (7) days by written notice, mailing, or telephone as to why the solid waste was not collected, i.e., bag or bundle without appropriate City logo, hazardous waste, improper placement, etc.

k. In the event that a regularly scheduled collection is missed and a complaint received by either City or the Contractor or party in an interlocal governmental agreement, and where no fault can be found on the generator's part, a special collection of solid waste will be required of the contractor or party in an interlocal governmental agreement within thirty-six (36) hours.

l. The following holidays shall be observed as non collection days by the contractor or party in an interlocal governmental agreement: (1) Memorial Day; (2) Independence Day: (3) Labor Day: (4) Thanksgiving day: (5) Christmas day: and (6) New Year's day. If any of the above mentioned holidays fall on a normal collection day, collection and transfer services will be provided by the Contractor or party in an interlocal governmental agreement on the following day; or the Contractor or party in an interlocal governmental agreement shall notify all residential and commercial customers of the revised schedule for the week.

m. The Contractor or party in an interlocal governmental agreement shall receive, document and respond to all complaints regarding services provided under the terms of a contract or interlocal governmental agreement. Any complaint received by the City shall be directed to the Contractor's or party in an interlocal governmental agreement's office within twelve (12) hours. Should a complaint remain unresolved for seven (7) business days, the Advisory Committee shall be convened for the purpose for developing a resolution. The City shall have the right to demand an explanation or resolution to its satisfaction.

n. The contractor or party in an interlocal governmental agreement shall make arrangements for the collection of white goods upon request of a resident or commercial account of the service area; and participate in special clean up programs, such as annual white-goods collection programs, in coordination with the City's Recycling Department.

o. The Contractor or party in an interlocal governmental agreement shall assist customers with the disposal of building materials and common cleanup debris (C& D waste) by setting and retrieving containers at customers' requests or by collecting such material in their regular route. Additionally, customers shall have the option of scheduling the rental of roll off container services for such clean up efforts. The Contractor's or party in an interlocal governmental agreement's fees for these services shall be defined in the contract or interlocal governmental

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agreement.

p. The contract or interlocal governmental agreement between the City and the Contractor or party in an interlocal governmental agreement shall specify the Contractor's or party in an interlocal governmental agreement's responsibility for collecting and transferring hazardous waste.

q. The City, the Contractor or party in an interlocal governmental agreement, and the Advisory Committee shall work cooperatively to inform all customers of complaint procedures, rates, regulations, collection schedules, and special solid waste management events.

r. The Policies recommended by the Solid Waste Advisory Committee and adopted by the Eureka Springs City Council shall remain in force. Such policies may be amended by the City Council upon recommendation of the Solid Waste Advisory Committee. ~~Such policies, as amended, are attached hereto as Exhibits A and B.~~

4.40.05, Billing Procedures for Residential and Commercial Accounts

a. The monthly service fee for residential solid waste collection and transfer services and the fees charged for commercial solid waste collection and transfer services, as defined in the contract between the City and the Contractor, shall be added to each customer's monthly water and sewer bill; and the City shall be responsible for collecting the fee. The only exception to this billing procedure is for C&D waste roll off container services which are billed directly by the Contractor or party in an interlocal governmental agreement.

b. The Contractor or party in an interlocal governmental agreement shall pay the City a fee for billing and collecting residential and commercial accounts, and the fee shall be defined in the contract or interlocal governmental agreement

c. Within ten (10) business days following the collection deadline for each water and sewer billing period, the City shall remit payment to the Contractor or party in an interlocal governmental agreement for an amount equal to total collections for the period minus the negotiated billing, franchise, and collection fee.

d. When assisting customers with special collection arrangements, the Contractor or party in an interlocal governmental agreement shall be responsible for documenting the receipt of any service fees collected by the Contractor or party in an interlocal governmental agreement and shall within ten (10) business days following the end of each calendar month remit to the City an amount equal to the negotiated franchise fee defined in the contract or interlocal governmental agreement

4.40.06, Enforcement of Residential and Commercial Accounts

a. If a residential or commercial account is not paid by the collection deadline for a billing period, the account shall be assessed a late-payment penalty equal to ten (10) percent of the

current balance. The customer's failure to pay an account within fifteen (15) consecutive days following the collection deadline may result in suspension or termination of services provided by the City.

B. A customer may contact the City's clerks to make arrangements for the payment of a past-due account.

Sections 4.40.07, Dedicated Revenues

a. All revenues derived from the enactment of this ordinance except the residential and commercial billing and collection fee shall be dedicated to funding the Eureka Springs Recycling Center and related solid-waste management programs within the City.

4.40.08, Recycling Programs

a. Curbside Recycling. Effective January 1, 1993 1998, the City shall arrange to have curbside recycling services available to all residential units within the corporate limits of the City. The City shall provide at least one collection bin for each residential unit. The Recycling Department shall coordinate all planning for the program including recyclable material to be collected, the collection routes, the collection schedules, and the public information program.

b. Commercial Cardboard Recycling. The Recycling Department shall make a commercial cardboard recycling program available to all businesses within the corporate limits of the City and shall be responsible for the management and facilitation of the program.

c. Drop off Center. The Recycling Department shall provide a drop-off center where residents can routinely deposit recyclable materials accepted by the Department, and the Department shall coordinate white goods drop-off programs and special cleanup events with the Contractor or party in an interlocal governmental agreement.

d. Yard Waste. The Recycling and Public Works Departments shall work cooperatively to plan and to facilitate yard waste cleanup programs as needed by the residents of the City.

e. Ownership of Recyclable Materials: Upon the placement of recyclable material by residents and businesses at a collection location, the recyclable materials shall become the property of the Eureka Springs Recycling Department. During the period of time commencing at sunset on the evening preceding a collection day and ending at the time recyclable materials are collected, no person, other than authorized Recycling Department personnel, shall remove recyclable materials which have been placed for collection by the Department. Any and each such collection in violation hereof from one or more collection locations shall constitute a separate and distinct offense punishable as provided in the ordinance.

4.40.09, Unlawful Disposal of Solid Waste

Within the incorporated limits of the City, it shall be unlawful for any individual, partnership, or corporation to:

a. Construct, install, alter, modify, use, or operate any solid-waste processing or disposal facility or disposal site without appropriate permits from the Arkansas Pollution Control and Ecology Commission and the City.

b. Sort, collect, transport, process, or dispose of solid waste contrary to Municipal, State, or Federal laws or in such a manner or place as to create or be likely to create a public nuisance or a public health hazard or to cause or be likely to cause water or air pollution within the meaning of the Arkansas Water and Air Pollution Control Act, 8-4-101.

c. Dispose of solid wastes, resulting from household or business activities, on public to private land within the City if the disposal creates a public or private nuisance or a hazard to health, violates Municipal, State, or Federal Laws, or involves open dumping of solid wastes.

4.40.10, Solid Waste Disposal Fees

a. The City will remit payment to the Contractor or party in an interlocal governmental agreement for collection costs minus franchise and billing fees. Disposal costs will be charged directly to the City and paid for directly by the City.

4.40.11, Penalties

a. The criminal, civil, and administrative penalty provisions of environmental law included in the A.C.A, Chapter 6, "Disposal of Solid Wastes and Other Refuse," shall prevail in actions regarding the unlawful disposal of solid wastes.

b. Any individual, partnership, or corporation which violates any provision of this ordinance shall be guilty of a misdemeanor; and, upon conviction, shall be punished by a fine of $250.00 for the first conviction, and $500.00 for a second or subsequent conviction on the previous offense, plus all court costs. Each violation shall constitute a separate offense.

Section Two

All ordinances and part of ordinances, including those provision of Ordinance No. 1462, in conflict with this ordinance are hereby repealed.

Section Three

If any provision, word, phrase, sentence, paragraph, or section of this ordinance shall be held unconstitutional or otherwise unenforceable by a court of competent jurisdiction, such holding shall be deemed to apply only to such provision, word, phrase, sentence, paragraph, or section; and the remainder of this ordinance shall remain in full force and effect.

Section Four

Because it is imperative that the Solid-waste collection Ordinance be corrected so that the City can (1) establish a solid-waste management system and (2) secure the collections and transfer services of a solid-waste Contractor or party in an interlocal governmental agreement, the City Council of the City of Eureka Springs finds that an emergency exists; and ordinance shall be in effect and after its passage, approval, and publication as provided by law.

PASSED AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF EUREKA SPRINGS, ARKANSAS, THIS 27th DAY OF January, 1998.

APPROVED:

Barbara O'Harris

Barbara O'Harris, Mayor

ATTEST:

Mary Ann Lee

Mary Ann Lee, Clerk

EXHIBIT A:

Current polcies