

ORDINANCE NO. 1040

AN ORDINANCE REPEALING ORDINANCE NO. 979 AND ORDINANCE NO. 995 OF THE CITY OF EUREKA SPRINGS, ARKANSAS, AND ESTABLISHING QUALIFICATIONS, REGULATIONS, LICENSE FEES AND MAXIMUM RATES FOR PERSONS, FIRMS AND CORPORATIONS ENGAGED IN THE BUSINESS AND OPERATION OF THE COLLECTION OF REFUSE, TRASH, GARBAGE AND OFFAL WITHIN THE CORPORATE LIMITS OF THE CITY OF EUREKA SPRINGS, ARKANSAS.

WHEREAS, the City Council passed Ordinance No. 979 on March 22, 1975, whereby the City of Eureka Springs, Arkansas, entered into an "Exclusive Franchise and Agreement" with Herbert H. Fryar, doing business as Fryar Sanitation; and

WHEREAS, the City Council passed Ordinance No. 995 on February 7, 1976, whereby the City of Eureka Springs, Arkansas, accepted the assignment of said "Exclusive Franchise and Agreement" by the said Herbert H. Fryar to Cumy Ann Knight, doing business as Fryar Sanitation; and

WHEREAS, the City Council has found that said "Exclusive Franchise and Agreement" should be declared null and void pursuant to Section 9 of said Ordinance No. 979; and

WHEREAS, it is essential to the public health, safety and welfare that the City of Eureka Springs, Arkansas, provide for the collection of refuse, trash, garbage and offal within the corporate limits of the City:

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

SECTION 1. ORDINANCE NO. 979 AND ORDINANCE NO. 995 REPEALED.

Ordinance No. 979 and Ordinance No. 995 are hereby repealed, effective immediately.

SECTION 2. OCCUPATIONAL LICENSE REQUIRED.

The collection of refuse, trash, garbage and offal within the corporate limits of the City of Eureka Springs, Arkansas, is

hereby declared to be a privilege. No person, firm or corporation shall engage in or carry on the business and operation of collecting refuse, trash, garbage and offal over or upon the streets and public ways of the City or otherwise within the corporate limits of the City without first obtaining from the City Clerk-Treasurer an occupational license for such business and operation. The annual fee required for obtaining such an occupational license shall be Two Hundred Fifty * * * * * and No/100 Dollars (\$250.00), and each license obtained shall expire at 12:00 o'clock midnight on the 31st day of December of the calendar year in which each such occupational license is obtained. There shall be no prorating of said annual fee. Engaging in such business and operation within the corporate limits of the City without first obtaining such occupational license shall constitute a misdemeanor and, upon conviction thereof in the Municipal Court of Eureka Springs, the guilty person, firm or corporation shall be subject to a fine of Two Hundred Fifty and No/100 Dollars (\$250.00), and each and every day of such offense shall constitute a separate offense. Any person, firm or corporation, holding a valid license, issued pursuant to this Ordinance on the 31st day of December of any year, including 1978, and continuing to engage in such business and operation on the next 1st day of January of any year after 1978 shall obtain from the City Clerk-Treasurer an occupational license not later than the 31st day of January; the failure to do so by the 31st day of January shall cause such person, firm or corporation to be subject to a penalty of 10% of said annual license fee in addition to said annual license fee; the failure to do so by the 14th day of February shall constitute a misdemeanor and, upon conviction thereof in the Municipal Court of Eureka Springs, the guilty person, firm or corporation shall be subject to a fine of Two Hundred Fifty and No/100 Dollars (\$250.00), and each and every day of such offense after the 14th day of February shall constitute a separate offense.

SECTION 3. MINIMAL QUALIFICATIONS FOR EACH LICENSEE.

The City Clerk-Treasurer shall not issue such an occupational license to any applicant for the same until such applicant has certified to the City Clerk-Treasurer, in writing and subject to applicable State statutes for perjury, that the following minimal qualifications are currently possessed by such applicant and/or shall be possessed by the applicant on the date the occupational license applied for shall be effective, to-wit:

A. Access to real property and/or a facility approved by the State Department of Pollution Control and Ecology for the disposal of refuse, trash, garbage and offal, and the assurance that the licensee shall exclusively utilize such real property and/or facility for the lawful disposal of all refuse, trash, garbage and offal collected by the licensee.

B. A sufficient and adequate number of covered trucks, registered and licensed by the State, with drivers, licensed by the State, and collectors to collect and dispose of all refuse, trash, garbage and offal undertaken by the licensee.

C. Sufficient and adequate maintenance and operation of such covered trucks by the licensee to assure the reliable collection and disposal of all refuse, trash, garbage and offal undertaken by the licensee.

D. Provision of State Workers' Compensation Law insurance coverage for all employees of the licensee in compliance with applicable State statutes and rules.

E. Compliance with State statutes and rules pertaining to unemployment compensation for all employees of the licensee entitled to the same.

F. Liability insurance, issued to the licensee by an insurance company licensed to do business in the State, with respect to injuries to persons, to the minimal extents of Ten Thousand and No/100 Dollars (\$10,000.00) for the injury or death of any one (1) person and subject to that limit for each person, Twenty Thousand and No/100 Dollars (\$20,000.00) for each accident, and, with respect to damage to property, Five Thousand and No/100 Dollars (\$5,000.00) for each accident. In lieu of such liability insurance, a licensee may obtain a bond to be signed by some solvent Surety Company licensed

to do business in the State, which bond shall be in substantial compliance with the form approved by the State Commissioner of Revenue pursuant to Act 485 of 1949, Section 1, Acts of Arkansas, and shall be conditioned for the payment of property damage and personal injuries in the same manner and to the same minimal extents herein provided in the case of liability insurance issued to the licensee.

SECTION 4. CONSEQUENCES OF NONCOMPLIANCE.

The occupational license of any licensee under this Ordinance shall be subject to immediate suspension and/or revocation upon a finding by the City Council that such licensee has failed or ceased to comply with any of the minimal qualifications provided by Section 3 of this Ordinance or has exceeded any of the maximum rates provided by Section 5 of this Ordinance, provided, however, that any licensee subject to such suspension and/or revocation shall be entitled to not less than fifteen (15) days prior notice of the possibility of such suspension and/or revocation which shall inform such licensee of the date, time and place the City Council shall meet to determine whether or not sufficient cause exists to suspend and/or revoke the occupational license of such licensee, at which time such licensee shall have the right to be heard and to be represented and/or assisted by legal counsel licensed to practice law in this State. Such meeting shall be open to the public and shall be within the context of either a regular meeting or a special meeting of the City Council.

SECTION 5. MAXIMUM RATES.

No licensee under this Ordinance shall charge any customer of such licensee in an amount which shall exceed the following maximum rates, to-wit:

A. Special collection and disposal on a "call" basis for bulky, heavy and/or loose articles, the charge being conditioned upon the bulk and weight of the articles and the manpower and man-hours required to so collect and dispose the same, Fifty and No/100 Dollars (\$50.00) per special collection and disposal, to be provided within

seventy-two (72) hours after the request for the same is received by the licensee.

B. One (1) day per week service for residences with one (1) occupant, Two and No/100 Dollars (\$2.00) per month.

C. One (1) day per week service for residences with two (2) or more occupants and churches, Three and No/100 Dollars (\$3.00) per month.

D. One (1) day per week service for apartment houses, Two and No/100 Dollars (\$2.00) per month per apartment.

E. Up to seven (7) days per week service for hotels, motels, rooming houses and boarding houses, Seventy-Five and No/100 Dollars (\$75.00) per month.

F. Up to seven (7) days per week service for restaurants and cafes, One Hundred Twenty-Five and No/100 Dollars (\$125.00) per month.

G. Up to three (3) days per week service for garages, automobile repair shops, service stations and grocery stores, Twenty and No/100 Dollars (\$20.00) per month.

H. Up to two (2) days per week service for gift shops, antique shops, artisan and craftsman shops, studios, galleries, and retail shops and stores not otherwise provided for, Ten and No/100 Dollars (\$10.00) per month per thirty (30) gallons container.

I. Up to three (3) days per week service for public facilities, except those public facilities otherwise provided for herein, Ten and No/100 Dollars (\$10.00) per month per thirty (30) gallons container.

J. Up to two (2) days per week service for hospitals, clinics and nursing homes, Twenty-Five and No/100 Dollars (\$25.00) per month.

K. Up to five (5) days per week service for schools, Fifty and No/100 Dollars (\$50.00) per month.

SECTION 6. MODIFICATIONS OF SCHEDULE OF MAXIMUM RATES.

Any licensee under this Ordinance may petition the City Council, in writing, to modify one (1) or more of the alphabetized items appearing under Section 5 of this Ordinance at any time, provided that the licensee filing such written petition with the City Clerk- Treasurer shall comply with each of the following, to-wit:

A. Designate, in the petition, the date and hour that such petition shall be considered by the City Council, which must be at a regular meeting of the City Council.

B. Cause a public notice of the filing of such petition and the date and hour the same shall be considered at a public hearing by the City Council to be published one (1) time in a newspaper having general circulation within the City, at least fifteen (15) days prior to the date of such consideration by the City Council specifically setting forth each modification requested in such petition, with the expense of such publication being paid by the petitioning licensee.

C. Serve a true copy of said petition and a true copy of said notice upon each and every existing licensee under this Ordinance, other than the petitioner, via certified mail return receipt requested, at the expense of the petitioning licensee.

D. In the event that the City Council shall grant all or part of such petition, the petitioning licensee shall pay for the preparation of the ordinance which shall amend Section 5 of this Ordinance, with such ordinance to be approved, as to form, by the City Council, and shall pay for the publication of said amending ordinance.

SECTION 7. REPEAL OF CONFLICTING ORDINANCES, RESOLUTIONS, MINUTE ORDERS AND PARTS THEREOF.

All ordinances, resolutions and minute orders, and/or parts of ordinances, resolutions and minute orders, in conflict with this Ordinance are hereby repealed, effective immediately.

SECTION 8. SEVERABILITY.

Each word, phrase, sentence, subsection and section of this Ordinance is hereby declared to be severable from each and every other word, phrase, sentence, subsection and section hereof. In the event that any part of this Ordinance shall be held to be unconstitutional or unenforceable by a court of competent jurisdiction, the remaining parts of this Ordinance not included in such holding shall remain in full force and effect.

PASSED AND ORDAINED BY THE CITY COUNCIL OF THE CITY
OF EUREKA SPRINGS, ARKANSAS, ON THIS 5th DAY OF AUGUST, 1978.

APPROVED:

Charles F. Robertson
CHARLES F. ROBERTSON, MAYOR

ATTEST:

June I. Moncravie
JUNE I. MONCRAVIE, CITY CLERK-TREASURER

(SEAL OF THE CITY)

EMERGENCY DECLARED

The City Council of the City of Eureka Springs, Arkansas, has found that the public health, safety and welfare of the City, its inhabitants, its visitors and its public and private property, necessitate the immediate effect of Ordinance No. 1040. Therefore, an emergency is declared to exist, and Ordinance No. 1040 shall be in full force and effect on Thursday, August 10, 1978, being the date of its publication according to law.

PASSED AND DECLARED BY THE CITY COUNCIL OF THE CITY OF
EUREKA SPRINGS, ARKANSAS, ON THIS 5th DAY OF AUGUST, 1978.

APPROVED:

Charles F. Robertson
CHARLES F. ROBERTSON, MAYOR

ATTEST:

June I. Moncravie
JUNE I. MONCRAVIE, CITY CLERK-TREASURER

(SEAL OF THE CITY)