

ORDINANCE NO. 1470 (Amended)

**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 Pollution Control and Ecology Commission. And,

WHEREAS, The intent of the City Council of the City of Eureka Springs is to exercise the rights of a municipality establish 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 the 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, THEREFOR, 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 in its entirety to read as follows:

4.40.01, Definitions:

- a. Advisory Committee: a five-member committee including the Contractor's representative, the Recycling Department manager, a City official, a residential customer, and a commercial customer. The City official, 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 more than one family, 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 waste, (2) can be sealed or tied securely at the top, and (3) have a capacity not to exceed 50 pounds.

- d. Bags, Residential: Plastic sacks designed for refuse which (1) are used for collecting and transferring solid waste, (2) have an identifying imprint designated by the City, (3) are provided 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.
- e. Bed and Breakfast House: A dwelling or area containing one or more structures occupied by the owner where, for compensation, lodging for transient guests is provided in three or fewer units and meals are provided.
- f. City of Eureka Springs: The area within the Eureka Springs corporate city limits.
- g. Commercial Container: A container provided by a solid-waste Contractor and used to contain solid-waste material on site prior to collection and transfer.
- 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 Waste: Commercial solid waste 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. Hazardous Waste: Waste, in any amount, which is 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 waste, in any amount, which is regulated under Federal or State law. For purposes of this ordinance, the term Hazardous Waste shall also include motor oil, combustible fluids and materials, liquid paint, automotive batteries, and waste tires.
- k. Inactive Residential Account: The account for a residential unit which is temporarily unoccupied (vacation status, for example) but still receiving City water and sewer services.
- l. On-site Compactor: A commercial container with compaction capability used to contain solid-waste material 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 waste 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. Solid Waste, Commercial: Normal garbage generated by businesses, including food refuse, containers, packaging products, and other common rubbish; excludes liquid waste, gaseous waste, rock, stone, concrete, dirt, and steel.
- p. Solid Waste, Residential: Includes normal household garbage such as food refuse, containers and packaging products, and other common rubbish from homes; excludes

rock, stone, concrete, and dirt.

- q. Tags: Tags designed to identify solid waste and white goods to be collected by the Contractor.
- r. Tourist Home: A dwelling or area containing one or more structures where, for compensation, lodging for transient guests is provided in three or fewer units.
- s. White Goods: Includes common household appliances, furniture, mattresses, tools, large toys or parts thereof, building materials, wires, plumbing fixtures, and other items generally discarded when unserviceable.
- t. Yard Waste: Includes normal organic yard and garden refuse such as tree, shrub, and brush trimmings; grass and other plant cuttings; dead plants and trees; leaves; and etc.

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 materials, hazardous waste, 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 individual, partnership, or corporation shall have a valid contract 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 shall be approved by the City Council.

4.40.03, Minimum Contractor Requirements

All individuals, partnerships, or corporations desiring to contract 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 a State Department of Pollution Control and Ecology, or the equivalent thereof, for the disposal of solid waste, white goods, recyclable materials, and hazardous waste (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 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.
- g. Willingness and ability to comply with all 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, its officers, agents, servants, and employees in the performance of a contract.

j. Willingness and ability to provide Workers' Compensation Law 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 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 a contract. The City and the Contractor shall negotiate coverage amounts for: (1) General Liability; (2) Automobile Liability; and (3) Excess Umbrella Coverage.

m. Willingness and ability to furnish a corporate surety bond, or other securities acceptable to the City Council, as security for the performance of the terms of a contract.

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

o. Willingness and ability to participate cooperatively with the City Council and the Advisory Committee in conducting periodic evaluations of services rendered and the terms of a contract.

4.40.04, Residential Solid-waste Collection and Transfer Services

a. All individuals, partnerships, or corporations interested in providing residential 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 a competitive bidding process governed by A.C.A. 8-6-211 and negotiation procedures established by the City Council.

b. Responsible bidders will be asked to propose a monthly service fee to be charged to each residential unit within the corporate limits of the City; and the City Council and the prospective Contractor shall negotiate the final contract terms, including a standard monthly service fee for residential units.

c. During the term of a contract, the Contractor may petition the City during an evaluation process for fee adjustments on the basis of unusual changes in the costs of operations resulting from changes in: new or revised laws; ordinances or regulations; location of disposal sites; disposal fees; and other pertinent factors. The City shall have the right, as a condition for its approval, to demand inspection by itself or by an independent auditor of pertinent records that demonstrate the need for an adjustment to the rates.

d. Residential customers shall apply for services at the City of Eureka Springs City Hall, and the City's clerks shall notify the Contractor of all applications for services.

e. The contracted residential solid-waste collection and transfer services shall be mandatory for all residential units within the corporate limits of the City.

f. 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 additional bags available to customers at a cost determined by the City Council.

g. Residential customers will be required to tag solid waste and white goods which cannot be contained in bags. The City, through its offices or designated agent(s), shall make tags embossed with the City's logo available at a cost mutually agreed upon by the Contractor, the City, and the Advisory Committee.

h. The Contractor shall provide residential solid-waste collection and transfer services for all residential units located within the corporate limits of the City one (1) time per week; and the customer shall be responsible for placing bags and bundles curbside, or as close as practicable to collection vehicle routes, by 5 a.m. on the designated collection day(s). Curbside refers to that 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).

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

j. The Contractor shall provide the City with maps and schedules of residential collection routes and keep such information current at all times. In the event of changes in routes or schedules, the Contractor shall promptly notify each resident affected within five (5) days.

k. In accordance with the Americans With Disabilities Act and exceptional customers' needs, the Contractor shall make reasonable accommodations for collecting some customers' bags and/or bundles.

l. The Contractor may decline to collect any bag or bundle not placed curbside. Where the Contractor has reason to leave solid waste uncollected at a residential location, the Contractor 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.

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

n. The following holidays shall be observed as non-collection days by the Contractor: (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 on the following day; or the Contractor shall notify all residential customers of the revised schedule for the week.

o. The Contractor shall receive, document, and respond to all complaints regarding services provided under the terms of a contract. Any complaint received by the City shall be directed to the Contractor'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 of developing a resolution. The City shall have the right to demand an explanation or resolution to its satisfaction.

p. The Contractor shall make arrangements for the collection of white goods upon request of a resident of the service area; provide a City-approved drop-off site for bulky white goods; and participate in special cleanup programs, such as annual white-goods collection programs, in coordination with the City's Recycling Department.

q. The Contractor shall assist customers with the disposal of building materials and common cleanup debris by setting containers at the customers' requests. Additionally, customers shall have the option of scheduling the rental of a refuse truck and an operator for such cleanup efforts. The Contractor's fees for these services shall be defined in the contract between the City and the Contractor.

r. The contract between the City and the Contractor shall specify the Contractor's responsibilities for collecting and transferring hazardous waste.

s. The City, the Contractor, and the Advisory Committee shall work cooperatively to inform all customers of complaint procedures, rates, regulations, collection schedules, and special solid-waste management events.

4.40.05, Billing Procedures For Residential Accounts

a. The monthly service fee for residential 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.

b. The Contractor shall pay the City a fee for billing and collecting residential accounts, and the fee shall be defined in the contract between the City and the Contractor.

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 for an amount equal to total collections for the period minus the negotiated billing and collection fee.

d. When assisting customers with special collection arrangements, the Contractor shall be responsible for documenting the receipt of any service fees collected by the Contractor 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 between the City and the Contractor) for said receipts.

4.40.06, Enforcement of Residential Accounts

a. If a residential account is not paid by the collection deadline for a billing period, the account shall be assessed a late-payment penalty equal to 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.

4.40.07, Commercial Solid-waste Collection and Transfer Services

a. All persons, firms, or corporations interested in providing 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 a competitive bidding process governed by A.C.A. 8-6-211 and negotiation procedures established by the City Council.

b. Responsible bidders will be asked to propose a schedule for monthly service fees to be charged to commercial accounts within the corporate limits of the City. The fee schedule shall be based on (1) commercial container size and frequency of service or (2) frequency of service for hand-loading service; and the City Council and the prospective Contractor shall negotiate the final contract terms, including the schedule of monthly service fees for commercial accounts.

c. During the term of a contract, the Contractor may petition the City during an evaluation process for fee adjustments on the basis of unusual changes in the costs of operations resulting from changes in: new or revised laws; ordinances or regulations; location of disposal sites; disposal fees; and other pertinent factors. The City shall have the right, as a condition for its approval, to demand inspection by itself or by an independent auditor of pertinent records that demonstrate the need for an adjustment to the rates.

d. Commercial customers shall apply for services or changes in levels of services at the Contractor's office.

e. The Contractor shall provide commercial solid-waste collection and transfer services for all businesses within the corporate limits of the City of Eureka Springs at least one (1) time per week, and the services shall be mandatory for all businesses within the service area.

f. All solid waste to be collected by the Contractor will be contained in 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 practicable to collection vehicle routes by 5 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 that portion of the right-of-way adjacent to paved or traveled roadways. If using a commercial container(s) provided by the Contractor for disposal of solid waste, the customer is responsible for placing solid waste to be collected in the container prior to 5 a.m. on the designated collection day(s).

g. The container size and the frequency of service selected by the customer must be correlated with the volume of solid waste to be collected and transferred by the Contractor. Commercial hand-loading services shall be available only where space for a commercial container is not available or the volume of solid waste does not justify the use of a commercial container. The Advisory Committee shall mediate disputes regarding such levels of service.

h. The Contractor may decline to collect any bag, bundle, or privately owned container not placed curbside. Where the Contractor has reason to leave solid waste uncollected at a business, the Contractor 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., hazardous waste, improper placement, etc.

i. The Contractor shall make arrangements for the collection of white goods upon request of a customer of the service area; provide a City-approved drop-off site for bulky white goods; and participate in special cleanup programs, such as annual white-goods collection programs, in coordination with the City's Recycling Department.

j. Commercial customers will be required to tag white goods which cannot be contained in bags, bundles, or containers. The City, through its offices or designated agent(s), shall make tags embossed with the City's logo available at a cost mutually agreed upon by the Contractor, the City, and the Advisory Committee.

k. The Contractor shall assist customers with the disposal of building materials and common cleanup debris by setting containers at the customer's request. Additionally, customers shall have the option of scheduling the rental of a refuse truck and an operator for such cleanup efforts. The Contractor's fees for these services shall be defined in the contract between the City and the Contractor.

l. Normal hours of collection are to be from 5 a.m. to 8 p.m. on the City-approved collection days of each week. Exceptions may be made only when the Contractor has reasonably

determined that an exception is necessary to complete collection and transfer of an existing route due to unusual circumstances or upon the mutual agreement of the City and the Contractor.

m. The Contractor shall provide the City with maps and schedules of commercial collection routes and keep such information current at all times. In the event of changes in the routes or schedules that will alter the day of pickup, the Contractor shall promptly notify each customer affected within five (5) days.

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

o. The following holidays will be observed as non-collection days by the Contractor: (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 on the following day; or the Contractor shall notify all commercial customers of the revised schedule for the week.

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

q. The City, the Contractor, and the Advisory Committee shall work cooperatively to inform all customers of complaint procedures, rates, regulations, collection schedules, and special solid-waste management events.

4.40.08, Billing Procedures For Commercial Accounts

a. The Contractor shall be responsible for billing each commercial account for the appropriate monthly solid-waste collection and transfer fee, as defined in the contract between the City and the Contractor; and the Contractor shall be responsible for collecting all commercial accounts. On or before the final day of each month, the Contractor shall mail to each customer a statement, dated the final business day of the month, for services rendered during the month. Customers shall have twenty (20) days from the statement date to remit payment to the Contractor.

b. Within ten (10) days following the collection deadline for each monthly billing period, the Contractor shall remit to the City a franchise fee payment equal to the negotiated percentage of total collections for all services rendered during the billing period, as defined in the contract between the City and the Contractor.

c. The City shall have the right to demand inspection by itself or by an independent auditor of pertinent records related to: (1) the billing of all commercial accounts within the City; (2) the collection of all commercial accounts within the City; and (3) the remittance of franchise fee payments to the City.

4.40.09, Enforcement of Commercial Accounts

a. Commercial accounts not paid within twenty (20) days following the statement date shall be considered past due and assessed a late-payment penalty equal to 10 percent of the current balance.

b. The City shall not issue an occupation license to any business within the corporate limits of the City which is not in full compliance with this ordinance, as defined in Chapter 4.16, "Occupational Licenses," Eureka Springs Municipal Code.

4.40.10, Dedicated Revenues

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

4.40.11, Recycling Programs

a. Curbside Recycling. Effective January 1, 1993, 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 materials 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.

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 materials 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 this ordinance.

4.40.12, 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 or 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.

4.40.13, 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 provisions 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 collection and transfer services of a solid-waste Contractor, the City Council of the City of Eureka Springs finds that an emergency exists; and this ordinance shall be in effect from and after its passage, approval, and publication as provided by law.

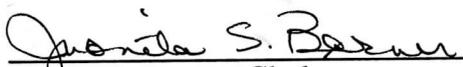
PASSED AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF EUREKA SPRINGS, ARKANSAS, THIS 8TH DAY OF DECEMBER, 1992.

APPROVED:



Randy Wolfenbarger, Mayor

ATTEST:



Juanita S. Barner, Clerk