

ORDINANCE NO. 1509

**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 . . .

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 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 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) 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 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.

- e. 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. Such facilities with more than three rental units must have a commercial solid-waste collection account.
- 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 materials 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 wastes 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 Contract between the City and the Contractor.
- k. Hazardous Waste: 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 is 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. Inactive Accounts: Accounts for residential units which are temporarily unoccupied (vacation status, for example) but still receiving City water and sewer services.
- m. On-site Compactor: A commercial container with compaction capability used to contain solid-waste materials on site prior to collection and transfer.
- n. 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
- o. Recycling Diversion Credit: Monetary credit remitted to the City by the Contractor equal to the amount the Contractor does not pay in tipping fees when recyclable materials are diverted from the waste stream. The credit shall be for recyclable materials collected through the City's curbside recycling program and marketed by the Recycling Department. All recycling diversion credits shall be dedicated to funding the Eureka Springs Recycling Department and related solid-waste management programs within the City.
- p. 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.

- q. 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.
- 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 Contractor.
- t. Tourist Home/Lodging: A dwelling or area containing one or more contiguous structures where, for compensation, lodging is provided for transient guests. Such facilities with more than three rental units must have a commercial solid-waste collection account.
- u. 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.
- 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; 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 wastes, commercial solid wastes, recyclable materials, hazardous 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 individual, partnership, or corporation shall have a valid contract with the City of Eureka Springs. Firms engaged in collecting and transferring medical wastes may be excluded from this requirement. The City has the authority to grant such an exclusive right as delegated to it by A.C.A 8-6-211.

4.40.03, Billing Procedures For Residential Accounts

- a. The City shall be responsible for establishing, maintaining, and billing all residential accounts.
- b. The monthly fees for residential solid-waste collection and transfer services for active, inactive, and hardship accounts, as defined in the contract between the City and the Contractor, shall be added to customers' monthly water and sewer bills; and the City shall be responsible for collecting the fees.
- c. 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.
- d. 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 franchise fee.
- e. 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.

4.40.04, 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.

4.40.05, Billing Procedures For Commercial Accounts

a. The Contractor shall be responsible for establishing, maintaining, and billing all commercial accounts for the appropriate monthly solid-waste collection and transfer fees, 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.

4.40.06, 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.

4.40.07, Dedicated Revenues

a. All revenues derived from the enactment of this ordinance, except the residential franchise fee which shall be used to pay billing and collection expenses, 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. The Recycling Department shall make 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 public information programs.

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 Wastes. The Recycling and Public Works Departments shall work cooperatively to plan and to facilitate yard wastes 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.

4.40.09, Unlawful Disposal of Solid Wastes

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 wastes 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.

4.40.10, 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 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 Management 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 25TH DAY OF JANUARY, 1993.

APPROVED:



Randy Wolfinbarger, Mayor

ATTEST:



Juanita S. Barner, Clerk