

CITY OF NEWPORT

ORDINANCE NO. 2067

AN ORDINANCE AMENDING CHAPTER 7.05
OF THE MUNICIPAL CODE RELATED TO
SOLID WASTE

WHEREAS, Chapter 7.05 of the Newport Municipal Code provides that the city regulate solid waste management to: (1) ensure safe, economical, and comprehensive solid waste service; (2) to ensure rates that are just, fair, reasonable, and adequate to provide necessary public service and to prohibit rate preferences and other discriminatory practices; and (3) to provide for technologically and economically feasible solid waste recovery by and through the franchise; and

WHEREAS, Thompson's Sanitary Service, the city's solid waste franchisee, plans to institute a curbside composting service which is consistent with the intent of Chapter 7.05 of the Newport Municipal Code; and

WHEREAS, Thompson's Sanitary Service has conducted an informational and educational campaign regarding its curbside composting service;

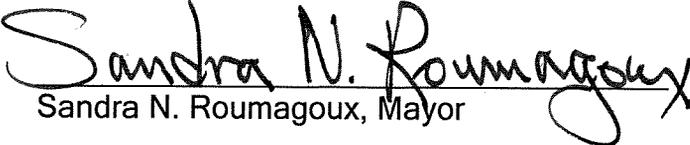
WHEREAS, the City Council of the City of Newport endorses the curbside composting service that Thompson's Sanitary Service plans to institute.

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

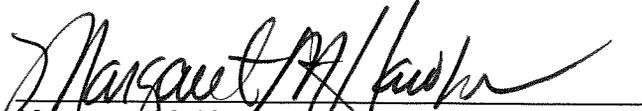
Section 1. Chapter 7.05 is amended to read as in the attached Exhibit A.

Section 2. Emergency. This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect immediately upon passage.

Adopted by the Newport City Council on July 7, 2014.


Sandra N. Roumagoux, Mayor

ATTEST:


Margaret M. Hawker, City Recorder

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

7.05.005 Purpose and Policy

A. Purpose. The City of Newport regulates solid waste management:

1. To insure safe, economical and comprehensive solid waste service;
2. To insure rates that are just, fair, reasonable and adequate to provide necessary public service and to prohibit rate preferences and other discriminatory practices; and
3. To provide for technologically and economically feasible solid waste recovery by and through the franchise.

B. Policy and Priorities. The city's solid waste management priorities, in order, are:

1. Reduce the amount of solid waste generated;
2. Reuse materials for the purposes for which they were originally intended;
3. Recycle materials that cannot be reused;
4. Resource recover material where possible;
5. Assure that remaining wastes will be disposed of in a manner that fully meets all requirements of state statutes and regulations.

The city recognizes that the priorities are subject to economic and technical considerations.

C. Recycling. The opportunity to recycle shall be an integral part of the overall solid waste collection system, taking advantage of coordinated area-wide service, promotion, education and marketing.

D. Research and Demonstration Projects. The city encourages and will cooperate in research and demonstration projects in recycling, reuse, resource

recovery and solid waste management generally by its franchisees, with technical assistance from other sources, as required.

- E. Consistency with State Law. The city's solid waste management program is intended to carry out state solid waste requirements and shall be interpreted to be consistent with state law and regulations regulating solid waste.

7.05.010 Definitions

- A. Collection Service. The collection and/or compaction of residential, commercial, drop box, and demolition solid waste together with the collection of recyclable and mixed compostable materials.
- B. Compost or Composting: The controlled biological decomposition of compostable material or the product resulting from such process.
- C. Compostable Material: Yard debris, food waste, and food soiled paper when source-separated for composting; but does not include food-soiled paper containing plastic or any other material that inhibits controlled biological decomposition.
- D. Customer. The person who generates solid waste to whom the franchisee provides collection services and who has not been refused service pursuant to this chapter.
- E. Disposal. The disposition of solid waste at a permitted solid waste handling facility.
- F. Fair Market Value. Fair market value is that price for which goods will sell as between one who wants to purchase and one who wants to sell after reasonable efforts have been made to find a purchaser who will give a good price. In determining whether fair market value has been paid, the value of services provided in removing and disposing of the materials shall be excluded if the disposal of such material is then available to the generator at no cost.
- G. Food-soiled Paper. Paper products that have been in contact with food or food waste to the degree that they would not be able to be recycled into new paper products. Food-soiled paper includes, but is not limited to, used

paper table covers, used napkins, pizza boxes, coffee filters, and waxy corrugated cardboard. Food-soiled paper does not include unsoiled cardboard, paperboard, newspaper or office paper.

- H. Food Waste. Waste from meats, fish, shellfish, grains, fruits, and vegetables which attends or results from the storage, preparation, cooking, handling, selling, or serving of food for human consumption. Food waste includes, but is not limited to, excess, spoiled, or unusable food or dairy products, meats, fish, shellfish, grains, fruits, vegetables, breads and dough, incidental amounts of oils and meats which are collected for rendering, fuel production, or other reuse applications. Food waste does not include dead animals or animal excrement.
- I. Franchisee. The person granted the franchise under Section 7.05.015, as well as authorized subcontractors and agents of the franchisee. .
- J. Hazardous Waste. Any wastes regulated as hazardous wastes under state law.
- K. Mixed Recycling and Mixed Compostables. The process where two or more types of recyclable or compostable materials are collected together (i.e., not separated) in a combination allowed by the city, and in accordance with Oregon Department of Environmental Quality regulations.
- L. Person. An individual, partnership, association, corporation, trust, firm, estate or other private or public legal entity or agency.
- M. Recyclable Material. Any material or group of materials that can be recycled.
 - 1. Recyclable Material. Recyclable material that the franchisee is required to collect from customers. The Council may modify which materials are recyclable by resolution after consultation with the Franchisee. The following materials collected from a residential source are recyclable materials: used motor oil, newspaper, aluminum, corrugated cardboard, and tin cans. The following materials collected from a commercial source are recyclable materials: Ferrous metal, nonferrous metal, used motor oil, corrugated cardboard, tin cans.
 - 2. Depot-Recyclable Material. All recyclable material and

container glass.

- N. Recycling and Mixed Compostable Service. The collection, handling, and disposition of recyclable and mixed compostable materials. Recycling and mixed compostable service includes collection of recyclables and mixed compostables.
- O. Resource Recovery. The process of obtaining useful material or energy resources from solid waste, including energy recovery, materials recovery, recycling, composting, or reuse of solid waste.
- P. Service. Collection service, recycling service, mixed compostable service, and resource recovery.
- Q. Solid Waste. All putrescible waste and non-putrescible waste, including but not limited to, garbage, rubbish, refuse, ashes, swill; wastepaper (correlated or cardboard), grass clippings; compost; mixed compostables, residential, commercial, industrial, demolition and construction wastes; discarded residential, commercial and industrial appliances, equipment and furniture; vehicle parts and vehicle tires; manure, vegetable or animal solid or semi-solid waste, dead animals and all other wastes not exempted by this subsection. Solid waste does not include:
 - 1. Hazardous waste.
 - 2. Sewer sludge and septic tank and cesspool pumping or chemical toilet waste.
 - 3. Reusable beverage containers for which a deposit is required under state law.
 - 4. Curb-side recyclable material and depot recyclable materials when collected by the franchisee or delivered to franchisee if such materials are properly prepared for recycling.
 - 5. Source separated used materials that are sold for fair market value for recycling or reuse.
- R. Solid Waste Management. The business of collection, transportation, storage, treatment, utilization, processing, disposal, recycling, composting, and resource recovery of

solid waste.

- S. Source. The person last using recyclable, compostable, or waste materials as, for example, a residential householder who buys and consumes the contents of a product container, making the container available to be disposed of as waste, to be processed as mixed compostables, or to be recycled; or the owner of a building that becomes construction debris.

- T. Waste. Material that is no longer usable by or that is no longer wanted by the source, which material is to be disposed of or be resource-recovered by another person. However, the term "waste" shall not include any materials which are the subject of a sales transaction by the source of the material for actual monetary consideration and involving materials for which a recognized market exists and which requires, or involves, no processing prior to such sale by the source. A payment of a nominal consideration to the source of material shall not exempt such material from the definition of the term "waste" if in fact the true consideration is merely the collection, transportation, conveyance, or disposal of the waste materials.

- U. Yard Debris. All vegetative waste generated from property maintenance and/or landscaping activities, including, but not limited to, grass clippings, leaves, hedge trimmings, and small tree branches, but excluding tree stumps and other similar bulky woody materials.

7.05.015 Exclusive Franchise and Exceptions

- A. The Council finds that the best way of achieving the purpose, policies and priorities of this chapter is to grant an exclusive franchise for service. The franchisee shall be required to enter into a franchise agreement with the city. Grants of franchises and approval of franchise agreements shall be by non-codified ordinances. The franchisee shall provide service throughout the city, and shall provide at least one depot for depot-recyclable materials and two additional depots for container glass only.
 - 1. Unless as otherwise provided by this chapter, no person shall provide service without a franchise issued by the city.

2. Unless as otherwise provided by this chapter, no person without a franchise issued by the city shall take, process, sort, transfer, compact or remove, whether for recycling, mixed composting, reuse, or otherwise, waste or solid waste materials placed out for collection.
 3. Unless as otherwise provided by this chapter, no person without a franchise issued by the city, other than the person producing the materials contained therein, shall enter or interfere with any solid waste, recycling, or mixed compostable container, or remove any such container or its contents from the location where the same has been placed by the person producing the contents of such container without first obtaining written consent from the franchisee.
 4. Any person with a franchise issued by the city, shall in addition to all other legal rights and remedies he or she might otherwise possess, have a cause of action for violations of this chapter or the franchise in any court of competent jurisdiction, including a claim for injunctive relief. Damages recovered in such a case shall be trebled if reasonably necessary to deter continuing violations of this chapter or the franchise. The prevailing party in any such action shall be entitled to recover his or her reasonable costs, including attorney's fees and expert witness fees at the trial court level and on appeal.
- B. Nothing in this chapter or a franchise issued pursuant to this chapter shall:
1. Prohibit any property owner or tenant from personally transporting solid waste generated by the property owner or tenant to an authorized disposal site or resource recovery facility. Solid waste generated by a tenant is owned by the tenant, not the landlord or property owner.

(Chapter 7.05.015(B.)(1.) adopted by Ordinance No. 1945 on January 7, 2008; effective February 6, 2008)

2. Prohibit any person from contracting with a federal agency to provide service to such agency, provided, however, such person shall apply for a franchise for that service only and shall comply with all applicable requirements imposed on the franchisee under this

chapter and a franchise issued pursuant to this chapter with the exception of rates or terms of service set by written contract with such agency where they

are in conflict.

3. Prohibit any non-profit charitable or civic organization having a recognized tax-exempt status, from receiving as a donation, source-separated recyclable materials at a designated location.
4. Prohibit a contractor licensed in the state of Oregon from transporting and disposing of waste as an incidental part of carrying on the business or service of the demolition, construction, or remodeling of a building or structure or in connection with land clearing and development. Such waste will be generated only by the contractor in connection with the contractor's construction site and hauled in equipment owned by the contractor. For purposes of this section, "incidental" is defined as a total of twelve (12) cubic yards or less of solid waste hauled at any time or in any one piece of equipment.

(7.05.015(B)(4) was added by the adoption of Ordinance No. 2015 on May 16, 2011; effective June 15, 2011.)

7.05.020 Supervision

Service provided under the franchise shall be under the supervision of the city manager. Franchisee shall, at reasonable times, permit inspection of its facilities, equipment, and personnel providing service.

7.05.025 Public Responsibility

- A. To prevent recurring back and other injuries to collectors and to comply with safety instructions to collectors from the State Accident Insurance Fund:
 1. No garbage, recycling, or mixed compostable container set out for manual collection shall exceed 60 pounds gross loaded weight. No garbage, recycling or mixed compostable container set out for mechanical collection shall exceed the manufacturer's maximum recommended weight.
 2. Sunken refuse cans or containers shall not be used.
 3. All customers will be provided with containers for solid waste, recycling, and mixed compostables by the franchisee that the franchisee shall own and maintain.

4. The customer shall provide safe access to the pickup point so as not to jeopardize safety of the driver of a collection vehicle or the motoring public or to create a hazard or risk to the person providing service or that would cause a violation of state or federal laws or safety regulations. Where the franchisee finds that a private bridge, culvert, or other structure or road is incapable of safely carrying the weight of the collection vehicle, the collector shall not enter onto such structure or road. The customer shall provide a safe alternative access point or system.
 5. The customer shall set out garbage, recycling, and mixed compostable containers for collection at agreed upon location, if service is "curbside" then location will be the curb or fog line.
 6. The customer shall set out garbage, recycling, and mixed compostable containers for collection no later than 6:00 A.M. the day of collection.
 7. If the franchisee has provided the customer with a container for collection, then the user must use that vessel.
 8. All containers, one cubic yard or larger, must be set upon a smooth, dry, hard surface, and be readily serviceable from a public right-of-way.
- B. 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, unless otherwise provided by an agreement with the franchisee, place the container to be emptied outside of any locked or latched gate and outside of any garage or other building.
 - C. No stationary compactor or other container for commercial or industrial use shall exceed the safe loading design limit or operation limit of the collection vehicles provided by the franchisee providing service.
 - D. To prevent injuries to users and collectors, stationary compacting devices for handling solid wastes shall comply with applicable federal and state safety regulations.
 - E. Any vehicle used by any person to transport solid wastes

shall be so loaded and operated as to prevent the wastes from dropping, sifting, leaking, blowing, or other escapement from the vehicle.

- F. No person shall place hazardous waste out for collection by the franchisee or place hazardous waste in any container, box or vehicle owned or operated by the franchisee or by the City of Newport without the prior permission of the office of the franchisee or of the city manager.
- G. In the case of customers who violate the above conditions, the franchisee shall not be required to furnish service until the violation is corrected. The franchisee shall give violating users reasonable notice of the violations and an opportunity to cure prior to terminating services.
- H. The franchisee shall charge the rates approved by the City Council as provided in the franchise by resolution after consultation with the franchisee, and customers shall pay the approved rates. Franchisees may provide services other than those that have published rates at any rate agreeable to the franchisee and customer.

7.05.030 Accumulation of Waste

No person shall accumulate or store waste that is unsightly, or in violation of the city's nuisance ordinance, or in violation of regulations of the Oregon Department of Environmental Quality.

7.05.035 Unauthorized Removal

No person shall remove solid waste, recyclables, or mixed compostables placed out for collection, resource recovery, mixed composting, or recycling except the person so placing the materials or the franchisee. This Section does not apply to the purchase of materials for fair market value as exempted by Section 7.05.015.

7.05.040 Exempt Activities

It is not the intention of this chapter to prohibit, restrict or control the bona fide sale or exchange of material not constituting recyclable material, when such material has a recognized market value or for which a recognized market exists and where such sale or exchange is for valuable

consideration. A payment of a merely nominal consideration to the source of the material shall not exempt such material from the definition of the term waste or the restrictions of this chapter if in fact the true consideration is merely the collection,

transportation, conveyance, or disposal of waste materials.

7.05.045 Construction/Severability

Any finding by any court of competent jurisdiction that any portion of this chapter is unconstitutional, invalid, or unenforceable shall not invalidate any other portion of this chapter.

7.05.050 Penalties

Violation by any person except franchisee of the provisions of this chapter is a civil infraction. The civil infraction remedy is not exclusive and is in addition to all other remedies. The city and/or the franchisee may seek any other remedy in any other forum authorized by law. Violations of this chapter by franchisee or its agents or subcontractors shall be enforced as provided in the franchise.

7.05.055 Customer Dispute Resolution

- A. Any citizen of the city who is aggrieved or adversely affected by any application of the franchise or a policy of the franchisee shall first attempt to settle the dispute by notifying the franchisee of the nature of the dispute and affording the franchisee the opportunity to resolve the dispute.
- B. If the dispute is unresolved, the citizen may petition the city in writing for a hearing on the complaint. At the conclusion of the hearing, the city shall have the authority to determine whether the complaint is unfounded or that the franchisee should be ordered to remedy the matter.
- C. If either party disagrees with the city's decision, either party may submit the matter to be decided by neutral, binding arbitration in accordance with the rules of the American Arbitration Association and the laws of the State of Oregon, and not by court action except as provided by Oregon law for judicial review of arbitration proceedings. Judgment upon any arbitration award rendered may be entered in any court having jurisdiction.
- D. Any attorney fees or other costs incurred by a party in preparation for or participation in any arbitration shall be the responsibility of that party, except that the costs of arbitration shall be shared equally by the parties.

E. Actions brought against the city under this section shall be subject to the applicable tort limits in the Oregon Tort Claims Act and the Oregon Constitution.

(7.05.055(E) was adopted by Ordinance No. 2015 on May 16, 2011; effective June 15, 2011.)

(Chapter 7.05 was adopted by Ordinance No. 1913 on May 7, 2007; effective June 6, 2007)