

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

An Ordinance Relating to Solid)	SOLID WASTE
Waste Management in Marion County)		MANAGEMENT ORDINANCE
Amending Ordinance No. 615 and)	
Repealing Ordinances Nos. 638,)	December 18, 2002
656, 668, 706, 720, 747, 781, and 876,)	
and Declaring an Emergency.)	

ORDINANCE NO. 1173

THE MARION COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS
FOLLOWS:

1. GENERAL PROVISIONS

1.1 Short Title

This Ordinance shall be known as the "Solid Waste Management Ordinance" and shall be so cited and pleaded. This Ordinance shall amend Ordinance No. 615 in whole.

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1. General Provisions

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1.3 Purpose, Policy and Scope

1.3.1 In order to protect the health, safety, and welfare of the people of Marion County; to provide a coordinated program of waste reduction, recycling, collection, and disposal of waste and solid waste; and to provide a viable franchise system; it is declared to be the public policy of Marion County to regulate the collection, transportation, recovery of materials and/or energy, and disposal of solid waste, in order to:

- (a) Provide for safe and sanitary collection, transportation, energy recovery, and disposal of waste and solid waste.
- (b) Provide a coordinated county-wide program for control of waste and solid waste in coordination with federal, state, and local agencies and laws.
- (c) Provide for and encourage research, study, surveys, and demonstration projects on developing more efficient and economical recovery of materials and/or solid waste disposal systems and programs.
- (d) Provide standards for location and operation of solid waste facilities.
- (e) Establish franchises and set franchise rates for franchised collectors, waste transporters, along with disposal operations at transfer stations, energy recovery facilities, or at sanitary landfills, that are just, fair, reasonable, and adequate to provide funding necessary for providing solid waste management to the people of Marion County.
- (f) Provide for economically feasible resource recovery.
- (g) Provide for economically and environmentally sound waste reduction through such techniques as reduction at source, recycling, reuse, and/or materials resource recovery.

1.3.2 The Board has the discretion to expend funds for any and all solid waste management activities.

1.4 General Definitions

For the purpose of this Ordinance, words used in the present tense include the future, the singular number includes the plural, the word "shall" is mandatory and directory, and the term "this Ordinance" shall be deemed to include all amendments hereafter made to this Ordinance. Unless otherwise defined in this section, the language used in this Ordinance shall have the meanings as defined in Chapters 459 and 459A of Oregon Revised Statutes. If a word is not specifically defined either in this Ordinance or in ORS Chapters 459 and 459A, then it shall have the meaning as defined in the "Webster's Ninth New Collegiate Dictionary".

1.5 Specific Definitions

As used in this Ordinance, the following words and phrases shall have the meaning herein ascribed to them:

- 1.5.1 "Ashes" means the residue from the combustion of solid fuels.
- 1.5.2 "Board" means the Marion County Board of Commissioners.
- 1.5.3 "Bulk" means discarded household furniture, bedding and mattresses, leaves, yard trimmings, appliances, building waste, or other nonputrescible and nonhazardous materials too large to be placed into containers.
- 1.5.4 "Cannery Waste" means organic waste residues from a commercial food processing facility, but does not include nonputrescible waste such as, but not limited to, woody waste, such as pallets, plastic, cardboard, metal cans, paper, etc., unless contaminated with food residues before being placed in the container for disposal.
- 1.5.5 "City" means an incorporated municipal unit.
- 1.5.6 "Collection Vehicle" or "Transportation Vehicle" means any vehicle used to collect or transport waste or solid waste.
- 1.5.7 "Committee" means the Board-appointed Marion County Solid Waste Management Advisory Council to assist in gathering information and/or making recommendations concerning waste/solid waste, recycling, reuse, transfer stations, sanitary landfills, energy recovery, or a combination thereof, to serve for a specific period of time.
- 1.5.8 "Compaction" means shredded, manually compacted or mechanically compacted material.
- 1.5.9 "Compensation" means any type of consideration for service, including, but not limited to, any direct or indirect provisions for payment of money, goods, services, or benefits to tenants, lessees, occupants, or similar persons and for the exchange for service between persons and/or payment for collection, removal, or disposal of solid waste. For the purpose of this section, it is presumed that all services provided by a lessor or landlord are received for consideration.
- 1.5.10 "Container" means any vessel used for the storage of solid waste.
- 1.5.11 "Department" means the Marion County Department of Public Works.
- 1.5.12 "Department of Environmental Quality" or "DEQ" means the Department of Environmental Quality of the State of Oregon.

- 1.5.13 "Director" means the head of the Public Works Department, to whom the Board delegates the administration and enforcement of this Ordinance.
- 1.5.14 "Disposal Site" means land used for the disposal or handling of waste or solid waste, including, but not limited to, dumps, landfills, or incinerators for solid waste delivered by the public, by a franchised collector, or franchised transporter of solid waste. The term does not include a hazardous waste facility subject to the permit requirements of ORS Chapter 459, or a landfill site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete, or other similar non-decomposable materials, unless the site is used by the public, either directly or indirectly.
- 1.5.15 "Dispose" or "Disposal" means the accumulation, storage, collection, or transportation of solid waste to a transfer facility, disposal site, sanitary landfill, or resource recovery facility.
- 1.5.16 "Energy Recovery" means recovery in which all or a part of the solid waste materials are processed to utilize the heat content, or other forms of energy, of the material.
- 1.5.17 "Franchise" or "Franchise Collector" means the authority given by a City or County to operate a solid waste collection service, operate a disposal site, a processing facility, a transfer station, or a resource recovery facility.
- 1.5.18 "Franchise Fee" means the fee charged by a City or County to the franchisee for the administration of the franchise.
- 1.5.19 "Franchisee" or "Franchised Collector" means the person to whom a franchise is granted.
- 1.5.20 "Garbage" means all classes of putrefactive and easily decomposable animal and vegetable matter including without limitation, waste produced from the handling and preparation of food.
- 1.5.21 "Generator" means the person who produces the solid waste and recyclable material and places it for collection and disposal. The term does not include a person who manages an intermediate function of altering or compacting the material after it has been produced by the generator and placed for collection and disposal.
- 1.5.22 "Hazardous Solid Waste" means that waste defined by ORS Chapter 466, as implemented by regulation for the Environmental Quality Commission or regulation adopted by the Department of Environmental Quality (DEQ).
- 1.5.23 "Household Hazardous Waste" is any household material that may pose a substantial threat or potential hazard to human health or the environment when handled improperly. These materials can be solid, liquid, sludge, or containerized gas. They differ from other household materials because they meet one or more of the following characteristics:

"Corrosive": A substance that is usually highly acidic or alkaline that corrodes materials with which it comes in contact.

"Toxic": Materials that, when improperly managed, pose a hazard to human health or the environment.

"Ignitable": Materials that burn.

"Reactive": Materials that create a vigorous reaction with air, water or other substances, which may result in explosions and the generation of toxic fumes.

- 1.5.24 "Incinerator" means a combustion device specifically designed for reducing the mass of solid, semisolid, or liquid combustible waste by burning.
- 1.5.25 "Infectious Waste" means biological waste, including medical waste, as defined in ORS 459.386.
- 1.5.26 "Material Recovery" means any process of obtaining, by pre-segregation or otherwise, materials from solid waste that still have useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled for the same or other purpose.
- 1.5.27 "Mixed Recycling" means two or more recyclable materials collected together (ie. not separated) in the combination of recyclable materials allowed by the County.
- 1.5.28 "Owner" means the one who has the legal or rightful title to premises or any agent or person employed by the title holder to manage or maintain such premises, or a person who is purchasing such premises under contract.
- 1.5.29 "Permit" means a written document issued by a regulatory agency.
- 1.5.30 "Person" includes: the United States government or agencies thereof; any state; public or private corporation; local government unit; public agency; individual; partnership; association; cooperative; firm; trust; estate; or any legal entity, contractor, subcontractor, or combination thereof.
- 1.5.31 "Placed for Collection": means solid waste, recyclable materials or yard debris that has been placed by the generator for collection by a franchisee in accordance with the terms of this Ordinance.
- 1.5.32 "Process" or "Processed" means a method or system of altering the form, condition, or content of solid wastes including, but not limited to, composting, shredding, milling, pulverizing, or incineration.
- 1.5.33 "Premises" means a building or a group of buildings constituting a single property and the lot or parcel of land on which the building or buildings are located.
- 1.5.34 "Putrescible Material" means solid waste containing organic material that can be rapidly decomposed by microorganisms, and that may give rise to foul smelling, offensive products during decomposition or which is capable of attracting or

providing food for birds and potential disease vectors such as rodents and flies, including but not limited to bones; meat; meat scraps; fat; grease; fish; fish scraps; vegetables; fruit; and food containers or products contaminated with food wastes, particles or residues. (OAR 340-093-0030(70))

- 1.5.35 "Rate" means the amount approved by the Board as a charge for service rendered and charged by the franchisee, including the franchise fees, to users of the service.
- 1.5.36 "Recycling" means any process by which solid waste materials are transformed into new products in a manner that the original products may lose their identity.
- 1.5.37 "Recycling Drop-Off Center" means a facility that receives and temporarily stores multiple source separated recyclable materials including, but not limited to, glass, scrap paper, corrugated paper, newspaper, tin cans, aluminum, plastic, and oil that are transported or sold to third parties for reuse or resale.
- 1.5.38 "Recyclable Material" means any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same materials.
- 1.5.39 "Refuse" means worthless or useless items as determined by the generator of the material.
- 1.5.40 "Regulation" or "Rule" means an order of the Board issued pursuant to this Ordinance.
- 1.5.41 "Resource Recovery" means the process of obtaining useful material or energy resource from solid waste.
- 1.5.42 "Reuse" means the return of a commodity into the economic stream for use in the same kind of application as before, without a change in its identity or form.
- 1.5.43 "Rubbish" includes cardboard, plastic, metal, glass, paper, rags, sweepings, wood, rubber, leather, and similar waste materials that ordinarily accumulate on premises, but not garbage, ashes, bulk items, dead animals, or hazardous solid waste.
- 1.5.44 "Sanitary Landfill" means a site operated in compliance with a permit issued by the Department of Environmental Quality for the disposal of solid waste by placing it in or upon land and covering it with earth or other approved cover material.
- 1.5.45 "Service" means the collection, storage, transportation, transfer, disposal, or resource recovery of solid waste.
- 1.5.46 "Service Area" means the geographic area in which service, other than operation of a disposal site, is provided.

- 1.5.47 "Solid Waste" means all putrescible and non-putrescible wastes including, but not limited to, garbage; rubbish; refuse; ashes; waste paper and cardboard; commercial, industrial, demolition, and construction wastes; discarded or abandoned vehicles or parts thereof; discarded home and industrial appliances; manure; vegetable or animal solid and semisolid wastes; dead animals; or other wastes. The term does not include:
- (a) Hazardous wastes as defined by ORS Chapter 466 or regulations adopted by the Department of Environmental Quality or the Environmental Quality Commission.
 - (b) Materials used for fertilizer or for other productive purposes, or which are salvageable, when these materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowl or animals.
 - (c) Radioactive waste as defined in ORS 469.300.
 - (d) Explosives.
 - (e) Reusable beverage containers as defined in ORS Chapter 459A.
 - (f) Sewage sludge and septic tank and cesspool pumping or chemical toilet waste.
- 1.5.48 "Solid Waste Management" means the prevention of or reduction of solid waste; management of the storage, collection, transportation, transfer, treatment, utilization, processing, and final disposal of solid waste; resource recovery from solid waste; and facilities and equipment necessary or convenient to these activities.
- 1.5.49 "Source Separation" means the separation of materials by the generator, in preparation for recycling or reuse, including mixed recycling as defined herein.
- 1.5.50 "Transfer Site" or "Transfer Facility" means a facility used as an adjunct to collection vehicles, resource recovery facility, or disposal site between the collection of the waste/solid waste and disposal site, including but not limited to a concrete slab, pit, building, hopper, railroad gondola, or barge. "Transfer site or facility" also may mean a resource recovery facility where mixed materials are brought and sorted to remove recyclable materials. "Transfer site or facility" does not include a self-propelled compactor type solid waste collection vehicle into which scooters, pickups, small packers, or other satellite collection vehicles dump collected solid waste for transport to a transfer site, disposal site, landfill, or resource recovery site or facility.
- 1.5.51 "Waste" means any material that is no longer usable by the source, generator, or user of the material and which is to be disposed of, "waste" may be a resource recovered by another person.

1.6 Administration

The Board shall be responsible for the administration and enforcement of this Ordinance. The Board may issue regulations and delegate the administration and

enforcement of this Ordinance. The Board has the discretion to expend funds for any and all solid waste management activities.

1.7 Exemptions and Exceptions

Except as specifically provided elsewhere in this Ordinance or by state statute or Department of Environmental Quality regulations, this Ordinance shall not apply to:

- (a) The Federal Government or state agencies that collect, store, transport, or dispose of waste or solid waste.
- (b) Hazardous waste as defined by ORS Chapter 466, or regulations adopted by the Department of Environmental Quality or the Environmental Quality Commission.
- (c) Materials used for fertilizer or for other productive purposes, when these materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowl(s) or animals in a manner not to cause vector creation or sustenance, air or water pollution, public health hazards, odors, or nuisance.
- (d) The collection, transportation, and reuse of repairable or cleanable discards by private charitable organizations regularly engaged in this business or activity including, but not limited to, the Salvation Army, St. Vincent DePaul, Goodwill, and similar organizations.
- (e) The collection, transportation, and reuse or recycling of totally source separated solid waste materials or the operation of a collection center for totally source separated solid waste materials by a religious, benevolent, charitable, or fraternal organization that was not organized nor is operated for any solid waste management purpose and when the organization is using the activity for fund raising.
- (f) The collection, transportation, or redemption of returnable beverage containers under that portion of ORS Chapter 459A and commonly known as the "Bottle Bill."
- (g) The generator, producer, or source who transports and disposes of solid waste created as an incidental part of regularly carrying on the business of: 1) auto dismantling, to the extent licensed by the State of Oregon; 2) janitorial service, which does not include primarily or solely accumulating or collecting solid wastes created, generated, or produced by a property owner or occupant; and 3) gardening or landscaping service.
- (h) The transportation and collection of a person's self-generated solid waste to a lawful disposal site, resource recovery facility, or market. In the case of a non-owner occupied property, the solid waste is produced and owned by the occupant and not by the landlord, property owner, or agent of the landlord or property owner.
- (i) Persons transporting hazardous waste materials.
- (j) The Board may exempt other activities or practices should it find there is no need for regulation and no substantial impact on the purposes of this Ordinance, service to customers, consumer rates, or service and financial stability of the franchisee.

1.8 Prohibited Activities

- 1.8.1 It shall be unlawful for any person, franchised collector, holder of a disposal franchise, or a disposal site operator to recklessly deposit or dispose of hazardous waste in any landfill, disposal site, transfer site, or resource recovery site. This section does not apply to small quantities of hazardous waste generated from household grade products disposed of or placed in the waste stream.
- 1.8.2 It shall be unlawful for any person to provide solid waste service or offer to provide or solicit for customers for the performance of such service except as provided by this Ordinance.
- 1.8.3 All persons, legal entities, and franchised collectors owning or operating vehicles used to haul unrestrained loads susceptible to littering while the vehicle is in motion to Marion County solid waste disposal and transfer facilities shall be assessed a fee. For the first offense, this fee shall be \$10.00 for non-franchised persons and legal entities and \$100.00 for franchised collectors, for the first occurrence. The fee may be waived for the first occurrence by a non-franchised hauler if the hauler purchases a tarp at the disposal or transfer facility. The tarp shall be available at cost plus a reasonable handling charge as determined by the Director.

For repeated occurrences, the fee shall double for each additional occurrence.

All persons and franchised collectors hauling unrestrained loads, who fail or refuse to pay the fee or purchase a tarp when entering the disposal facility, shall be assessed the fee by mail, addressed to the registered owner of the vehicle. If payment is not received within 30 days of the date the assessment notice was mailed, the Marion County Department of Public Works may collect the original assessment, plus all costs of collection incurred, by any lawful means.

The assessment notice shall contain notice of the terms of this order, including the liability for costs incurred in the collection of any assessment unpaid after 30 days. The fee shall be in addition to any other fine or penalty, civil or criminal, which may be imposed for violation of this Ordinance or any statute.

- 1.8.4 No person, other than the generator of the materials placed in a container for collection, or an employee of a franchisee, shall interfere with or remove any solid waste or recycling container from the location where it has been placed by the generator for collection, or remove, alter or compact (either manually or mechanically) the contents of the container.
- 1.8.5 No person shall place chemicals, paint, corrosive materials, infectious waste or hot ashes into a container placed for collection service, with the exception that household quantities of chemicals, paint, and corrosive materials may be placed by household residents into their own solid waste container when prepared in such a manner as to prevent spillage or leakage of the contents. When materials, customer abuse, fire or vandalism causes excessive wear or damage to a container provided by franchisee, the cost of repair or replacement may be charged to the collection customer.

1.8.6 No person shall place Solid Waste or Recyclable Materials in a drop box or compactor in an amount that exceeds the legal weight limits of state and local laws or that exceeds the weight limits or manufacturer's specifications of the franchised collector's equipment. Drop boxes shall not be filled beyond the top of the box in order that they may be securely covered.

1.8.7 No person shall dispose of Solid Waste in a site or facility other than a Disposal Site designated by the Board.

1.9 Ownership of Solid Waste and Recyclable Materials Placed Out For Collection

Solid waste and source separated recyclable materials placed out for collection by the franchisee are the property of the franchised collector designated by the Board to provide collection or to provide recycling or reuse service.

1.10 Persons, Activities, and Practices Regulated

Except as provided in this Ordinance, it shall be unlawful for any person to store, collect, transport, or dispose of any solid waste for compensation unless the person is franchised in accordance with the provisions of this Ordinance.

1.11 Regional Collection and Disposal

The Board may enter into agreements with any city, county, or private firm for joint or regional franchising of collection, disposal, or transportation services or for the administration of solid waste management activities within the jurisdiction.

The Board has a responsibility to provide and protect disposal sites for the residents of Marion County. The Board may therefore regulate the use of disposal sites by those from outside Marion County for the disposal of their wastes.'

2. PUBLIC RESPONSIBILITY

2.1 Preparation of Waste for Collection

- (a) Garbage shall be drained of surplus water, and should be wrapped or contained, so as not to allow the escape of solid waste or contaminated water to the ground, air, or public waters. Garbage shall not cause objectionable odors, dust, unsightliness, aesthetically objectionable conditions, or other nuisance conditions.
- (b) Residential ashes shall be cool and shall be securely wrapped or bagged before they are deposited in any container.
- (c) All rubbish, with the exception of large, bulky items, shall be deposited promptly in a standard solid waste container or in an approved type of substitute solid waste container, or be placed or located so as not to create a safety, nuisance, litter, or health hazard.
- (d) Bulk solid waste may be placed in a substantial box located near the approved standard container. This material shall be kept so that it does not create a nuisance or fire hazard and in a dry condition in accordance with the

regulations of this ordinance. Unless the collector provides special service or special equipment for handling bulk waste materials, it shall be securely tied in bundles or placed in boxes, sacks, or other receptacles. Solid waste so bundled shall not exceed (60) pounds in weight.

- (e) The maximum overall dimensions of any waste item to be deposited shall not exceed six (6) feet in the longest dimension or an outside diameter of three (3) feet when measured at the widest point.
- (f) Newspapers, magazines, and similar items, when not placed in a container, shall be bundled and securely tied with a strong cord to prevent blowing and littering prior to collection.
- (g) Source separated waste materials for recycling or reuse shall be prepared and placed in conformance with rules adopted by the Director.
- (h) No person other than the generator of the materials placed in a container for collection, an officer or employee of Marion County, or an employee of the franchisee shall interfere with or remove any solid waste or recycling container or waste materials placed near a container from the location where it has been placed by the generator for collection or remove, alter or compact (either manually or mechanically) the contents of the container.

2.2 Solid Waste Container

Unless one is supplied by the garbage hauler, every occupant or owner of each residence, apartment house, dwelling unit, or other building, structure, or premises on which solid waste is produced for collection shall provide and at all times keep on the premises, in a convenient place for collection, a suitable, adequate, and not easily corrodible container in compliance with ORS 91.770. Each residence unit shall have not less than 19 gallons per week container space.

Except for drop boxes, containers shall be equipped with tight-fitting covers sufficient to keep out water and to prevent disturbance by animals and entrance of insects. For residential dwelling units, customer-supplied household waste containers shall not have less than nineteen (19) nor more than thirty-two (32) gallon capacity. These containers shall be equipped with suitable handles by which they may be lifted. These containers shall be round, tapered from top to a small bottom, rigid, fire-proof, rodent-proof, and be able to withstand hot and cold weather without cracking or splitting. Except for drop boxes, solid waste containers shall be kept closed, except when being filled, emptied, or cleaned, and shall be kept in a clean and sanitary condition. When solid waste is placed in containers that are not designed for emptying by mechanical means the total weight for the container and contents shall not exceed sixty pounds (60 lbs).

Solid Waste containers that are designed for emptying by mechanical means shall be provided by franchisee, shall be loaded so that the lid tightly fits, and shall be loaded so as not to exceed the manufacturer's specifications for the weight limit.

2.3 Storage and Removal of Solid Waste on Premises

- (a) It shall be unlawful for any person owning or occupying any building, lot, or premises to allow any solid waste to collect and remain upon the lot or premises; provided, however, that this provision shall not be construed as

interfering with building under a building permit during the course of construction, or demolition of a building, or within a reasonable time thereafter. This subsection does not apply to loose bulk material temporarily stored pending removal by those who provide the service, provided that storage shall not be allowed to create a safety, fire, health, or nuisance hazard as determined by the Director.

- (b) It shall be unlawful for any person, upon vacating or removing from dwellings, storerooms, any other buildings, structures, or premises, to fail to remove all solid waste from the buildings and premises, or to fail to place the same in a thoroughly sanitary condition within forty-eight (48) hours after the premises have been vacated.
- (c) Containers shall be kept or placed in a conveniently located area with safe access for collection service and shall not be kept or placed upon the street, sidewalk, or other public place unless such location has been approved by the Director, except for the day on which collection is made and the evening prior to collection. Containers shall be kept outside of any locked, latched, bolted, or hooked enclosure on collection day. No person shall block the service access to a one-cubic yard capacity, or larger container, drop box, or roll-off box or similar container for solid waste collection.
- (d) No new containers shall be installed as sunken containers. When a customer has a container that currently is installed as a sunken container, it shall be the responsibility of the customer to place the container on top of the ground for collection, and the container shall have an appropriate cover and side handles. No franchisee shall remove sunken waste containers from their underground storage.
- (e) Solid waste containers shall be maintained in a clean and sanitary condition by the user.
- (f) The Director may approve general locations for storage and placement of waste materials for collection for recycling or reuse and may impose necessary conditions therefor.
- (g) Putrescible solid waste shall be removed from the premises at regular intervals not to exceed seven (7) days, excluding January 1, Thanksgiving Day, and December 25th. All solid waste shall be removed at regular intervals.

2.4 Littering and Disturbance of Solid Waste Prohibited

- (a) It shall be unlawful for any person to sort, scatter, dump, deposit, or cause to be deposited any solid waste along the bank of or in any canal, ditch, creek, river, or in any street, alley, road, or park, or on any lot, place, or premises in the county, whether public or private. Materials shall be disposed of only in disposal sites approved by the Oregon Department of Environmental Quality or other governmental agency having jurisdiction. Certain nonputrescible solid waste materials may, however, be used in a manner approved by the Director or in compliance with all applicable statutes, ordinances, and regulations or rules for improving property by grading or resurfacing.
- (b) It shall be unlawful for any person not authorized to do so to remove the lid from any solid waste container or to collect, disturb or scatter solid waste stored in the container or to deposit solid waste into the container.

2.5 Open Burning Prohibited

Open burning of any waste materials that normally emit dense smoke, noxious odors, or that may tend to create a public nuisance is prohibited.. These materials include, but are not limited to, household garbage, plastics, wire, insulation, auto bodies, asphalt, waste petroleum products, rubber products, animal remains, and animal or vegetable wastes resulting from the handling, preparation, cooking, or service of food.

Any property owner, tenants or other person who owns or controls property on which open burning occurs or who has caused or allowed open burning to be initiated or maintained, shall be considered the person responsible for the open burning.

2.6 Public Right to Transportation of Waste

The transportation of solid waste by a person who produced it to a lawful disposal site, facility, or market is permitted. In the case of non-owner occupied property, the solid waste is produced and owned by the occupant, not by the landlord, property owner, or agent of the landlord or property owner.

When solid waste materials are transported the load must be covered or tied in such a way as to prevent the material from leaking, spilling, or shifting off of the load onto public rights of way or private lands.

2.7 Responsibility for Payment of Charges for Service

Any person who receives service shall be responsible for payment for that service. The landlord of any premises shall be responsible for payment for service provided to the premises if the tenant does not pay for the service, unless the lease or rental agreement specifically provides otherwise.

2.8 Use of Stationary Compactors

Stationary compactors for handling solid waste shall comply with applicable federal and state safety regulations. No compactor shall be loaded so as to exceed the safe loading design limit or operation limit of the collecting vehicles used by the franchisee. A person who wants service for a compactor shall acquire a compactor compatible with the franchisee's equipment or equipment the franchisee is willing to acquire.

3. FRANCHISING OF SOLID WASTE ACTIVITIES

Subject to ORS 459.145 and the requirements of ORS 459A.085, in areas outside of incorporated cities, the Board may set rates for and prescribe the quality and character of collection, transportation, and disposal service. The Board may also establish the minimum requirements to guarantee maintenance of service, divide the unincorporated area into service areas, grant franchises to persons for solid waste service, and establish and collect fees from persons holding franchises.

3.1 Application for Franchise

- (a) Applications for franchises shall be on forms provided by the Public Works Department. In addition to the information requested on the forms, the Public Works Department may require the filing of any additional information it deems necessary to ensure compliance with this Ordinance.
- (b) All applications must be filed with the Public Works Department. The applicant must submit a \$250 application fee with the application.

3.2 Requirements for Franchise

The Board may grant a franchise or approve the transfer of a franchise to an applicant who meets the following criteria:

- (a) The applicant has letters of recommendation, as may be required.
- (b) The applicant has experience to insure compliance with this Ordinance and any regulations thereof. If the applicant does not have sufficient experience, the Board may require the applicant to post a \$50,000 surety bond guaranteeing full and faithful performance by the applicant of the duties and obligations of a franchise holder under the provision of this Ordinance and applicable federal, state, and local laws, rules, and regulations.
- (c) The applicant shall have in force or shall provide sufficient proof of insurability, to the satisfaction of the Board, that the hauler can obtain and maintain at least \$500,000 per each occurrence, combined single limit of personal injury and property damage for comprehensive, general, and auto liability, or greater amount, as required by Board order based upon a need for a greater amount of insurance in the Board's judgment. Marion County shall be named as an additional insured.
- (d) When requesting a transfer of a previously granted franchise, the applicant must submit as part of the application a letter from the current franchise holder requesting the transfer or other legal document showing the current franchiser's release of the franchise for legal purposes.

3.3 Issuance of a Franchise

- 3.3.1 The Board shall review applications, direct an investigation of the applicant as the Board deems appropriate, and set a time for a public hearing on the application.
- 3.3.2 Notice of the public hearing on the application shall be given to all holders of franchises in the county. Notice of the public hearing shall be posted in the Marion County Courthouse and published in a daily or weekly newspaper, designated by the Board two times, at least two days apart; one published notice shall appear at least twenty (20) days before the public hearing. The applicant shall pay the costs of publication. The notice shall contain the name of the applicant, the service area to be affected by the franchise, and the date, time and place of the public hearing on the application. The hearing date shall be

scheduled by the Board within sixty (60) days from the date the application was filed with the Public Works Department, however the actual hearing date may not occur within that time.

- 3.3.3 During the hearing, the Board will receive testimony from staff, the applicant, any franchise holders, and the general public concerning the application for a franchise. All persons may submit written testimony for the Board's consideration.
- 3.3.4 The Board shall make findings based upon the application, written and oral testimony, and documentary evidence, and either grant or deny the application. If the Board finds that a modification of the service area is necessary, the Board shall include the necessary modifications in its order granting the franchise.
- 3.3.5 Upon receipt of the order granting the franchise, the applicant shall enter into a written franchise agreement with Marion County, that will requires compliance with this Ordinance, any applicable provision of ORS Chapters 459 and 459A, and any rules or regulations issued pursuant to ORS Chapters 459 and 459A by the Department of Environmental Quality or the Environmental Quality Commission.
- 3.3.6 The franchise agreement with Marion County shall set forth its term and expiration date.
- 3.3.7 The applicant shall submit with the executed franchise agreement a certification of \$500,000 per each occurrence, combined single limit of personal injury and property damage for comprehensive, general liability, and auto liability insurance, or greater amount as required by Board order. The policy of insurance shall (1) name Marion County as additional insured and (2) provide that the policy not be canceled, terminated, amended, or permitted to expire without at least thirty (30) days prior written notice to that effect to the County. Marion County shall be named as an additional insured.

3.4 Renewal of a Franchise

If the County terminates the automatic extension of a "rolling" term as provided in subsection 3.12 and changes to a fixed term, then the following renewal process shall apply:

- 3.4.1 Any person holding a franchise at the time of the enactment of this Ordinance shall retain the franchise until its normal expiration date.
- 3.4.2 Renewal of an existing franchise shall be based upon an application filed with the Public Works Department, using the same procedure outlined by the Ordinance for the issuance of a franchise.

3.5 Responsibilities of Franchisee

- 3.5.1 Franchisee shall provide adequate and reliable service to customers within its franchised area.
- 3.5.2 Franchisee may relinquish the franchise and discontinue providing service under the franchise only upon ninety (90) days prior written notice to the County and the written approval of the Director. This paragraph shall not apply to any order for closure or restriction of use by any public agency, public body, or court having jurisdiction.
- 3.5.3 Franchisee shall establish and follow procedures designed to give reasonable notice prior to refusing service to any person. Copies of notification and procedures for this action shall be retained on file for one (1) year by the franchisee for review by the County.
- 3.5.4 Franchisee shall file an annual operating report on forms provided by the County on or before May 15 of each year for the preceding calendar year.
- 3.5.5 Franchisee shall comply with all provisions of this Ordinance, ORS Chapters 459 and 459A, and all other applicable laws, rules, or regulations.
- 3.5.6 Franchisee shall indemnify the County, its officials, officers, employees or and agents, and save them harmless from any and all loss, damage, claim, expense, or liability arising out of operation by the franchisee under its franchise.
- 3.5.7 Franchisee shall implement a program based on County guidelines and approved by the Director for reducing the amount of solid waste entering disposal sites, processing facilities, or transfer stations.
- 3.5.8 Franchisee shall provide the opportunity to recycle in accordance with ORS Chapters 459 and 459A.
- 3.5.9 Franchisee shall respond to any written complaints on service.
- 3.5.10 Franchisee shall not use a firm name implying government ownership.

3.6 Service Standards

Service provided under a franchise shall be subject to standards contained in this ordinance or imposed in accordance with this ordinance by the Director or his designee. The franchisee shall permit the County to inspect its facilities, equipment, personnel, and records in relation to the service under this Ordinance.

3.7 Suspension, Modification, or Revocation of Franchise

- 3.7.1 Franchisee's failure to provide necessary service or otherwise comply with the provisions of this Ordinance after written notice and reasonable opportunity to comply, shall be grounds for modification, revocation, or suspension of the franchise.

- 3.7.2 After receipt of written notice from the County, the franchisee shall have thirty (30) days from the date of the mailing of the notice in which to comply or to request a public hearing before the Board. In the event of a public hearing, the franchisee and other interested persons shall have the opportunity to present information and testimony in oral and written form.
- 3.7.3 The Board may suspend, modify, revoke, or refuse to renew a franchise upon finding that the franchisee has:
- (a) Violated this Ordinance, ORS Chapters 459 or 459A, or the rules promulgated thereunder, or any other applicable law or regulation;
 - (b) Misrepresented material facts or information in the franchise application, annual operating report, or other information required to be submitted to the County;
 - (c) Refused to provide adequate service after written notification and reasonable opportunity to do so;
 - (d) Misrepresented the gross receipts from the operation of the franchised site, facility, or station; or
 - (e) Failed to pay the fees required to be paid under this Ordinance when due.
- 3.7.4 Except as provided in subsection 3.7.5, suspension, modification, revocation, or non-renewal of the franchise shall take effect not less than thirty (30) days after the date of the order by the Board, and the order may be contingent on compliance with specified conditions. The Franchisee may request reconsideration of the Board's order. If reconsideration is sought, the Board will hold a public hearing on the franchise suspension, modification, or non-renewal.
- 3.7.5 In the event that the Director finds that there is serious danger to the public health or safety as a result of the actions or inactions of a franchisee under this Ordinance, the Director may suspend, modify, or revoke the franchise, or may take whatever steps may be necessary to abate the danger without notice and without a hearing to the affected franchisee. In addition, the Board may authorize another franchisee or another person to provide service or to use and operate the land, site, station, facilities, and equipment of the affected franchisee for reasonable compensation in order to provide service or to abate the danger for so long as the danger continues.

The Director's decision shall be reviewed by the Board at its next regularly scheduled public meeting. The Board may adopt the Director's decision as its own or overrule the decision. The franchisee may seek reconsideration of the Board's decision to adopt the Director's decision. If reconsideration is sought, the Board will hold a public hearing on its decision.

3.8 Preventing Interruption of Service

In the event that the Director finds an immediate and serious danger to the public creating a health hazard or serious public nuisance that is a result of franchisee's

conduct, the Director may, after a minimum of 24 hours actual notice to the franchisee, authorize another person to temporarily provide service under this Ordinance, or the County may provide service. In either event, the franchisee agrees as a condition to the franchise that any real property, facilities, or equipment owned by the franchisee may be used to provide such emergency service. The County shall return franchisee's property upon abatement of the health or nuisance hazards created by the general interruption of service.

3.9 Application Process for Exemptions

3.9.1 The franchisee may submit an application to request an exemption from any requirement of this ordinance, except the requirement for insurance. The Board may, in its sole discretion, authorize exemptions to provisions of this Ordinance. The Board may consider the following factors:

- (a) Whether the existing franchise holder will be able to provide the required service so as to make the exemption unnecessary;
- (b) Unnecessary or unreasonable hardships or practical difficulties that exist and cannot be solved by the existing franchise holder without unreasonable expenditure of funds and can be relieved only by the granting of an exemption.
- (c) The granting of the exemption will not be materially detrimental to or have a substantial impact on service, customer rates, or the franchisee.
- (d) The applicant has the necessary equipment, personnel, and/or money to effectuate the terms of the exemption.

3.9.2 The application for exemption shall be filed with the Public Works Department. There shall be a \$50 fee charged for an exemption application. The hearing date shall be scheduled by the Board within sixty (60) days from the date the application was filed with the Public Works Department, however the actual hearing date may not necessarily occur within that time. Copies of the application for exemption shall be posted in the Marion County Courthouse, and a copy will be sent by first class mail to the affected franchise operator.

3.9.3 Notice of the hearing on the application shall be published in a daily newspaper of general circulation in the County at least two times, with each publication being a minimum of two (2) days apart, at least one week before the public hearing. The applicant shall bear the costs of publication.

3.9.4 The Board shall consider the exemption during a public hearing and take public testimony from the applicant, the franchise holder, or any citizen wishing to speak on the issue.

3.10 Reapplication For a Franchise

If the Board rejects all or part of the application for a franchise, the applicant may not submit another application for the same service area or a portion thereof or for the same disposal site for a period of six (6) months unless the Board finds that the public interest requires reconsideration within a shorter period of time.

3.11 Existing Franchisees

Any person holding a franchise at the time of the enactment of this Ordinance shall retain the franchise and its established maximum rates until its normal expiration date, or unless changed by an order of the Board with thirty (30) days' written notice to the existing collection franchise holder.

3.12 Term of Franchise

3.12.1 Collection Franchises

- (a) The franchise granted to each franchisee shall be for a "rolling" seven (7) year term, subject to the automatic extension of the franchise as provided below.
- (b) Beginning January 1 of each year, the franchise will be considered renewed for an additional seven (7) year term, unless at least thirty (30) days prior to January 1 of any year the County notifies the franchisee of the County's intent to terminate the "rolling term" franchise system.
- (c) The County may terminate the automatic extension after holding a public hearing prior to January 1 of the year in which the termination is proposed. Notice of such public hearing shall be in a manner as described in Section 3.3.2 of this ordinance.
- (d) If the County terminates the automatic extension after public hearing, each franchisee shall have a fixed seven (7) year term from the date of the last renewal prior to the termination by the County of the automatic extension.
- (e) If the County terminates the automatic extension as stated in (d) above, then the process for renewal of the fixed seven (7) year term shall be as stated in Section 3.4 of this Ordinance.
- (f) Franchises shall be subject to a review by the Director every five (5) years, or more frequently at the Director's discretion. The Director shall provide a report of the review to the Board. The Board may order that conditions be attached to a franchise or that modifications be enacted by a franchisee, based upon the review. Any order for conditions or modifications shall be subject to the notification and hearing process set forth in Section 3.7 of this Ordinance.
- (g) The County may initiate proceedings for suspension, modification, or revocation of a franchise under Section 3.7 of this Ordinance at any time, whether or not a review is being conducted.

3.12.2 Disposal and Transfer Facility Franchises shall not be automatically renewable. The term of a disposal franchise shall not exceed twenty (20) years.

3.13 Transfer of Franchises

Any person applying for the transfer of a franchise previously issued must meet the requirements described herein. No transfer of a previously issued franchise shall be allowed unless approved by the Board. As part of the application for transfer of a

franchise, the applicant must submit a letter from the current franchise holder requesting transfer, or other legal documents showing the applicant's rights to the franchise.

4. COLLECTION FRANCHISES

Collection franchises shall be governed under the terms and conditions as outlined in Section 3 of this Ordinance, except as modified by this Section.

4.1 Requirements for Collection Franchises

The Board may grant a franchise or approve the transfer of a franchise to an applicant who meets the following criteria:

- (a) The applicant has a majority of the service accounts in the service area for which it has applied. The applicant shall provide a list of customers served.
- (b) The applicant has available collection vehicles, equipment, facilities, and personnel sufficient to meet the standards of equipment and service established by this Ordinance, ORS Chapters 459 and 459A, and applicable rules and regulations. If the applicant proposes to serve a service area or portion of a service area that is under franchise to another person, or to replace that person upon expiration of the existing franchise, the applicant shall have available on the beginning date of the proposed franchise term, collection vehicles and other equipment equal or greater than that currently used in the service area.

4.2 Identification of Equipment

The outside of the collection vehicle body must be kept in a reasonably clean, well-painted, and properly maintained condition at all times. The vehicle shall be identified by the logo or name of the individual or company owning the vehicle, in letter at least three (3) inches high that are visible on both sides of the vehicle.

4.3 Vehicle Regulations

All solid waste shall be collected in vehicles that shall be kept in good condition and repair and constructed, operated, and maintained so that, to the greatest extent possible, the contents will not spill, seep, leak, or blow from the vehicle.

4.4 Regulations Governing Collection

The franchisee shall not litter premises while making collections or allow any solid waste to blow or fall from its vehicles. The franchisee shall repair or replace at its own expense containers damaged as a result of its mishandling. The franchisee shall replace lids or covers on containers immediately after emptying them.

Except under emergency conditions or as other conditions warrant, collection shall be made between the hours of 6:00 a.m. and 6:00 p.m., except in the business districts,

where collection shall be between the hours of 5:00 a.m. and 12:00 noon, subject to such reasonable modifications of collection period as the Director may impose. All collections shall be made as efficiently and quietly as possible. Unnecessarily noisy trucks or equipment are prohibited. Garbage and putrescible waste shall be collected at least once every seven (7) days, excluding January 1, Thanksgiving Day, and December 25th, from every place of business, motel or hotel, and residential areas. Nonputrescible solid waste may be collected less frequently, but in no case shall nonputrescible solid waste be allowed to accumulate longer than twenty-one (21) days, unless confined within a container.

The Director may order more frequent collection of solid waste than required by this section, if the accumulation of waste constitutes a threat to public health, safety, or welfare.

Upon request by the Director, the franchisee shall furnish schedules of collection and disposal routes and shall furnish copies of complaints, reports, and information as to their disposition.

The franchisee shall supply all customers with information regarding amount and effective date of any rate increase.

It is the intent of this Ordinance that the franchisee shall collect all reasonable quantities or types of solid waste placed for collection within the County promptly, and with dispatch, and dispose of the waste collected in a lawful manner, upon the payment of rates approved by the County for these services by the persons requesting services.

The franchisee shall establish and maintain an office where solid waste bills may be paid, service applied for, and complaints made.

4.5 Exclusive or Joint Service under a Franchise

If the holder of a valid collection franchise requests approval for a subcontract for service to a single customer, a group or type of customers, or for a particular type or unusually large quantity of solid waste within the franchisee's franchise area, the Director may approve a subcontract with another person who can provide that service. These subcontracts shall not relieve the franchisee of total responsibility for compliance with this Ordinance.

If the holder of a franchise is unable to provide service for particular types or unusually large quantities of solid wastes, the Director may issue a temporary letter of authorization to another person for the limited purpose of providing service to the customer or customers. The temporary authorization shall be for a period not exceeding six months.

The Board may enter into agreements with any city or county for joint or regional franchising of collection or the administration of franchising.

4.6 Interruption or Termination of Service

- 4.6.1 The franchisee shall not interrupt or terminate service to any of its customers served under this franchise unless:
- (a) The street or road access is unavoidably blocked through no fault of the franchisee and there is no reasonable alternate route or routes to serve all or a portion of its customers. The County shall not be liable for blocked access.
 - (b) Adverse weather conditions render providing service unduly hazardous to persons or equipment providing service or the interruption or termination is caused by an Act of God or a public enemy.
 - (c) For nonpayment by a customer for services rendered if the customer fails to pay within forty-five (45) days of the mailing of the bill, after having been given a seven-day written notice to pay.
- 4.6.2 The customer shall provide safe access to the pickup point so as not to jeopardize the safety of the driver of a collection vehicle or the motoring public, or create a hazard or risk to the person providing service. When a private bridge, culvert, or other structure or road is incapable of safely conveying the weight of the collection vehicle, the collector shall not enter onto the structure or road. The customer shall provide a safe alternative access point or system.

4.7 Franchise Fees

- 4.7.1 The Board shall collect a fee equal to not less than three percent (3%) and not more than five percent (5%), as provided in the franchise agreement, of the gross cash receipts from service provided to the service area included in the franchise, including all services under subcontract for the service area (i.e., drop box service).
- 4.7.2 The franchise fee shall be computed on the basis of gross cash receipts, shall be computed and collected on a quarterly basis, and shall be paid by the franchise holder not later than thirty (30) days after the end of each calendar quarter.
- 4.7.3 Within sixty (60) days after the end of each calendar year, a franchise holder shall file with the Board a sworn and verified statement of the gross receipts for the previous year.
- 4.7.4 Every franchise holder shall maintain books and records disclosing the gross receipts from its service area, including any subcontracts, which books and records shall be open at reasonable times and places for audit by authorized personnel or representatives of Marion County.

5. **DISPOSAL AND TRANSFER FACILITY FRANCHISES**

Disposal and transfer facility franchises shall be governed under the terms and conditions as outlined in Section 3 of this Ordinance, except as modified in this Section.

5.1 Issuance of a Disposal or Transfer Facility Franchise

- 5.1.1 If there are two or more applicants for a disposal or transfer facility franchise, the Board shall determine which site would have the most economical operation, and whether the applicant has the ability to provide the necessary equipment, manpower, and expertise to operate a disposal site. The decision of the Board shall be based upon the evidence, and written findings of facts will be filed.
- 5.1.2 The Board order granting the franchise to the applicant shall be conditioned upon the applicant obtaining a valid permit from the Department of Environmental Quality or the Environmental Quality Commission.
- 5.1.3 The County shall have the right to either approve or disapprove a disposal or transfer facility site regardless of whether the site is located within the incorporated limits of any city or is within the borders of Marion County.

5.2 Responsibility of Franchisee

Each franchisee shall ensure that:

- 5.2.1 The franchisee shall maintain a current and valid permit from the Oregon Department of Environmental Quality (DEQ) for the duration of the franchise. Failure to do so may result in the termination of the franchise.
- 5.2.2 Monitoring of Disposal Sites
 - (a) When the County finds that a disposal site's location and geophysical condition indicate that there is a reasonable probability of potential adverse effects on public health or the environment, the County may require a franchisee to provide monitoring wells in addition to any required by DEQ in order to determine the effects of the disposal site on groundwater or on the concentration of methane gas in the soil.
 - (b) If the County determines that monitoring wells are required at a disposal site, the franchisee shall install and maintain the wells at the locations specified by the County and, at the County's request, shall submit a copy of the well logs to the County within thirty (30) days of completion of construction.
 - (c) When the County determines that self-monitoring is practical, the County may require that a franchisee collect and analyze samples of surface water, groundwater, or gas, at intervals specified and in a manner approved by the County, and submit the results within a time frame specified by the County.
 - (d) The County may require franchisees who do self-monitoring to periodically split samples with the County for the purpose of quality control.

- 5.2.3 The County may require that disposal and transfer facility site franchisees provide scales and weigh incoming loads of solid waste, to facilitate solid waste management planning.
- 5.2.4 The County may require submittal of records and reports it considers reasonably necessary to ensure compliance with conditions of a permit or these rules.

5.3 Franchise Fees

The Board shall collect fees as listed herein:

- 5.3.1 The Board shall adopt orders setting annual franchise fees for disposal or transfer facility franchises.
- 5.3.2 The disposal or transfer facility franchisee shall pay based on a payment schedule set forth in the franchise agreement, an amount from zero percent (0%) to not more than fifteen percent (15%) of the gross income from the disposal service provided by the franchisee.
- 5.3.3 The County shall maintain the right to staff and operate the gatehouse at any franchised disposal or transfer facility franchise if it so chooses. If the County chooses to operate the gatehouse, the County shall provide the number of employees that it determines are required to run the gate house, collect disposal fees, and monitor persons and vehicles using the disposal facility for compliance with this Ordinance.

The County shall retain the net balance of total gross income receipts, after deduction of amounts paid to the disposal franchisee as provided in the franchise agreement.

5.4 Disposal Franchise Insurance and Bond Requirements

In addition to the general insurance requirements detailed in Section 3, the applicant shall obtain pollution insurance, if available, in an amount as determined by the Board, naming Marion County as an additional named insured. The policy shall last for the term of the franchise plus thirty (30) years. All policy (general liability, property, and pollution) costs shall be included in the closure fund. The applicant must demonstrate the means of maintaining pollution insurance. The Board may consider other financial assurances under the exception process.

6. RATES STRUCTURE

6.1 Board Responsibility

The Board shall be responsible for establishing collection and disposal rates, including the adjustment of existing rates or rates differential by zone or type. Before any rates are adjusted, the Board shall have an investigation conducted by the Director and shall

consider the matter at a public hearing. The Board shall then issue an order setting forth its findings, the maximum appropriate rates, and their effective date.

6.2 Interim Rates

When no rate has been established for a particular type of service, the Director may establish an interim rate, pursuant to the factors listed below. Interim rates shall be valid for a period not to exceed six (6) months, or until a final determination is made by the Board.

6.3 Rate Adjustment Consideration

The Board shall consider the following factors before adjusting rates:

- (a) Current and projected revenues.
- (b) Current and projected operating expenses.
- (c) Investment in facilities, including construction and maintenance costs.
- (d) Acquisition and replacement of equipment.
- (e) Services of management.
- (f) Professional and consultant services.
- (g) Local wage scales.
- (h) Concentration of collection service customers in a collection service area.
- (i) Methods and costs of storage, collection, transportation and disposal.
- (j) Length of haul to disposal facilities.
- (k) Special services and the cost of providing for future, added or different services.
- (l) Research, training and development.
- (m) Providing the opportunity to recycle in accordance with ORS Chapters 459 and 459A and additional requirements, if any, by County.
- (n) Reasonable rate of return and operating margin.
- (o) Any other factors deemed relevant by the Board.

6.4 Maximum Rates

No franchise holder shall charge a rate greater than that established under the provisions of this Ordinance.

7. **ADMINISTRATION AND ENFORCEMENT**

7.1 Parties Bound

The term of a franchise shall be binding upon the franchisee, its heirs, executors, administrators, successors, and assigns.

7.2 Acceptance

Any franchise granted under this Ordinance shall be inoperative unless the franchisee files with the County the executed franchise agreement within sixty (60) days of the Board approval of the franchise. The franchise agreement shall constitute an

irrevocable contract between the County and the franchisee, subject to termination only as provided under this Ordinance or in the franchise agreement.

7.3 Severability

If any section, subsection, sentence, clause, or portion of this Ordinance is for any reason held invalid or declared unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and the holding shall not affect the constitutionality of the remaining portion hereof. The Board hereby declares that it would have passed this Ordinance and section, subsection, sentence, clause, and phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid, or unconstitutional. If, for any reason, the franchise fee under this Ordinance is invalidated or amended by the act of any court or governmental agency, then the highest reasonable franchise fee allowed by the court or other governmental agency shall be the franchise fee charged under this Ordinance.

Any appeal from an action by the Board shall be made pursuant to ORS 34.010-34.100, writs of review, and shall be filed with the Marion County Circuit Court.

7.4 Repeal of Conflicting Ordinance

This Ordinance repeals all prior solid waste ordinances, specifically Ordinances Nos. 261-A, 423, 424, 451, 452, 536, 638, 656, 688, 706, 720, 747, 781, and 876, and amends Ordinance No. 615 in whole.

7.5 Right to Purchase

The County may, in any lawful manner and upon payment of a fair valuation lawfully ascertained, purchase, condemn, acquire, take over, and hold the real property, buildings, and equipment of the franchisee in whole or in part. If the purchase or taking over be upon revocation or termination of the franchise, the valuation shall not include any sum for the value of the franchise or grant any other intangible values.

7.6 Indemnity

The privileges granted to a franchisee are upon the express condition that the franchisee shall be liable for all damages or injuries to persons or property caused by the negligence or mismanagement of the franchisee or any of its employees or agents while engaged in the business under the terms of the franchise. Should the County, or any of its officers, agents, or employees in the scope of their employment, be sued for damages caused in whole or part by the operations of a franchisee, under the terms of the franchise, the franchisee shall be notified in writing of the suit and it thereupon shall be its duty to defend or settle the suit. Should judgment be entered against the County, its officers, agents, or employees, franchisee shall be responsible to pay the full amount of the judgment, costs and attorney fees.

The franchisee shall covenant and agree to purchase an indemnity policy of insurance with a company licensed to do business in the State of Oregon with limits of liability specified in this Ordinance, which policy shall name the County, its officers, agents, and employees as the additional insured.

7.7 Enforcement of Ordinance

The County may enforce the provisions of this Ordinance by administrative, civil, or criminal proceedings, or a combination thereof, as necessary to achieve compliance with this Ordinance, including as provided by County Ordinance No. 1105. Further violation of this Ordinance may be punishable as a Class A misdemeanor under the provisions of ORS 459.992 and/or in addition thereof, a civil fine of up to \$500 per day, for each day of violation under the provisions of ORS 459.995.

The Owner, title holder, contract seller, or contract buyer of the land upon which a violation is occurring is equally responsible for the violation of the county ordinance, as is the possessor of the land, user of the land, or the person which is taking the action, conduct, or omission which constitutes a violation of the ordinance.

7.8 Solid Waste Fund

Fees and revenue collected pursuant to this Ordinance shall be paid into the Marion County Solid Waste Fund. These fees and revenue shall include, but not be limited to, electrical revenue generated from the Marion County Waste-to-Energy Facility, fees collected from the public and franchised haulers delivering waste to a disposal or transfer facility, franchise fees, the sale of recyclable materials and other miscellaneous revenues."

Monies collected and deposited to the Solid Waste Fund shall be expended exclusively for solid waste management related activities. The Director shall prepare a proposed annual budget outlining the anticipated revenues and expenditures. The budget shall include and establish amounts to be reserved for solid waste management activities to provide financial stability, meet contractual obligations, provide for future solid waste facilities, address changes in legal requirements and protect the environment. The budget recommendations prepared by the Director shall be reviewed and be subject to approval through the county's annual budget process pursuant to Oregon's Local Budget Law and applicable county policies.

8. EMERGENCY CLAUSE

This ordinance being necessary to preserve the public health and safety, an emergency is declared to exist and this ordinance shall become effective January 1, 2003.

Signed and finalized at Salem, Oregon, this ____ day of _____, 20____.

Marion County Board of Commissioners

Chair

Recording Secretary