

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

An Ordinance Relating to Solid)
Waste Management in Marion County) SOLID WASTE
Amending Ordinance No. 615 and) MANAGEMENT ORDINANCE
Repealing Ordinances Nos. 638, 656,)
668, 706, 720, 747, 781, 876, 1173,) September 22, 2010
and 1293 and Declaring an Emergency.)

ORDINANCE NO. 1209

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. 1173 in whole.

1.2 Index

- 1. General Provisions
 - 1.1 Short Title
 - 1.2 Index
 - 1.3 Purpose, Policy, and Scope
 - 1.4 General Definitions
 - 1.5 Specific Definitions
 - 1.6 Administration
 - 1.7 Exemptions and Exceptions
 - 1.8 Prohibited Activities
 - 1.9 Ownership of Solid Waste, Compostable Materials and Recyclable Materials Placed Out For Collection
 - 1.10 Persons, Activities, and Practices Regulated
 - 1.11 Regional Collection and Disposal
- 2. Customer Responsibility
 - 2.1 Preparation of Solid Waste, Recyclable Materials and Compostable Materials for Collection
 - 2.2 Solid Waste, Compostable Materials and Recyclable Material Receptacle
 - 2.3 Placement of Receptacles for Collection by Franchisee
 - 2.4 Storage and Removal of Solid Waste, Compostable Materials and Recyclable Materials on Premises
 - 2.5 Littering and Disturbance of Solid Waste Prohibited
 - 2.6 Open Burning Prohibited
 - 2.7 Public Right to Transportation of Waste
 - 2.8 Responsibility for Payment of Charges for Service
 - 2.9 Use of Stationary Compactors

- 3. Franchising of Solid Waste Management Service
 - 3.1 Application For Franchise
 - 3.2 Requirements For Franchise
 - 3.3 Issuance of a Franchise
 - 3.4 Renewal of a Franchise
 - 3.5 Responsibilities of Franchisee
 - 3.6 Service Standards
 - 3.7 Suspension, Modification, or Revocation of Franchise
 - 3.8 Preventing Interruption of Service
 - 3.9 Application Process for Exemptions
 - 3.10 Reapplication for a Franchise
 - 3.11 Existing Franchisees
 - 3.12 Term of Franchise
 - 3.13 Transfer of Franchise

- 4. Collection Franchises
 - 4.1 Requirements for Collection Franchises
 - 4.2 Identification of Equipment
 - 4.3 Vehicle Regulations
 - 4.4 Regulations Governing Collectors
 - 4.5 Exclusive or Joint Service Under a Franchise
 - 4.6 Interruption or Termination of Service
 - 4.7 Franchise Fees

- 5. Disposal and Transfer Facility Franchises
 - 5.1 Issuance of a Disposal or Transfer Facility Franchise
 - 5.2 Responsibility of Franchisee
 - 5.3 Franchise Fees
 - 5.4 Disposal Franchise Insurance and Bond Requirements

- 6. Rates Structure
 - 6.1 Board Responsibility
 - 6.2 Interim Rates
 - 6.3 Rate Adjustment Consideration
 - 6.4 Maximum Rates

- 7. Administration and Enforcement
 - 7.1 Parties Bound
 - 7.2 Acceptance
 - 7.3 Severability
 - 7.4 Repeal of Conflicting Ordinance
 - 7.5 Right to Purchase
 - 7.6 Indemnity
 - 7.7 Enforcement of Ordinance
 - 7.8 Solid Waste Fund

- 8. Emergency Clause

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, recyclable materials and compostable materials; 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, processing and disposal of waste and solid waste, recyclable materials and compostable materials.
- (b) Provide a coordinated county-wide program for control of waste and solid waste, recyclable materials and compostable materials 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 and materials resource recovery 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 unincorporated 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 "Bulky Waste" means discarded household furniture, bedding and mattresses, appliances, yard or building waste, or other non-putrescible and non-hazardous materials too large in quantity or size to be placed into collection receptacles.
- 1.5.4 "Cannery Waste" means organic waste residues from a commercial food processing facility, but does not include non-putrescible 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 receptacle 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, recyclable material or compostable material.
- 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 and 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 "Compact and Compaction" means to engage in the process of shredding of material, or the manual or mechanical compressing of 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, recyclable materials or compostable materials. 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. "Compost or Composting" means the controlled biological decomposition of compostable material or the product resulting from such process.
- 1.5.11 "Compostable Material" means 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.
- 1.5.12 "Department" means the Marion County Department of Public Works.
- 1.5.13 "Department of Environmental Quality" or "DEQ" means the Department of Environmental Quality of the State of Oregon.
- 1.5.14 "Director" means the head of the Public Works Department, to whom the Board delegates the administration and enforcement of this Ordinance.
- 1.5.15 "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.

- 1.5.16 "Dispose" or "Disposal" means the accumulation, storage, discarding, collection, removal, transportation, recycling or resource recovery of solid waste, recyclable material or compostable material to a transfer facility, disposal site, sanitary landfill, or resource recovery facility.
- 1.5.17 "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.
- 1.5.18 "Food Soiled Paper" means 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.
- 1.5.19 "Food Waste" means all 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.
- 1.5.20 "Franchise" or "Franchise Collector" means the authority given by a City or County to operate a solid waste management service, operate a disposal site, a processing facility, a transfer station, or a resource recovery facility.
- 1.5.21 "Franchise Fee" means the fee charged by a City or County to the franchisee for the administration of the franchise.
- 1.5.22 "Franchisee" or "Franchised Collector" means the person to whom a franchise is granted.
- 1.5.23 "Generator" means the person who produces the solid waste, recyclable material or compostable 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.
- 1.5.24 "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).

- 1.5.25 "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.
- 1.5.26 "Incinerator" means a combustion device specifically designed for reducing the mass of solid, semisolid, or liquid combustible waste by burning.
- 1.5.27 "Infectious Waste" means biological waste, including medical waste, as defined in ORS 459.386.
- 1.5.28 "Material Recovery" means any process of obtaining, by pre-segregation or otherwise, materials from solid waste, recyclable materials and compostable materials 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.
- 1.5.29 "Mixed Compostables" means the process where two or more types of compostable materials are collected together (ie., not separated) in a combination allowed by the County.
- 1.5.30 "Mixed Recycling" means two or more recyclable materials collected together (ie. not separated) in the combination of recyclable materials allowed by the County.
- 1.5.31 "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.
- 1.5.32 "Permit" means a written document issued by a regulatory agency.
- 1.5.33 "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.
- 1.5.34 "Placed for Collection": means solid waste, recyclable materials or compostable materials that have been placed by the generator for collection by a franchisee in accordance with the terms of this Ordinance.
- 1.5.35 "Process" or "Processed" means a method or system of altering the form, condition, or content of solid waste, recyclable materials or compostable materials, including, but not limited to, composting, shredding, milling, pulverizing, or incineration.

- 1.5.36 "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.
- 1.5.37 "Putrescible Material" means solid waste or compostable materials 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.
- 1.5.38 "Rate" means the amount approved by the Board as a charge for solid waste management service rendered and charged by the franchisee, including the franchise fees, to users of the service.
- 1.5.39 "Receptacle" means a trash can, cart, bin, container, drop box or other vessel used for the collection and disposal of solid waste, recyclable material or compostable material that has been approved by the Director and into which solid waste, recyclable material or compostable material may be placed for collection and disposal.
- 1.5.40 "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.
- 1.5.41 "Recycling Drop-Off Center" means a facility that receives and temporarily stores multiple source separated or mixed 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.
- 1.5.42 "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.
- 1.5.43 "Refuse" means worthless or useless items as determined by the generator of the material.
- 1.5.44 "Regulation" or "Rule" means an order of the Board issued pursuant to this Ordinance.
- 1.5.45 "Resource Recovery" means the process of obtaining useful material or energy resource from solid waste.
- 1.5.46 "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.
- 1.5.47 "Rubbish" includes cardboard, plastic, metal, glass, paper, rags, sweepings, wood, rubber, leather, and similar waste materials that ordinarily accumulate on premises, but not ashes, bulky waste, dead animals, or hazardous solid waste.

- 1.5.48 "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.
- 1.5.49 "Service" means the collection, storage, transportation, transfer, disposal, or resource recovery of solid waste, recyclable materials and compostable materials.
- 1.5.50 "Service Area" means the geographic area in which service, other than operation of a disposal site, is provided.
- 1.5.51 "Solid Waste" means all putrescible and non-putrescible wastes including, but not limited to, 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.
- 1.5.52 "Solid Waste Management" means the prevention of or reduction of solid waste; the business of collection, storage, transportation, transfer, treatment, utilization, processing, and final disposal of solid waste, recyclable materials and compostable materials; resource recovery from solid waste, recyclable materials and compostable materials; and facilities and equipment necessary or convenient to these activities.
- 1.5.53 "Source Separation" means the separation of materials by the generator, in preparation for recycling or reuse, including mixed recycling and mixed compostables as defined herein.
- 1.5.54 "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 and solid waste, recyclable materials and compostable materials 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, recyclable materials or compostable materials for transport to a transfer site, disposal site, landfill, or resource recovery site or facility.

1.5.55 "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.

1.5.57 "Yard Debris" means grass, clippings, leaves, hedge trimmings, and small tree branches, but excludes stumps and other bulky woody materials.

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 recyclable materials or the operation of a collection center for totally source separated recyclable 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 engaged in 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 waste 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 lawfully 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 management 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 receptacle for collection, or an employee of a franchisee, shall interfere with or remove any solid waste, recyclable materials or compostable materials receptacle 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 receptacle.
- 1.8.5 No person shall place chemicals, paint, corrosive materials, infectious waste or hot ashes into a receptacle 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 receptacle 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 receptacle 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, recyclable materials or compostable 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, source separated recyclable materials and compostable materials placed out for collection by the franchisee are the property of the franchised collector designated by the Board to provide solid waste management 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, recyclable material or compostable material 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. CUSTOMER RESPONSIBILITY

2.1 Preparation of Solid Waste, Recyclable Materials and Compostable Materials for Collection

- (a) Solid Waste, Recyclable Materials and Compostable Materials 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. No materials shall 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 receptacle.
- (c) All solid waste, recyclable materials or compostable materials, with the exception of large, bulky waste, shall be deposited promptly in a county approved solid waste, recyclable material or compostable material receptacle, or in an approved type of

- substitute receptacle, and be placed or located so as not to create a safety, nuisance, litter, or health hazard.
- (d) Bulky waste may be placed in an appropriately sized receptacle located near the approved standard receptacle. 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 and the customer have arranged for special service collection or special equipment for handling bulky waste materials, it shall be securely tied in bundles or placed in boxes, sacks, or other receptacles. Bulky waste so bundled shall not exceed (60) pounds in weight.
 - (e) Unless the collector and the customer have arranged for special service collection, the maximum overall dimensions of any bulky 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 receptacle, shall be bundled and securely tied with a strong cord to prevent blowing and littering prior to collection.
 - (g) Source separated recyclable materials and compostable materials 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 receptacle for collection, an officer or employee of Marion County, or an employee of the franchisee shall interfere with or remove any solid waste, recyclable materials or compostable materials receptacle or any materials placed near a receptacle 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 receptacle.

2.2 Solid Waste, Recyclable Material and Compostable Material Receptacles

Receptacles designed for collection by mechanical means for the collection of solid waste, recyclable materials and compostable materials shall be provided to the generator by the franchisee, unless otherwise authorized by the franchisee. The loaded weight of a receptacle shall comply with the manufacturer's specifications.

The owner of every non-owner occupied dwelling unit, or other building, structure, or premises at 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 and adequate receptacle with a cumulative capacity that allows for not less than thirty-two gallons per dwelling unit, into which solid waste from the dwelling units may be emptied for storage between days of collection. The owner shall subscribe to and pay for weekly solid waste management service of the receptacles with the appropriate Marion County franchisee.

Except for drop boxes and recycle baskets provided to the generator by franchisee, receptacles shall be equipped with tight-fitting covers sufficient to keep out precipitation and to prevent disturbance by animals and entrance of pests. Receptacles shall be kept closed, except when being filled, emptied or cleaned; and shall be kept in a clean, sealed and sanitary condition by the generator. Receptacles used for the collection of compostable material may contain vent holes for the purpose of aeration. The Director may adopt rules designed to mitigate or remedy public health, public safety or pest concerns.

Solid waste placed in receptacles that are not designed for emptying by mechanical means shall not exceed a weight of sixty pounds, including the weight of the receptacles and their contents. These receptacles shall be equipped with suitable handles by which they may be

lifted, 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.

Receptacles designed for emptying by mechanical means shall not exceed a weight of one hundred and eighty pounds for ninety-five gallon receptacles, one hundred and twenty pounds for sixty-five gallon receptacles, sixty pounds for thirty-five gallon receptacles, and forty pounds for twenty gallon receptacles, including the weight of the receptacles and their contents.

2.3 Placement of Receptacles for Collection by Franchisee

Receptacles shall be kept or placed so that there is convenient and safe access for collection service by a franchisee and except as provided in this section, shall not be kept or placed upon the street or sidewalk or other public place unless such location has been first approved by the Director.

- (a) All carts designed for mechanical solid waste, recycling or composting collection shall be placed at the curb or roadside by the generator prior to collection time.
- (b) The generator shall provide safe access to the collection point so as not to jeopardize the persons or equipment supplying service or the motoring public.
- (c) Receptacles may be placed at or on the curb, whether on the sidewalk or in the street right-of-way, provided that receptacles placed in the street shall be placed so that no part of the receptacle may be more than three feet from the curb. Placement shall be made so that receptacles are within manageable reach if standing in the street or next to the curb line. If conditions exist that require placement of the receptacles at a location other than curbside, those arrangements may be made between the franchisee and the customer.
- (d) Placement of receptacles at curbside or roadside are limited to a time period of twenty-four hours prior to pick-up and twenty-four hours after pickup.
- (e) Receptacles shall be kept outside of any locked, latched, bolted or hooked enclosure when placed out for collection.
- (f) No person shall block service access to a commercial receptacle, drop box or roll-off box or other similar receptacle for solid waste management collection.

2.4 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 bulky waste 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 receptacle in a thoroughly sanitary condition within forty-eight (48) hours after the premises have been vacated.
- (c) Receptacles 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 twenty-four hour periods prior to and after 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 receptacle, drop box, or roll-off box or similar receptacle for solid waste, recyclable material or compostable material 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 receptacles shall be maintained in a clean and sanitary condition by the user.
- (f) The Director may approve general locations for storage and placement of solid waste, recyclable materials and compostable materials receptacles and may impose necessary conditions therefor.
- (g) Putrescible solid waste and compostable materials shall be removed from the premises at regular intervals not to exceed fourteen (14) days, excluding January 1, Thanksgiving Day, and December 25th. All solid waste shall be removed at regular intervals.

2.5 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 non-putrescible 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 by this ordinance or by the Director, to remove the lid from any solid waste, recyclable material or compostable material receptacle or to collect, disturb, compress or scatter material in the receptacle or to deposit material into the receptacle.

2.6 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 solid waste, 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.

2.7 Public Right to Transportation of Solid Waste and Waste Ownership

The transportation of solid waste by a person who produced it to an authorized 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 shall 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.

2.8 Responsibility for Payment of Charges for Solid Waste Management 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.

2.9 Use of Stationary Compactors

Stationary compactors for handling solid waste, recyclable materials or compostable materials 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 MANAGEMENT SERVICE

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 solid waste management 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 management 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 franchisee's release of the franchise for legal purposes.
- (e) When requesting a franchise for a service area that is already serviced by an existing franchisee, the applicant shall be required to prove that the existing franchisee has not been or is not willing to provide solid waste management service as required by this ordinance.

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. If the franchise request is for a service area already serviced by an existing franchisee, the Board's findings shall include a showing of need for the applicant's franchise, based upon the fact that the existing franchisee has not been or is not willing to provide the solid waste management service as required by this ordinance.

- 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 solid waste management 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 approved by the County on or before August 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 the Director's 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 franchise 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 franchisee.

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, recyclable material and compostable material 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 make a concerted effort to not litter premises while making collections or allow any solid waste, recyclable material or compostable material to blow or fall from its vehicles. The franchisee shall repair or replace at its own expense receptacles damaged as a result of its mishandling. The franchisee shall replace lids or covers on receptacles 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. Putrescible solid 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.

Non-putrescible solid waste may be collected less frequently, but in no case shall non-putrescible solid waste be allowed to accumulate longer than twenty-one (21) days, unless confined within a receptacle.

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 solid waste management service 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, recyclable material and compostable material placed for collection within the County promptly, and with dispatch, and dispose of the solid waste, recyclable material and compostable material collected in a lawful manner, upon the payment of rates approved by the County for these solid waste management services by the persons requesting services.

The franchisee shall establish and maintain an office where solid waste management service 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, recyclable material or compostable material 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 waste, recyclable material or compostable material, 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 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 franchisees.

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 for recyclable materials and compostable materials by the 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 terms 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 34.01034.100, 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, 876, 1173, and 1293 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 chapter shall be paid into the Marion County Solid Waste Fund. These fees and revenue shall include fees collected from the public and franchised haulers delivering solid waste to a disposal or transfer facility, franchise fees, the sale of recyclable materials and other miscellaneous revenues. In addition, revenues from the generation of electricity by the Marion County Waste-to-Energy Facility needed to maintain solid waste reserves at the level required by law, regulation or county policy shall also be paid into the Solid Waste fund.

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 September 22, 2010.

Signed and finalized at Salem, Oregon, this 29th day of September, 2010.

Marion County Board of Commissioners


Chair


Recording Secretary

