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July 11, 2019

Board of County Commissioners  
Clackamas County

Members of the Board:

Second Reading of an Ordinance Amending Chapter 10.03,  
Solid Waste and Wastes Management, of the Clackamas County Code  
Adopting a Food Waste Collection Requirement for Certain Businesses

<b>Purpose/Outcome</b>	Provide for revisions of Code Chapter 10.03 to include a Food Waste Collection Requirement for certain groups of businesses.
<b>Dollar Amount and Fiscal Impact</b>	N/A
<b>Funding Source</b>	Metro is committing additional funding for staff time for technical assistance to covered businesses, free containers and resources for businesses, and to reimburse collectors for additional cost of transfer to Metro Central, for those collectors where a nearby option is not available. The County's franchise fees will supplement if enforcement costs are incurred.
<b>Duration</b>	Upon execution; permanent
<b>Previous Board Action/Review</b>	04/19/2019: BCC policy session 06/13/2019: First Public Hearing for this Ordinance
<b>Counsel Review</b>	Reviewed by County Counsel on July 2, 2019
<b>Strategic Plan Alignment</b>	Honor, promote, utilize and invest in natural resources
<b>Contact Person</b>	Eben Polk, Supervisor; 503-742-4470

In July 2018 Metro adopted a policy that requires local governments to ensure that certain food-related businesses separate and recover food waste. Metro subsequently adopted administrative rules to implement the policy in October 2018. Local governments within the Metro district are required to pass implementing ordinances by July 31, 2019. On April 9, 2019 the Board of Commissioners directed staff to develop an implementing ordinance. On May 1<sup>st</sup> the Solid Waste Commission reviewed preliminary code amendment language and heard a publicly noticed presentation on the ordinance. On May 30<sup>th</sup> the Solid Waste Commission reviewed and unanimously endorsed the amendment for consideration by the Board. The code amendment has also been presented for review by the Code Committee and has been approved by County Counsel.

Key points discussed in prior work sessions and presentations include:

## Basis for the Ordinance

- This is a regional requirement from Metro to be adopted by July 31, 2019. Metro is designated as a regional authority for solid waste planning, governing transfer and disposal.
- Food is the largest single remaining recoverable item in waste going to landfill (16-18%), where it generates methane, a potent greenhouse gas pollutant; businesses generate the majority of our food waste in the region.
- Food waste recovery is an opportunity to create clean energy and soil amendments.
- Voluntary commercial food waste collection has been available to businesses for several years in most of Clackamas County. Collection regionally has plateaued.
- Separating food waste can help a business identify opportunities to reduce costs, reduce waste, or donate edible food.
- This policy will contribute to Oregon's statewide food recovery goal.

## How it Has Been Developed

- At direction of Metro Council a policy research process began in 2016.
- A policy development committee with members representing several local governments, including Clackamas County, worked in 2017 and 2018 to advise Metro on their ordinance and administrative rules.
- Prior to adopting their ordinance and administrative rules, Metro conducted a survey and two widespread mailers (a letter and a postcard) alerting food-related businesses of two public comment periods. Businesses' responses were almost all supportive or neutral.
- Metro has worked closely with the Oregon Restaurant and Lodging Association. Though ORLA opposed a requirement, they have been co-developing resources to assist food businesses.
- Metro agreed to provide support to help offset costs to businesses and franchised collectors by:
  - Providing additional funding for staff to provide technical assistance
  - Maintaining a significantly lower rate for commercial food waste disposal (\$66.23/ton) compared to garbage (\$97.45/ton)
  - Making payments directly to franchised collectors to reimburse them where longer transfer routes to Metro Central increases their costs
- Metro Council has directed staff to develop options to ban large quantities of commercial food waste at transfer stations in the years after 2023.

## How it Will Work

At direction of the Board, County staff have developed an ordinance amendment consistent with Metro's model ordinance, and vetted it with the Code Committee, County Counsel, and the Solid Waste Commission.

Starting in March 2020, the requirement would initially apply only to large food waste generators (those producing more than 0.5 ton [1,000 pounds] of food waste per week) such as food processors, restaurants, and grocery stores, and then extending to smaller institutions, restaurants, grocers, and schools in 2021 and 2022. Food-related businesses that generate less than 250 pounds of food waste per week are not subject to the requirement. Specifically, Metro's administrative rules require compliance in phases:

<b>Business Group 1</b>	<b>Business Group 2</b>	<b>Business Group 3</b>
March 31, 2020-March 31, 2021	March 31, 2021-Sept. 30, 2022	Sept. 30, 2022-Sept. 30, 2023
≥0.5 ton (1,000 pounds) per week food waste generated	≥0.25 ton (500 pounds) per week food waste generated	≥0.125 ton (250 pounds) per week food waste generated

Businesses may request a waiver from the requirement per criteria laid out in Metro administrative rule. For example, if physical barriers exist that cannot be immediately remedied, or compliance requires unreasonable capital expense, a waiver may be granted.

The food scraps requirement is similar to our 2008 code amendments requiring that businesses recycle basic materials such as metals, paper, and certain plastics. County Code already anticipates the potential for required food waste collection, stating that “All businesses within the County shall comply with waste prevention, recycling and composting requirements as set forth in this Chapter...” (10.03.145).

In unincorporated Clackamas County, food-waste generating businesses already have access to food scraps collection service as an option, which can be included with commercial service. That is, when a business participates, they will not pay an additional fee for food scraps collection. A business subject to this requirement would also receive free indoor containers, signage, training for employees, and assistance setting up a system that works for the business. Costs to provide the service are included within commercial rates.

The ordinance, attached as Exhibit A, makes two primary changes to Chapter 10.03. First, it defines food waste, and second, a new section 10.03.147 outlines the ‘Business Food Waste Requirement.’ Other minor housekeeping level changes are also present in the attachment.

The first reading was held June 13, 2019. The second reading is scheduled for Thursday, July 11, 2019.

County Counsel has reviewed and approved the language of proposed amendments to Chapter 10.03 of the County Code.

**RECOMMENDATION**

Staff respectfully requests that the Board approve the Ordinance changes after a first and second reading amending Chapter 10.03, Solid Waste and Wastes Management, of the Clackamas County Code.

**ATTACHMENT:** Ordinance No 04-2019 and Exhibit A

Sincerely,

Dan Johnson, Director  
 Department of Transportation & Development

## ORDINANCE NO. 04-2019

### An Ordinance Amending

#### Clackamas County Code Chapter 10.03, SOLID WASTE AND WASTES MANAGEMENT, Adopting a Food Waste Collection Requirement for Certain Businesses

WHEREAS, Metro, the regional government, has adopted Resolution No.18-4864 which requires local governments to adopt a food waste collection requirement for certain groups of businesses within the Metro boundary; and

WHEREAS, food represents 18 percent of the region's disposed waste—the largest single material sent to landfill and the largest single recoverable material sent to landfill; and;

WHEREAS, when sent to landfill, food waste contributes to greenhouse gas emissions by generating methane, at least 25 times more potent than carbon dioxide; and

WHEREAS, when separated and recovered, commercial food waste can be channeled into processes that create valuable low-carbon energy and soil amendments;

WHEREAS, food scraps are identified as a primary material for recovery within the Regional Waste Plan which guides our work in the area of solid waste; and

WHEREAS, the State of Oregon Department of Environmental Quality, via Oregon Revised Statutes 459A.010 has set a food waste recovery goal of 25% by 2020;

WHEREAS, the State of Oregon Department of Environmental Quality has added a required food waste collection program for nonresidential generators to the list of menu items available to local governments for compliance with state law under Oregon Administrative Rule 340 Division 90;

WHEREAS, Clackamas County Board of County Commissioners have expressed multiple commitments to address climate change, most recently in Resolution 2017-85, Reaffirming our Commitment to Combat Climate Change signed on July 6, 2017; now, therefore

The Board of Commissioners of Clackamas County ordains as follows:

**Section 1:** Chapter 10.03, SOLID WASTE AND WASTES MANAGEMENT, of the Clackamas County Code is hereby amended as shown on Exhibit "A", attached hereto and incorporated herein by this reference.

**Section 2:** The Director of the Department of Transportation and Development shall amend administrative regulations in implementation of this amendment.

ADOPTED this \_\_\_\_\_ day of June, 2019.

**CLACKAMAS COUNTY BOARD OF COMMISSIONERS**

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Chair

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Recording Secretary

## **Exhibit A**

### **Chapter 10.03**

## **10.03 SOLID WASTE AND WASTES MANAGEMENT**

### **10.03.010 Coverage Of Chapter**

This chapter shall govern the collection, storage, transportation, and disposal of all solid waste and wastes. It shall also govern recycling, resource recovery, reuse and utilization of solid waste and wastes by franchisees and permittees. It shall govern solid waste management. It creates a program by which persons can be lawfully franchised to collect solid waste and wastes or operate a Disposal Site or Transfer Station, and which provides for franchisees or permittees to engage in recycling, resource recovery, or utilization of solid waste and wastes. No person shall collect solid waste or wastes or recyclable materials or operate a Disposal Site or Transfer Station for compensation or engage in recycling, resource recovery, or utilization of solid waste and wastes or recyclable materials except as provided for by this chapter or the Recycling License chapter.

[Codified by Ord. 05-2000, 7/13/00]

### **10.03.020 Purpose and Policy**

- A. To protect the health, safety, and welfare of the people of Clackamas County and to provide a coordinated program on accumulation, collection, and disposal of solid waste and wastes and recyclable materials, it is declared to be the policy of Clackamas County to regulate the accumulation, collection, and disposal of solid waste and wastes; the recycling resource recovery and utilization of recyclable materials; and the creation and operation of disposal sites and transfer stations to:
1. Provide for safe and sanitary accumulation, storage, collection, transportation, and disposal of solid waste and wastes and recyclable materials. To accomplish this and other purposes of this chapter, it is the policy of the County and the intent of this chapter that all solid waste and wastes, including materials involved in recycling, resource recovery, reuse and utilization, be collected and transported by those persons holding a collection franchise under this chapter, or by their subcontractors under 10.03.30 A (59) of this chapter, or by those organizations or corporations holding a permit under this chapter, or by a licensee holding a license under the Recycling License Chapter.
  2. Provide for a coordinated solid waste and wastes and recycling collection and disposal program with cities within Clackamas County so as to benefit all citizens of the County.
  3. Provide the opportunity to recycle for every person in Clackamas County.
  4. Provide for a recycling education, promotion and notification program on the reasons for recycling, recycling awareness and how to recycle.

5. Promote application of recycling systems by preventing or reducing at the source, materials which otherwise would constitute solid waste, thereby preserving and enhancing the quality of air, water and land resources.
6. Reduce the amount of solid waste generated; to reuse material for the purpose for which it was originally intended; and to recycle material that cannot be reused.
7. Provide a coordinated countywide program of control of solid waste and wastes and recyclable materials in cooperation with city, regional, Metropolitan Service District, state, and federal programs.
8. Provide for, and encourage research, studies, surveys, and demonstration projects on developing more sanitary, efficient and economical solid waste and wastes and recyclable materials collection and disposal systems and programs.
9. Develop a long-range plan to provide adequate disposal sites and disposal facilities to meet future demands.
10. Provide for cooperation and agreements between Clackamas County, ~~the Metropolitan Service District~~ and other counties involving joint or regional franchising, licensing or permitting of solid waste and wastes disposal; provide for recycling, resource recovery, or utilization of recyclable and solid waste or wastes; and provide for recycling and solid waste and wastes management.
11. Reduce use of highways and roads and encourage highway safety by reducing unnecessary traffic in connection with solid waste and wastes and recyclables in order to encourage economic and efficient collection of same and to reduce wasteful use of fuel, equipment and capital by providing a franchised, licensed and/or permitted collection system.
12. Prohibit the accumulation of solid waste and wastes on private property when such accumulation creates a public nuisance, a health or safety hazard, or a condition of unsightliness and to provide for abatement of the same.
13. Prevent theft or vandalism of source-separated recyclable materials in order to preserve the economic viability of collection, transportation, disposal, storage or utilization of recyclables.
14. Prevent the unauthorized collection, transportation, disposal, storage, reuse or utilization of solid waste or wastes or recyclables.

[Codified by Ord. 05-2000, 7/13/00]

### **10.03.030 Definitions**

- A. For the purpose of this chapter, words used in the present tense include the future; the singular number, includes the plural; the word “shall” is mandatory and not directory; and the term “this chapter” shall be deemed to include all amendments hereafter made to this chapter. The definitions applicable to this chapter are:
  1. BOARD means Board of County Commissioners for Clackamas County.
  2. BUSINESS: any entity of one or more persons, corporate or otherwise, engaged in commercial, professional, charitable, political, industrial, educational, or other activity that is non-residential in nature, including public bodies.

3. CERTIFICATE means permission granted in writing by the Director to operate a Compactor/Train Waste Management System at a multi-family development subject to the criteria to establish said system as required by this chapter.
4. COLLECTION SERVICE means the collection, transportation, storage, or disposal, of solid waste or wastes for compensation, solid waste management and utilization as defined in this chapter, and reuse or recycling of recyclable materials.
5. COLLECTION SERVICE FRANCHISE means the Franchise issued for collection service.
6. COLLECTION SERVICE FRANCHISEE means the person to whom a Collection Service Franchise is granted by the Board.
7. COLLECTION VEHICLE means any vehicle used to collect or transport solid waste or wastes or recyclables.
8. COMMISSION means the solid waste and wastes Disposal Commission established by this chapter hereinafter referred to as the solid waste Commission.
9. COMPACTOR means any self-contained, power-driven, mechanical equipment designed for the containment and compaction of solid waste or wastes or recyclable materials.
10. COMPENSATION includes any type of consideration paid for service including, but not limited to, rent, the sale of recyclable materials, and any other direct or indirect provisions for payment of money, goods, or benefits by tenants, members, licensees, or similar persons. It shall also include any exchange of services, including the hauling of solid waste and wastes. Compensation includes the flow of consideration from the person owning or possessing the solid waste or wastes to the person collecting, storing, transporting, or disposing of solid waste or wastes.
11. COMPOST means the end product resulting from composting, commonly known as humus or soil amendments.
12. COMPOSTING means a controlled biological decay of organic waste where moisture, heat, bacteria, earthworms and microorganisms found in nature transforms the organic waste into compost in a manner which does not create offensive odors, a health or safety hazard, or a condition of unsightliness.
13. CONTAINER means a receptacle, one (1) cubic yard or larger in size, used to store solid waste or wastes or recyclable material, but not a drop box or compactor.
14. COUNTY ROAD means shall mean a public road under the jurisdiction of Clackamas County that has been designated as a County road pursuant to ORS 368.016.
15. CURBSIDE or ROADSIDE means a location within three (3) feet of a County Road, Public Access Road, State Road or Federal Road. This does not allow the garbage or recycling receptacle to be placed on the inside of a fence or enclosure even if the receptacle is within three (3) feet has said road or roads. For residences on “Flag Lots”, private roads, or driveways, “Curbside or Roadside” shall be the point where the private road or driveway intersects a County Road, Public Access Road, State Road or Federal Road.

16. DEPARTMENT means the State of Oregon Department of Environmental Quality, cited as D.E.Q.
17. DIRECTOR means ~~t~~The Director of the Department of Transportation and Development of Clackamas County, or his/her authorized representative.
18. DISPOSE OR DISPOSAL includes accumulations, storage, collection, transportation and disposal of solid waste and wastes or recyclable materials.
19. DISPOSAL FRANCHISE means a franchise to create or maintain a disposal site.
20. DISPOSAL SITE means any land and facilities used for the disposal, handling or transfer of, or resource recovery from, solid waste and wastes including but not limited to dumps, landfills, sanitary landfills and composting plants, but does not include a landfill site which is not used by the public either directly or through a service and which is used by the owner or tenant thereof to dispose of soil, rock, or nonputrescible industrial waste products resulting from the process of manufacturing.
21. DROP BOX means a single container designed for the storage and collection of large volumes of solid waste or wastes or recyclable materials, which is usually ten (10) cubic yards or larger in size, and provides for transportation of large volumes of solid waste or wastes or recyclable materials and is transported to a disposal site for transfer, land-filling, recycling, materials recovery or utilization and then emptied, and returned to either its original location or some other location.
22. EQC means the Environmental Quality Commission of Oregon, cited as EQC.
23. ENERGY RECOVERY means recovery of all energy forms from any part of solid waste or wastes materials.
24. EXCHANGE means a mutual act of giving or taking of one item or service for another. This includes any transaction into which money enters either as the consideration or as a basis of measure.
25. FAIR MARKET VALUE means the cash price (or its equivalent in terms of savings on collection and disposal fees) that is at least equal to the cost of collection and disposal of a recyclable material or group of recyclable materials, that would be purchased or exchanged between the collector of said recyclable material or group of recyclable materials and the generator of said recyclable material or group of recyclable materials. Collection includes type, frequency, condition and extent of collection service, together with education and promotion for said service.
26. FAIR MARKET VALUE EXEMPTION means the exemption set forth under ORS 459A.075 wherein a source-separated recyclable material must be purchased from the generator, or exchanged between the generator and the franchisee or licensee with a resulting measurable savings in solid waste collection or disposal cost to the generator, in order to qualify for the exemption.
27. FOOD WASTE is solid waste generated from the distribution, 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 and includes inedible parts commonly associated with food preparation such as pits, shells, bones, rinds, and peels. Food waste does not include liquids or large

amounts of oils and meats which are collected for rendering, fuel production or other non-disposal applications, or any food fit for human consumption that has been set aside, stored properly and is accepted for donation by a charitable organization or any food collected to feed animals in compliance with applicable regulations.

~~27:28.~~ FRANCHISE means a franchise granting the right and responsibility to provide collection service, a disposal site, or a transfer station pursuant to Section 10.03.140 of this chapter.

~~28:29.~~ HEALTH OFFICER shall mean the Health Officer of Clackamas County or his/her duly authorized representative.

~~29:30.~~ HAZARDOUS WASTE means solid waste or wastes that may, by itself or in combination with other waste, be infectious, explosive, poisonous, caustic, toxic, or otherwise dangerous or injurious to human, plant or animal life.

~~30:31.~~ INCINERATOR means a combustion device specifically designed for the reduction by burning of solid, semi-solid or liquid combustible wastes.

~~31:32.~~ INFECTIOUS WASTE means biological waste including medical waste described as:

- a. Blood and blood products, excretions, exudates, secretions, suctioning and other body fluids that cannot be directly discarded into a municipal sewer system, including solid or liquid waste from renal dialysis and waste materials reasonably contaminated with blood or body fluids.
- b. Cultures and stocks of etiologic agents and associated biologicals, including specimen cultures and disks and devices used to transfer, inoculate and mix cultures, wastes from production of biologicals and serums and discarded live and attenuated vaccines; but does not include throat or urine cultures.
- c. Sharps that have been removed from their original sterile containers, including needles, I.V. tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling, and syringes.
- d. Pathological waste, including biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures and animal carcasses exposed to pathogens in research, the bedding of the animals and other waste from such animals. Pathological waste does not include formaldehyde or other preservative agents.

~~32:33.~~ INOPERABLE VEHICLE for the purpose of the Nuisance Abatement provisions of this chapter, shall mean a vehicle designed for use on a public highway which has been left on public or private property thirty (30) days or more and is not currently licensed, or not in operating condition, or which has been extensively damaged, vandalized or stripped, including, but not limited to, missing wheels, tires, motor or transmission. An inoperable vehicle shall not mean an unlicensed operable vehicle or vehicles, which are used on private property for the production, propagation or harvesting of agricultural products grown or raised on such lands.

- ~~33-34.~~ LANDFILL means a disposal site operated by means of compacting and covering solid waste or wastes at specific designated intervals, but not each operating day.
- ~~34-35.~~ LICENSE means permission granted (pursuant to the Recycling License Chapter) by the Director to a person to engage in a business or occupation or in an activity, which would otherwise be unlawful, for the purpose of providing recycling services which include collection, storage, reuse and utilization of recyclable materials.
- ~~35-36.~~ MATERIAL RECOVERY means any process of obtaining from solid waste materials that still have useful physical or chemical properties and can be reused or recycled.
- ~~36-37.~~ METROPOLITAN SERVICE DISTRICT (METRO) means a district organized under ORS Chapter 268 and exercising solid waste authority granted to such district under ORS Chapters 268, 459 and 459A.
- ~~37-38.~~ NON-PROFIT CIVIC COMMUNITY, BENEVOLENT, OR CHARITABLE CORPORATION OR ORGANIZATION means a Corporation or organization whose purpose is civic, community, benevolent, or charitable in nature, which distributes no part of its income to its members, directors or officers and which is not organized for purposes of profit, nor for the purpose of solid waste or wastes collection service. This may include but not be limited to churches, private or public schools, Boy Scouts, United Way, Lions and Kiwanis clubs or similar non-profit corporations or organizations.
- ~~38-39.~~ NON-PUTRESCIBLE MATERIALS for purposes of this chapter shall include, but not be limited to, inoperable vehicles; vehicle parts; tires; residential, commercial and industrial appliances, equipment and furniture; scrap metal; residential, commercial and industrial building demolition or construction waste; plastic; glass; cardboard; and wastepaper.
- ~~39-40.~~ NUISANCE means the unlawful use by a person of real or personal property contrary to the terms of this chapter.
- ~~40-41.~~ ON-ROUTE COLLECTION means the pick up of source-separated recyclable materials from the generator at the place of generation.
- ~~41-42.~~ OPERABLE VEHICLE means a vehicle that is currently licensed and in operating condition to be used on a public road or highway.
- ~~42-43.~~ ORGANIC WASTE includes but is not limited to yard debris, dust, wood, sod, manure, agricultural and fruit and vegetable waste, and paper recyclable material which are generally a source of food for bacteria.
- ~~43-44.~~ PERMIT means permission granted in writing by the Director to a non-profit organization or corporation that shall contain conditions for the collection of recyclable materials.
- ~~44-45.~~ PERSON means, and includes: individuals, members, corporations, cooperatives, associations, firms, partnerships, joint stock companies, trusts and estates, municipalities, and any other legal entities whatsoever.
- ~~45-46.~~ PUBLIC ACCESS ROAD shall mean any public road under the jurisdiction of Clackamas County which is not a County Road, State Highway, Federal Road, or road within the corporate limits of any city.

- ~~46-47.~~ PURCHASE means the legal transmission of property from one person to another through a voluntary act or agreement, with compensation in the form of money paid or to be paid, by a buyer to a seller of the property.
- ~~47-48.~~ PUTRESCIBLE MATERIAL means solid waste or wastes, including: bones; meat and meat scraps; fat; grease; fish and fish scraps; food containers or products contaminated with food wastes, particles or residues; prepared vegetable and fruit food wastes or scraps; manure; feces; sewer sludge; dead animals or similar wastes which cause offensive odor or create a health hazard, or which are capable of attracting or providing food for potential disease carriers, such as birds, rodents, flies and other vectors.
- ~~48-49.~~ RECEPTACLE means a can, cart, container, drop box, compactor, recycling bin, or any other means of containment of solid waste or wastes or recyclable materials.
- ~~49-50.~~ RECYCLING means the process by which waste materials are transformed into new products in such a manner that the original products lose their identity. It shall also include the collection, transportation or storage of products by other than the original user or consumer, giving rise to the product being in the stream of commerce for collection, disposal, recycling, resource recovery or utilization.
- ~~50-51.~~ RECYCLING DEPOT means a center, depot, drop box, or other place for receiving source-separated recyclable materials with or without compensation. This shall not include a salvage, junk or auto wrecking yard.
- ~~51-52.~~ 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.
- a. Residential - A group of recyclable materials as designated from time to time by the Department of Environmental Quality or the County.
  - b. Commercial/Industrial - Recyclable materials that are purchased or exchanged for fair market value from commercial or industrial sources.
  - c. Exemption - An inoperable vehicle commonly designed of ferrous metals is not included as a recyclable material.
- ~~52-53.~~ REGULATIONS mean regulations promulgated by the Board or Director pursuant to this chapter.
- ~~53-54.~~ RESOURCE RECOVERY means any process of obtaining from solid waste and wastes, materials which still have useful physical or chemical properties after serving a specific purpose, and therefore can be reused or recycled for the same or other purpose.
- ~~54-55.~~ REUSE means the return of a commodity into the economic stream for use in the same or similar kind of application as before, without change in its identity.
- ~~55-56.~~ SERVICE means the collection, transportation storage, disposal, solid waste management and utilization by a private company of solid waste or wastes or recyclable materials for compensation.
- ~~56-57.~~ SERVICE AREA means the geographical area, in which service, other than operation of a disposal site is provided.
- ~~57-58.~~ SIGHT OBSCURING SCREEN means a structure or partition which is a minimum of six (6) feet in height, built for the purpose of separating properties, or uses, and arranged in such a way as to obscure normal human vision.

- 58-59. SOLID WASTE OR WASTES shall include all putrescible and non-putrescible waste, including but not limited to, garbage; compost; organic waste; yard debris; brush and branches; land-clearing debris; sewer sludge; residential, commercial and industrial building demolition or construction waste; discarded residential, commercial and industrial appliances, equipment and furniture; discarded, inoperable or abandoned vehicles or vehicle parts and vehicle tires; special vehicles and equipment that are immobile and/or inoperable, mobile homes or trailer houses which are dilapidated, partially dismantled or fire damaged; manure; feces; vegetable or animal solid and semi-solid waste and dead animals; and infectious waste. Waste shall mean useless, unwanted or discarded materials. The fact that materials which would otherwise come within the definition of solid waste may, from time to time, have value and thus be utilized shall not remove them from the definition. The terms solid waste or wastes do not include:
- a. Environmentally hazardous wastes as defined in ORS Chapter 466.
  - b. Materials used for fertilizer or for other productive purposes on land in agricultural operations in the growing and harvesting of crops or the raising of fowl or animals. This exception does not apply to the keeping of animals on land which has been zoned for residential non-agricultural purposes.
  - c. Septic tank and cesspool pumping or chemical toilet waste;
  - d. For purposes of Section 10.03.140 to 10.03.330 of this chapter, reusable beverage containers as defined in ORS 459A.
  - e. Source-separated, principal recyclable materials as defined in ORS 459A and the rules promulgated thereunder and under this chapter, which have been purchased or exchanged for fair market value, unless said principal recyclable materials create a public nuisance pursuant to Section 10.03.060 to 10.03.080 of this chapter.
  - f. Applications of industrial sludge or industrial waste by-products authorized through a Land Use Compatibility Statement or Management Plan approval and that have been applied to agricultural lands according to accepted agronomic practices or accepted method approved by the Land Use Compatibility Statement or Management Plan, but not to exceed 100 dry tons per acre annually.
  - g. Stabilized municipal sewage sludge applied for accepted beneficial uses on land in agricultural, non-agricultural, or silvicultural operations. Sludge derived products applied for beneficial uses on land in landscaping projects.

59-60. SOLID WASTE AND WASTES MANAGEMENT means the management of the accumulation, storage, collection, transportation, treatment, processing and final disposal or utilization of solid waste and wastes or resource recovery from solid waste, and facilities necessary or convenient to those activities. The Collection Franchisee may contract with another person to provide service of any type under the Franchisee's Collection Service Franchise, but the Collection Franchisee shall remain ultimately responsible for solid waste and wastes management in the Collection Franchisee's franchised area.

- ~~60-61.~~ 61-62. SOLID WASTE STREAM means the total flow of solid waste and wastes and recyclable materials from residential, institutional, commercial, agricultural, construction and industrial generators to disposal and utilization facilities.
- ~~61-62.~~ 62-63. SOURCE-SEPARATED MATERIALS means that the person who last uses recyclable material separates the recyclable material from other solid waste.
- ~~62-63.~~ 63-64. SPECIAL VEHICLE OR EQUIPMENT for purposes of this chapter, shall include, but not be limited to, a travel or camp trailer, motor home, boat, recreational vehicle, tractor or farm implement, utility trailer, stock trailer, semi-trailer, motorcycle, snowmobile or any other equipment or mechanism designed to serve a special purpose or perform a special function.
- ~~63-64.~~ 64-65. SUBCONTRACT means a written contract for the performance of all or a portion of Franchised Collection Service.
- ~~64-65.~~ 65-66. TRANSFER STATIONS means a fixed or mobile facility normally used as an adjunct of a solid waste management system between a collection route and disposal site including, but not limited to, a stationary compaction drop box facility, processing center, railroad gondola, barge or facility that accepts solid waste or wastes for the purpose of removing the solid waste or wastes to a disposal site or utilization center.
- ~~65-66.~~ 66-67. TRANSFER STATION FRANCHISE means a Franchise to create or maintain a transfer station.
- ~~66-67.~~ 67-68. URBAN GROWTH BOUNDARY means that boundary adopted by the Metropolitan Service District pursuant to ORS 268.390.
- ~~67-68.~~ 68-69. UTILIZATION, and the terms utilize, utilization, or utilization of solid waste or wastes shall mean productive use through recycling, reuse, salvage, resource recovery, energy recovery, or land filling for reclamation, habitation, or rehabilitation of land.
- ~~68-69.~~ 69-70. WASTE REDUCTION means the reduction of solid waste, or of wastes generated, or of wastes that would otherwise be land filled.
- ~~69-70.~~ 70-71. WASTESHED means an area of the State having a common solid waste Disposal System, as designated by the Environmental Quality Commission, as an appropriate area of the State within which to develop a common waste reduction program.
- ~~70-71.~~ 71-72. WASTESHED AGENT means a person identified as the representative for the wasteshed to act as a contact between the affected persons in a wasteshed and the Department of Environmental Quality (D.E.Q.) and METRO in matters relating to waste reduction and to the D.E.Q. Recycling Report.
- ~~71-72.~~ 72-73. YARD DEBRIS means grass clippings, leaves, tree and shrub pruning of no greater than four (4) inches in diameter, or similar yard and garden vegetation. Yard debris does not include dirt, sod, stumps, logs, tree and shrub pruning greater than four (4) inches in diameter, or rocks, plastic, animal waste or manure, cat litter, potting soil, prepared food wastes or non-putrescible material.
- ~~72-73.~~ 73-74. YARD DEBRIS PROCESSING CENTER means a facility which processes yard debris into compost or other products, through controlled mechanical and/or biological means.

[Codified by Ord. 05-2000, 7/13/00; Subsection 2 added and subsection 61 amended by Ord. 04-2009, 7/9/09]

#### **10.03.040 Administration**

The Director, under the supervision of the Board, shall be responsible for the administration and enforcement of this chapter. In order to carry out the duties imposed by this chapter, the Director shall have authority to administer oaths, certify to all official acts, subpoena and require the attendance of witnesses at public hearings before the Commission or the Board; require production of relevant documents at public hearings; swear in witnesses; take testimony of any person by deposition; enter or authorize personnel to enter upon the premises of any person regulated by this chapter at reasonable times to determine compliance with this chapter and with the regulations promulgated by the Board pursuant thereto. [Codified by Ord. 05-2000, 7/13/00]

#### **10.03.050 Persons and Agencies Exempted**

- A. Except as specifically provided by Section 10.03.060 to 10.03.080, this chapter shall not apply to:
1. areas within the incorporated limits of any city, or to Federal or State agencies, unless said city or agency enters into an intergovernmental agreement with the County for solid waste and wastes management services under this chapter; or
  2. Those who contract with such agencies as to the terms or rates to be charged for the collection, storage, transportation, disposal or utilization of solid waste or wastes. This exemption shall not apply to a disposal site or transfer station operated by a franchise holder under this chapter.
  3. Those persons who hold a valid, waste tire storage or carrier permit pursuant to OAR Chapter 340. Such persons shall not be regulated by Section 10.03.330 of this chapter.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.03.060 Solid Waste or Wastes Accumulation Prohibited**

- A. Except as provided in subsection D of this Section, no person shall store, collect, maintain, or display on private property, solid waste or wastes or recyclable material that is offensive or hazardous to the health and safety of the public, or which creates offensive odors, or a condition of unsightliness. Storage, collection, maintenance, or display of solid waste or wastes in violation of this Section shall be considered to be a public nuisance which may be abated as provided in 10.03.070 of this chapter.
- B. In addition to the provisions of subsection A, the following conditions or actions are also specifically identified as creating a public nuisance under this chapter:
1. Placing a tarp, plastic, cloth, or similar screening apparatus over or around solid waste or wastes for purposes of keeping it out of sight from the road or surrounding properties.
  2. Placing a tarp, plastic, cloth, or similar screening apparatus over or around solid waste or wastes that is stored in a utility trailer, pickup truck, semi-trailer or similar device for purposes of keeping it out of sight from the road or surrounding properties.
  3. Constructing a tire fence for any purpose.

4. Storing waste tires except as permitted pursuant to OAR Chapter 340.
  5. Storing putrescible waste, whether it is visible or not visible from the road or adjacent properties, that is not kept in a rodent proof container with a tight fitting lid, and not removed from the property to an authorized disposal facility within seven (7) days.
  6. Composting which causes offensive odors, or creates a health hazard, or which is capable of attracting or providing food for potential disease carriers such as birds, rodents, flies and other vectors.
  7. Storing, collecting, maintaining, or displaying any licensed or unlicensed special vehicle or equipment that is immobile, inoperable, partially dismantled or dismantled, dilapidated, or fire damaged and is visible from the road or surrounding properties.
  8. Storing, collecting, maintaining, or displaying a mobile home or trailer house, which is dilapidated or partially dismantled, or fire damaged, and is visible from the road or surrounding properties.
  9. Storing, collecting, maintaining or displaying: residential, commercial and industrial appliances, equipment and furniture; vehicle parts; tires; scrap metal, or any other useless, unwanted or discarded material, or other similar non-putrescible solid waste or wastes, that is visible from the road or surrounding properties.
  10. Storing, collecting, maintaining or displaying any antique, classic, race car or collectible vehicle that is inoperable and is visible from the road or surrounding properties.
  11. Storing any inoperable vehicle or vehicles unless said vehicle or vehicles are housed within a permitted structure or development, except up to two vehicles per premise may be stored behind a sight-obscuring screen, in accordance with 10.03.060 C, and shall not be visible from the road or surrounding properties. For purposes of this Subsection 11, two or more contiguous tax lots that are under common ownership shall be considered one premises.
  12. When commercial, industrial, multi-family or residential developments that use a compactor or compactors for on-site waste management, do not keep the areas around the compactor free of solid waste and debris, and washed down on a regular basis.
- C. Any sight obscuring screen used to abate a solid waste nuisance shall consist of one of the following options:
1. Construct a wood fence unpainted or painted with neutral or earth tone colors of which the upright posts shall consist of a decay resistive material a minimum of four (4) inches in diameter and anchored a minimum of two (2) feet below ground level. There shall be a maximum post separation of eight (8) feet. The railings shall be a minimum of 2-inch by 4-inch lumber with the 4-inch side attached vertically to the posts. The attached vertical or horizontal fence boards shall be set with a maximum separation of 1/4 inch.
  2. Construct a metal fence consisting of chain link or woven fabric with metal upright posts anchored a minimum of two (2) feet below ground level with metal railings and connectors. Water and insect resistive wood or plastic slats shall be

inserted in the chain link or woven fabric, with a maximum separation of 3/8 inch between slats.

3. Construct a combination fence consisting of metal sheeting attached to wood framing as defined in Section C 1 above, or durable metal framing, which is painted a neutral or earth tone color.
4. Construct a wall consisting of solid material, built of concrete, masonry, brick, stone or other similar materials or combinations thereof.
5. Construct an earthen berm consisting of dirt, soil, sand, clay or any combination thereof and shall be planted with grass and/or ornamental plantings and shall be maintained at all times.
6. Plant a hedge consisting of evergreen plantings or other ornamental plantings a minimum of six (6) feet in height, planted not more than two (2) feet on center and which is maintained at all times.

In addition to the minimum fencing requirements, wood, metal, masonry fences or combination thereof greater than six (6) feet in height are subject to County review pursuant to the Oregon State Uniform Building Code, and all earthen berms are subject to County review pursuant to the County's Grading and Excavation Chapter.

For purposes of this chapter, no sight obscuring screen shall be located, placed, constructed or installed contrary to the Clackamas County Zoning and Development Ordinance.

- D. 10.03.060 to 10.03.080 of this chapter do not apply to:
1. Areas within the limits of incorporated cities unless a city enters into an Intergovernmental Agreement with the County for solid waste and wastes management services under this chapter.
  2. Disposal sites and transfer stations franchised under provisions of 10.03.180 to 10.03.210 of this chapter, provided that such disposal sites and transfer stations comply with rules promulgated by any State agency under ORS Chapter 459 and regulations adopted by Clackamas County pursuant to this chapter.

[Codified by Ord. 05-2000, 7/13/00]

### **10.03.070 Abatement of Nuisance**

- A. The Director, which by definition includes an authorized representative, upon the written or oral complaint of any person, may make an investigation to determine whether or not storage, collection, maintenance, display or illegal dumping of solid waste or wastes is in violation of 10.03.060 or 10.03.080 of this chapter or if any person is in violation of 10.03.145 or 10.03.147. For the purpose of such investigation the Director may enter upon private property at reasonable times to determine compliance.
- B. If, after investigation, the Director finds that a nuisance does exist as defined by 10.03.060 or 10.03.080 of this chapter, a notice shall be mailed to the property owner and/or person in possession by regular mail, giving them not less than ten (10) days to abate the nuisance. The notice to abate shall contain:
1. A description of the property by tax lot number and/or address.

2. The length of time in days that the property owner and/or person in possession has to abate the nuisance, from the receipt of the notice to abate.
  3. A description of the nuisance to be abated.
  4. A statement that unless the nuisance is abated by the property owner and/or person in possession within the given length of time, the County will cause the nuisance to be abated.
  5. That the costs of the nuisance abatement and/or civil penalties shall be collected from the owner and/or person in possession of the property, and may be made a lien against the property.
- C. If the owner and/or person in possession of the property does not remove the solid waste or wastes so that no nuisance exists within the time specified by the Director pursuant to subsection B of this Section, the Director shall:
1. Order the violation referred to the Compliance Hearings Officer pursuant to the Compliance Hearings Officer Chapter and the rules and regulations promulgated thereunder for abatement of the nuisance, which may result in the imposition and collection of a civil penalty for the violation and/or costs of the nuisance abatement, and which if not paid, may be made a lien against the property; or
  2. Order County Counsel to institute injunction, mandamus, or abatement proceedings which may result in a court order and the imposition and collection of a civil penalty for the violation; or
  3. Order a notice to be issued and served upon the owner of the property and the occupant of the property where the nuisance is alleged to be maintained, requiring the owner and/or person-in-possession occupant to appear before the Board at a time and place named in the notice, to show cause why a nuisance should not be declared to exist. The time for appearance shall not be less than ten (10) days after the service of the notice. The notice shall be served in the manner provided by law for the service of Summons. At the time and place fixed in the notice issued by the Board, the Board shall hold a hearing on the question of the existence of the nuisance and shall have power to subpoena witnesses to compel their attendance. If, after the hearing, the Board finds that a nuisance exists, it shall declare the existence of a nuisance by Order entered in its Journal, and shall order the nuisance abated within thirty (30) days after the entry of the Order. If the owner and/or person in possession of the property fails to abate the nuisance within thirty (30) days after the entry of the Order of the Board, the Board may direct the County Counsel's Office of Clackamas County to institute suit in the name of Clackamas County for the abatement of the nuisance or the Board may direct the Director or his/her representative to cause the nuisance to be abated by removing from the subject property the solid waste or wastes found to be the cause of such nuisance.
- D. In an emergency, the Director may order summary abatement of a nuisance. For purposes of this section, an emergency exists when the Director has reasonable cause to believe that a nuisance constitutes an immediate danger to the public health, safety and welfare. The Director shall not be required to give notice as set forth in subsection B of this section before proceeding with summary abatement. If the Director elects to proceed with summary abatement without prior notice to the owner, then notice of the action taken for abatement shall be sent to the owner immediately after it has been accomplished. When

summary abatement of the nuisance is ordered, the nuisance shall be abated by the County's own forces, or forces contracted by the County.

- E. If either the Board or the Compliance Hearings Officer declares that a nuisance exists and the owner and/or person in possession does not remove the solid waste or wastes within the time specified, then the removal from the subject property of the solid waste or wastes found to be the cause of the nuisance may be done by the County, by contract or the utilization of County personnel and County equipment.
1. Where the Director determines that said removal would not be best accomplished by County personnel and County equipment, s/he shall (unless public bidding is otherwise required) contact the franchised collector of the area where the nuisance exists, providing said collector has the available equipment and personnel to remove the type of solid waste or wastes that was found to be the cause of the nuisance. The collector shall be given the option of removing the nuisance or refusing the job. If the collector accepts the job, s/he shall charge his/her approved hourly rate for cleanups. If the collector refuses the job, or does not have the available equipment or personnel, the Director may contract with another person to abate the nuisance. The Director shall keep an accurate record of expenses incurred by the County in abating the nuisance and shall submit a copy of this record to the County Clerk for filing.
  2. After the removal of the solid waste or wastes by the County, the Director shall forward to the property owner and the person in possession by registered or certified mail, a notice stating:
    - a. The total cost of the nuisance abatement.
    - b. That the cost as indicated will be assessed to, and become a lien against, the property unless paid within thirty (30) days from the date of the notice.
    - c. That, if the owner or the person in possession of the property objects to the cost of the abatement as indicated, s/he may file a written notice of objection with the County Clerk not more than ten (10) days from the date of the notice.
  3. If within ten (10) days the written statement of objection as provided for in 2 C of this section is filed, the Board or the Compliance Hearings Officer, whichever has declared the nuisance, shall in its regular course of business herein determine the objections to the cost to be assessed. If the nuisance has been summarily abated, the Compliance Hearings Officer shall determine any objections to the costs to be assessed, or challenges to the need for summary abatement, and the County shall have the burden of proving by a preponderance of the evidence that a nuisance existed, and that the manner and costs of abatement were reasonable.
  4. If the costs of the abatement are not paid within thirty (30) days from the date of notice, or from the date of the determination by the Board or Compliance Hearings Officer of the cost to be assessed pursuant to a written statement of objection, an assessment of the costs as stated or as determined by the Board or Compliance Hearings Officer shall be made. An assessment of costs by the Board shall thereupon be entered in the docket of County Liens, and upon such entry being made, shall constitute a lien on the property from which the nuisance was removed and abated. The lien shall be enforced in the same manner as liens for street improvements are enforced, and shall bear interest at the legal rate

established by State statutes for judgments from the date of entry of the lien in the Lien Docket. An error in the name of the property owner or person in possession shall not void the lien, nor will failure to receive the notice of the proposed lien render the lien void. An assessment of costs by the Compliance Hearings Officer may be collected in the same manner as any other debt allowed by law.

5. Where the nuisance is abated by the removal of the nuisance by the County, the County and its officers and employees shall not be liable for any trespass or conversion as to any real or personal property.
- F. The provisions of this Section are in addition to, and not in lieu of, the penalty and enforcement procedures provided for in Section 10.03.390 and Section 10.03.400 of this chapter.

[Codified by Ord. 05-2000, 7/13/00; Subsection B amended by Ord. 04-2009, 7/9/09]

### **10.03.080 Unauthorized Dumping Prohibited**

- A. Except as provided in subsection C of this Section, it shall be unlawful to dispose of solid waste or wastes at any other place other than a disposal site approved by the Board, DEQ, or the Metropolitan Service District. The Board will, upon recommendation of the Commission, designate in writing the places at which solid waste and wastes collected in the County shall be disposed of.
- B. No person shall use, or permit to be used, any land within unincorporated areas of the County as a public or private disposal site, unless recommended by the Commission and approved by the Board.
- C. Persons desiring to bury or dispose in any manner of their own, domestic solid waste or wastes generated on that subject property under their ownership, may do so in accordance with rules promulgated pursuant to ORS Chapter 459 and 459A and regulations promulgated by the Director pursuant to this chapter, provided that:
  1. The subject property is located outside the urban growth boundary;
  2. The subject property is a minimum of five (5) acres in size;
  3. The solid waste or wastes is buried at least one hundred (100) feet from the nearest well;
  4. The solid waste or wastes is buried at least one hundred (100) feet from adjacent property lines, except property lines between contiguous tax lots under common ownership;
  5. The solid waste or wastes is not buried within one hundred (100) feet of a jurisdictional wetland, natural or manmade drainage way, creek, stream, river, pond or lake; and
  6. The solid waste or wastes shall not fall within the DEQ definition of special or hazardous waste given the term in ORS Chapter 466.005; household hazardous waste as defined in ORS Chapter 459.005; or infectious waste as defined in ORS Chapter 459.386.
- D. If any person uses a motor vehicle or other type of device that is so identified in the transport and illegal dumping of solid waste or wastes in any area of the unincorporated limits of the County, said identified motor vehicle or device shall be subject to impoundment by order of the Board. Such identified motor vehicle or device, if so impounded, shall be placed in storage and remain in custody of such persons authorized

to receive the same, and be held as security in addition to any such fine or costs that may be assessed to further secure the clean-up and removal cost of any such solid waste and wastes so unlawfully deposited in violation of this chapter. In addition to the right of impoundment as provided in the preceding paragraph, if the violator, owner, or operator of said identified motor vehicle or device, or any party asserting lawful claim to said identified motor vehicle or device, fails to redeem said motor vehicle or device, or fails to post an adequate bond as security for the clean-up and relocation and removal of the solid waste and wastes that violated this chapter, then the Board authorized to enforce this chapter shall publish a notice of sale in a newspaper of general circulation in the County of Clackamas in conformity with applicable notice provisions of the law for repossession of said identified motor vehicles or devices. The Board shall be empowered to sell said identified motor vehicles or devices so impounded in satisfaction of said lien or costs and expenses for the removal of solid waste or wastes illegally dumped in the unincorporated areas of the County. If there is any money remaining after the costs of clean up are paid, said money shall be reimbursed to the owner of the identified motor vehicles or devices that were sold to pay for the cost of said clean up.

- E. No person shall discard, deposit, throw, permit to be thrown, place or cause to be placed, or drain any rubbish, trash, debris, garbage, solid waste or wastes in a manner prohibited by ORS 164.775, 164.785 or 164.805. Any person violating this subsection shall be subject to a civil penalty to enforce the provisions of this subsection pursuant to ORS 459.108.
- F. No person shall throw or place, or direct another person to throw or place, any rubbish, trash, debris, and garbage, solid waste or wastes in the receptacles of another person without the permission of the owner.

[Codified by Ord. 05-2000, 7/13/00]

### **10.03.090 Solid Waste Commission**

Under this solid waste and wastes management Chapter, there is hereby created a solid waste commission of seven members:

- A. Director of the Department of Transportation and Development or his/her authorized representative.
- B. Health Officer or his/her authorized representative.
- C. One Member of the public.
- D. One Member of the public.
- E. One Member of the public.
- F. One Collection Service Franchise holder.
- G. One Collection Service Franchise holder.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 03-2016, 8/11/16]

### **10.03.100 Bylaws**

The solid waste commission shall have the power to promulgate such bylaws as may be necessary for the efficient operation of the commission. Bylaws that are inconsistent with any provisions of this Chapter shall be void.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 03-2016, 8/11/16]

### **10.03.110 Duties of the solid waste Commission**

In addition to other duties prescribed by this chapter, the Commission shall:

- A. Make an annual report containing its recommendations, if any, regarding proposed changes or additions to regulations promulgated by the Board or amendments to this chapter, for the purpose of carrying out the intent of this chapter.
- B. Cooperate with any regional or state authority, such as Metro (Metropolitan Service District) or D.E.Q., to develop a long-range plan to provide adequate disposal sites and disposal facilities to meet future demands and for regional disposal sites. If an authorized regional or state authority sites such a facility, the plan for such a site shall be recommended to the Board for approval.
- C. Promote community involvement and make recommendations to the Board for wastes reduction and recycling programs.
- D. Monitor franchise agreements between Clackamas County and its franchised solid waste collectors, and make recommendations to the Board to grant, modify or revoke a franchise. The Commission shall also hear all appeals for the granting, modifying, or revoking of permits or licenses issued by the Director.
- E. Review collection fee changes and make recommendations to the Board for a specific action.
- F. Make recommendations to the Department of Environmental Quality, Metropolitan Service District, and local political jurisdictions regarding local and regional policy and legislative changes in solid waste Management.
- G. At the request of the Director, or upon a written request by a person, review the Department of Transportation and Development's enforcement action regarding solid waste nuisance abatement appeals, as provided in 10.03.040 and 10.03.060 of this chapter.
- H. Review changes in legislation affecting solid waste and materials management and recycling in the County and make recommendations to the Board for appropriate action.
- I. Perform such other acts or duties as directed by the Board or as established by other chapters as may be necessary, proper, or desirable to carry out effectively the functions and duties of the Commission.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 03-2016, 8/11/16]

### **10.03.120 Regional solid waste Commission**

If agreement is reached with one or more counties pursuant to 10.03.370 of this chapter for regional cooperation in the collection, disposal or utilization of solid waste or wastes, the solid waste Commission shall serve on a Regional Committee established to advise the Board of Commissioners or County Courts of the affected counties.

[Codified by Ord. 05-2000, 7/13/00]

### **10.03.130 Regulation**

Upon recommendations of the Commission or Board, the Director may promulgate regulations pertaining to administration of this chapter.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.03.140 Persons, Activities and Practices Regulated**

- A. Except as provided in 10.03.050 of this chapter, it shall be unlawful for any person to store, collect, transport, or dispose of any solid waste or wastes for compensation unless such person is franchised, in accordance with the provisions of Section 10.03.140 to 10.03.330 of this chapter, or is a subcontractor of a Collection Service Franchise holder under Section 10.03.260.
- B. Except as provided in 10.03.050 and Section 10.03.140 of this chapter, it shall be unlawful for any person to create or maintain a disposal site unless METRO, DEQ and the County approve such site.
- C. Except as provided in 10.03.050 and Sections 10.03.140 to 10.03.330 of this chapter, it shall be unlawful for any person to create or maintain a Transfer Station unless METRO, DEQ and the County approve such site.
- D. No person shall collect, transport, or dispose of any solid waste or wastes or recyclable material of their tenant. The only exceptions are:
  - 1. The use of an on-site compactor at multi-family developments whereby said development owners, management, or their employees transport the on-site containers and empty their contents into the compactor, subject to the following conditions:
    - a. The development owner, management, their employees or agents shall apply for and receive an annual certificate, on forms provided by the County, prior to installing said system and shall pay an annual certification fee in an amount established by the County. The certificate shall require the owner, management, their employees or agents to comply with all criteria of this subsection. After final inspection by the County, when it is determined that the development owners, management, their employees or agents have complied with the criteria of this subsection, the County shall issue a Certificate of Compliance.  
A certificate holder shall be required to apply annually for re-certification not less than ninety (90) days prior to expiration of the original certification. Continued certification shall be subject to approval by the County, and payment of the annual re-certification fee.
    - b. The collection service for the compactor shall be provided by a Collection Service Franchisee or the Franchisee's authorized subcontractor.
    - c. The compactor and containers shall be compatible with the Collection Service Franchisee's or the Franchisee's subcontractor's equipment. The cost of retrofitting any collection equipment shall be the responsibility of the owners of the compactor.
    - d. All manufacturer standards for proper use and maintenance of said equipment shall be followed. In addition, the weight of said equipment and its contents when transported for disposal should not exceed the legal weight limits of state and local laws or the Collection Service Franchisee's

equipment. Any costs associated with overweight violations on public roadways, including the costs of citations and down time, shall be the responsibility of the development owners, management, their employees or agents.

- e. Collection service for the compactor shall be provided at least once every seven- (7) days and the compactor shall be sized to accommodate that period of on-site waste generation.
  - f. No on-site nuisance conditions shall be created as a result of infrequent container or compactor servicing.
  - g. The compactor and container location and the site development shall comply with design review and development standards of the Clackamas County Zoning and Development Ordinance and the Building and Structural Specialty Codes. All sites shall meet the accessibility requirements of the Collection Service Franchisee or the Franchisee's subcontractor, but such requirements shall not exceed those set forth in the design review and development standards of the Clackamas County Zoning and Development Ordinance.
  - h. An on-site recycling program, approved by the County, shall be developed and implemented concurrent with the use of an on-site compactor.
  - i. A special waste management fee shall apply towards providing recycling collection services by the Collection Service Franchisee or the Franchisee's authorized subcontractor.
  - j. The area around the compactor shall be kept free of solid waste and debris and be washed down on a regular basis.
  - k. Only the development manager or their employees shall conduct the on-site transport and collection system of the containers or compactors, if a Collection Service Franchisee is not used for said transport.
- 2. If any condition in l. a. through l. k. of this Subsection D. is violated or fails to be implemented at a multi-family development by the owner, management, their employees or agents, then the exception allowed under this subsection shall terminate upon order of the Director and the certificate under this subsection shall be revoked.
  - 3. When the on-site management or their employees collect and transport recyclable materials for the purpose of consolidating said recyclable materials at a central location or locations, for collection by a Collection Service Franchisee or the Franchisee's subcontractor
- E. No person shall solicit, collect, transport or dispose of any residential recyclable material or materials, unless such person is franchised or permitted in accordance with the provisions of 10.03.330 of this chapter, or unless such person is the generator of said recyclable materials. In addition, no person licensed under the Recycling License Chapter shall solicit or collect any residential recyclable material at the place of residence of the generator of the material unless all of the materials identified as residential materials under 10.03.030 are simultaneously solicited for fair market value.
  - F. No person shall collect, transport or dispose of any recyclable material or materials, that are placed at the curb/road for residential collection by a Collection Service Franchisee

holder, unless such person is a subcontractor of a Collection Service Franchisee under 10.03.260

- G. No person shall collect or transport any commercial or industrial recyclable material or materials without first obtaining a permit in accordance with 10.03.330 of this chapter, or first obtaining a license in accordance with the Recycling License Chapter, unless such person is exempt from the Licensing chapter or is the generator of said material.
- H. No recycling depot, including a buy-back center or drop box, shall be located or placed at any location in the unincorporated area of the County in violation of land use and zoning laws.
- I. No person shall remove the cover of a residential or commercial container or receptacle except when depositing or removing the contents, nor in any manner interfere with the container or its contents, except those authorized for such duty.
- J. It shall be unlawful to deposit solid waste or wastes in the recycling receptacle or the solid waste receptacle of another person, dwelling unit, or establishment without the consent of the person in charge of the premises or receptacle.
- K. No person shall place hazardous materials, chemicals, paint, corrosive materials, infectious waste or hot ashes into a receptacle intended for collection service. When materials, or customer abuse, or fire, or vandalism causes excessive wear or damage to a receptacle, the cost of repair or replacement may be charged to the collection service customer.
- L. No person shall place solid waste or wastes or recyclable materials in a drop box or compactor in an amount that exceeds the legal weight limits of State and local laws, or which exceed the weight limits of the franchised collectors' equipment or manufacturers' specifications.
- M. No person shall store putrescible materials in a receptacle in excess of seven (7) days. Said material shall be removed from the premises at regular intervals not to exceed the seven- (7) days.
- N. No commercial recycling receptacle shall be constructed of materials other than those approved by the local fire marshal, nor shall the receptacle be placed in a location that violates the local fire ordinance.
- O. An inoperable vehicle commonly designed of ferrous metals shall only be collected, transported, and disposed of by the owner of the vehicle or by a licensed auto wrecker or towing company.
- P. Pursuant to OAR Chapter 340 no person shall store waste tires without first obtaining a waste tire storage permit from the Department of Environmental Quality.
- Q. Any person picking up or transporting waste tires shall comply with the permit requirements of the DEQ.

[Codified by Ord. 05-2000, 7/13/00]

### **10.03.145 Business Recycling Requirement**

All businesses within the County shall comply with waste prevention, recycling and composting requirements as set forth in this Chapter and the regulations promulgated hereunder. Failure to comply with this Section shall be considered a public nuisance which may be abated as provided in 10.03.070 of this chapter.

- A. Business will source-separate all recyclable paper, cardboard, glass and plastic bottles

- and jars, and metal cans for reuse or recycling.
- B. Businesses will ensure the provision of recycling receptacles for internal and/or external maintenance or work areas where recyclable materials are collected, stored, or both.
  - C. Businesses will post accurate signs:
    - 1. Describing the location where recyclable materials are collected, stored, or both;
    - 2. Identifying the materials the business must source-separate for reuse or recycling; and
    - 3. Providing recycling instructions
  - D. Persons and entities that own, manage or operate premises with business tenants, and that provide garbage collection service to those business tenants, shall provide recycling collection systems adequate to enable those business tenants to comply with the requirements of subsections A, B and C of this section.
- [Added by Ord. 04-2009, 7/9/09]

### **10.03.147 Business Food Waste Requirement**

All covered businesses in the County that fall within the Metro boundary shall comply with provisions set forth in this Chapter and regulations promulgated hereunder. A covered business is a business or workplace that cooks, assembles, processes, serves, or sells food or does so as a service provider for other enterprises and generates more than 250 pounds per week of food waste. Failure to comply with this Section or regulations promulgated hereunder shall be considered a public nuisance which may be abated as provided in 10.03.070 of this chapter.

- A. Covered businesses must separate and collect food waste that is controlled by the business, agents, and employees. This requirement does not apply to food wastes controlled by customers or the public. At its discretion, a business may also collect food waste from customers or the public. K-12 schools may also include student-generated food waste from school cafeteria meals but must ensure that food wastes are free of non-food items.
- B. Covered businesses must ensure that food waste collected in compliance with this chapter is free of non-food waste items.
- C. Covered businesses must have correctly-labeled and easily-identifiable receptacles for internal maintenance or work areas where food waste may be collected, stored, or both.
- D. Covered businesses must post accurate signs where food waste is collected and stored that identify the materials that the covered business must source separate.
- E. All Covered Businesses must comply with this section by September 30, 2023;
  - a. Covered Businesses, that are not schools, generating greater than 1,000 pounds/week must comply with this section by March 31, 2021;
  - b. Covered Businesses, that are not schools, generating greater than 500 pounds of food waste per week must comply with this section by September 30, 2022;
- F. Persons and entities that own, manage or operate premises with tenants that are covered businesses, must allow or facilitate food waste collection service adequate to enable those tenants to comply with the requirements of subsections A, B,C, D and E of this section.

G. A covered business may seek a temporary compliance waiver from the business food waste requirement subject to the following conditions:

- a. The temporary compliance waiver will not exceed twelve (12) months, and;
- b. The business provides access to the County for a site visit to demonstrate that the covered business cannot comply with this section under criteria identified in Metro or County administrative rule, and,
- c. The County approves a temporary compliance waiver under this section, and;
- d. The County may perform periodic site visits to ensure the conditions allowing a temporary compliance waiver under this section are still in place and cannot be remedied.

H. The County may grant a renewal of a temporary compliance waiver.

I. Those cities with which the County has agreements for performing the work associated with the Annual Waste Reduction Plan may delegate the granting and administration of temporary compliance waivers to Clackamas County.

### **10.03.150 Applications**

Applications for Franchises shall be on forms provided by the Commission. In addition to information required on the forms, the Commission may require the filing of special guarantees and indemnities, and any additional information it deems necessary, to insure compliance with this chapter.

- A. Applicants for Collection Service Franchises shall state the type of service to be provided, and shall supply information required to determine qualifications for such franchise under Section 10.03.160 of this chapter.
- B. Applicants for Disposal Franchises shall file a duplicate copy of the information required by the Department of Environmental Quality pursuant to Chapter 459, Oregon Revised Statutes.

[Codified by Ord. 05-2000, 7/13/00]

### **10.03.160 Requirements for Collection Service Franchises**

- A. Existing Collection Services:
  - 1. Collection Service Franchisee's shall make application for renewal of their Collection Service Franchise within thirty (30) days of the County's written notice of the requirement for filing an application for renewal. The County will normally give such written notice to said Collection Service Franchisee not less than one (1) year prior to expiration of the Collection Services Franchises. Upon filing an application for renewal, and furnishing required information for renewal of such Franchise, said applicant might continue to provide collection service until the Board makes a final decision on the application for renewal. Such person shall furnish the information required by subsection B of this Section and prove to the satisfaction of the Board that the applicant has a majority of the service accounts in the service area for which he/she is applying for renewal, which shall be evidenced by a list of customers served. If such person is also applying for an

area which he/she is not currently serving, he/she shall also supply the information required by subsection C or D of this Section.

2. Franchisees shall submit to the Director any information necessary to satisfy which recyclables are being collected or received, methods of and/or copies of materials providing for public education and promotion or any other information required by the Director, METRO, and the Department of Environmental Quality pursuant to ORS Chapter 459 or 459A and Rules promulgated thereunder.
3. Upon proper application and a finding by the Board that the applicant is providing adequate service and otherwise qualifies for a franchise under this Section, the Board shall issue a Collection Franchise covering the area served by the applicant on the effective date of this chapter. However, if this Board finds that the applicant should not be granted a Collection Franchise on the basis of inadequate existing service or that the applicant does not meet the requirements of this Section, the Board may deny, or partially deny, the application or may specify additional requirements to be met by the applicant to guarantee service. By the same Order, the Board may grant, modify, or deny, in whole or part, an applicant's request to serve an additional area not being served on the effective date of this chapter, or may assign an additional service area. Any such order is subject to appeal and hearing as provided in 10.03.220 of this chapter.

B. Applicants for a Collection Service Franchise or renewal of said Franchise shall provide sufficient information to the Board to prove to its satisfaction that:

1. The applicant has available collection vehicles, equipment, facilities and personnel sufficient to meet the standards of equipment and service established by this chapter, and ORS Chapter 459 or 459A, and the rules and regulations promulgated thereunder.
2. The applicant has good moral character, or if the applicant is a firm or corporation, that the principal partners or officers are of good moral character.
3. The applicant shall use disposal sites authorized by the Board, DEQ, and METRO, and list such sites.
4. The applicant shall furnish the County with a Certificate of Insurance for comprehensive general liability insurance, including contractual and products/complete operations liability insurance in an amount established by the Board for combined, single limit for personal injury and property damage for the protection of the County, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to the applicant's or any subcontractor's performance of this chapter.
5. The applicant shall indemnify, save harmless and defend the County, its officers, commissioners and employees from and against all claims and action, and all expenses incidental to the investigation, and defense thereof, arising out of, or based upon, damage or injuries to persons or property caused by the errors, omissions, fault, or negligence of the applicant, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

6. The insurance shall include the County as an additional insured and refer to and support the applicant's obligation to hold harmless the County, its officers, commissioners and employees. Such insurance shall provide thirty (30) days written notice to the County in the event of cancellation, non-renewal, or material change, and include a statement that no act on the part of the insured shall affect the coverage afforded to the County under this insurance.
- C. In the matter of an application for a Collection Service Franchise, if the applicant is not already serving an area proposed to be served, the applicant shall show in addition that:
    1. The defined service area has not been franchised to another person; or,
    2. The holder of the franchise is not adequately serving the defined service area and there is substantial demand by customers within the area for a change of service to that area.
  - D. If the applicant for a Collection Service Franchise proposes to serve an area or portion thereof that is under franchise to another person, or to replace such person upon expiration of the existing franchise, he/she shall have available, on the day beginning the proposed franchise term, adequate personnel, collection vehicles, containers, and other equipment for the service to be rendered. The Board shall require that such applicant supply a corporate bond, or cash, or acceptable negotiable securities to guarantee such availability to the satisfaction of the Board.
  - E. If it appears to the Board through its own knowledge, or through knowledge of its agents, or through written notice from any person, that there are conflicting claims to a Service Area, then a public hearing shall be called by the Board to resolve such conflicting claims and the claim shall be resolved by the Board, upon the basis of the recommendation of the Commission, the requirements of this chapter for Collection Service Franchises as set forth in this Section, and the Board's determination as to which applicant can best serve a given service area in the public interest. The decision of the Board in resolving any conflict between persons claiming the Service Area shall, in addition, be made by the Board upon its finding of which person or applicant has the greatest claim to the Service Area or portion thereof the Commission's recommendation shall be based on a review as to past Service of record in the area and the requirements of this chapter. The Board's decision shall be final.

[Codified by Ord. 05-2000, 7/13/00]

### **10.03.170 Issuance of Collection Service Franchises**

Applications for Collection Service Franchises and renewal of Collection Service Franchisees shall be reviewed by the Commission and by the Director. They shall make such investigation, as they deem appropriate. The Commission shall give written notice to the current Collection Service Franchisees when any person applies for a franchise within an established franchised area.

Upon the basis of the application, evidence submitted and results of any investigation by the Commission and by the Director, the Commission shall review the qualifications of the applicant pursuant to the requirements for a Collection Service Franchise under 10.03.160 and shall

determine whether additional areas should be included or additional service or equipment should be provided.

On the basis of its review, the Commission shall recommend to the Board whether the application should be granted, be denied, or be modified. The Board shall issue an Order granting, denying, or amending the application.

[Codified by Ord. 05-2000, 7/13/00]

### **10.03.180 Disposal Franchise Requirements**

- A. Applicants for a Disposal Franchise shall provide sufficient information to determine compliance with the requirements of this chapter; the regulations promulgated thereunder and rules of Federal, State and local agencies having jurisdiction.
- B. Applicants shall specify the type of disposal site and the disposal method to be employed together with any proposed special regulations dealing with hazardous wastes, recyclable materials or what waste or recyclable material will be accepted or rejected at the disposal site.
- C. The applicant must show to the satisfaction of the Board that he/she:
  - 1. Has available land, equipment, facilities, and personnel to meet the standards established by this chapter and ORS Chapter 459 or 459A, and the rules and regulations promulgated thereunder and that he/she has insurance equal to that required by 10.03.150 of this chapter.
  - 2. Has good moral character or, if the applicant is a firm or corporation that the principal partners or officers are of good moral character.
  - 3. The Board shall require the applicant to submit a corporate surety bond in the minimum amount of \$50,000, or such other sum as the Board may require, or such other acceptable guarantees or substitutes in an amount to be designated by the Board, guaranteeing full and faithful performance by the applicant of the duties and obligations of the franchise holder under provisions of this chapter and applicable Federal, State, and local laws and rules or regulations. In determining the amount of bond to be required, the Board shall give due consideration to the size of the site, the method of disposal proposed, the population to be served, adjacent or nearby land uses, and the potential danger for failure of service.
- D. Where the applicant is providing disposal service on the effective date of this chapter, and has filed his/her application within thirty (30) days thereafter, he/she may continue service until the final decision of the Board on his/her application.

[Codified by Ord. 05-2000, 7/13/00]

### **10.03.190 Issuance of a Disposal Franchise**

The Commission shall review applications for Disposal Franchise. The Commission shall give written notice of the application to any person who holds a Disposal Franchise for Service to all or part of the area that reasonably would be served under the application.

Upon the basis of the application, evidence submitted, and results of any investigation, the Commission shall make a finding on the qualifications of the applicant and whether or not

additional service, personnel, land, equipment or facilities should be provided and what conditions of service should be imposed including, but not limited to, whether the site should be opened to the public and under what conditions, whether or not certain types of wastes, solid waste, hazardous wastes or recyclable materials should be excluded from the site or should be required to be accepted at the site, and shall make a finding as to whether or not the site is economically feasible, whether or not the site may be integrated with existing private or county-owned or operated sites, and further that the site complies with all rules and regulations adopted pursuant to ORS Chapter 459 or 459A, and by this chapter.

On the basis of its review, the Commission shall recommend to the Board whether or not the application should be granted, be denied, or be modified. The Board shall issue an Order granting, denying, or amending the application.

These provisions are in addition to, and not in lieu of, any provisions of the Clackamas County Zoning and Development Ordinance and the Clackamas County Comprehensive Plan.  
[Codified by Ord. 05-2000, 7/13/00]

#### **10.03.200 Transfer Station Franchise Requirements**

- A. Applicants for a Transfer Station Franchise shall provide sufficient information to determine compliance with the requirements of this chapter, the regulations promulgated thereunder and rules of Federal, State or regional agencies having jurisdiction.
- B. Applicant must show to the satisfaction of the Board that he/she:
  - 1. Has available land, equipment, facilities, and personnel to meet the standards established by this chapter and ORS Chapter 459 or 459A, and the rules and regulations promulgated thereunder.
  - 2. Has good moral character, or if the applicant is a firm or corporation, that the principal partners or officers are of good moral character.
  - 3. Shall furnish the County with a Certificate of Insurance for comprehensive general liability insurance, including contractual and products/completed operations liability insurance in an amount established by the Board for combined, single limit for personal injury and property damage for the protection of the County, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, or damage to property, including loss of use thereof, in any way related to the applicant's or any subcontractor's performance of this chapter.
  - 4. Shall indemnify, save harmless and defend the County, its officers, commissioners and employees from and against all claims and action, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the applicant, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

5. Has insurance which shall include the County as an additional insured, and which shall refer to and support the applicant's obligation to hold harmless the County, its officers, commissioners and employees. Such insurance shall provide thirty (30) days written notice to the County in the event of cancellation, non renewal or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the County under this insurance.
- C. Where the applicant is providing transfer service on the effective date of this chapter, and has filed his/her application within thirty (30) days thereafter, he/she may continue service until the final decision of the Board on his/her application.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.03.210 Issuance of a Public Transfer Station Franchise**

- A. The Commission shall review applications for Transfer Station Franchises. The Commission shall give written notice to any person who holds a transfer station franchise for service to all or part of the area that reasonably would be served under the application.
- B. On the basis of the application, evidence submitted, and results of any investigation, the Commission shall make a finding on the qualifications of the applicant and whether or not additional personnel, service, land, equipment or facilities should be provided, and what conditions of service should be imposed, including but not limited to whether or not certain types of wastes, solid wastes, hazardous wastes or recyclable materials should be excluded from the transfer station or should be required to be accepted at the transfer station, and the Commission shall make a finding as to whether or not the transfer station may be integrated with existing private or County-owned or operated transfer stations, and further that the transfer station complies with all rules and regulations adopted pursuant to Chapter 459 or 459A. On the basis of its review, the Commission shall recommend to the Board whether or not the application should be granted, be denied, or be modified. The Board shall issue an Order granting or denying a Transfer Station Franchise to the applicant.
- C. Provisions of this section of this chapter are in addition to, and not in lieu of, any provisions of the Clackamas County Zoning and Development Ordinance, the Clackamas County Comprehensive Plan or rules or regulations of the Oregon Department of Environmental Quality and the Federal Government.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.03.220 Appeal of a Franchise**

If the Order of the Board is adverse to the applicant or to the holder of an existing franchise, it shall not become effective until thirty (30) days after the date of said Order, unless the Board finds that there is an immediate and serious danger to the public, or that a health hazard or public nuisance would be created by a delay. The applicant or a franchise holder may request a public hearing before the Board upon the Board's Order by filing a written request for an appeal hearing with the Board within thirty (30) days after the date of said Order. On the filing of such request for an appeal hearing, the Board shall set a time and place for a public hearing upon its Order, which hearing shall be not more than thirty (30) days from the date of said request for an appeal hearing. The applicant or franchise holder may submit relevant evidence to the Board upon the

Board's Order. Other interested persons or affected public or private agencies may appear and offer oral or written testimony. The Board may, following the public hearing, affirm, modify or rescind its prior Order.

Subject to provisions of 10.03.410, the determination of the Board after conclusion of said public hearing should be final.

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

[Codified by Ord. 05-2000, 7/13/00]

### **10.03.230 Exclusive or Joint Service Under a Collection Service Franchise**

Upon recommendation of the Commission, if the Board finds that an applicant for a Collection Service Franchise cannot provide adequate Service for the collection of solid waste or wastes, or the curbside/roadside collection of recyclable materials to a single customer, a group or type of customer, or for a particular type or unusually large quantity of solid waste or wastes, or for recyclable material, it may issue a franchise for joint service with another person who can provide that service; provided, however, that in all cases where the Board finds that the applicant is able to provide adequate service within the defined Service Area, it shall issue an exclusive Collection Service Franchise.

If the holder of a Collection Service Franchise is unable to provide service for particular types, or unusually large quantities, of solid waste or wastes or recyclable materials, the Board may issue a temporary or permanent Collection Service Franchise to another person for the purpose of providing limited service to the customer or customers having such particular types or unusually large quantities of solid waste or wastes or recyclable materials.

Upon recommendation of the Commission, if the Board finds that the need for service justifies action before a complete investigation and final determination can be made, it may issue a temporary Collection Service Franchise valid for a stated period not to exceed six months, entitling a person to serve a defined Service Area or customers.

[Codified by Ord. 05-2000, 7/13/00]

### **10.03.240 Transfer of Franchise**

The holder of a solid waste or wastes Collection Service Franchise may transfer his/her franchise and/or right to provide residential curbside/roadside or multi-family collection service of recyclable materials, or a portion thereof, to other persons only upon written notice to, and approval by, the Board.

Upon recommendation and finding of the Commission, the Board may approve the transfer if it

finds that the transferee meets all applicable requirements met by the original Collection Service Franchise holder. The Board shall approve or disapprove any application for transfer of a Collection Service Franchise and/or right to provide residential curbside/roadside or multi-family collection of recyclable materials within thirty (30) days of receipt of notice by the Board, unless the Board finds there is substantial question of public health or safety involved which requires additional time for investigation and decision.

Upon recommendation of the Commission, the Board may permit a Collection Service Franchise to be pledged as a security for purchase of land, equipment, or facilities that are needed to provide service, or to finance purchase of a business providing service under this chapter. The Board may attach whatever condition it deems appropriate to guarantee maintenance of service. [Codified by Ord. 05-2000, 7/13/00]

### **10.03.250 Change In Control of Franchises**

The holder of a solid waste or wastes Collection Service Franchise shall promptly notify the County of any proposed change in control, or transfer of a controlling interest in stock ownership. 'Change in control' shall mean the occurrence of either A or B of this Section:

- A. Any person, corporation, limited liability company, partnership, trust or association, or any group within the meaning of Section 13 D 3 of the Securities Exchange Act of 1934, as amended, 15 USC §78m D 3, and the rules and regulations promulgated thereunder, 17 CFR §240.13d-3, (the "Exchange Act") shall have acquired, after the date hereof, beneficial ownership (within the meaning of Rule 13d-3 of the Exchange Act), directly or indirectly, of common stock representing fifty percent (50%) of the combined voting power of all common stock of the franchise holder, or of any parent company of the franchise holder, immediate or otherwise, (hereinafter called a 'Controlling Person'). "Common stock" as used in the preceding sentence shall mean common stock eligible to vote in the election of directors, or other securities convertible into such common stock, other than securities having such voting power only by reason on the happening of a contingency. Or
- B. A majority of the Board of Directors or the franchise holder shall cease for any reason to consist of:
  - 1. Individuals who are currently serving as directors of the franchise holder; and
  - 2. Individuals who subsequently become members of the board if such individuals' nomination for election, or election to, the board is recommended or approved by a majority of the board of directors or stockholders of the franchise holder, provided that use of the provisions of this clause shall not be used to evade the intent of this section.
- C. For purposes of paragraph A above, a person or group shall not be a Controlling Person if such a person or group holds voting power in good faith and not for the purposes of circumventing this provision as an agent, bank, broker, nominee, trustee, or holder of revocable proxies given in response to a solicitation pursuant to the Exchange Act, for one or more beneficial owners who do not individually, or, if they are a group acting in concert, as a group, have the voting power specified in paragraph A.

- D. The franchise holder shall give County a written request to approve the change in control prior to any change in control taking effect. If a change in control occurs without written notice to County, such change shall be grounds for revocation of franchise by the County, at its sole discretion.
- E. A change in control shall make a franchise subject to revocation, unless and until the Board, after receiving the recommendation of the Commission, has approved the change in control. The Board shall approve or disapprove any change in control within ninety (90) days of receipt of written request to enter into the transaction and receipt of all information required in writing by the County. For the purpose of determining whether it will consent to such change in control, the County may inquire into the qualifications of the prospective controlling party to perform under the County's solid waste collection system and the effects of the change on that system. The franchise holder shall assist the County in any such inquiry.

[Codified by Ord. 05-2000, 7/13/00]

### **10.03.260 Responsibilities of Franchise Holders**

- A. The holder of a Collection Service Franchise:
  - 1. Shall provide required service, personnel, equipment and facilities, but not less than the service, personnel, equipment and facilities commensurate with existing service provided within the Service Area defined in the franchise, within one month from the date of issuance of the Collection Service Franchise or renewal of the Franchise, unless the Commission extends the time upon showing of reasonable grounds by the franchisee. Where an area is not receiving service on the date of the application for a Collection Service Franchise covering such area, the Commission may order that Service be provided at such time as it finds to be reasonable.
  - 2. Shall not voluntarily discontinue service to the Service Area, or substantial portion thereof, or any customer without giving ninety (90) days written notice of the proposed discontinuance of service to the Commission and to the customers within the franchised Service Area, and shall not discontinue the service without receiving the approval of the Board. Nothing in this section shall prohibit a franchisee from refusing to provide service to a customer if the customer refuses to pay for the service in accordance with waste management fees established pursuant to this chapter, or for other reasons as may be established by the Board or Director by regulation; provided, however, in no event shall the holder of the Collection Service Franchise terminate such service without seven (7) days prior written notice to the customers of the franchisee's intention to terminate service. The franchisee shall retain a copy of said notice. A Collection Service Franchise holder who has discontinued service on the basis of refusal of a customer to pay for such service may require a reasonable deposit to guarantee payment for future services before reinstating such service or demand advance payment for service. Nothing in this subsection shall apply to any Order for a change, restriction, or termination of service by any public agency, public body or court having jurisdiction.

3. May subcontract with another person to provide service, or a particular type of service, within a Service Area after giving written notice to, and obtaining approval of, the Board.
4. May refuse Service to a customer where service at a particular location would jeopardize the safety of the driver of the collection vehicle, or the motoring public, or cause damage to the collection vehicle or equipment, or where the customer has not provided reasonable access to the pickup point for the receptacle(s) storing solid waste or wastes or recyclable materials. Service may also be refused where there is undue hazard or risk to the person providing service due to natural or manmade constraints, such as overhanging branches, slope, topography, wet ground conditions; vicious animals; or private roads, driveways, or bridges where damage may occur to said road, driveway, or bridge, or equipment from the weight of the collection vehicle or equipment whether empty, partially full, or full. In addition, weather conditions may temporarily prevent service to a particular customer or customers. The Board, Commission, or Director, may from time to time, develop regulations establishing adequate standards of safety for the driver of a collection vehicle, the motoring public, and the public generally, and the solid waste or wastes or recyclable materials collection vehicle or equipment. If a customer is refused service for any condition other than temporary weather conditions, a written notice stating the reasons for refusal of service shall be given to said customer and the Director within seven (7) days from when service is first refused by the Collection Service Franchisee.
5. Shall provide the opportunity to recycle as follows:
  - a. Shall provide at least weekly residential on-route curbside/roadside collection of recyclable materials and weekly on-route collection of yard debris within the urban growth boundaries of Clackamas County and cities within the Metropolitan Service District.
  - b. Shall provide other on-route collection of recyclable materials as required by the County or State law.
  - c. Shall have the right to compete in the purchase or exchange for fair market value in the collection of commercial/industrial source-separated recyclable materials.
  - d. Shall design, commit resources, and provide an education, promotion and notification program to enhance recycling awareness and to provide the opportunity to recycle as provided by this chapter and ORS Chapter 459 or 459A and the rules promulgated thereunder.
  - e. Shall report to the County on recycling activities and supply all necessary information for purposes of preparing the D.E.Q. or METRO recycling report.
  - f. At the request of a permit holder shall haul any load of recyclable materials collected by the permit holder to a legally established utilization facility and may charge a fee pursuant to 10.03.330 to cover the cost of this service. The franchisee shall remit to the permit holders all revenue derived from the sale of this material at the utilization facility.
6. Shall indemnify Clackamas County, the Board, the Commission, the Director and any of their employees or agents, and save them harmless from any and all loss,

damage, claim, expense or liability arising out of operation by the Collection Service Franchise holder under his/her franchise. In the event that any suit or action is brought for injury or damage to persons or property of others against Clackamas County, the Board, the Commission, the Director or any of their employees or agents, based upon, or alleged to be based upon, any loss, damage, claim, expense or liability arising out of operations by the franchise holder under his/her franchise, the Collection Services Franchise holder shall defend the same at his/her own cost and expense; provided, however, that Clackamas County, the Board, the Commission and the Director reserve the right to retain counsel of their own choosing and join in the defense of any such suit or action.

B. The holder of a Disposal Franchise:

1. Shall not voluntarily discontinue service without giving at least ninety (90) days written notice of the proposed discontinuance of service to the Commission and to any Collection Service Franchisee using his/her disposal site; and further, shall receive the approval of the Board prior to discontinuing said service. This paragraph shall not apply to any order for closure or restriction of use by any public agency, public body, or court having jurisdiction.
2. May contract with another person to operate the disposal site after giving written notice to, and obtaining the approval of, the Board.
3. May refuse disposal service to any customer if the customer refuses to pay for the service in accordance with the rates established pursuant to this chapter. A Disposal Franchise holder who has discontinued service for refusal of a customer to pay for such service, may demand that the customer provide a reasonable deposit in advance to guarantee payment for future service prior to reinstating such service, or may demand advance payment for service.
4. Shall provide the necessary service and facilities for collecting source-separated recyclable materials as designated by D.E.Q., METRO, or the County. This shall also include development of education and promotion literature on the opportunities to recycle and recycling awareness for distribution to the user.
5. Shall indemnify Clackamas County, the Board, the Commission, the Director and any of their employees or agents, and save them harmless from any and all loss, damage, claim, expense or liability in any manner occurring in connection with, or arising out of, operations under this Disposal Franchise. In the event any suit or action is brought for injury or damage to persons or property of others against Clackamas County, the Board, the Commission, the Director or any of their employees or agents based upon or alleged to be based upon any loss, damage, claim, expense or liability in any manner occurring in connection with or arising out of operations under this Disposal Franchise, the Disposal Franchise holder shall defend the same at his/her own cost and expense; provided, however, that Clackamas County, the Board, the Commission, and the Director reserve the right to retain counsel of their own choosing and join in the defense of any suit or action.

C. The holder of a Transfer Station Franchise:

1. Shall not voluntarily discontinue service without giving at least thirty (30) days written notice of the proposed discontinuance of service to the Commission and to any Collection Service Franchisees using his/her Transfer Station; and further

shall receive the approval of the Board prior to discontinuing said service. This subparagraph shall not apply to any order, foreclosure, or restriction of use, by any public agency, public body, or Court having jurisdiction.

2. May contract with another person to operate the Transfer Station after giving written notice to, and obtaining approval from, the Board.
3. May refuse service to any customer if the customer refuses to pay for this service in accordance with the rates established pursuant to this chapter. A Transfer Station Franchise holder who has discontinued service for refusal of a customer to pay for such service, may demand that the customer provide a reasonable deposit in advance to guarantee payment for future service prior to reinstating that service or may demand advance payment for service.
4. Shall provide the necessary service and facilities for collecting source-separated recyclable materials as designated by D.E.Q., METRO or the County. This shall also include development of education and promotion literature on the opportunities to recycle and recycling awareness for distribution to the user.
5. Shall indemnify Clackamas County, the Board, the Commission, the Director and any of their employees or agents and save them harmless from any and all loss, damage, claim, expense, or liability in any manner occurring in connection with or arising out of operations under the Transfer Station Franchise. In the event any suit or action is brought for injury or damage to persons or property of others against Clackamas County, the Board, the Commission, the Director or any of their employees or agents, based upon or alleged to be based upon any loss, damage, claim, expense or liability, in any manner occurring in connection with or arising out of operations under his/her Transfer Station Franchise, the franchise holder shall defend the same at his/her own cost and expense; provided, however, that Clackamas County, the Board, the Commission, and the Director reserve the right to retain counsel of their own choosing and join in the defense of any such suit or action.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.03.270 Enforcement of Franchise Provisions**

The Commission shall, upon reasonable cause, make an investigation to determine if there is sufficient reason and cause to suspend, modify, revoke, or refuse to renew a franchise as provided in this section. If, in the opinion of the Commission, there is sufficient evidence to constitute a violation of this chapter or ORS Chapter 459, or 459A, or the rules or regulations promulgated thereunder, the Commission shall notify the holder of the franchise in writing of the alleged violation and the steps necessary to be taken to cure the violation. Upon a finding that a violation exists and that the franchisee is unable to, or refuses to, cure the violation, the Commission shall make a recommendation to the Board that the franchise be suspended, modified, revoked, or that it not be renewed.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.03.280 Suspension, Modification, Revocation or Refusal to Renew a Franchise**

- A. Upon recommendation by the Commission, or upon its own motion, the Board may suspend, modify, revoke, or refuse to renew a franchise upon finding that the holder thereof has:
1. Willfully violated this chapter or ORS Chapter 459, or 459A, or the rules, or the regulations promulgated thereunder; or
  2. Willfully misrepresented material facts or information given in the application for the franchise; or
  3. Willfully refused to provide adequate service in a defined Service Area or at the franchised Disposal Site, Transfer Station or Depot after written notification and a reasonable opportunity to do so; or
  4. Willfully misrepresented the total number of collection service customers in the Franchised Service Area.
- B. In lieu of immediate suspension, modification, revocation, or refusal to renew a franchise, the Board may order compliance and make the suspension, modification, revocation, or refusal to renew a franchise or permit contingent upon compliance with the Order within the period of time stated in said Order.
- C. If the Board suspends, modifies, revokes, or refuses to renew the franchise, the action shall not become effective until thirty (30) days after the date of the Order, unless the Board finds that there is a serious and immediate danger to the public health, or that a public nuisance would be created. The holder of a franchise may request a public hearing before the Board upon the Board's Order by filing a written request for such hearing with the Board within thirty (30) days after the date of said Order. Upon the filing of said request for hearing, the Board shall set a time and place for a public hearing; and upon its Order, said hearing shall not be more than thirty (30) days from the date of filing of said request for hearing. The franchise holder and other interested persons or affected public agencies may submit oral or written evidence to the Board relevant to the Board's Order. The Board may, following the public hearing, affirm, amend, or rescind its prior Order. Subject to provisions of Section 10.03.410, the determination of the Board, after conclusion of said public hearing, shall be final.

[Codified by Ord. 05-2000, 7/13/00]

### **10.03.290 Preventing Interruption of Service**

The holder of any franchise agrees, and it is a condition of his/her obtaining and holding the franchise, that whenever the Board finds that the failure of service would result in creation of a health hazard or a public or private nuisance, the Board shall, after reasonable notice of not less than 24 hours to the franchisee, and a public hearing, if the franchisee requests such hearing, have the right to authorize another franchise holder or another person to provide service, or to use and operate the land, facilities or equipment of the franchise holder, for reasonable compensation to provide emergency service in the event of a serious interruption of service to all, or to a class, or group of customers for so long as such interruption continues.

[Codified by Ord. 05-2000, 7/13/00]

### **10.03.300 Terms of Franchises**

- A. Franchises, other than Collection Service Franchises, shall be renewable unless grounds exist for refusal to renew pursuant to Section 10.03.280 of this chapter.
- B. The term for a Disposal Franchise shall be determined by the Board upon the recommendation of the Commission, based upon site longevity, population to be served, and probable use.
- C. The term for a Transfer Station Franchise shall be ten (10) years, unless upon recommendation of the Commission, the Board may adjust the term of the franchise as deemed necessary due to the cost of land, equipment, or facilities.
- D. Unless grounds exist for suspension, modification, or revocation of the Collection Service Franchise under Section 10.03.280 of this chapter, each Collection Service Franchise shall be considered as a continuing ten- (10) year term. Beginning January first (1st) of each year, the Franchise will be considered renewed for an additional ten (10) year term, unless at least thirty (30) days prior to January first (1st) of any year the County notifies all the Franchisees of intent to terminate the continuing franchise system. Upon the giving of such notice, the Franchisees will each have a Franchise which will terminate on the January first (1st) which is ten years from the date of the last renewal prior to the notice of termination.
- E. The County may initiate proceedings for suspension, modification, or revocation of a Collection Service Franchise under Section 10.03.280 of this chapter, at any time, whether or not a review is being conducted.
- F. Collection Service Franchises shall be subject to a review by the Director every five (5) years. The Director shall provide a report of the review to the Commission and the Board. Upon recommendation by the Commission, or upon its own motion, the Board may order that conditions be attached to a Collection Service Franchise or that modifications be enacted by a Collection Service Franchisee, based upon the review. Any such order for conditions or modifications shall be subject to the notification and hearing process set forth in Section 10.03.280 C of this chapter.

[Codified by Ord. 05-2000, 7/13/00]

### **10.03.310 Franchise Fees**

- A. The Board shall collect in the manner and at the time provided in this Section, from the holder of:
  - 1. Any Collection Service Franchise, an annual fee based on gross cash receipts from collection service provided to the service area included in the Collection Service Franchise. Said fee shall be in an amount established by the Board and shall not include cash receipts from the sale of recyclable materials.
  - 2. Any Disposal Franchise, an annual fee based on gross annual disposal fees. Said fee shall be in an amount established by the Board.
  - 3. Any Transfer Station Franchise, an annual fee based on gross annual disposal fees. Said fee shall be in an amount established by the Board.
  - 4. These fees may be changed by resolution of the Board, upon thirty- (30) days written notice, to give an opportunity for each franchisee to be heard.
- B. Annual Collection Service Franchise fee shall be computed quarterly and shall be paid on a quarterly basis, not later than thirty (30) days after the end of each calendar quarter.

- C. Within sixty (60) days after the end of each calendar year, a Collection Service Franchise holder shall file with the Board a sworn and verified statement of his/her total gross cash receipts; and, in order that the Board may have a way of keeping up with the total number of customers in the franchised areas, the Collection Service Franchise holder shall include in the sworn and verified statement the figure for his/her total number of customers.
- D. The annual Disposal Franchise fee shall be computed monthly and paid by the 20th of the following month. Within sixty (60) days after the end of each calendar year, a Disposal Franchise holder shall file with the Board a sworn and verified statement of his/her total gross cash receipts for disposal; and, in order for the Board to have a way of keeping up with the volumes disposed, the Disposal Franchise holder shall submit a sworn statement of the total volumes disposed during the previous calendar year.
- E. Every Collection Service Franchise holder, Disposal Franchise holder or Transfer Station Franchise holder shall maintain books and records disclosing the total number of customers in his/her franchised area, which records shall be open at reasonable times and places for audits by authorized personnel of Clackamas County.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.03.320 Use of Franchise Fees**

Fees collected pursuant to Section 10.03.310 of this chapter shall be placed in a fund to be known as the Solid Waste Disposal Fund and shall be used only for the purposes outlined in 10.03.020 of the Purpose and Policy Statements of this chapter, unless transferred to another fund by budget transfer approved by the Board of County Commissioners. The solid waste disposal fund shall not be used for general County purposes unless first transferred by such a budget transfer. Said fund shall be kept and accounted for separately and apart from the Clackamas County General Fund or any other fund.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 09-2001, 9/27/01]

#### **10.03.330 Permit for Civic Community, Benevolent or Charitable Non Profit Organization or Corporation**

- A. Unless franchised under Section 10.03.140 to 10.03.330 of this chapter, any civic, community, benevolent or charitable nonprofit organization or corporation conducting activities for the collection, transportation, processing or disposal of recyclable materials, shall apply for a permit therefor from the Director on forms supplied by the Director. The Collection Service Franchise holder for the area in which the permittee shall conduct such activities shall be notified of the issuance of the permit. There shall be no fee for such a Permit. The duration of the permit shall be twelve (12) months or such other time as fixed by the Director. The Director shall furnish the permittee a list of applicable regulations and such available information as may assist the permittee in his/her endeavor. The Director may reject a permit application on the grounds that the applicant is unable or unwilling to meet the standards or requirements applied by the Director. The Director may apply any reasonable standard or requirement to such permit to prevent the creation of health, fire or safety hazards, the sustenance leading to the production of

vectors or anything leading to a condition of unsightliness or foul odors. Any condition applied by the Director shall become a part of the permit, and violation by the permittee of any such condition shall automatically revoke the permit granted.

- B. The permittee shall make arrangements to have the recyclable materials transported to market and shall designate who is to transport the recyclable materials when the permit is applied for. The assistance of the Collection Service Franchise holder whose Collection Service Area the recyclables are taken from may be used. If the Collection Service Franchise holder participates in transporting the recyclable materials, the said franchisee shall have the right to charge a fee pursuant to Section 10.03.340 to cover the cost of this service. Said Franchisee shall remit to the permit holder all revenue derived from the sale of the material.
- C. The Director may suspend, modify, revoke, or refuse to issue or renew a permit upon the grounds set forth in A of this section. The applicant for a permit, or the permittee, may appeal any such decision of the Director to the Commission for their decision on the matter. If the Commission suspends, modifies, revokes or refuses to renew the permit, the action shall not become effective until thirty (30) days after the date of the Commission's decision, unless the Commission finds that there is a serious and immediate danger to the public health, or that a public nuisance would be created. The holder of a permit may request a public hearing before the Commission by filing a written request for such hearing with the Commission within thirty (30) days after the decision of the Commission. Upon filing of said request for hearing, the Commission shall set a time and place for a public hearing, and upon its Order, said hearing shall not be more than thirty (30) days from the date of filing of said request for hearing. The permit holder and other interested persons or affected public agencies may submit oral or written evidence to the Commission relevant to the Commission's decision. The Commission may, following the public hearing, affirm, amend or rescind its prior decision. The determination of the Commission, after conclusion of said public hearing, shall be final.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.03.340 Determination of Waste Management Fees (WMF)**

- A. Upon recommendation of the Commission, the Board may establish uniform Waste Management Fees (WMF) for collection service throughout the County, or may establish uniform WMF for collection service within zones based upon the length of haul or other factors which may, in the opinion of the Board, justify establishment of WMF differentials. The Board may also establish WMF by class of collection service customer for recycling collection costs, if said costs exceed the revenues produced by sale of recyclable materials collected. In no case shall a customer that recycles be charged more than one that does not recycle.
- B. Upon recommendation of the Commission, the Board shall consider Disposal or Transfer Station WMF based upon the type of site, the cost of operation of such site, whether or not the site is open to the public, the type of waste to be disposed of, and the cost of compliance with Federal, State and local laws and regulations together with such other factors which may, in the opinion of the Board, affect the WMF to be charged. The Board

- may establish uniform WMF for all Disposal sites or Transfer Stations, or may establish different WMF based upon the factors specified in this Section.
- C. Increases or decreases in WMF approved under this Section may not be made by the Board unless the Board, upon the recommendations of the Commission, finds that the increase or decrease is based upon an increase or decrease in the cost of doing business, or an increased cost of additional, better, or more comprehensive service.
  - D. In determining the proposed WMF for Collection Services, the Commission and the Board shall give due consideration to: the investment in facilities and equipment; the services of management; local wage scales; the concentration of collection service customers in the service area; methods and costs of storage, collection, transportation and disposal; the length of haul to disposal facilities; a reasonable return and operating margin for the owner(s) of the business; the future service demands of the area or site which must be anticipated in equipment, facilities, personnel or land; extra charges for special pickup or pickups on days where service is not normally provided on a route; extra charges where the type of character of solid waste or wastes, including, but not limited to wastes with peculiarly offensive odors, requires special handling or service; extra charges for providing janitorial services on the premises where service is provided; and extra costs for providing the opportunity to recycle under ORS 459 and 459A.
  - E. The Board may require an investigation by the Commission of any proposed WMF increase or decrease. For the purpose of making this investigation, the Commission, in cooperation with the Director, is authorized to hold public hearings, and to take and receive testimony relevant to the consideration to be made by the Board, in allowing or denying the WMF increases or decreases under this chapter. Upon completion of its investigation, the Commission shall make a report of the public hearing and shall make recommendations to the Board regarding the proposed WMF.
  - F. In considering WMF increases or decreases, the Board must find that the WMF will be just, fair, reasonable, and sufficient to provide required service to the public. The Board may consider the WMF charged by other persons performing the same or similar service in the same or other areas.
  - G. Where no WMF has been established for a particular type of service, the Commission may establish an interim WMF until the Board makes a final determination on the WMF for that type of service. In establishing such a WMF, the Commission shall give due consideration to all the factors established as a guideline for the Commission and Board in this Section.

[Codified by Ord. 05-2000, 7/13/00]

### **10.03.350 Waste Management Fee (WMF) Preference Prohibited**

- A. No Collection Service Franchise holder subject to Waste Management Fee (WMF) regulation under this chapter shall give any WMF preference to any person, locality, or type of solid waste or wastes or recyclable materials stored, collected, transported, disposed or utilized.
- B. Nothing in this Section is intended to prevent:
  - 1. The reasonable establishment of uniform classes of WMF for collection service based upon length of haul; type of solid waste or wastes or recyclable materials stored, collected, transported, disposed or utilized; the number, type, and location

of customers served; or upon other factors as long as such WMF are reasonably based upon costs of the particular service and are approved by the Board in the same manner as other WMF.

2. Any Collection Service Franchisee from volunteering collection or recycling service at reduced cost for a charitable, community, civic or benevolent purpose.

[Codified by Ord. 05-2000, 7/13/00]

### **10.03.360 Responsibility for Payment Charges for Service**

Any person who receives service shall be responsible for payment for such service. The owner of any premises shall be responsible for payment for services provided to those premises to the extent permitted by Oregon Law.

[Codified by Ord. 05-2000, 7/13/00]

### **10.03.370 Agreement for Joint Franchises**

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

[Codified by Ord. 05-2000, 7/13/00]

### **10.03.380 Agreements for Allocation of Franchise Fees**

The Board may enter into agreements with any city or county providing for allocation of franchise fees where the franchise service areas crosses city or county boundaries.

[Codified by Ord. 05-2000, 7/13/00]

### **10.03.390 Abatement**

- A. The accumulation, storage, collection, transportation, disposal, or illegal dumping of solid waste or wastes by any person in violation of this chapter, or regulations promulgated thereunder, is a nuisance, and the Board or County Counsel may, in addition to other remedies provided by law, institute injunction, mandamus, abatement, and/or collection of a fine for the violation, or any other appropriate legal proceedings to temporarily, or permanently, enjoin or abate such accumulation, storage, collection, transportation, disposal, or illegal dumping.
- B. It is unlawful for any person to collect, store, transport, dispose, utilize, destroy, vandalize in any fashion, steal or take source-separated recyclable materials set out or deposited for recycling collection, without the consent of the generator and the intended recipient of such materials, and without first obtaining a franchise, subcontract, recycling license or permit.

If any person is in violation of this Section, or this chapter, or the regulations thereunder, the Board or County Counsel may, in addition to other remedies provided by law, institute injunction, mandamus, abatement, and/or collection of a fine for the violation or

any other appropriate legal proceedings to temporarily, or permanently, enjoin or abate the violation.

- C. In addition to the provisions of subsections A and B of this section, if any person is in violation of these Sections or this chapter, and the regulations thereunder, the Board or Director may, in addition to other remedies provided by law, refer said violation to the Compliance Hearings Officer pursuant to the Compliance Hearings Officer Chapter to abate the violation and/or collect civil penalties or costs for the violation.
- D. The provisions of this Section are in addition to, and not in lieu of, any criminal prosecution as provided by this chapter or State law.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.03.400 Penalties**

A violation of Section 10.03.060, 10.03.070, 10.03.080, 10.03.140, 10.03.310 or 10.03.340 of this chapter shall be punishable by a civil penalty in an amount set by resolution of the Board of County Commissioners, or any other penalty to the extent permitted by State law.

A penalty imposed for a violation of Section (E) of 10.03.080 may, in addition, be increased as permitted in ORS 459.108 to include all of the costs incurred by the County in removing rubbish, trash, debris, garbage, solid waste or wastes polluting substance unlawfully placed on the property and eliminating the effects of such unlawful placement.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2003, 3/13/03]

#### **10.03.410 Court Appeal**

All decisions of the Board under this chapter shall be reviewable by the Circuit Court of the State of Oregon for the County of Clackamas by Writ of Review as provided in ORS 34.010 – 34.100.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.03.420 Appeals From Decisions of the Director or Commission**

The Commission or the Board, upon their own motion, or upon the request of an interested person or affected public agency, may review decisions of the Director or Commission made pursuant to this chapter.

[Codified by Ord. 05-2000, 7/13/00]