

# CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

## Policy Session Worksheet

**Presentation Date:** July 26, 2016 **Approx Start Time:** 10:30 am

**Approx Length:** 60 Min

**Presentation Title:** Updates to County Code

**Department:** County Counsel

**Presenter:** Stephen Madkour

**Other Invitees:** Nathan Boderman, Scott Ciecko, Christina Thacker

### **WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?**

Approval to move proposed County Code amendments forward to the BCC's Business Meeting for public hearing.

### **EXECUTIVE SUMMARY:**

Pursuant to County Code Chapter 1.01.100, the County Counsel is responsible for maintaining and updating the Code. A Code Update Committee periodically meets to consider Code changes that are either proposed by staff, citizens, or identified by members of County Counsel as necessary or appropriate.

The Code Update Committee has approved several proposed changes to the County Code for Board consideration on a variety of topics. They include:

*Building Code Administration:* Clackamas County administers the State of Oregon building code, which is made up of various specialty codes covering all aspects of buildings and construction. Over time, new specialty codes are added, references to the certain specialty codes change, and the names and titles of the specialty code change altogether. The amendments to Chapter 9.02 will update the County Code to include the most up to date references to the State Building Code, which includes correct references to all of the respective specialty codes. The proposed amendments are attached.

*Chronic Nuisance:* Provides for clearer and more comprehensive approaches to chronic nuisance complaints by revising Chapter 6.08. This will allow County staff to better respond to citizen issues. The proposed amendments are attached.

*Employment Updates:* Proposed changes to County Code 2.05 and 2.14:

- Remove County Surveyor from employment contract and removed unrepresented positions in the County Justice Court from the unclassified service (2.05.040.3; 2.14)
- Remove references to Board of County Commissioners and replace with County Administrator in the classification provisions (2.05.050)

- Remove references to County Administrator and replace with Department Director; revise language regarding salary grade adjustments, in the compensation provisions (2.05.060)

The proposed amendments are attached. The Code Update Committee has identified the inclusion of many employment provisions in the County Code as an inefficient approach. A work plan is being developed to provide for the removal of the provisions from the County Code and inclusion in a more accessible document to be created by County Counsel, County Administration and the Department of Employee Services.

*LCRB Rules Update:* The Board and County Administration has requested a more permanent means for allowing the County Administrator to act on the Board's behalf during extended recesses, such as the traditional August and Christmas breaks. The Code Committee has also received requests for certain job titles to be authorized under the Local Contract Review Board ("LCRB") rules for delegated signing authority. The proposed amendments, attached, provide for both. A more complete update and revision of the LCRB rules is part of the Code Update Committee work plan over the next year.

*Solid Waste Commission Bylaws:* Recently, PGA worked with various boards and committees in the County to update the bylaws governing each entity. During this process, it was discovered that the bylaws for the Solid Waste Commission were contained in the County Code in Chapter 10.03. As part of PGA bylaw update process, the solid waste commission adopted a stand-alone bylaw document that incorporated, and expanded upon, many of the provisions currently found in Chapter 10.03. The BCC reviewed the new bylaws at its recent Policy Session on May 24, 2016. The revisions proposed to 10.03.090 - .110 will eliminate redundancies with the new bylaws, and remove unnecessary provisions from the County Code. The proposed amendments are attached.

**FINANCIAL IMPLICATIONS (current year and ongoing):**

None.

**STRATEGIC PLAN ALIGNMENT:**

This aligns with the Performance Clackamas goals of Building Trust Through Good Government by improving the applicability, accuracy and effectiveness of the County's governing ordinances.

**LEGAL/POLICY REQUIREMENTS:**

Governance and/or funding changes require detailed steps which are highlighted in the Regulatory Timeline provided in this packet. A new district must be formed for any of the alternative options presented below.

**PUBLIC/GOVERNMENTAL PARTICIPATION:**

The adoption of the revised ordinances will require two public hearings.

**OPTIONS:**

1. Direct staff to bring forward the proposed code amendment proposals to the next available business meeting for public hearing and consideration.

2. Direct certain changes be made in the proposed amendments, and then have such modified proposals brought forward at the next available business meeting for public hearing and consideration.
3. Decline to bring the proposed amendments forward for public hearing.

**RECOMMENDATION:**

Option #1, bringing forward the proposed code amendment proposals to the next available business meeting for public hearing and consideration.

**ATTACHMENTS:**

Building Code Revisions  
Chronic Nuisance Revisions  
Employment Code Revisions  
LCRB Revisions  
Solid Waste Committee Revisions

**SUBMITTED BY:**

Division Director/Head Approval \_\_\_\_\_  
Department Director/Head Approval \_\_\_\_\_  
County Administrator Approval \_\_\_\_\_

For information on this issue or copies of attachments, please contact Mandy Gordon @ 503-655-8619
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## Chapter 9.02

# 9.02 APPLICATION AND ENFORCEMENT OF THE CLACKAMAS COUNTY BUILDING CODE

### 9.02.010 Purpose

The purpose of this chapter is to establish uniform performance standards for building-related codes and rules to reasonably safeguard the health, safety, welfare, comfort and security of residents of this jurisdiction who are occupants and users of buildings, and provide for the use of modern methods, devices, materials and techniques and for superior energy conservation. [The provisions of this ordinance are in addition to the requirements of the State Building Code, as defined in ORS 455.010.](#)

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

### 9.02.020 Application

This chapter shall apply to the construction, [reconstruction](#), alteration, [relocation \(i.e. moving\)](#), demolition, repair, maintenance and work associated with any building [or structure](#) except when located in public ways.

If any apparent conflict arises because different sections of this chapter specify different materials, methods of construction or other requirements, the most restrictive provision shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement will apply.

If any apparent conflict arises between a provision of this Chapter and Oregon Revised Statutes [or State Building Code](#), the statutory [or State Building code](#)-provision(s) shall govern.

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

### 9.02.030 Definitions

When used in this chapter, the following terms, phrases, words and their derivatives shall have the meanings ascribed to them below. When terms are used that are not defined below, they shall have the ordinary accepted meanings that are appropriate to their context. Words used in the singular include the plural and those used in the plural include the singular. Words used in the masculine gender include the feminine and those used in the feminine include the masculine.

- A. PERSON includes human beings and, where appropriate, public or private corporations, unincorporated associations, partnerships, firms, governments, governmental instrumentality, joint stock companies, trusts and estates, trustees, and any other legal entities whatsoever, and shall indicate both the singular and the plural.

BUILDING OFFICIAL is the official designated by order of the Clackamas County Board of Commissioners as the Clackamas County Building Official, and includes that official's authorized representatives.

AUTHORIZED REPRESENTATIVE may include, among others, the Community Environment Manager and his authorized inspection personnel, and the Fire Marshall.

BUILDING is any building or structure constructed for any purpose whatsoever.

BOARD OF APPEALS is the entity appointed by the Clackamas County Board of Commissioners to hear and decide appeals of orders, decisions and determinations made by the building official relative to the application and interpretation of this Chapter, except that the Board of Appeals will not have jurisdiction over appeals arising from the Electrical Specialty Code, the Manufactured Dwelling or Mobile Home Parks Administrative Rules, or the On-Site Sewage Disposal Administrative Rules, which must be appealed to the entities identified in Section 9.02.150 of this Chapter.

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

#### **9.02.040 Clackamas County Building Code**

The Clackamas County Building Code consists of the following Specialty Codes as adopted by the State of Oregon:

- A. The Oregon Structural Specialty Code, as adopted by OAR Chapter 918, Division 460, except as modified in this Chapter, shall be enforced as part of this Chapter.
- B. The Oregon Mechanical Specialty Code, as adopted by OAR Chapter 918, Division 440, except as modified in this Chapter, shall be enforced as part of this Chapter.
- C. The Oregon Plumbing Specialty Code, as adopted by OAR Chapter 918, Division 750, except as modified in this Chapter, shall be enforced as part of this Chapter.
- D. The Oregon Electrical Specialty Code, as adopted by OAR Chapter 918, Division 251 except as modified in this Chapter, shall be enforced as part of this Chapter.
- E. The Oregon ~~One and Two Family Dwelling~~ Residential Specialty Code, as adopted by OAR Chapter 918, Division 480, except as modified in this Chapter, shall be enforced as part of this Chapter.
- F. The manufactured dwelling park and mobile home park rules adopted by OAR ~~Chapter 918 Division -600-0005 through 918-600-0110~~, except as modified in this Chapter, shall be enforced as part of this Chapter.
- G. The manufactured structures rules adopted by OAR Chapter 918, Divisions 500 ~~and, 520, 525, 530, 535, and 540~~, except as modified in this Chapter, shall be enforced as part of this Chapter.
- H. The Recreational Park and Organizational Camp Rules adopted by OAR Chapter 918, Division 650, except as modified in this Chapter, shall be enforced as part of this Chapter.
- I. ~~Chapter 9.03 of t~~The Clackamas County Code: Excavation and Grading ~~Chapter of this Code~~.
- J. The On-Site Sewage Disposal Rules as adopted by OAR Chapter 340, Division 71 and OAR Chapter 340, Division 73, except as modified in this Chapter, shall

be enforced as part of this Chapter.

K. The Oregon Energy Efficiency Specialty Code as adopted by OAR Chapter 918, Division 460, except as modified in this Chapter, shall be enforced as a part of this Chapter.

J.L. The Oregon Solar Installation Specialty Code as adopted by ORS 455.010 through 455.897, except as modified in this Chapter, shall be enforced as a part of this Chapter.

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

#### **9.02.050 Alternate Materials And Methods**

The provisions of this chapter are not intended to prevent the use of any material, alternate design or method of construction not specified in this chapter, provided the alternate has been approved and its use authorized by the building official.

The building official may approve any alternative, provided the building official finds that the proposed design is satisfactory and complies with the provisions of this chapter, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that required under this chapter in suitability, strength, effectiveness, fire resistance, durability, safety and sanitation.

The building official shall require that sufficient evidence or proof be submitted to substantiate any claims that may be made regarding the use of alternates. The details of any action granting approval of an alternate shall be recorded and entered in the files. An applicant may appeal the decision of the building official regarding the use of alternates to the Board of Appeals. An appeal of the building official's decision shall be accompanied by the appropriate filing fee.

ORS 455.060 provides for state rulings on acceptable materials, designs and methods of construction. When a state ruling has been issued, ORS 455.060 (4) applies.

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

#### **9.02.060 Modifications**

When there are practical difficulties involved in carrying out the provisions of this chapter, the building official may grant modifications for individual cases. In order to grant such a modification, the building official must first find that a unique factor distinguishes the situation before him in a manner that makes it impractical to strictly apply this chapter, and that the modification is in conformance with the intent and purpose of this chapter. Such modifications shall not lessen any fire-protection requirements or any degree of structural integrity. The details of any action granting modification shall be recorded and entered in the files.

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

#### **9.02.070 Tests**

Whenever there is insufficient evidence of compliance with any of the provisions of this chapter or evidence that any material or construction does not conform to the requirements of this chapter, the building official may require tests as proof of compliance to be made at no expense to Clackamas County.

Test methods shall be as specified by this chapter or by other recognized test standards. If there are no recognized and accepted test methods for the proposed alternate, the building official shall determine test procedures.

All tests shall be made by an approved accredited testing agency. Reports of such tests shall be retained by the building official for the period required for the retention of public records.

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

### **9.02.080 Powers And Duties Of The Building Official**

The building official is hereby authorized and directed to enforce all the provisions of this chapter.

The building official shall have the power to render interpretations of this chapter and to adopt and enforce administrative procedures in order to clarify the application of its provisions. Such interpretations, rules, and regulations shall be in conformance with the intent and purpose of this chapter. The building official shall have the power to vary the approval period for permits applied to resolve violations to less than the 180 days referred to in Section 9.02.270 of this Chapter.

The building official may request, and shall receive, the assistance and cooperation of other officials of this jurisdiction in the discharge of duties required by this chapter and other pertinent laws or ordinances.

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

### **9.02.090 Deputies**

In accordance with prescribed procedures the building official may appoint technical officers and inspectors and other employees to carry out the functions of code enforcement under this chapter. The building official may deputize such inspectors or employees as may be necessary to carry out the functions of code enforcement under this chapter.

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

### **9.02.100 Right Of Entry**

When it is necessary to make an inspection to enforce the provisions of this chapter, or when the building official has reasonable cause to believe that there exists in a building or upon a premises a condition which is contrary to or in violation of this chapter which makes the building or premises unsafe, dangerous or hazardous, the building official may

enter the building or premises at reasonable times to inspect or to perform the duties imposed by this chapter, provided that if such building or premises be occupied that credentials be presented to the occupant and entry requested. If the building or premises be unoccupied, the building official shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry. If entry is refused, the building official shall have recourse to the remedies provided by law to secure entry.

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

### **9.02.110 Stop Work Orders, Warning Notices & Violation Notices**

Whenever any work is being done contrary to the provisions of this chapter, or other pertinent laws or ordinances implemented for enforcement of this chapter, the building official may order the work stopped by notice in writing served on any person engaged in doing the work or causing the work to be done, or by posting of the building or work being done, and any such person shall forthwith stop such work until authorized by the building official to resume the work.

In the discretion of the building official, warning notices or violation notices may also be issued for violations of this chapter and any other pertinent laws or ordinances implemented for enforcement of this chapter.

Orders or notices shall give a brief description of the violation identified, and shall be issued through one of the following methods:

- A. Personal service upon the person responsible for the violation;
- B. Posting at the site of the violation; or
- C. Delivered by regular U.S. mail to the address listed on the permit application (if any) submitted in association with the work in question.

Orders or notices shall contain the name of the County Department to contact regarding the violation, the name of the person issuing the order or notice, the date the order or notice was issued and a statement that failure to correct the alleged violation within the time set (no less than 30 days) may result in legal action with the courts or the Compliance Hearings Officer to abate the nuisance or both, and the imposition of penalties and enforcement fees.

If the building official believes an alleged violation presents an imminent threat to public health or safety, no warning notice need be given before pursuing remedies allowed for by this chapter.

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

### **9.02.120 Authority To Disconnect Utilities In Emergencies**

In case of emergency, the building official shall have the authority to disconnect the energy, fuel or power supply, or plumbing utility service to a building, structure, premises or equipment regulated by this chapter when necessary to eliminate an immediate hazard to life or property. The building official shall, whenever possible, give



advance notice to the serving utility, the owner and the occupant(s) of the building or premises that utilities will be disconnected, and shall notify the serving utility, owner and occupant of the building or premises in writing of utility disconnection immediately afterward.

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

#### **9.02.130 Connection After Order To Disconnect**

Persons shall not make connections from an energy, fuel, power supply or plumbing service, nor supply energy, fuel, power or plumbing to any equipment regulated by this chapter which has been disconnected or ordered to be disconnected by the building official, or the use of which has been ordered to be discontinued by the building official, until the building official authorizes the reconnection and use of such equipment.

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

#### **9.02.140 Occupancy Violations**

Whenever any building or equipment therein regulated by this chapter is being used contrary to the provisions of this chapter, the building official may order such use discontinued and the structure, or portion thereof, vacated by notice served on any person causing such use to be continued. Any person receiving notice shall discontinue the use within the time prescribed by the building official to make the building, or portion thereof, comply with the requirements of this chapter.

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

#### **9.02.150 Adjudicating Entities For Specific Appeals**

- A. Appeals relating to the administrative portions of this chapter shall be made only to the building official.
- B. Any person aggrieved by a decision of the building official made to apply, interpret or enforce the following specialty codes may appeal that decision to the designated entities:
  - 1. Electrical Specialty Code – appeals may be made to the State of Oregon, Building Codes Division, Chief Electrical Inspector (ORS 479.853);
  - 2. Manufactured Dwelling or Mobile Home Parks – appeals, requests for interpretations, or alternate methods and materials of OAR 918, Division 600 may be made to the Administrator of the Building Codes Division for a ruling (OAR 918-600-0080); and
  - 3. On-Site Sewage Disposal – appeals may be made to the State of Oregon, Department of Environmental Quality.

Appeals of all other substantive provisions of this chapter will be made first to the building official, then to the Board of Appeals.

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

#### **9.02.160 Board Of Appeals**

In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this chapter, there shall be and is hereby created a board of appeals consisting of members who are qualified by experience and training to pass on matters pertaining to construction and who are not employees of the jurisdiction. The building official shall be an ex officio member of and shall act as secretary to the Board of Appeals but shall have no vote on any matter before the Board. The Board of Appeals shall be appointed by the governing body and shall hold office at its pleasure. The Board shall adopt rules of procedure for conducting its business, and shall render all decisions and findings in writing to the appellant with a duplicate copy to the building official.

The Board of Appeals shall have no authority relative to interpretation of the administrative provisions of the code nor shall the Board be empowered to waive requirements of this chapter.

All applications for an appeal shall be accompanied by the appropriate filing fee.

Any decision relating to the suitability of alternate materials and methods of construction or interpretation by the building official with regard to this chapter, except for the State of Oregon Electrical Specialty Code, the State of Oregon Manufactured Dwelling or Mobile Home Park Rules and the State of Oregon On-Site Sewage Disposal Rules, should be appealed first to the building official, then to the Board of Appeals, in conformance with procedures provided herein.

An appeal shall be in writing, shall describe the basis for the appeal and shall first be filed with the building official.

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

#### **9.02.170 Form Of Appeal**

- A. Any person appealing an order, decision or determination of the building official to the Board of Appeals must do so by filing at the office of the building official a written appeal containing:
1. A heading in the words: "Before the Board of Appeals for the Building Official of Clackamas County";
  2. A caption reading: "In the matter of the appeal of .....,," giving the names of all appellants participating in the appeal;
  3. A brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the action of the building official;
  4. A brief statement in ordinary and concise language of the specific order or action protested, together with any material facts claimed to support the appellant's contentions;
  5. A brief statement in ordinary and concise language of the relief sought and the reasons why the protested order or action should be reversed, modified or set aside;
  6. The signatures of all parties named as appellants and their official mailing

addresses; and

7. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

The Department of Transportation and Development shall make available to the public an appeal form consistent with the requirements of section A above.

The appeal shall be filed within 10 days from the date of the service of the order or from the action of the building official.

As soon as possible after receiving the written appeal, the Board of Appeals shall fix a date, time and place for the hearing by the Board of Appeals. The date shall not be less than 10 days nor more than 60 days from the date the appeal was filed with the building official. Written notice of the time and place of the hearing shall be given to each appellant at least 10 days prior to the date of the hearing, either by:

1. Causing a copy of such notice to be delivered to the appellant personally;  
or
2. Mailing a copy of the notice to the appellant at the address shown on the appeal.

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

#### **9.02.180 Effect Of Failure To Appeal**

Failure of any person to file an appeal in accordance with the provisions of Section 9.01.170 shall constitute a waiver of the right to an administrative hearing and adjudication of the Notice and Order or other action of the building official.

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

#### **9.02.190 Scope Of Hearing On Appeal**

Only those matters or issues specifically raised by the appellant in the written request for appeal shall be considered in the hearing of the appeal.

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

#### **9.02.200 Procedures For Conduct Of Appeals Hearings**

- A. Record – A record of the entire appeal proceedings shall be made by tape recording or by any other means of permanent recording found appropriate by the Board of Appeals.
- B. Continuances – The Board of Appeals may grant requests for a continuance if good cause is shown for the continuance.
- C. Reasonable Dispatch – The Board of Appeals shall proceed with reasonable speed to conclude any matter before it.

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

#### **9.02.210 Form Of Notice Of Hearing**

The notice to appellant shall follow this basic form, but may include additional information:

“You are hereby notified that a hearing will be held before the Board of Appeals for the Building Official of Clackamas County at [hearing location] on the \_\_\_\_\_ day of \_\_\_\_\_, at the hour \_\_\_\_\_, upon the [Order or other action] regarding [address/location of building]. You may be present at the hearing. You may be represented by counsel, but need not be. You may present any relevant evidence and will be given the opportunity to cross-examine witnesses testifying against you.”

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

### **9.02.220 Conduct Of Hearing**

- A. Rules – Hearings need not be conducted according to court rules regarding evidence and witnesses.
- B. Oral Evidence – Oral evidence shall be taken only on oath or affirmation of the witness. The Board of Appeals may administer oaths or affirmations to witnesses.
- C. Admissibility of Evidence – Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Common law or statutory rules that might dictate a contrary result in state courts will not apply.
- D. Exclusion of Evidence – Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

Rights of Parties – Each party shall have the following rights, among others:

- 1. To call and examine witnesses on any matter relevant to the issues of the hearing;
- 2. To introduce documentary and physical evidence;
- 3. To cross-examine opposing witnesses on any matter relevant to the issues of the appeal;
- 4. To impeach any witness regardless of which party first called the witness to testify;
- 5. To rebut the evidence; and
- 6. To be represented by anyone who is lawfully permitted to do so.

Inspection of Premises – The Board of Appeals may inspect any building or premises involved in the appeal during the course of the hearing, provided that:

- 1. Notice of the inspection is given to the parties before the inspection is made;
- 2. The parties are given an opportunity to be present during the inspection, and
- 3. conclusions reached upon completion of the inspection. Each party must be given an opportunity to rebut or explain observations and conclusions announced by the Appeals. The Appeals Adjudicator states for the record the material facts observed and the Adjudicator.

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

### **9.02.230 Method And Form Of Decision**

- A. Form of Decision – The decision of the Board of Appeals shall be in writing, and shall contain findings of fact and a determination of the issues presented. A copy of the decision shall be delivered to the appellant personally or sent by certified mail, postage prepaid, return receipt requested. A decision shall be issued within 14 days of the conclusion of any appeals hearing.
- B. Effective Date of Decision – The effective date of the decision shall be as stated in the decision itself. The timelines for compliance with the final decision should be based on the guidelines for compliance with the original Order or action of the building official, when appropriate.

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

#### **9.02.240 Plans And Permits**

The application, plans, specifications, computations and other data filed by an applicant for a permit shall be reviewed by the building official. Such plans may be reviewed by other departments of Clackamas County to verify compliance with any applicable laws and ordinances. If the building official finds that the work described in an application for a permit and the plans, specifications and other data filed therewith conform to the requirements of this chapter and other pertinent laws and ordinances, and that the fees have been paid, the building official shall issue a permit to the applicant.

When the building official issues a permit for which plans are required, the building official shall endorse in writing or stamp the plans and specifications. Such approved plans and specifications shall not be changed, modified or altered without authorization from the building official, and all work regulated by this chapter shall be done in accordance with the approved plans.

The building official may issue a permit for the construction of part of a building or structure before the complete plans and specifications for the whole building or structure have been submitted or approved, if adequate information and detailed statements have been filed to assure compliance with all pertinent requirements of this chapter. The holder of a partial permit who chooses to proceed assumes the risk that the permit for the entire building or structure may be denied.

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

#### **9.02.250 Retention Of Plans**

One set of approved plans, specifications and computations shall be retained by the building official for a period of not less than 90 days from date of completion of the work covered therein; and one set of approved plans and specifications shall be returned to the applicant.

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

#### **9.02.260 Validity Of Permit**

The building official shall consider any violations of Clackamas County Ordinances or other applicable laws that are known to him/her in responding to all permit requests and applications. The building official may refuse to issue permits under this chapter if the parcel of land, or the use of the land on which the building, or equipment is to be placed, altered, equipped or used is in violation of any Clackamas County Ordinance.

No building or site permit shall be issued by the building official until all plans for sewage disposal facilities have been approved by the appropriate authority. Further, no building containing plumbing shall be occupied until connected to a sewage disposal facility approved by the appropriate authority and meeting the minimum standards of the Oregon State Board of Health and the Department of Environmental Quality.

The issuance or granting of a permit or approval of plans, specifications and computations shall not be construed to be acquiescence to any violation of any of the provisions of this chapter or of any other ordinance of the jurisdiction. Permits presuming to give authority to violate or cancel the provisions of this chapter or other ordinances of the jurisdiction shall be null and void.

The issuance of a permit based on plans, specifications and/or other data shall not prevent the building official from thereafter requiring the correction of errors in said plans, specifications and other data, or from preventing building operations associated with the permit, if executed in violation of this chapter or of any other ordinances of this jurisdiction.

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

#### **9.02.270 Expiration Of Applications, Plans And Permits**

- A. Automatic Expiration of Applications -- Applications for which no permit is issued within 180 days following the date of the application shall automatically expire, and plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the building official.
- B. Extensions on Unexpired Applications – The building official may extend the time for action by the applicant for a period not exceeding 180 days if:
  - 1. The applicant so requests; and
  - 2. The applicant shows that circumstances beyond applicant’s control have prevented action from being taken.

No application shall be extended more than once.

Pre-Conditions to Renewing Action on an Expired Application – In order to renew action on an application after expiration, the applicant shall resubmit plans and pay a new plan review fee.

Automatic Expiration of Permits – Every permit issued by the building official under the provisions of this chapter shall automatically expire and become null and void if the building or work authorized by the permit is:

- 1. Not commenced within 180 days from the date of the permit; or
- 2. Suspended or abandoned for a period of 180 days at any time after the work is commenced, or

3. Not subject to inspection approval for a period of 180 days at any time after the work is commenced.

Extensions on Unexpired Permits – Any permittee holding an unexpired permit may apply for an extension of the time within which to commence work under that permit when the permittee is unable to commence work within the time originally required for good reason. The building official may extend the time for action by the permittee for a period not exceeding 180 days if:

1. The permittee requests an extension in writing; and
2. The permittee shows that circumstances beyond permittee's control have impeded progress under the permit.

No application shall be extended more than once.

Timelines for Permits Issued to Resolve Violations – In those instances where a permit is issued to resolve a violation, the building official may specify the length of approval of the permit.

Pre-Conditions to Resuming Work on Expired Permit – Before resuming work under an expired permit, a new permit must be obtained, and an additional fee remitted.

The fee will be determined under the following guidelines:

1. If no changes have been made or will be made in the original plans and specifications for the work to be resumed; and the suspension or abandonment of work under the permit has not exceeded one year, then the fee will be one half the amount required for a new permit for such work; or
2. If there have been or will be changes to the original plans and specifications for the work to be resumed, or the suspension or abandonment of work under the permit has exceeded one year, then the permittee shall pay a new full permit fee.

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

### **9.02.280 Work Without A Permit; Investigation Fees**

Whenever any work for which a permit is required by this chapter has been commenced without first obtaining a permit, a special investigation shall be made before a permit may be issued for such work.

An investigation fee, in addition to the permit fee, may be collected whether or not a permit is ever issued. The investigation fee shall be equal to the amount of the permit fee. The payment of the investigation fee shall not exempt any person from compliance with all other provisions of this chapter nor from any penalty prescribed by law.

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

### **9.02.290 Transferability**

With the permission of the building official a permit issued to one person or firm may be transferred to another person or firm to perform any work thereunder.

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

### **9.02.300 Suspension; Revocation**

The building official may, in writing, suspend or revoke a permit issued under the provisions of this chapter whenever the permit is issued in error or on the basis of incorrect information supplied, or in violation of any ordinance or regulation of any of the provisions of this chapter.

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

### **9.02.310 Inspections**

It shall be the duty of the permit holder or his/her agent to request all necessary inspections in a timely manner and according to the policies of Clackamas County, provide access to the site, and provide all necessary equipment to make inspections as determined by the building official. The permit holder shall not proceed with the building construction until authorized by the building official. It shall be the duty of the permit holder to cause the work to remain accessible and exposed for inspection purposes. Any expense incurred by the permit holder to remove or replace any material required for proper inspection shall be the responsibility of the permit holder or his/her agent. Failure to request inspections shall result in expiration of the permit as per Section 9.02.270. The county has no obligation, responsibility, or liability to follow up on permits for which necessary inspections have not been requested or which are at risk of expiration under Section 9.02.270. The permittee shall bear all such responsibility and liability.

Work requiring a permit shall not be commenced until the permit holder or an agent of the permit holder has posted or otherwise made available an inspection record card that will allow the building official to conveniently notate required entries regarding inspection of the work. This card shall be maintained by the permit holder and kept available until final approval has been granted by the building official.

Any person to whom a permit is issued shall be liable for any loss, damage, or injury caused or arising from the permittee's negligence, as well as for any breach of the building codes or regulations, to the person suffering such loss, damage, or injury. The permittee shall indemnify, defend and hold harmless the County and its officers, employees and agents from any and all claims, demands, actions and suits (including all attorney fees and costs, through trial and on appeal) arising from the permittee's negligence, as well as for any breach of the building codes or regulations to the person suffering such loss, damage or injury.

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

### **9.02.320 Fees**

Fees for permits, inspections, plan checks, site plan review, copy costs, and such other fees that the Clackamas County Board of Commissioners deem reasonable shall be as set from time to time by order of the Clackamas County Board of Commissioners.



The building official may authorize refunds of fees when the guidelines of the applicable refund policy so authorize.

The determination of value or valuation under any provisions of this chapter shall be made by the building official. The value to be used in computing building permit and plan review fees shall be the total value of all construction work associated with the permit, as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire-extinguishing systems and any other permanent equipment.

Enforcement fees are in addition to and not in lieu of civil penalties that may be imposed by a Compliance Hearings Officer or court. Enforcement fees shall be used to defray the costs of enforcement of the provisions of this chapter.  
[Codified by Ord. 05-2000, 7/13/00]

### **9.02.330 Violations And Enforcement**

All persons shall comply with this chapter in the location, construction, maintenance, repair, alteration, or use of buildings, installations or sewage disposal systems or facilities within Clackamas County.

A violation of this chapter exists whenever a building, structure, installation, sewage disposal system or sewage disposal facility is, or is proposed to be, located, constructed, maintained, repaired, altered, or used contrary to the requirements of this chapter. Each day that a violation exists is considered to be a separate offense.

A violation of this chapter is a public nuisance, and continues to be a public nuisance until the offending building, structure, installation, system, facility or use is brought into compliance with this chapter.

The County may, in addition to the other remedies provided by law, institute injunction, mandamus, abatement or other appropriate proceedings to prevent, temporarily or permanently enjoin, abate, or remove violations of this chapter. The County may also enforce this chapter through the provisions of the Clackamas County Compliance Hearing Officer Ordinance.

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

### **9.02.340 Prioritization Of Violations For Enforcement**

The building official is charged with administration, implementation and enforcement of the State Building Code and this chapter. His/her duties include the duty to oversee plan reviews and building inspections required under the State Building Code and this chapter, and the duty to supervise continuing enforcement when violations are identified. Since the Building Code Division has limited financial resources, the building official must exercise his/her inherent discretion to ensure that sufficient funds are available to deal with the most important public policy matters that come before him/her.

The top priority for Division resources is the processing of plans and permits properly applied for under the Codes. Although the Division must also address Code violations, violations vary greatly in severity, with some violations having a negligible impact on the public interest and others having a potentially great impact on the public interest. For this reason, the Board of County Commissioners has determined that the building official may prioritize violations for enforcement action without unduly compromising public policy. The Board of County Commissioners believes that this prioritization of violations for enforcement will result in the most effective and efficient re-allocation of Building Division resources.

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

## Chapter 6.08

### 6.08 CHRONIC NUISANCE

#### 6.08.010 Chronic Nuisance Property – Violations.

- A. Any property within Clackamas County, that becomes a chronic nuisance property, as defined herein, is in violation of this Chapter and subject to its remedies.
- B. Any person who permits property under his or her ownership, possession, or control to be a chronic nuisance property, as defined herein, shall be in violation of this Chapter and subject to its remedies.

[Added by Ord. 08-2001, 7-12-01; Amended by Ord. 13-2002, 10/17/02]

#### 6.08.020 Definitions.

- A. ABATE: Affirmative actions to remove, to stop, to prevent a nuisance including but not limited to:
  - 1. Restricting or limiting use of the Property, including posting the property with signs indicating such restrictions.
  - 2. Limiting the hours of operation of a business.
  - 3. Closing the Property for not less than six (6) months or more than one (1) year.
  - 4. Entering premises for purposes of removing, compelling the removal or destruction of the structure, thing, substance, condition or property constituting a nuisance.
  - 5. Filing a civil complaint in a court of competent jurisdiction.
- B. BOARD OF COMMISSIONERS: The Board of Commissioners for Clackamas County.
- C. CHRONIC NUISANCE PROPERTY:
  - 1. Property on which three (3) or more Nuisance Activities exist or have occurred during any sixty (60) day period or on which twelve (12) or more Nuisance Activities exist or have occurred during any twelve (12) month period; or
  - 2. Property within 200 feet of which three (3) or more Nuisance Activities exist or have occurred during any sixty (60) day period or twelve (12) or more Nuisance Activities exist or have occurred during any twelve (12) month period, and the Nuisance Activities were engaged in by any Person Associated with the Property.
- D. CONTROL: The authority to regulate, restrain, dominate, counteract or govern Property, or conduct that occurs on a Property.
- E. GOOD CAUSE: Circumstances beyond the ability of a person acting with reasonable care and diligence to control.
- F. NUISANCE ACTIVITIES:
  - 1. Any of the following activities, behaviors or conduct:
    - a. ~~Harassment as defined in ORS 166.065(1)(a).~~
    - b. ~~Intimidation as defined in ORS 166.155 through 166.165.~~
    - c. ~~Disorderly conduct as defined in ORS 166.025.~~

- ~~d. — Homicide, Aggravated Murder, Manslaughter, Criminal Negligent Homicide, Assault, Menacing or Recklessly Endangering Another Person as defined in ORS 163.005 through ORS 163.195.~~
- ~~e. — Rape, Sodomy, Unlawful Sexual Penetration, Sexual Abuse, Contributing to the Delinquency of a Minor or Sexual Misconduct as defined in ORS 163.160 through 163.445.~~
- ~~f. — Public Indecency as defined in ORS 163.465.~~
- ~~g. — Endangering the Welfare of a Minor as defined in ORS 163.575.~~
- ~~h. — Prostitution or related offenses as defined in ORS 167.007 through 167.017.~~
- ~~i. — Alcoholic liquor violations as defined in ORS 471.105 through 471.482.~~
- ~~j. — Criminal Trespass as defined in ORS 164.243 through 164.265.~~
- ~~k. — Theft or related offenses as defined in ORS 164.015 through 164.140, where the act or acts have negatively affected the surrounding neighborhood or caused a burden on the resources of the County.~~
- ~~l. — Arson or related offenses as defined in ORS 164.315 through 164.335.~~
- ~~m. — Possession, Manufacture, or Delivery of a Controlled Substance or related offenses as defined in ORS 167.222, ORS 167.262 and ORS 475.991 through 475.999, except acts which constitute violations under ORS 475.992(2)(b) and (4)(f).~~
- ~~n. — Criminal Mischief as defined in ORS 164.345 through 164.365.~~
- ~~o. — Weapons related offenses as defined in ORS 166.180, ORS 166.190, ORS 166.220, ORS 166.384 through 166.410 and ORS 166.630.~~
- ~~p. — Curfew as defined in ORS 419C.680, and Clackamas County Code Sections 6.01.010 through 6.01.020.~~
- ~~q. — Robbery as defined in ORS 164.395 through 164.415.~~
- ~~r. — Kidnapping as defined in ORS 163.225 through 163.235.~~
- ~~s. — Criminal Mistreatment as defined in ORS 163.200 through 163.206.~~
- ~~t. — Any attempt to commit (as defined in ORS 161.405), Solicitation to Commit (as defined in ORS 161.435), and/or Conspiracy to Commit (as defined in ORS 161.450), any of the activities, behaviors or conduct listed in this section:~~
  - ~~a. Any activity on the Property, the commission of which constitutes a misdemeanor or felony criminal offense, even if criminal charges have not been issued or a criminal case is pending but not yet resolved.~~
  - ~~b. Noise violations as prohibited in Clackamas County Code Sections 6.05.010 through 6.05.100.~~
  - ~~c. Prohibited touching and nudity in massage as prohibited in Clackamas County Code Sections 6.02.010 through 6.02.070.~~
  - ~~d. Arrests for criminal activity or based on a warrant of any kind.~~
  - ~~e. Aiding or abetting in the commission of any crime as described by ORS 161.155.~~
  - ~~f. Ordinance or code violations, including but not limited to violations of the solid waste ordinance, where the violations appear to a sworn law enforcement officer or duly authorized code enforcement officer to be~~

reasonably likely to pose a threat to the health or safety of occupants or neighbors of the property or to the public at large.

g. Illegal occupation, camping, or squatting by individuals without authority or right to be on the Property.

h. Harboring or giving refuge to a person who is actively sought or wanted in custody by a law enforcement agency.

2. To qualify, all Nuisance Activities must be based on either:
  - a. Personal observation of the Sheriff or designee; or
  - b. A determination by the Sheriff or designee, either after an investigation or following a sworn statement of a person who personally witnessed the alleged incident and a determination that there are reasonable grounds to conclude that the alleged Nuisance Activities did, in fact, occur.
- G. PERMIT: To suffer, allow, consent to, acquiesce by failure to prevent, or expressly assent or agree to the doing of an act.
- H. PERSON: Any natural person, agent, association, firm, partnership, corporation or other entity capable of owning, occupying or using Property in Clackamas County.
- I. PERSON ASSOCIATED WITH THE PROPERTY: Any Person who, on the occasion of a Nuisance Activity, has entered, patronized, visited, or attempted to enter, patronize or visit, or waited to enter, patronize or visit a Property or any Person present on a Property. Person Associated With the Property includes, without limitation, any officer, director, customer, agent, employee, or any independent contractor of a Property, the Person in Charge, or an owner of a Property.
- J. PERSON IN CHARGE: Any Person with actual or constructive possession of a Property, including but not limited to an owner or occupant of Property under his or her ownership or Control.
- K. PROPERTY: Any property, including land and that which is affixed, incidental or appurtenant to land, including but not limited to any business or residence, parking area, loading area, landscaping, building or structure or any separate part, unit or portion thereof, or any business equipment, whether or not permanent. For Property consisting of more than one unit, Property may be limited to the unit or the portion of the Property on which any Nuisance Activity has occurred or is occurring, but includes areas of the Property used in common by all units of Property including without limitation other structures erected on the Property and areas used for parking, loading and landscaping.
- L. SHERIFF: The Clackamas County Sheriff.

[Added by Ord. 08-2001, 7/12/01; Amended by Ord. 13-2002, 10/17/02]

### **6.08.030 Procedure**

- A. When the Sheriff or designee receives information documenting-indicating the existence of activities which qualify as nuisance activities:
  1. The Sheriff or designee shall independently review such report(s)information to determine whether a Chronic Nuisance Property as defined in 6.08.020.C. is more likely than not established by the information.
  2. Upon such determination, the Sheriff shall notify a Person in Charge in writing that the Property has been determined to be a Chronic Nuisance Property and request an abatement plan from the Person in Charge.

3. The notice shall contain the following information:
    - a. The street address or a legal description sufficient for identification of the Property.
    - b. A statement that the Sheriff has determined the Property to be a Chronic Nuisance Property with a concise description of the Nuisance Activities leading to this determination.
    - c. A demand that the Person in Charge respond within ten (10) days to the Sheriff by either describing the actions the Person in Charge intends to take to abate the Nuisance Activities (abatement plan), or indicating good cause as to why the Person in Charge cannot abate the Nuisance Activities, or contesting the determination of the Sheriff to the Board of Commissioners.
    - d. That an agreed abatement plan must be reached with the Sheriff or designee within thirty (30) days from the date of the notice of determination of Chronic Nuisance Property.
    - e. That if the Nuisance Activities are not abated and good cause for failure to abate is not shown, the matter may be referred by the Sheriff to the Board of Commissioners with a recommendation that the Board of Commissioners authorize the County Counsel to seek any remedy deemed to be appropriate to abate the Nuisance Activities.
    - f. That permitting Chronic Nuisance Property is a violation of this Chapter.
    - g. That the above remedies are in addition to those otherwise provided by law.
  4. Notice may be served by personal service, posting on the Property, or registered mailing with return receipt requested. Notice may be delivered to the Property, to the mailing address of the owner of the Property as listed on the county tax roll, or to any other address that is likely to give the Person in Charge notice of the determination of the Sheriff.
  5. The failure of any person to receive notice shall not invalidate or otherwise affect the proceedings under this Chapter.
- B. The Sheriff may take further action as described in Section 6.08.040 of this chapter when refer the matter to the Board of Commissioners where:
1. The Person in Charge fails to respond within ten (10) days from the date of the notice of determination of Chronic Nuisance Property by the Sheriff; or
  2. No agreeable written abatement plan is reached within thirty (30) days from the notice of determination of Chronic Nuisance Property by the Sheriff; or
  3. The Person in Charge fails to abate the Nuisance Activities from the Property as required by the agreed abatement plan; or
  4. The Person in Charge fails to comply with all conditions of the written abatement plan for one year.
- C. When the Person in Charge includes both a Person with actual or constructive possession of the Property and a legal owner of the Property, both people must agree to any proposed abatement plan within the time allotted under subsection (A)(3)(d) of this Section. Failure of both to agree to a proposed abatement plan shall result in a finding by the Sheriff that the abatement plan is not agreeable under subsection (B)(2) of this Section.

- D. ~~The Person in Charge may also request a public hearing of the Board of Commissioners in writing no later than ten (10) days from the date of the notice of determination of Chronic Nuisance Property by the Sheriff.~~
- E. Failure to respond, failure to abate the Nuisance Activities, or failure to propose an abatement plan shall be prima facie evidence of lack of cooperativeness of the Person in Charge. Failure to execute or comply with any abatement plan shall be prima facie evidence of lack of good faith in mitigating or correcting the situation.
- F. ~~When a Person in Charge makes a response to the Sheriff or designee as required in Section 6.08.030, conduct or statements made in connection with the response does not constitute an admission that any Nuisance Activities have occurred or are occurring. This subsection does not require exclusion of any evidence that is otherwise admissible or offered for any other purpose.~~

[Added by Ord. 08-2001, 7/12/01; Amended by Ord. 13-2002, 10/17/02]

#### **6.08.040 Commencement of Actions; Remedies; Burden of Proof**

- A. ~~After receiving a referral from the Sheriff or his or her designee, or a request for a hearing from the Person in Charge, the Board of Commissioners shall give notice of the hearing in accordance with Section 6.08.030.A.4. to the Person in Charge, and post notice of the hearing on the main entrance of the property. At the time set for hearing the Person in Charge may appear and be heard. The Board of Commissioners shall determine whether the property is Chronic Nuisance Property, whether the nuisance has been abated and whether the owner has shown good cause or otherwise has a valid defense.~~
- ~~B. The Board of Commissioners, after adopting findings that a Chronic Nuisance Property exists, may authorize the County Counsel to commence legal proceedings in the Circuit Court to abate Chronic Nuisance Property and to seek closure of the Property, the imposition of civil penalties against any or all of the Persons in Charge thereof, and, any other relief deemed appropriate.~~
- ~~B.C. If the County submits a case to the Circuit Court, any disputed issues of law or fact as to the Property's designation as a Chronic Nuisance Property shall be determined by a judge at a court trial. Such trial shall be held as soon as reasonably possible by the Court in light of the risks posed to the community by Chronic Nuisance Properties and the standard of proof in such a case shall be a preponderance of the evidence.~~
- ~~C. If the Court determines a Property to be Chronic Nuisance Property, the County shall request that the eCourt may order any or all of the following remedies; that:~~
  - ~~1. That all occupants, regardless of their legal status, must vacate the Property.~~
  - ~~2. That if the occupants fail to vacate the Property, the County may remove all occupants by obtaining a writ of execution and an eviction trespass notice in substantially the manner and form provided by ORS Chapter 105. The writ of execution and eviction trespass notice shall be available to the County not less than four (4) days after the subject Property is posted with a copy of the Court's judgment.~~
  - ~~3. That the County's designee shall have authority to determine who may access the Property and for what purposes and duration such access is appropriate;~~

4. That anyone who accesses the Property without proper authorization from the County may be arrested for trespassing.
5. That upon the vacation or removal of all occupants, the County may enter and Property be immediately closed and secured the Property against all unauthorized access, use and occupancy. The Court may order that the Property remain closed for a period of not less than six (6) months, nor more than of time not to exceed one (1) year.
6. That any owner or occupant of the Property who is named as a party in the lawsuit shall pay a civil penalty in an amount authorized by the Board of County Commissioners in Appendix B to the Clackamas County Code.
7. That any owner or occupant of the Property must take remedial steps to clean up or secure the Property, or to otherwise abate any activity or condition on the Property causing a risk to the health or safety of any occupants of the Property or any people residing in the vicinity of the Property. The Court may condition re-entry onto the Property on completion of said remedial steps.
8. Any other remedy that the Court deems appropriate in light of the circumstances.

The order shall be entered as part of the final judgment. The Court shall retain jurisdiction during any period of closure and to enforce the terms and conditions of the judgment.

~~D.~~ ~~If the Court determines a Property to be Chronic Nuisance Property, the Court may impose a civil penalty in an amount set by resolution of the Board of County Commissioners, for each day Nuisance Activities occurred on the Property, following notice of determination by the Sheriff; or, the cost to the County to abate the Nuisance Activities at the Property whichever is greater. The amount of the civil penalty shall be assessed against the Person in Charge and/or the Property and may be included in the County's money judgment.~~

DE. When establishing the amount of any civil penalty, the Court may consider any of the following factors and shall cite those found applicable based on the evidence presented:

1. The actions taken by the Person in Charge to mitigate or correct the Nuisance Activities at the Property;
2. The financial condition of the Person in Charge;
3. Continuous or repeated nature of the problem;
4. The magnitude or gravity of the problem;
5. The cooperativeness of the Person in Charge with the County;
6. The cost to the County of investigating and correcting or attempting to correct the Nuisance Activities;
7. The effect upon the surrounding neighborhood during the history of the Nuisance Activities;
8. The good faith of the Person in Charge in executing and complying with any abatement plan; and
9. Any other factor deemed relevant by the Court.

EF. The County shall have the initial burden of proof to show by a preponderance of the evidence that the Property is a Chronic Nuisance Property.

FG. Evidence of a Property's general reputation and/or the reputation of persons residing in or frequenting it shall be admissible.



[Added by Ord. 08-2001, 7/12/01; Amended by Ord. 05-2003, 3/13/03]

#### **6.08.050 Summary Closure**

Any summary closure proceeding shall be based on evidence showing that Nuisance Activities exist or have occurred on the Property and that emergency action is necessary to avoid an immediate threat to public welfare and safety. Proceedings to obtain an order of summary closure shall be governed by the provisions of ORCP 79 for obtaining temporary restraining orders. ~~In the event of summary closure, the County is not required to comply with the notification procedures set forth in Section 6.08.030.A.3, nor the Board of Commissioners hearing procedure provided by Section 6.08.040.~~

[Added by Ord. 08-2001, 7/12/01]

#### **6.08.060 Entering Closed Property**

It is unlawful for any person to enter, use or remain in or on property that has been ordered closed pursuant to this Chapter.

[Added by Ord. 08-2001, 7/12/01]

#### **6.08.070 Enforcement**

- A. The Court may authorize the County to physically secure the Property against all unauthorized access, use or occupancy in the event that the Person in Charge fails to do so within the time specified by the Court.
- B. In the event that the County is authorized to secure the Property, the County shall recover from the Owner or Person in Charge all costs reasonably incurred by the County to physically secure the Property. The County shall prepare and submit a statement of costs incurred in physically securing the Property to the Court for review as provided by ORCP 68.
- C. The Person in Charge ~~shall~~ may be required by the Court pay reasonable relocation costs of a tenant as defined by ORS 90.100(28), if, without actual notice, the tenant moved into the Property after either:
  1. A Person in Charge received notice of the determination of the Sheriff pursuant to Section 6.08.030.A.3.; or
  2. A Person in Charge received notice of an action brought pursuant to Section 6.08.040 and 6.08.050.
- D. A lien shall be created against the Property for the amount of the County's money judgment. In addition, any Person who is assessed penalties under this chapter shall be personally liable for payment thereof to the County. Judgments imposed by this Chapter shall bear interest at the statutory rate.

[Added by Ord. 08-2001, 7/12/01]

#### **6.08.080 Liability**

Nothing herein shall be relied on or construed as establishing any County responsibility, obligation or liability to any third party, for damages or otherwise, arising from the actions or inaction of the County in applying this Chapter. Nothing herein lessens or otherwise alters the Person in Charge's responsibility to third parties arising from use and condition of the Property.  
[Added by Ord. 08-2001, 7/12/01]

**6.08.090 Attorney Fees**

The Court may, in its discretion, award attorney fees to the prevailing party.  
[Added by Ord. 08-2001, 7/12/01]

**6.08.100 Sunset Clause**

[Added by Ord. 08-2001, 7/12/01; Amended by Ord. 13-2002, 11/17/02; Deleted by Ord. 14-2004, 12/16/04]

**6.08.110 Severability**

The provisions of this Chapter are intended to be consistent with any applicable provisions of state law. If any provisions of this Chapter, or its application to any person, or circumstances is held to be invalid for any reason, the remainder of the Chapter, or the application of its provisions to other persons or circumstances shall not in any way be affected.  
[Added by Ord. 08-2001, 7/12/01]

## TITLE 2

### GOVERNMENT ADMINISTRATION

\* \* \*

#### Chapter 2.05

#### 2.05 PERSONNEL POLICIES AND PROCEDURES FOR CLACKAMAS COUNTY EMPLOYEES

##### 2.05.010 Responsibilities

- A. The Board of County Commissioners reserves the right to make changes in the Personnel Chapter 2.05 at any time. These changes will become effective only when made in writing.
- B. The Department of Employee Services shall provide supervisory staff with a copy of the Personnel Chapter 2.05 and any subsequent updates.
- C. It is the responsibility of each elected official and Division/Department Director to be familiar with and administer these policies in a consistent and impartial manner.
- D. It is the responsibility of each Department to maintain an updated Personnel Chapter 2.05 in a location easily accessible to all employees. Chapter 2.05 will be available to all employees on the County internet and intranet.
- E. It is the responsibility of all employees to familiarize themselves with and follow the policies in this chapter.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

##### 2.05.020 Intent Of Document

The Clackamas County Personnel Chapter does not establish a property right or contractual right of employment to any Clackamas County employee.

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

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**2.05.040.3 Application Of Personnel Chapter**

All positions within the County government shall be divided into the classified or unclassified service.

- A. Classified Services: The classified service shall include all positions that are not included in the unclassified service. Positions in the classified service are subject to all of the provisions in this Personnel Chapter.
- B. Unclassified Service: The unclassified service shall include the following offices and positions:
  1. Any officer, chosen by popular election or appointed to fill a vacancy caused by death, resignation or removal of any officer chosen by election.
  2. Any special Deputy Sheriff or peace officer appointed to act without compensation from the County.
  3. Any Deputy District Attorney, the District Attorney Office Manager, the District Attorney Victim Assistance Manager, and the District Attorney Senior Administrative Services Manager.
  4. Any member of a board or commission whose principle vocation is other than as a County employee.
  5. Persons employed as on-site property managers residing in County-owned or County-provided facilities.
  6. Persons employed in unallocated positions (also known as temporary positions).
  7. Any part-time employee working less than half time.
  8. Persons employed under a limited term appointment status.
  9. The County Administrator, under employment contract with the Board of County Commissioners.
  10. Department directors, ~~and the County Surveyor,~~ under employment contract with the County Administrator.
  11. Persons holding positions ~~whose positions are~~ designated by the County Administrator as appropriate for unclassified status, who hold positions under employment contract with the County Administrator.
  12. Persons employed in the Sheriff's Office as a Captain or Undersheriff.
  13. The County Counsel, under employment contract with the Board of County Commissioners.
  14. Employees of the Office of County Counsel, under employment contracts with the County Counsel.
  - ~~15. Persons employed in unrepresented positions in the County Justice Court.~~

-[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 13-2003, 7/13/03; Amended by Ord. 07-2005, 11/3/05; Amended by Ord. 04-2007, 4/26/07; Amended by Ord. 01-2009, 2/5/09; Amended by Ord. 05-2009, 10/29/09; Amended by Ord. 02-2012, 1/5/12; Amended by Ord. 05-2014, 9/25/14]

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## **2.05.050 Classification Of Positions**

### **2.05.050.5 Classification Downgrading**

Classification downgrading occurs when a position is assigned to a different or new classification that carries a lower salary grade. "Lower salary grade" for these purposes means a minimum of 4.0% difference when comparing the maximum hourly rates of pay of the salary grades. An employee whose position has been downgraded shall be placed in the position without competing for the position. An employee whose position has been downgraded shall be placed on the layoff register for their former classification or any equivalent classification for a period of two (2) years from the date of downgrading. Placement on the layoff register will allow referral and consideration for other positions within the same or equivalent classifications as the position held prior to classification downgrading. The order in which names will be placed on the layoff register shall be based upon seniority. An "equivalent classification" is defined as one requiring both the same kind of knowledge and the same degree of skills. Demonstration of the employee's skills and knowledge in appropriate selection procedures may be required by the Department of Employee Services or appointing authority prior to being placed in another position in the former or equivalent classification.

A downward reclassified employee will have no changes made to salary increase eligibility date or to an existing probationary period. At the request of the Department Director, the ~~Board of County Commissioners~~County Administrator may authorize continuation of the same salary rate as an employee received prior to a downgrading of the position (a "red circle"). The employee receiving a red circle pay rate shall receive no future salary increases until the salary grade of the position exceeds the "red circle" rate. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

### **2.05.050.6 Classification Review Of New Positions**

When a new, regular position is approved by the ~~Board of County Commissioners~~County Administrator, a position requisition and position classification questionnaire shall be submitted to the Department of Employee Services. The Department of Employee Services shall review the proposed duties and responsibilities of any new position added to the Classified Service and determine the appropriate classification and compensation. At the request of the ~~Board of County Commissioners~~County Administrator, the Department of Employee Services shall also review position requisitions with regard to the need for the position. A new position shall not be filled until the Board of County Commissioners approves the ~~classification assignment~~, position requisition, and budgetary allocation for the new position. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

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## 2.05.060 Compensation Plan

### 2.05.060.1 Maintenance Of Compensation Plan

The Department of Employee Services, under direction of the County Administrator, shall maintain a compensation plan. It is the responsibility of the Department of Employee Services to keep the County Administrator informed of the adequacy of the County's compensation plan. The plan shall include for each classification a minimum and a maximum pay rate and such intermediate rates as are considered necessary or equitable. The salary grades shall reflect the relative responsibilities of the classification, availability of labor, prevailing rates of pay and financial conditions of the County. The County Administrator shall assign the compensation of all classified and unclassified positions except for those positions whose salaries are determined under state laws. In determining the amount of compensation thereof, the County Administrator shall give due consideration to the recommendations of the Department of Employee Services and the appointing authority.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

### 2.05.060.2 Administration Of Compensation Plan

- A. Rates of Pay: Classified employees shall be paid at a rate established within the salary grade for the classification in which they are employed, unless otherwise authorized by the County Administrator.
- B. Entrance Salary: An employee will be appointed at the entrance rate for each classification. The entrance rate shall be the first step or minimum pay rate in a salary grade established by a collective bargaining agreement or for nonrepresented employees it shall be any rate from minimum to midpoint in the established salary grade. If an appointment or reinstatement above the entrance rate (“upper-step”) is requested, authorization must be ~~obtained from the County Administrator, through the Department of Employee Services~~ by the Department Director. In determining such requests, the ~~County Administrator~~ Department Director shall give consideration to qualifications of the candidate, availability of applicants and the resulting salary relationship with other positions.
- C. Salary Increases: Salary increases are not automatic. Appointing authorities shall recommend to the County Administrator salary increases only for those employees who have demonstrated high standards of work performance. Work performance should be reviewed periodically to determine whether increases have been earned. (Refer to Performance Evaluation 2.05.120.)
  1. Eligibility for Salary Increases: New employees or promoted employees shall be eligible for advancement to the next step or applicable percentage increase within the salary grade for their classification six (6) months from the first of the month following their first day of work in the position. Thereafter, employees are eligible for a salary increase at the conclusion of twelve (12) months of continuous service since their last in-grade salary adjustment other than an exceptional increase. Eligibility for salary increases shall continue until employees reach the last step in their respective salary grade.
  2. Exceptional Increases:

- a. An appointing authority may request an exceptional increase for any employee when:
- i. The employee's performance is outstanding in relation to other employees in the same department, and the employee's outstanding performance is documented according to an approved performance evaluation program; or
  - ii. Other factors exist, such as compression of pay rates, which justify an exceptional increase; and;
  - iii. Funds for such "special" increases are budgeted; and,
  - iv. At least six (6) months have passed since the last "salary" or "step" increase, or last promotion.
- b. Exceptional increases must be approved by the Department Director and will ~~generally~~ be limited to the maximum amount of a regular merit increase or one step-or percentage amount equivalent to one salary increase. An amount greater than this must be authorized by the County Administrator. Exceptional increases will not affect an employee's established salary increase date.
3. Interim Increases: An employee whose salary increase is denied may be eligible for an increase following an additional six-month period during which successful performance is monitored and documented. If such a salary increase is granted, the employee's new date of eligibility for a salary increase shall be one year from the date of the last salary increase.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09; Amended by Ord. 05-2014, 9/25/14]

### 2.05.060.3 Salary ~~Range~~ Grade Adjustments

- A. General: The compensation plan for County personnel shall provide reasonably competitive grades of pay for each classification. The County Administrator may make adjustments in salary grade(s) as necessary to attract and retain competent personnel and to provide equity between the various classifications. Such salary grade adjustments are to be distinguished from salary increases. Salary grade adjustments are not intended to give recognition to length or quality of service; rather they are based solely on prevailing rates of pay for the various classes of work in the County service.
- B. Effect of Salary Grade Adjustments: For Non-Represented employees, when the If a salary grade for a classification is adjusted upward, the salary pay rate of an incumbent employee is not impacted if their pay rate falls within the new salary grade. usually adjusted. Circumstances indicating adjustment consideration include If an employee's pay rate falls ~~ing~~ below the minimum of the new salary grade, it shall be increased to the minimum of the grade. If an employee has been at the top of their salary grade for greater than one year, the employee shall receive the equivalent on one merit increase effective the first of the month following implementation of the new salary grade, and be eligible for merit

increases annually thereafter until the top of the grade is reached. When the salary grade for a classification is adjusted downward, the pay rate of an incumbent employee is not impacted if their pay rate falls within the new salary grade. If an employee's pay rate falls above the maximum of the new salary grade, the employee's pay rate shall be red-circled. ~~salary grade and negotiations with recognized bargaining groups.~~ This method for determining individual employee pay rate changes shall be applied consistently to all employees within the affected classification, unless otherwise salary grade and negotiated ions with recognized bargaining groups. .

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2009, 10/29/09]

\* \* \*

### **2.05.140.5 Reclassification**

When a position is reclassified to a classification with a higher salary grade under the provisions of classification upgrading, the incumbent shall be advanced to the minimum or first step in the new grade or to the rate of pay that most closely approximates a five (5) percent increase from the employee's regular rate of pay, whichever is higher. The salary adjustment will take place on the effective date of reclassification. The employee's salary increase date will be adjusted to the first of the month following twelve (12) full months from the date of a classification upgrading.

When a position is reclassified downward, the incumbent's salary may remain the same if it is within the new salary grade. The employee's salary increase date will not be affected as a result of reclassification downward. If the position is downgraded to a classification that has a pay grade lower than the employees' current rate of pay, the salary rate may be red circled.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05]

### **2.05.140.6 Temporary Out-Of-Class**

Employees may be temporarily assigned higher or lower compensated duties without a change in pay, where periodic or regular variations in assignments occur because of seasonal needs or because of the nature of the duties or the work schedule. Such variations shall be considered as incidental to the position.

Unless otherwise specified in the collective bargaining agreement, an employee directed to continuously perform duties of a higher level classification shall be entitled to compensation at the higher level for the time worked in excess of thirty (30) consecutive days, providing such assignment clearly encompasses the full scope of duties and responsibilities normally associated with the higher level classification as confirmed and pre-approved by the appointing authority. Requests for such additional compensation shall be made by the appointing authority to the Department of Employee Services. Temporary out-of-classification pay is awarded as 5% of base pay or to the minimum rate of the higher level classification salary grade, whichever is greater.



The Director of Employee Services has the authority to approve temporary out-of-classification pay for extenuating circumstances where an appropriate classification at a higher salary grade does not exist. Such circumstances may include when a classification at a higher salary grade is in the development or approval stages, or when an employee is performing additional duties for a specific duration of time such as during a reorganization, etc. Approval of temporary out-of-classification pay shall not be retroactive unless approved by the Director of Employee Services~~Board of County Commissioners~~.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 07-2005, 11/3/05; Amended by Ord. 05-2009, 10/29/09]

\* \* \*

## Chapter 2.14

### 2.14 COUNTY SURVEYOR

#### 2.14.010 Appointment of County Surveyor

A. The County Administrator or designee shall appoint, as County Surveyor, a person who is registered under the laws of the State of Oregon as a registered professional land surveyor, and who otherwise meets the eligibility requirements of ORS 204.016(1).

~~B. The County Surveyor serves at the pleasure of the County Administrator as an unclassified employee (as defined in Chapter 2.05) under an employment agreement. The County Administrator may accomplish the act of appointment to the office of County Surveyor by entering into a written employment agreement for the position of County Surveyor, and appointment to the office will continue thereafter until the employment relationship is ended by termination of the employment agreement, or by resignation or retirement.~~

[Added by Ord. 02-2012, 1/4/12]

#### 2.14.020 Authority

The County Surveyor has the authority to perform all the duties of a County Surveyor as set forth in ORS Chapter 209 or in the County Code, and such other duties as may be directed by the County Administrator.

[Added by Ord. 02-2012, 1/4/12]

#### 2.14.030 Duties

A. The County Surveyor appointed as provided in this Chapter is responsible for performing the duties of office as set forth by ORS Chapter 209, the duties set forth in the County Code, and such other duties as the County Administrator shall determine.

B. The County Surveyor will report to a person designated by the County Administrator.

[Added by Ord. 02-2012, 1/4/12]

## LCRB Proposed Amendments

[Note: The Local Contract Review Board Rules are Appendix C to the County Code]

### DIVISION C-050

#### AUTHORITY TO SIGN CONTRACTS

##### **C-050-0100 Delegation of Authority to sign Contracts and Amendments**

(1) **Application.** The Board has authority to sign all Contracts and Contract amendments or renewals for the Contracting Agency. The purpose of these division C-050 rules is to establish a limited delegation of that authority to sign Contracts and Contract amendments or renewals. In other words, these rules identify the persons other than the Board who have the authority to sign Contracts and Contract amendments or renewals for the Contracting Agency. They do not address the type of procurement process that is to be followed, such as Invitation to Bid, Request for Proposals, or other procurement process.

##### **(2) Authority to Sign Contracts and Contract Amendments.**

(a) Officers and employees of Clackamas County holding the positions listed in this subsection have the authority to sign Contracts with a value not to exceed a total of \$150,000 in the aggregate for any one project or for any one contractor in a single fiscal year.

(b) The listed persons also have authority to sign Contract amendments or renewals, if the amendment does not exceed 10% of the original Contract amount or \$150,000 for the entirety of the term of the Contract, whichever is less.

Assessor

Business and Community Services Director

Business and Community Services Deputy Director

C-Com Director

Chief Deputy

County Clerk

~~Community and Legislative Affairs Director~~

Community Corrections Director

~~Community Development Director~~

County Administrator

County Counsel

Deputy County Administrator

District Attorney

District Attorney Office Administrator (Administrative Services Manager)

Emergency Management Director

Employee Services Director

[Employee Services Deputy Director](#)

Family Court Services Director

Finance Director

[Finance Deputy Director](#)

~~Homeland Security Director~~

Health, Housing and Human Services Director

Health, Housing and Human Services ~~Assistant Deputy Director of Operations~~

Technology Services Director

Technology Services Deputy Director

Justice of the Peace

Juvenile Department Director

Law Library Librarian

~~Library Director~~

Public and Government Relations Director

~~Procurement Division Director~~~~Purchasing Manager~~

Sheriff

Tourism and Development Council Executive Director

Transportation and Development Director

Transportation and Development Deputy Director

~~Transportation and Development Business Services Manager~~

Treasurer

Undersheriff

Water Environment Services Director

~~—(c) For the period of **December 21, 2015 through January 4, 2016**, the Board of County Commissioners delegates authority to the county Administrator to sign all contracts or contract amendments. The county Administrator will report to the Board of County Commissioners on Thursday, January 15, 2015 at the regularly scheduled Business Meeting, regarding any contracts signed by the County Administrator during this time period.~~

**(3) District Attorney's, Sheriff's, Treasurer's, Assessor's County Clerk's and Justice of the Peace's Additional Authority.** In addition to the authority granted above in subsection (2), the District Attorney, the Sheriff, the Treasurer, the Assessor the County Clerk and the Justice of the Peace have the authority to sign Contract amendments, for contracts other than Public Improvement contracts, which do not exceed 10% of the original contract amount, or \$150,000, whichever is greater.

**(4) DTD Director's and WES Director's Additional Authority.** In addition to the authority granted above in subsection (2), the Transportation and Development Director, and the Water and Environment Services Director, have the authority to sign Contract amendments, for Public Improvement contracts, which do not exceed 10% of the original contract amount, or \$150,000, whichever is greater.

**(5) County Administrator's Additional Authority.** In addition to the authority granted above in subsection (2), the County Administrator has the authority to sign Contract amendments for both Public Improvement contracts and other contracts, which do not exceed 10% of the original contract amount, or \$150,000, whichever is greater.

In addition to the authority granted above, when (i) there exists an emergency such that a quorum of the Board of County Commissioners cannot meet before an action must be taken for the protection of the public and/or public goods, or (ii) a quorum of the Board of County Commissioners is not assembled for two or more regularly scheduled public business meetings, then the County Administrator is authorized to enter into contracts and contract amendments for the purchase of products and or services for any amount under the following conditions:

- (a) The Office of County Counsel has reviewed and approved the contract or amendment;
- (b) Sufficient monies are available to fund the contract or amendment; and
- (c) The County Administrator shall not approve any contracts or amendment, or take any other action, that requires a public hearing.

In such circumstances, it is the intent of the Board to grant the County Administrator sufficient authority to take such actions as are necessary to make certain emergencies are addressed and/or that County business can continue until such time as a quorum can be convened. The County Administrator shall provide a full report to the Board of County Commissioners at their next available business meeting on the exercise of any authority provided for under this provision.

**(6) Authority Exclusive.** The delegations of authority set forth in this section are exclusive, and no other persons have authority to perform such functions without express written authority from the Board granted after the adoption of this section. All previous delegations of authority adopted by the Board with respect to these Rules are hereby repealed. The County Administrator has other authority granted in Chapters 2.05 and 2.09 of the County Code, such as the authority to sign employment contracts.

(7) **Other Limits.** The authority granted in this section to sign Contract amendments does not override the limits on Contract amendments for Contracts awarded as small Procurements under C-047-0265 or intermediate Procurements under C-047-0270. Amendments to small Procurements shall not increase the Contract Price to greater than \$6,000. Amendments to intermediate Procurements shall not exceed 25% of the original Contract Price or \$25,000, whichever is greater.

[Adopted by Order NO. 2005-34, enacted 2/24/05; amended by Order No. 2006-366, enacted 8-24-06; Amended by Order No. 2008-08, enacted 1/31/08; Amended by Order No. 2008-165, enacted 10/16/08; Amended by Order No. 2009-84, enacted 7/9/09; amended by Order No. 2010-21, enacted 3/18/10; Amended by Order No. 2012-41, enacted 6/7/12.]

## **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 of 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 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. 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. HEALTH OFFICER shall mean the Health Officer of Clackamas County or his/her duly authorized representative.
29. 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. INCINERATOR means a combustion device specifically designed for the reduction by burning of solid, semi-solid or liquid combustible wastes.

31. **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. **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. **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. **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. **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. **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. **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. 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. NUISANCE means the unlawful use by a person of real or personal property contrary to the terms of this chapter.
40. ON-ROUTE COLLECTION means the pick up of source-separated recyclable materials from the generator at the place of generation.
41. OPERABLE VEHICLE means a vehicle that is currently licensed and in operating condition to be used on a public road or highway.
42. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. REGULATIONS mean regulations promulgated by the Board or Director pursuant to this chapter.
53. 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. 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. 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. SERVICE AREA means the geographical area, in which service, other than operation of a disposal site is provided.
57. 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. 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. **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. **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. **SOURCE-SEPARATED MATERIALS** means that the person who last uses recyclable material separates the recyclable material from other solid waste.
62. **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. **SUBCONTRACT** means a written contract for the performance of all or a portion of Franchised Collection Service.
64. **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. TRANSFER STATION FRANCHISE means a Franchise to create or maintain a transfer station.
66. URBAN GROWTH BOUNDARY means that boundary adopted by the Metropolitan Service District pursuant to ORS 268.390.
67. 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. WASTE REDUCTION means the reduction of solid waste, or of wastes generated, or of wastes that would otherwise be land filled.
69. 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. 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. 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. 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. 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 ~~c~~Commission of seven members:

- ~~A. —~~
- ~~3.~~ Health Officer or his/her authorized representative.
- ~~4.~~ One Member of the public.
- ~~5.~~ One Member of the public.
- ~~6.~~ One Member of the public.
- ~~7.~~ One Collection Service Franchise holder.
- ~~G.~~ One Collection Service Franchise holder.

### ~~8. —~~ 10.03.100 Appointments to the solid waste Commission 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.

~~— The Board shall appoint members of the solid waste Commission. Except for public employees who serve by reason of and for the term of the position they hold, and except~~

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as provided in subsection b of this Section, the term of the office of a member is four (4)

#### 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 ~~rate-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]

#### 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 Franchise 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.

- 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]

#### **10.03.150 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]