

COUNTY SOLID WASTE ORDINANCE - WITH NUISANCE ABATEMENT

Relating to accumulation, storage, collection, transportation and disposal of wastes and solid wastes; repealing conflicting ordinances; providing penalties; prescribing an effective date and declaring an emergency.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY, OREGON:
ARTICLE I. GENERAL PROVISIONS.

Section 1.01. SHORT TITLE. This ordinance shall be known as the "Solid Waste Collection and Disposal Ordinance" and may be so cited and pleaded and shall be cited herein as "this ordinance."

Section 1.02. INDEX.

ARTICLE I. GENERAL PROVISIONS.

PAGE
1
1
3
4
4
5
5

- Section 1.01. Short Title.
- Section 1.02. Index.
- Section 2.01. Purpose and Policy.
- Section 3.01. General Definitions.
- Section 3.02 to 3.24. Specific Definitions.
- Section 4.01. Administration.
- Section 4.02. Persons and Agencies Exempted.

ARTICLE II. SOLID WASTE ADVISORY COMMITTEE.

- 6 Section 5.01. Solid Waste Advisory Committee.
- 7 Section 5.02. Appointment of Solid Waste Advisory Committee.
- 8 Section 5.03. Duties of Solid Waste Advisory Committee.
- 8 Section 5.04. Regional Solid Waste Committee.

ARTICLE III. REGULATION OF SOLID WASTE MANAGEMENT.

- 8 Section 6.01. Regulation of Solid Waste Management.

ARTICLE IV. FRANCHISING OF SOLID WASTE COLLECTION AND DISPOSAL.

- 8 Section 7.01. Persons, Activities and Practices Regulated.
- 8 Section 7.02. Applications for Franchises.
- 9 Section 7.03. Existing Disposal and Collection Operators.
- 9 Section 7.04. Specific Collection Franchise Requirements.
- 10 Section 7.05. Specific Disposal Franchise Requirements.
- 11 Section 7.06. Review of Applications for Franchises.
- 12 Section 7.07. Board Action on Applications for Franchise.
- 12 Section 7.08. Exclusive or Joint Service Under a Franchise.
- 13 Section 7.09. Appeal from Determination of Board on Franchise.
- 14 Section 7.10. Responsibilities of Franchises.
- 15 Section 7.11. Enforcement of Franchise Provisions.
- 16 Section 7.12. Suspension, Modification, Revocation or Refusal to Renew Franchise.
- 17 Section 7.13. Preventing Interruption of Service.
- 17 Section 7.14. Franchise Term and Renewals.
- 17 Section 7.15. Franchise Fees.
- 18 Section 7.16. Use of Franchise Fees.
- 18 Section 7.17. Transfer of Franchises.

ARTICLE V. RATES FOR COLLECTION AND DISPOSAL SERVICE.

- 18 Section 8.01. Determination of Rates.
- 20 Section 8.02. Rate Preferences Prohibited.
- 20 Section 8.03. Responsibility for Payment of Charges for Service.

ARTICLE VI. REGIONAL COLLECTION AND DISPOSAL.

- 20 Section 9.01. Agreements for Joint Franchising or Planning.
- 21 Section 9.02. Agreements for Allocation of Franchise Fees.

ARTICLE VII. SOLID WASTE NUISANCE ABATEMENT: UNAUTHORIZED DUMPING PROHIBITED.

- 21 Section 10.01. Creation of Nuisance by Accumulation of Solid Wastes Prohibited.
- 21 Section 10.02. Unauthorized Dumping of Solid Wastes Prohibited.
- 21 Section 10.03. Abatement of Solid Waste Nuisance.

ARTICLE VIII. APPEALS, ABATEMENT AND PENALTIES.

- 23 Section 11.01. Appeals.
- 23 Section 11.02. Appeals from Decisions of the Administrator.
- 23 Section 11.03. Abatement.
- 23 Section 11.04. Penalties.

ARTICLE IX. CONSTRUCTION, REPEAL OF CONFLICTING ORDINANCES AND EFFECTIVE DATE AND EMERGENCY CLAUSE.

- 23 Section 12.01. Construction.
- 24 Section 12.02. Repeal of Conflicting Ordinances.
- 24 Section 12.03. Emergency Clause and Effective Dates.

Section 2.01. PURPOSE AND POLICY. To protect the health, safety and welfare of the people of Lincoln County and to provide a coordinated solid waste management program, it is declared to be the public policy of Lincoln County to regulate solid waste management to:

(1) Provide the safe and sanitary accumulation, storage, collection, transportation and disposal of solid wastes.

(2) To prohibit accumulation of wastes or solid wastes on private property in such manner as to create a public nuisance, a hazard to health or a condition of unsightliness and to provide for the abatement of such conditions where found.

(3) Develop a regional long-range plan to provide adequate disposal sites and disposal facilities to meet future demands.

(4) Provide for a coordinated county-wide solid waste management plan in cooperation with federal, state and local agencies responsible for the prevention, control or abatement of air, water and ground pollution and prevention of litter.

(5) Provide for and encourage research, studies, surveys and demonstration projects on developing more sanitary, efficient and economical solid waste management systems.

(6) Provide for a coordinated solid waste management plan with cities within Lincoln County and with other counties or cities should regional plans be developed.

(7) Provide for cooperation and agreements between Lincoln County and other Counties involving joint or regional franchising of solid waste collection or disposal.

(8) Provide minimum standards for location and operation of disposal sites to protect adjacent or nearby residents.

(9) Encourage utilization of the capabilities and expertise of private industry in accomplishing the purposes of this ordinance.

Section 3.01. GENERAL DEFINITIONS. For the purpose of this ordinance, words used in the present tense include the future, the singular number includes the plural, the word "shall" is mandatory and not directory, and the term "this ordinance" shall be deemed to include all amendments hereafter made to this ordinance.

Section 3.02. ADMINISTRATOR. The County Sanitarian or other person designated by resolution of the Board to administer this Ordinance and the duly authorized deputy or assistant of such person.

Section 3.03. BOARD. The Board of County Commissioners for Lincoln County.

Section 3.04. COLLECTION VEHICLE. Any vehicle used to collect or transport solid waste.

Section 3.05. COMMITTEE. The Solid Waste Advisory Committee created pursuant to this ordinance.

Section 3.06. COMPENSATION. Includes any type of consideration paid for service, including but not limited to, direct or indirect compensation by tenants, licensees or similar persons.

Section 3.07. DISPOSE OR DISPOSAL. Includes accumulation, storage, collection, transportation and disposal of solid wastes.

Section 3.08. DISPOSAL SITE. Any land used for the disposal of solid 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 a sawdust, bark, soil, rock, building demolition material or nonputrescible industrial waste products resulting from the process of manufacturing.

Section 3.09. FRANCHISE. A franchise to provide service issued by the Board pursuant to this ordinance.

Section 3.10. FRANCHISE, COLLECTION. A franchise to store, collect or transport solid waste.

Section 3.11. FRANCHISE, DISPOSAL. A franchise to create or maintain a disposal site.

Section 3.12. HAZARDOUS SOLID WASTE. Solid waste that may, by itself or in combination with other solid wastes, be infectious, explosive, poisonous, caustic or toxic or otherwise dangerous or injurious to human, plant or animal life.

Section 3.13. INCINERATOR. A combustion device specifically designed for the reduction, by burning of solid, semi-solid or liquid combustible wastes.

Section 3.14. LANDFILL. A disposal site operated by means of compacting and covering solid waste at specific designated intervals, but not each operating day.

Section 3.15. PERSON. Means and includes individuals, corporations, associations, firms, partnerships and joint stock companies.

Section 3.16. PUTRESCIBLE MATERIAL. Organic materials that can decompose and may give rise to foul smelling, offensive products.

Section 3.17. REGULATIONS. Regulations promulgated by the Board pursuant to this ordinance.

Section 3.18. RULES. Rules promulgated by state agencies pursuant to ORS Chapter 459.

Section 3.19. SANITARY LANDFILL. A disposal site operated by means of compacting and covering solid waste at least once each operating day.

Section 3.20. SERVICE. Disposal by private persons for compensation.

Section 3.21. SERVICE AREA. The geographical area in which service, other than operation of a disposal site, is provided by any person.

Section 3.22. SOLID WASTE. All putrescible and non-putrescible wastes, whether in solid or liquid form, except liquid-carried industrial wastes or sewage, or sewage hauled as an incidental part of a septic tank or cesspool cleaning service, but including garbage, rubbish, ashes, paper, cardboard, sewage sludge, street refuse, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semi-solid wastes, dead animals and other discarded solid materials.

Section 3.23. SOLID WASTE MANAGEMENT. Includes storage, collection, transportation, treatment, utilization, processing and final disposal or salvage, recycling or re-use of solid waste and necessary facilities therefor.

Section 3.24. WASTE. Useless, unwanted or discarded materials.

Section 4.01. ADMINISTRATION. The Administrator, under the supervision of the Board and with the assistance of the Committee, shall be responsible for the enforcement of this ordinance. In order to carry out the duties imposed by this ordinance, the Administrator shall enter or authorize personnel to enter on the premises of any person regulated by this ordinance at reasonable times and in a reasonable manner to determine compliance with this ordinance and regulations promulgated pursuant thereto.

Section 4.02. PERSONS AND AGENCIES EXEMPTED. (1) This ordinance shall not apply to:

(a) Areas lying within the limits of any incorporated municipality.

(b) Federal or state agencies that collect, store, transport or dispose of wastes or solid wastes or those persons who contract with such agencies to perform service, but only as to the terms for collection or disposal service under the contract. This exemption shall not apply to disposal on a disposal site operated by a franchise under this ordinance.

(2) In addition to the exemptions in subsection (1) of this section, sections 10.01 to 10.03 of this ordinance shall not apply to:

- (a) Disposal sites franchised under provisions of this ordinance and in compliance with this ordinance.
- (b) Agricultural operations and growing or harvesting of crops and the raising of fowls or animals.

ARTICLE II. SOLID WASTE ADVISORY COMMITTEE.

Section 5.01. SOLID WASTE ADVISORY COMMITTEE. There is hereby created a Solid Waste Advisory Committee appointed by the County Board of Commissioners to serve for two years. Four (4) appointed for one (1) year, five (5) for two (2) years may be reappointed.

(1) Nine members:

- (a) County Sanitarian
- (b) County Engineer
- (c) Five representatives of Cities within the County (including cities)
- (d) Two franchises or representatives of such franchisees.

(2) As exofficio members of the Committee:

(a) One representative of each city which does not have a member on the Committee.

(b) County Planner & County Assistant Sanitarian.

(Note: exofficio members commonly appointed include those not included in (1) above as members, parks director, county extension agent, representative of regional air authority and other city managers).

(3) As advisors to the Committee:

- (a) Director of Solid Waste Section, State Board of Health.
- (b) Director of Environmental Quality Department.

(c) Lincoln County District Attorney or his Deputy or Assistant.

(d) Oregon Sanitary Service Institute.

Section 5.02 APPOINTMENT OF SOLID WASTE ADVISORY COMMITTEE.

(1) Members, exofficio members and advisors shall be appointed by the Board. The Board may appoint additional persons to the Committee in these categories. The Board may appoint or approve designation of alternates to serve in the absence of persons appointed to the Committee.

(2) Public employees shall serve for the term of their office.

Appointment of other persons as members shall be for staggered terms on the initial Committee not to exceed three-year terms. Subsequent appointments of non-public members shall be for three year terms. Members shall serve until their successors are appointed and qualified. Vacancies shall be filled by the Board for the balance of the unexpired term.

(3) The Board shall appoint one member as Chairman and another as Vice-Chairman, both of whom shall serve at the pleasure of the Board. Five members of the Committee shall constitute a quorum for the transaction of business. The Committee shall meet at such times as deemed necessary or as called by the Board. The Chairman or any three members of the Committee may call a special meeting with ten days' notice to other members of the Committee; provided, however, that members may waive such notice.

Section 5.03. DUTIES OF THE SOLID WASTE ADVISORY COMMITTEE. In addition to other duties prescribed by this ordinance, the Committee shall:

(1) Make an annual report to the Board containing recommendations on development and implementation of a solid waste management plan and any necessary regulations or amendments to this ordinance.

(2) In consultation with responsible public officials and with persons providing service:

(a) Develop and periodically review a solid waste management plan including regional disposal sites and necessary disposal systems for review, adoption or modification by the Board.

(b) Develop and recommend to the appropriate agency or the Board minimum standards for location and operation of

disposal sites including, but not limited to, protection of adjacent or nearby residents.

(3) Perform such other duties as directed by the Board or as the Committee may find necessary to effectively carry out the purposes of this ordinance.

Section 5.04. REGIONAL SOLID WASTE COMMITTEE. The Board may appoint one or more members of the Committee to serve on any regional solid waste committee to advise the Board.

ARTICLE III. REGULATION OF SOLID WASTE MANAGEMENT.

Section 6.01. REGULATION OF SOLID WASTE MANAGEMENT. Upon its own motion or upon recommendation of the Committee, the Board may adopt reasonable and necessary regulations governing disposal sites or implementing this ordinance. Such regulations shall conform to ORS Chapter 459 and rules promulgated pursuant thereto.

ARTICLE IV. FRANCHISING OF SOLID WASTE COLLECTION AND DISPOSAL.

Section 7.01. PERSONS, ACTIVITIES AND PRACTICES REGULATED.

Except as provided in section 4.02 of this ordinance, no private person shall provide service for compensation except as authorized by a collection or disposal franchise issued pursuant to this article.

Section 7.02. APPLICATIONS FOR FRANCHISES. (1) Application for a franchise shall be made on forms provided by the Administrator. The Administrator may require filing of additional information necessary to determine compliance with this ordinance, ORS Chapter 459 and regulations and rules promulgated thereunder together with any other applicable laws or county ordinances.

(2) The applicant shall prove to the Board that:

- (a) He has sufficient collection vehicles, equipment, land, facilities or personnel to meet the standards established by this ordinance and ORS Chapter 459 and regulations or rules promulgated thereunder.
- (b) He has in force public liability insurance in the amount of not less than \$100,000 per person and \$300,000 per accident for bodily injury, and not less than \$25,000 for property damage, which shall be evidenced by a certificate of insurance.
- (c) He has good moral character or, if the applicant is a business entity, the principal partners or officers are of good moral character.

(d) He has sufficient experience in properly providing service of a comparable quality and quantity to insure compliance with this ordinance, and regulations promulgated thereunder and any franchise issued to him. If the applicant does not prove to the satisfaction of the Board that he has sufficient and successful experience, the Board may require the applicant to submit a corporate surety bond, in the amount of \$5,000 or 1/12 the estimated gross revenue to be derived from service annually, whichever is greater, guaranteeing full and faithful performance by the applicant of the duties and obligations of a franchisee under this ordinance. If the applicant is applying for both a disposal franchise and a collection franchise or collection franchises, the Board may permit the applicant to provide a single bond covering all such liabilities.

(3) Applicants shall specify the nature, type and extent of service to be provided; and solid wastes that will not be accepted for collection or disposal; and, any special requirements for the handling of hazardous wastes.

Section 7.03. EXISTING DISPOSAL AND COLLECTION OPERATORS. Persons providing collection or disposal service on the effective date of this ordinance shall file an application for a franchise together with any required information within 30 days thereafter. Upon filing his application, such person may continue providing service until a final determination on his application is made by the Board or a court upon appeal. Persons who meet the applicable qualifications of this article and who were providing service on the effective date of this ordinance and on October 1st, 1970, shall be awarded a collection franchise for the area they were serving on the effective date of this ordinance.

Section 7.04. SPECIFIC COLLECTION FRANCHISE REQUIREMENTS. An applicant for a collection franchise shall prove to the satisfaction of the Board that:

- (1) He will use disposal sites authorized by the Board.
- (2) He is either:
 - (a) Providing service in the service area for which he applies on the effective date of this ordinance and has a majority of service accounts in such service area, which shall be evidenced by a list of customers served and a map of the service area; or
 - (b) Applying for a service area that has not been franchised to another person, is not being served by the Franchisee.

after notice and a reasonable opportunity to do so or is not being adequately served by a franchisee and that there is a substantial demand from customers for a change in service to the area.

(3) He will, if applying for all or part of a service area franchised to another person pursuant to subsection (2) of this section, have available on the first day of such proposed service collection vehicles, containers or other equipment equal to that presently used in providing such service and that service would be equal to existing service.

Section 7.05. SPECIFIC DISPOSAL FRANCHISE REQUIREMENTS.

(1) An applicant for a disposal franchise shall submit a duplicate of the information submitted to the Department of Environmental Quality on such site under ORS Chapter 459 and rules promulgated thereunder.

(2) Each applicant shall supply a plan for rehabilitation and use of the site after disposal has been terminated and such use shall be a use permitted within the zone in which such land is located. Such plan shall be prepared at a scale of not less than one inch equals 400 feet with topographical contours, an interval of which shall be not less than 25 feet. In the discretion of the Administrator, Committee or Board, the applicant may be required to furnish a map showing greater detail to determine compliance with this ordinance and standards established by the Board. Amended plans may be submitted for approval in the same manner as initial plans.

(3) Where the land upon which a disposal site would be located is privately owned, the owner of the land and the franchise applicant shall, on forms furnished by the Administrator, jointly and severally agree to accept, to be responsible for or to be liable for:

(a) The entry upon the subject premises by persons designated to administer this ordinance to determine compliance with this ordinance and performance of the obligations of the franchise and the land owner.

(b) Proper establishment, maintenance and operation of the disposal site as required by this ordinance and applicable provisions of ORS 459, rules promulgated thereunder and other laws

or county ordinance.

- (c) Rehabilitation or restoration of the site upon termination of disposal under the land use plan submitted pursuant to subsection (2) of this section or any amendment thereto.
- (d) The entry upon the subject premises by persons designated by the Board to properly establish, maintain, operate, rehabilitate or restore the site where the landowner or franchisee do not comply with their agreement executed pursuant to this subsection after written notice and a reasonable opportunity to comply as provided in subsection (2) of Section 7.11 of this ordinance.

(4) The Board may order the filing in the county deed records of the agreements executed pursuant to this section as a recorded encumbrance on the real property to assure compliance with the conditions and agreements.

Section 7.06. REVIEW OF APPLICATIONS FOR FRANCHISES. (1) Applications shall be reviewed by the Administrator who shall make such investigation as he deems appropriate and who may request assistance of other persons as necessary.

(2) The Administrator shall notify the holder of or an applicant for another franchise for any part of the service area under consideration or whose existing or proposed disposal site would reasonably be affected by the disposal site under consideration.

(3) Unless the time is extended by the Board for good cause, the Administrator shall make his recommendation to the Committee within 30 days after the application and any required supplemental information has been filed.

(4) The Committee:

- (a) Shall consider the application and the recommendation of the Administrator at the next regular meeting of the Committee or at a special meeting called for the purpose.
- (b) May require additional investigation to be made or information to be filed.
- (c) May, after written notice to interested persons, call an informational hearing to permit interested persons to testify orally or in writing.

- (d) Shall upon the basis of the application, any evidence or testimony submitted and the Administrator's recommendation, make a finding on the qualifications of the applicant and a finding on whether additional area should be included, additional services be provided; additional equipment, facilities, land or personnel be provided; whether conditions should be imposed on disposal; and, with respect to disposal sites, whether or not the site may be integrated with existing private or public sites and whether or not the site is economically feasible.
- (e) Shall upon the basis of its findings, transmit its recommendations to the Board to grant, deny or modify or attach appropriate conditions and shall transmit such recommendations within 60 days from the date of the first meeting on the application.

Section 7.07. BOARD ACTION ON APPLICATIONS FOR FRANCHISES. The Board:

- (1) May require additional investigation by the Administrator or the Committee if it finds that there is insufficient information on which to base its action.
- (2) Shall upon the basis of the application, the Administrator's recommendation, the Committee's recommendation and such other information as is before the Board, affirm, deny, or modify the findings of the Committee and make an order granting, denying or modifying the application or attaching conditions thereto.
- (3) Shall not make an order adverse to the applicant or to the holder or applicant for another franchise effective less than 30 days after the date of such order and shall notify such persons in writing of the order. The Board may suspend operation of this subsection and enter an emergency order if it 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.

Section 7.08. EXCLUSIVE OR JOINT SERVICE UNDER A FRANCHISE.

- (1) If, upon recommendation of the Committee, the Board finds that an applicant for a collection franchise cannot provide service to a single customer, a group or type of customers or for a particular type or unusually large quantity of solid waste, it may issue a franchise for joint service with another person who can provide such service. Where the Board finds that the applicant is able to provide adequate service of all types within the defined service area, it shall issue an exclusive franchise for that area to the applicant.

(2) If a franchise is unable to provide service for particular types or unusually large quantities of solid wastes:

(a) The Administrator may permit the franchisee to subcontract such service to another person if he finds that the quality and extent of service would not be jeopardized. The Administrator may require the filing of such information as he deems necessary. The Administrator may request the recommendation of the Committee on the subcontract.

(b) The Board may issue a temporary or permanent franchise to another person for the limited purpose of providing service to the customer or customers having such solid wastes.

(3) Upon recommendation of the Administrator and a finding by the Board that the need for service justifies action before a complete investigation and final determination can be made, the Board may order the Administrator to issue a temporary certificate, valid for a stated period not to exceed six months, entitling a person to serve a defined service area or customers.

Section 7.09. APPEAL FROM DETERMINATION OF BOARD ON FRANCHISE.

(1) An applicant for a franchise or other affected franchise holders or franchise applicants may appeal an adverse order by filing written notice of appeal with the Board within 30 days of the date of the order.

(2) Unless an emergency order has been entered, the filing of notice of appeal shall suspend operation of the order until a final determination by the Board on the appeal.

(3) The appellant may request a public hearing as part of his notice of appeal. The Board may, upon its own motion or upon request, set a public hearing not more than 30 days from the date of notice of appeal.

(4) The Board shall provide an adequate opportunity for the appellant and other interested persons together with affected public agencies, or governmental jurisdictions to submit written statements or evidence or, if a public hearing is held, to submit oral or written testimony at a public hearing.

(5) Upon the basis of submissions or testimony entered pursuant to this section, the Board may affirm, modify or rescind its prior order. Subject to Court appeal as provided in this ordinance, the determination of the Board on the appeal shall be final.

(6) If the Board makes a final order rejecting all or part of the application for franchise, the applicant may not submit another application containing

all or a portion of the same service area or same disposal site for a period of six months unless this provision is waived by the Board upon a finding that the public interest requires reconsideration within a shorter period of time.

Section 7.10. RESPONSIBILITIES OF FRANCHISEES. (1) Except as provided in subsection (3) of this section, no franchisee shall voluntarily discontinue service to all or a substantial portion of his service area or at his disposal site until he has:

- (a) Given 90 days' written notice to affected customer in his service area..
- (b) Posted 90 days' notice at his disposal site.
- (c) Given 90 days' written notice to the Administrator.
- (d) Obtained approval of the Board.

(2) Where franchisee is not serving a service area or portion thereof at the time of granting the franchise, the Board may order that service be provided at such time as it finds the service to be necessary and reasonable.

(3) Subsection (1) of this section shall not apply to:

- (a) Change, restriction or termination of service when required by any public agency, public body or court having jurisdiction.
- (b) Refusal to provide service to customers refusing to pay for services in accordance with rates established pursuant to his ordinance. Holders of collection franchises shall not discontinue service under this paragraph without seven days' prior written notice to the customer and to the Administrator. Where service has been refused to a customer for refusal to pay for service, the franchisee may require a reasonable deposit to guarantee payment for future services before reinstating such service.
- (c) Transfer of franchises pursuant to section 7.17 of this ordinance.
- (d) Refusal of service to a customer upon reasonable grounds and with the approval of the Administrator upon a finding that service at the particular location would jeopardize the safety of the driver of a collection vehicle or the motoring public, that the customer has not provided reasonable access to the pickup point for the containers storing solid wastes without hazard or risk to the person providing service or that weather conditions prevent service to the particular customer.
- (e) Subcontracts under collection franchises pursuant to section 7.08 of this ordinance or to a subcontract to operate a disposal site

where the Administrator has approved the subcontract after finding that the quality or extent of service would not be jeopardized. In making his determination, the Administrator may request a recommendation from the Committee, information he deems necessary to insure compliance and written approval of the owner of the land on which the site is located.

Section 7.11. ENFORCEMENT OF FRANCHISE PROVISIONS. In addition to the remedy provided in section 7.13 and penalties provided elsewhere in this ordinance:

(1) The Administrator 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 subsection.

If, in the judgement of the Administrator, there is sufficient evidence to constitute a violation of this ordinance, ORS Chapter 459 or the rules or regulations promulgated thereunder, the Administrator shall notify the franchisee in writing of the alleged violation and what steps he must take to cure the violation and follow the requirements set forth in the notice. The Administrator shall send a copy of the notice to the Committee and may forward a copy to the Board. Upon a finding that a violation exists and that the franchisee is unable to or refuses to cure the violation, the Committee shall make its recommendation to the Board that the franchise be suspended, modified, or revoked or that it not be renewed together with any conditions the Committee deems appropriate.

(2) In the event that the landowner or franchisee under a disposal franchise does not comply with agreements executed pursuant to section 7.05 of this ordinance within a reasonable time after written notice to comply, the Board may institute proceedings under subsection (3) of this section to enforce compliance. "Reasonable time" within this subsection shall be determined by the Board upon the basis of the health, safety and welfare of the people of Lincoln County and of the area. In determining what is a "reasonable time", the Board shall give due consideration to, but shall not be limited to, the following:

- (a) The nature of the deficiency.
- (b) Conditions created by the deficiency.
- (c) Hazards to health or safety.
- (d) Creation of a condition of unsightliness.
- (e) Creation of a public or private nuisance.
- (f) Whether there is a satisfactory alternative practice, procedure or operation.

(3) Upon failure of the landowner or franchisee to comply with the Board's order within the time specified therein, the Board shall give 30 days' written notice to the landowner or franchisee or both at their last known addresses. The Board may shorten this notice to a period of not less than 24 hours' notice made to the landowner or franchisee if the Board finds that there is an immediate and serious danger to the public through creation of a health hazard or a public or private nuisance. After required notice, the Board shall hold a public hearing at which all interested persons shall have the right to be heard. After the public hearing and on the basis thereof, the Board shall have the power to order appropriate county agencies to correct the deficiencies in the establishment, maintenance or operation of the site, or to make required rehabilitation or restoration.

(4) The cost incurred by the County in carrying out subsection (3) of this section shall be paid by the landowner or franchisee or both. If not paid, the Board may order appropriate action to be taken to impose a lien upon the subject premises.

Section 7.12. SUSPENSION, MODIFICATION, REVOCATION OR REFUSAL TO RENEW A FRANCHISE. (1) Upon recommendation by the Committee or upon its own motion, the Board may suspend, modify, revoke or refuse to renew a franchise upon finding that the franchisee has:

- (a) Willfully violated this ordinance or ORS Chapter 459 or rules or regulations promulgated thereunder;
- (b) Materially misrepresented facts or information given in the application for the franchise;
- (c) Willfully refused to provide adequate service in a defined service area or at the franchised disposal site after written notification and a reasonable opportunity to do so; or
- (d) Misrepresented the gross receipts from the franchised service area or disposal site if such reports are required by this Ordinance or by order of the Board.

(2) 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 contingent upon compliance with the order of the Board within the period of time stated therein.

(3) If the Board suspends, modifies, revokes or refuses to renew the franchise, the action shall not become effective until 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 on the order by filing a written request for such hearing with the Board within 30 days after the date of the order. Upon filing of request for hearing, the Board shall set a time and place for a public hearing within 30 days of the request. The franchisee and other interested persons or affected public agencies or public bodies 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 and shall do so within 30 days of the public hearing. Subject to court appeal as provided in this ordinance, the determination of the Board shall be final.

Section 7.13 PREVENTING INTERRUPTION OF SERVICE. Any applicant for a franchise or franchise renewal agrees, and it is a condition of his obtaining and holding the franchise, that whenever the Board finds that the failure of service or threatened failure of service would result in creation of health hazards or public or private nuisances, the Board shall, after reasonable notice but not less than 24 hours notice to the franchisee and a public hearing if the franchisee requests such hearing, have the right to authorize another franchisee or other person to provide service or to use and operate the land, facilities or equipment of the franchise holder to provide service or to use and operate the land, facilities or equipment of the franchise holder through leasing 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.

Section 7.14 FRANCHISE TERM AND RENEWALS. (1) Unless the Board finds that a longer or shorter term is required in the public interest, the term for collection franchises shall be ten years.

(2) The term for disposal franchises shall be determined by the Board upon the basis of a recommendation by the Committee based upon site longevity, population to be served and probable use.

(3) Unless grounds exist for refusal to renew a franchise under Sections 7.12 and 7.13 of this ordinance, franchises shall be renewable. Applications for renewal shall be made on forms provided by the Administrator.

Section 7.15 FRANCHISE FEES. The Administrator shall collect, in the manner and at the time provided in this section, from the holder of:

- (a) Any collection franchise. An annual fee of \$10.00 per collection vehicle exceeding 6,000 pounds gross weight

payable to the Administrator on January 1st of each year.

- (b) Any disposal franchise. An annual fee of \$25.00 payable to the Administrator on January 1st of each year.

Section 7.16. USE OF FRANCHISE FEES. Fees collected pursuant to Section 7.15 of this ordinance shall be paid into the General Fund.

The Committee may make recommendations to the Board on a budget for the use of such funds to carry out the provisions of Section 2 of this ordinance.

Section 7.17. TRANSFER OF FRANCHISES. A franchisee may transfer his franchise, or a portion thereof, to other persons only upon written notice to and approval by the Board.

Upon a recommendation and finding by the Committee, the Board shall approve the transfer if it finds that the transferee meets all applicable requirements met by the original franchise holder. The Board shall approve or disapprove any application for transfer of a franchise within 30 days of receipt of notice by the Board. The Board may extend this time if it finds that there is a substantial question of public health or safety involved which requires additional time for investigation and decision.

Upon a recommendation of the Committee, the Board may permit a franchise to be pledged as security for purchase of land, equipment or facilities needed to provide service or to finance purchase of a business providing service under this ordinance. The Board may attach whatever conditions it deems appropriate to guarantee maintenance of service.

ARTICLE V. RATES FOR COLLECTION AND DISPOSAL SERVICE.

Section 8.01. DETERMINATION OF RATES. (1) Upon recommendation by the Committee, the Board may:

- (a) Approve and establish rates filed by applicants for franchises if it finds that such rates are not demonstratively unreasonable are not substantially higher than those charged generally in the County under similar service requirements and for the same or similar quality of service or it may establish a different rate schedule.
- (b) Establish uniform rates throughout the county or establish rates that are uniform within zones based upon the length of haul to disposal sites, concentration of customers and other factors which may, in the opinion of the Board, justify establishment of rate differentials.

- (c) Establish rates for disposal sites that are uniform throughout the county or different rates for each site or class of sites.
- (d) Increase or decrease rates based on the cost of doing business.
- (e) Establish an interim rate until the Board makes a final determination on the rate for that type of service.

(2) In determining rates, the Committee and the Board shall make a finding that the rates will be just, fair, reasonable and sufficient to provide proper service to the public. The Committee and the Board may consider rates charged by other persons performing the same or similar service in the same or other areas.

The Committee and the Board shall give due consideration to:

- (a) The investment in facilities and equipment.
- (b) The services of management.
- (c) Local wage scales.
- (d) The concentration of customers in the area served.
- (e) Methods of storage, collection, transportation and disposal, salvage, recycling or reuse.
- (f) A reasonable return to the franchisee.
- (g) The length of haul to disposal facilities.
- (h) The cost of disposal.
- (i) The use of transfer stations or transfer systems and the added costs.
- (j) The cost of alternate methods of disposal.
- (k) The future service demands of the service area or disposal site which must be anticipated in equipment, facilities, personnel or land.
- (l) Extra charges for special pickups or pickups on days where service is not normally provided on a collection route.
- (m) Extra charges where the type or character of waste or solid waste, including but not limited to, wastes with peculiarly offensive odors, requires special handling or service.
- (n) Extra charges for providing janitorial services on the premises where service is provided.

- (o) In addition, with respect to disposal sites, the type of site, whether the site is open to the public and hours, type of waste disposed of and method of disposal.
- (p) Cost of compliance with laws, ordinances or regulations and rules of public agencies or bodies having jurisdiction.
- (q) Other factors which may, in the opinion of the Committee and the Board, necessarily affect the rates to be charged.

(3) The Board may require an investigation by the Committee of any proposed rates. For the purpose of making this investigation, the Administrator shall assist the Committee and the Committee is authorized to hold public hearings and to take and receive testimony. Upon completion of such an investigation, the Committee shall report the results of any public hearing, its findings and its recommendations to the Board.

Section 8.02. RATE PREFERENCES PROHIBITED. (1) No franchisee subject to rate regulation by this ordinance shall give any rate preference to any person, locality or type of solid waste stored, collected, transported or disposed.

(2) Nothing in this section is intended to prevent:

- (a) The reasonable establishment of uniform classes of rates based upon length of haul, type of solid waste stored, collected, transported or disposed of or the number, type and location of customers served or upon other factors as long as such rates are reasonably based upon costs of the particular service and are approved by the Board in the same manner as other rates.
- (b) Any person from volunteering service at reduced cost for a charitable, community, civic or benevolent purpose.

Section 8.03. RESPONSIBILITY FOR PAYMENT FOR CHARGES FOR SERVICE.

Any person who receives service shall be responsible for payment for such service. The landlord of any premises shall be responsible for payment for service provided to that premise if the tenant does not pay for the service.

ARTICLE VI. REGIONAL COLLECTION AND DISPOSAL.

Section 9.01. AGREEMENTS FOR JOINT FRANCHISING OR PLANNING.

The Board may enter into agreements with any city or county for joint or regional franchising or collection or disposal service or planning for regional solid waste management.

Section 9.02. AGREEMENTS FOR ALLOCATION OF FRANCHISE FEES. The Board may enter into agreements with any city or county providing for the allocation of franchise fees where franchise service areas cross city or county boundaries.

ARTICLE VII. SOLID WASTE NUISANCE ABATEMENT: UNAUTHORIZED DUMPING PROHIBITED

Section 10.01. CREATION OF NUISANCE BY ACCUMULATION OF SOLID WASTE PROHIBITED.

Except as provided in Section 4.02 of this ordinance, no person shall store, collect, maintain or display on private property, waste or solid waste 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 wastes or solid wastes in violation of this section shall be considered to be a public nuisance which may be abated as provided in Section 10.03 of this ordinance.

Section 10.02. UNAUTHORIZED DUMPING PROHIBITED. Except as provided in Section 4.02 and in the definition of "disposal site" in Section 3.08 of this ordinance:

(1) No person shall dispose of solid waste on any land subject to this ordinance of which he is not the owner or occupant except at a disposal site authorized by the Board. The Board shall list disposal sites which may be used by the public and furnish copies of the list upon request.

(2) No person shall use or permit to be used any land within the County as a public or private disposal site without approval of the Board.

(3) Persons desiring to bury or dispose in any other manner of their own solid waste on their property may do so in accordance with rules promulgated pursuant to ORS Chapter 459 and regulations promulgated by the Board pursuant to this ordinance.

(4) Nothing in this section shall prohibit the accumulation or temporary storage of solid waste in receptacles provided for that purpose in compliance with ORS Chapter 459 and this ordinance and rules and regulations promulgated thereunder.

Section 10.03 ABATEMENT OF SOLID WASTE NUISANCES. (1) The Administrator may, or upon the written and signed complaint to the Administrator, by any person, public agency or public body, the Administrator shall investigate to determine whether or not any storage, collection, maintenance or display of solid waste is in violation of Section 10.01 of this ordinance. The Administrator may request the assistance of the Lincoln County Sheriff for the purpose of conducting preliminary investigations of any complaints filed pursuant to the ordinance or investigations instituted by the Administrator. The Administrator or any officer investigating

may enter upon the property concerned for investigation purposes.

(2) After investigation, if the Administrator finds reasonable cause to believe a public nuisance exists, he shall give written notice thereof to the Board and to the alleged violator.

(3) The Board may then order that a notice be issued and served upon the owner, tenant, occupant or person in possession of the premises where the nuisance is alleged or claimed to exist, requiring such person or persons to appear before the Board at the time and place stated in the notice to show cause why a nuisance should not be declared to be existing on the premises. Unless the Board finds that there is an immediate and serious hazard to the health or safety of the public, time set for the hearing shall not be less than 15 nor more than 40 days from the date of notice.

(4) At the time and place described in said notice, the Board shall conduct a public hearing on the existence of the alleged nuisance. The Administrator shall report his findings. The persons served with notice shall be permitted to cross-examine the Administrator or other witnesses and to present evidence or to make a statement on their own behalf. Any interested person, public agency or public body who requests the opportunity shall be heard, subject to the right of the persons served with notice to cross-examine. The Chairman of the Board shall have witnesses placed under oath.

(5) If the Board finds that a nuisance exists, it shall declare the existence of a nuisance within a time specified the Board may order a suit to be brought in the name of the county for its abatement.

(6) Where a writ of abatement from an appropriate court is obtained in a suit brought under this section, the County may remove from the subject premises the solid wastes or wastes found to be the cause of such nuisance. The cost of such collection shall be paid by the person or persons found by the Board and the Court to be responsible for the creation or maintenance of the nuisance and shall be a lien upon said premises until paid. The owner of the premise and any tenant or lessee shall be jointly and severally liable for such costs.

(7) The County or its agents shall not be liable for any trespass to, or conversion of, any real or personal property reasonably occurring in removing said waste or solid waste.

(8) The provision of this section are in addition to and not in lieu of the penalty described in Section 11.04 of this ordinance.

ARTICLE VIII. APPEALS, ABATEMENT AND PENALTIES.

Section 11.01. APPEALS. All decisions of the Board under this ordinance shall be reviewable by the Circuit Court of the State of Oregon for the County of Lincoln.

Section 11.02. APPEALS FROM DECISIONS OF THE ADMINISTRATOR. The Board may, upon its own motion or upon the request of an interested person or affected public agency or public body, review the decisions of the Administrator made pursuant to this ordinance and may uphold, modify, rescind or leave standing, the decision of the Administrator. For this purpose, the Board may request the recommendation of the Committee and the Board may hold a public hearing with notice to interested persons, public agencies or public bodies.

Section 11.03. ABATEMENT. (1) The accumulation, storage, collection, transportation or disposal of solid wastes by any person in violation of this ordinance or regulations promulgated thereunder is a nuisance and the Board or the District Attorney may, in addition to other remedies provided by law or by this ordinance, institute injunction, mandamus abatement or other appropriate legal proceedings to temporarily or permanently enjoin or abate such storage, accumulation, collection, transportation or disposal.

(2) The provisions of this section are in addition to and not in lieu of penalties described in section 11.04 of this ordinance.

Section 11.04. PENALTIES. The violation of sections 7.01, 7.15, 8.02, 10.01, or 10.02 of this ordinance shall be deemed to be a misdemeanor and shall be punishable upon conviction by a fine of not more than \$500.00 or ny imprisonment in the county jail for not more than six months or both.

ARTICLE IX. CONSTRUCTION; REPEAL OF CONFLICTING ORDINANCES, EFFECTIVE DATE AND EMERGENCY CLAUSE.

Section 12.01. CONSTRUCTION. Any findings by any court of competent jurisdiction that any portion of this ordinance is unconstitutional or invalid shall not invalidate any other portion of this ordinance.

Section 12.02. REPEAL OF CONFLICTING ORDINANCES. Any portion of any other ordinance previously enacted by this County which is inconsistent with the provisions of this ordinance is hereby repealed.

Section 12.03. EMERGENCY CLAUSE AND EFFECTIVE DATES. (1) Sections 10.01 and 10.03 of this ordinance shall not take effect until 30 days after enactment of this ordinance as provided in ORS 459.120.

(2) In order to provide the necessary storage, collection, transportation and disposal of wastes and solid wastes in Lincoln County and thereby preserve the health, safety and welfare of the residents and inhabitants of the county, an emergency is declared to exist and the terms and provisions of this ordinance, except sections 10.01 and 10.02, shall become effective upon enactment of this ordinance.

REGULARLY PASSED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LINCOLN, THIS 16th DAY OF March, 1971.

BOARD OF COUNTY COMMISSIONERS FOR LINCOLN COUNTY.

Albert R. Stand
Chairman
[Signature]
Commissioner
Arady Zadwick
Commissioner