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BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR THE COUNTY OF LINCOLN

ORDINANCE # 198

Lincoln County Legal Counsel

AN ORDINANCE AMENDING ORDINANCE #155, CHAPTER TWO, SECTIONS 2.105 THROUGH 2.255, AMENDING, REPEALING, OR ADDING CERTAIN SECTIONS, AND DECLARING AN EMERGENCY

SECTION I: REASONS FOR AMENDMENTS

WHEREAS Lincoln County currently has two franchises for the collection, transport, and disposal of sewage; and

WHEREAS sections 2.105 through 2.255 contain ordinance provisions which regulate existing franchises and other franchises which have expired; and

WHEREAS a separate ordinance has been adopted to manage solid wastes;

NOW, THEREFORE, THE BOARD finds that amendments to sections 2.105 through 2.255 are necessary in order to delete reference to solid waste but continue to reflect existing contractual rights of sewage collection and disposal franchises;

SECTION II: THE LINCOLN COUNTY BOARD OF COMMISSIONERS ORDAINS as follows:

2.100 Purpose

The purpose of sections 2.100 through 2.225 is to provide a coordinated management program for collection, transportation, and disposal of sewage, including:

- (1) its safe and sanitary accumulation, storage, collection, transportation, and disposal;
- (2) the prevention of disposal on private property in such manner as to create a public nuisance, a hazard to health, or a condition of unsightliness;
- (3) a coordinated county-wide management plan in cooperation with federal, state, and local agencies

responsible for the prevention, control, or abate-

- (4) "Compensation" means any type of consideration paid for service, including, but not limited to, direct or indirect compensation by tenants, licensees, or similar persons.
- (5) "Dispose" or "Disposal" mean accumulating, storing, collecting, and transporting sewage.
- (6) "Franchise" means a franchise to provide service issued by the Board pursuant to sections 2.100 through 2.225.
- (7) "Service" means disposal by private persons for compensation.
- (8) "Service Area" means the geographical area in which service, other than operation of a disposal site, is provided by any person.
- (9) "Sewage" means water and non-water-carried human and animal wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments, or other places, together with such ground water infiltration, surface waters, or industrial waste as may be present.
"Sewage" includes wastes generated by privies, vault privies, and chemical toilets, and excludes waste generated by a sewage treatment plant.
"Sewage" does not include "solid waste" as defined in section 2.1005(14) of the Lincoln County Code.

2.115 Administration

The administrator, under the supervision of the Board and with the assistance of the committee, shall be responsible for the enforcement of sections 2.100 through 2.225. In order to carry out his duties, the administrator may enter on the premises of any person regulated by sections 2.100 through 2.225 at reasonable times and in a reasonable manner to determine compliance with said sections.

2.120 Persons and Agencies Exempted

Sections 2.100 through 2.225 shall not apply to:

- (1) areas lying within the limits of any incorporated municipality;
- (2) agricultural operations.

2.125 Solid Waste Advisory Committee

The Solid Waste Advisory Committee created pursuant to this chapter shall have the duties prescribed by this chapter, and in addition other duties as requested by the Board, including recommendations on development and implementation of a management plan and any necessary amendments to this chapter.

2.130 Regulation of Sewage Management

Upon its own motion, or upon recommendation of the committee, the Board may adopt rules implementing sections 2.100 through 2.225.

2.135 Prohibition

No person shall provide service for compensation except as authorized by a franchise issued pursuant to sections 2.100 through 2.225.

2.140 Applications for Franchises

- (1) Application for a franchise shall be made on forms provided by the administrator. The administrator may require such additional information as necessary to determine compliance with sections 2.100 through 2.225, ORS chapter 459, and other applicable rules and laws.
- (2) Applications shall include:
 - (a) proof the applicant has sufficient vehicles, equipment, land, facilities, and personnel;
 - (b) proof the applicant 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) evidence of good moral character, or, if the applicant is a business entity, that the principal partners or officers are of good moral character;
- (d) evidence that the applicant has sufficient experience in providing service of a comparable quality and quantity to ensure compliance with this chapter. 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 of 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.

- (3) Applicants shall specify the nature, type, and extent of service to be provided.

2.145 Specific Franchise Requirements

An applicant for a franchise shall:

- (1) submit a statement that, as a franchisee, he will use disposal sites authorized by the Board;

- (2) submit evidence that he is 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 so to do, 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) if applying for all, or part, of a franchised area, have available on the first day of proposed service equipment equal to that presently used in providing such service and that service would equal existing service.

2.150

Review of Applications for Franchises

- (1) Applications shall be reviewed by the administrator who will make such investigation as he deems appropriate.
- (2) The administrator shall notify all franchisees and applicants for a franchise of any application affecting the franchisee or application.
- (3) 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;
 - (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 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, modify, or attach appropriate conditions and shall transmit such recommendations within 60 days from the date of the first meeting on the application.

2.155 Board Action on Applications for Franchises

Upon receipt of the committee's recommendation, the Board, after published notice, shall conduct a public hearing on the application. The Board may require additional investigation by the administrator or the committee if it finds that there is insufficient information on which to base its action. Within 60 days of the public hearing, the Board shall affirm, deny, or modify the findings of the committee and make an order granting, denying, or modifying the application or attaching conditions thereto. The Board may suspend

operation of this section 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.

2.160

Exclusive or Joint Service Under a Franchise

- (1) If, upon recommendation of the committee, the Board finds that an applicant for a franchise cannot provide service to a single customer, a group or type of customer, or for a particular type or unusually large quantity of solid wastes, it may issue a franchise for joint service with another person who can provide such service. If the Board finds that an 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 franchisee is unable to provide service for a particular type or unusually large quantities of sewage, the administrator may permit the franchisee to subcontract for such service if it is found that the quality and extent of service would not be jeopardized. The administrator may require the filing of such information as is necessary. The administrator may request the recommendation of the committee on the subcontract.
- (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 the person to serve a defined service area or customers.

Responsibilities of Franchisees

- (1) Except as provided in subsection (3) of this section, no franchisee shall discontinue service until he has:
 - (a) given 90-days' written notice to affected customers in his service area;
 - (b) given 90-days' written notice to the administrator;
 - (c) obtained approval of the Board.
- (2) If a 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;
 - (b) refusal to provide service to customers failing to pay for services in accordance with rates established pursuant to this chapter. Holders of franchises shall not discontinue service under this paragraph without 10-days' written notice to the customer and to the administrator. If 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 2.190;
 - (d) refusal of service to a customer if the administrator finds that service at the particular location would be contrary to public safety; the

customer has not provided reasonable access;
or, weather conditions prevent service to
the particular customer;

- (e) subcontracts under franchises pursuant to section 2.160 if 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, and information he deems necessary to ensure compliance.

2.170 Enforcement of Franchise Provisions

- (1) In addition to other remedies provided by this chapter, the administrator shall, upon reasonable cause, make an investigation to determine if there are grounds to suspend, modify, revoke, or refuse to renew a franchise as provided in this subsection. If, in the judgment of the administrator, there is evidence showing a violation of this chapter, state statutes, administrative rules, or the terms of a franchise, the administrator shall notify the franchisee in writing of the alleged violation. If, in the opinion of the administrator, the violation is not corrected the matter shall be referred to the Board.
- (2) The Board, after published notice, shall conduct a public hearing on the alleged violation and may suspend, modify, revoke, or impose conditions on the franchisee.

2.175 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, 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 franchisee to provide service or to use and operate the land, facilities, or equipment, 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.

2.180 Franchise Term

- (1) Unless the Board finds that, in the public interest, a longer or shorter term is required, the term for franchises shall be 10 years.
- (2) Franchises may be renewed as provided in section 2.140

2.185 Franchise Fees

A fee of \$25 per collection vehicle exceeding 6,000 pounds gross weight shall be collected by the administrator on January 1 of each year.

2.190 Transfer and Encumbrance of Franchises

- (1) A franchisee may transfer his franchise, or a portion thereof, to other persons only upon written notice to, and approval by, the Board. The Board shall approve a transfer if it finds that the transferee meets all applicable requirements met by the original franchisee. The Board shall approve or disapprove any ap-

plication for transfer of a franchise within 60 days of receipt of notice by the Board. The Board may conduct a public hearing on a transfer if there is a question of public health or safety involved.

- (2) 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 chapter. The Board may attach whatever conditions it deems appropriate to guarantee maintenance of service.

2.195 Rates

- (1) Upon recommendation by the committee, the Board may:
 - (a) approve rates as proposed by franchisee if it finds that such rates are not unreasonable and are not substantially higher than those charged for similar services;
 - (b) establish an interim rate until the Board completes a final review of the rate.
- (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 shall give due consideration to:
 - (a) the investment in facilities and equipment;
 - (b) the services of management;
 - (c) the local wage scales;
 - (d) the concentration of customers in the area served;

- (e) methods of storage, collection, transportation, disposal, salvage, recycling, or reuse;
 - (f) a reasonable return to the franchisee;
 - (g) the length of haul for disposal;
 - (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 which must be anticipated in equipment, facilities, personnel, or land;
 - (l) extra charges for special pickups or pickups on days when service is not normally provided on a collection route;
 - (m) cost of compliance with laws, ordinances, or regulations and rules of public agencies or bodies having jurisdiction;
 - (n) 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.

2.200 Rate Preferences Prohibited

- (1) No franchisee subject to rate regulations by this chapter shall give any rate preference to any person or locality.

- (2) Nothing in this section is intended to prevent:
- (a) the reasonable establishment by franchisees of uniform classes of rates based upon length of haul, collection and transportation requirements, 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 charitable, community, civic, or benefolent purpose.

2.205 Payment

Any person who receives service shall be responsible for payment for such service. Landlords shall be responsible for service provided if the tenant does not pay.

2.210 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 body, review any decision of the administrator or committee and may affirm, modify, or rescind the decision of the administrator. In reviewing appealed actions, the Board may request the recommendation of the committee, and hold public hearings after notice to affected persons.

2.215 Creation of Nuisance Prohibited

- (1) Except as otherwise provided in sections 2.100 through 2.225, no person shall store, collect, maintain, or display sewage 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 sewage in violation of this

section shall be considered a public nuisance which may be abated as provided in subsection (2) hereof.

- (2) Where it appears to the Board that a nuisance exists, the Board may order a notice to be issued and served upon the owner and the occupant of the property where the nuisance is alleged to be maintained, requiring the owner and 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 be not less than 10 days after the service of the notice. The notice shall be served in the manner provided by law for the service of summons.
- (3) At the time and place fixed in the notice provided for by subsection (2) above, the Board shall hold a hearing on the question of the existence of the nuisance and shall have power to subpoena witnesses and 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. If the owner or occupant of the property fails to abate the nuisance within 30 days after the entry of the order, the Board may cause the nuisance to be abated and charge the costs thereof to the owner of the property.
- (4) The remedies herein provided are in addition to, and not in substitution for, any other remedies provided by law.

2.220 Unauthorized Dumping Prohibited

Except as otherwise provided in sections 2.100 through 2.225:

- (1) no person shall dispose of sewage on any land not a disposal site authorized by the Board;
- (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) nothing in this section shall prohibit the accumulation or temporary storage of sewage in receptacles provided for that purpose in compliance with ORS chapter 459 and rules promulgated thereunder.

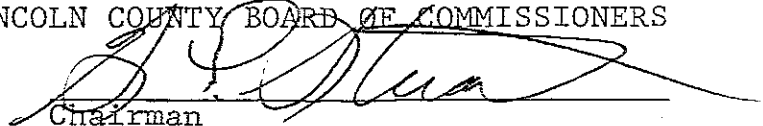
2.225 Penalties

Violation of sections 2.100 through 2.225, or any rules or regulations adopted by the Board pursuant to this title shall be deemed to be a violation of county laws and is punishable upon conviction by a fine of not more than \$500; provided, however, that each day of continued violation is a separate offense and is separately punishable, but may be joined in a single prosecution. In addition, county shall have the right to pursue any additional remedy provided to it under law.

SECTION III: EMERGENCY CLAUSE

This ordinance, being necessary for the immediate preservation of the public peace, health, safety, and welfare, an emergency is declared to exist and this ordinance takes effect on its adoption. DATED this 14th day of September, 1983.

LINCOLN COUNTY BOARD OF COMMISSIONERS


Chairman

Excused

Commissioner


Commissioner