

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR THE COUNTY OF LINCOLN

ORDINANCE # 199

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Lincoln County Legal Counsel

AN ORDINANCE AMENDING ORDINANCE #155, CHAPTER TWO, AND DECLARING
AN EMERGENCY

The Lincoln County Board of Commissioners ORDAINS
as follows:

SECTION I: Chapter Two is hereby amended
by adding the following sections:

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2.1000 Purpose, Policy and Scope

- (1) In order to protect the health, safety, and
welfare of the people of Lincoln County and
to provide a solid waste management program,
it is declared to be the public policy in
the county to regulate solid waste
management to:



- (a) Provide for a coordinated solid waste management program and administration with cities within Lincoln County and with other counties or cities under existing and future regional programs.
- (b) Provide standards, regulations and franchising to ensure the safe and sanitary accumulation, storage, collection, transportation and disposal or resource recovery of solid wastes and ensure maintenance of solid waste collection, resource recovery and disposal service.
- (c) Encourage research, studies, surveys and demonstration projects to develop a safe, sanitary, efficient and economical solid waste management system.
- (d) Provide for research, development and promotion of and public education in technologically and economically feasible resource recovery including, without limitation, recycling and reuse by and through the franchisees and other persons.
- (e) Eliminate duplication of service or routes to conserve energy and material resources, reduce air pollution, noise pollution, truck traffic and increase efficiency, thereby minimizing consumer cost for solid waste disposal and costs to Lincoln County in providing basic services.

- (f) Encourage the use of the capabilities and expertise of private industry and encourage volunteer efforts in accomplishing the purposes of this ordinance.
- (g) Provide equitable classes of rates to classes of users of solid waste services that are just, fair, reasonable and adequate to provide necessary services to the public, justify investment in solid waste management systems and provide for equipment and systems modernization to meet environmental service requirements and current technology.
- (h) Minimize the cost and burden of regulation, administration and enforcement.
- (i) Provide for public input in solid waste management.
- (j) Carry out local government responsibility and authority for solid waste management under Oregon Revised Statutes chapter 459 and carry out the mandate for waste reduction under chapter 773, Oregon Laws 1979.
- (k) Provide financial security for the repayment of investments in:
 - (A) collection and disposal equipment;
 - (B) a regional landfill provided by any franchisee under this ordinance including, but not limited to,

complying with minimum financial security requirements imposed by the Oregon Environmental Quality Commission, the State of Oregon and Lincoln County in financing such a site;

(C) future collection, disposal and resource recovery facilities.

(2) After public hearing held on 11/24/82 and subsequent continued hearings to consider this ordinance and upon the basis of evidence submitted therein, the Board finds that:

(a) This ordinance is authorized by ORS Chapter 459.015, 459.055, 459.065, 468.220(6), 459.085, 646.740(6), 279.011-279.061, ORS Chapter 203 and OAR 127-10.040, together with rules or regulations promulgated under the foregoing, and is in compliance with Goals No. 6 on Environment and No. 11 on Public Facilities adopted by the Land Conservation and Development Commission, the Lincoln County Comprehensive Plan, the Lincoln County Solid Waste Management Plan, the Oregon Department of Environmental Quality, Solid Waste Management Plan and the Lincoln County Waste Reduction Plan.

(b) To achieve the purposes and carry out the policy of this ordinance; to carry out the mandate of ORS 459.015 for local government to provide for a solid waste

management program; and to carry out the planning and waste reduction required of local government by ORS 459.055 and 468.220; it is necessary for Lincoln County, in cooperation with other affected governmental units, to:

- (A) Set the levels of service necessary for and required by the public in the fields of solid waste collection; solid waste disposal; and the recycling or reuse of source separated wastes.
 - (B) Make the necessary long-term governmental commitment to assure the investment in service facilities, equipment, personnel and financial capital; and to assure service to the public.
 - (C) Evaluate the costs of the various services and how that cost is to be collected or assessed.
- (c) To carry out Paragraphs a and b of this subsection, it is necessary to:
- (A) Reasonably regulate competition through a comprehensive program of solid waste management;
 - (B) Assign exclusive responsibility to one or more persons for each specified and regulated solid waste management service and service

territory and to issue a franchise to such person or persons;

- (C) Review service rates to the extent specified to protect consumers and the public generally and to assure adequate public service.
- (D) Select persons to provide service on the basis of their demonstrated ability, capability, expertise, and experience in providing the service together with their equipment, management facilities, personnel, and financial capability and investment available to provide service.
- (E) In appropriate cases, the Board may contract for public education in recycling and reuse, and contract for the promotion of recycling and reuse.
- (F) Recognize that the Congress, through the Resource Conservation and Recovery Act of 1976, the Oregon Legislature in ORS chapter 459, and the Oregon Environmental Quality Commission, Department of Environmental Quality, Land Conservation and Development Commission and the Lincoln County Board and Planning

Commission have, by developing and implementing a regional disposal site program, created a disposal monopoly. Under the regional program and concept, only a few regional disposal sites will be permitted in all of Western Oregon to force waste concentrations to finance environmentally acceptable disposal sites and methods and enhance the opportunities for resource recovery. Thus, only two municipal waste disposal sites have been permitted for disposal in a service area encompassing one county and future legislative action may limit this to one disposal site and a limited number of transfer stations.

- (G) Assign service territories to assure that persons in geographically remote or otherwise nonlucrative areas receive adequate solid waste collection and disposal services.

2.1005 Specific Definitions.

As used in this ordinance, unless the context otherwise requires:

- (1) "Administrator" means county sanitarian or other person designated by resolution of the Board to administer provisions of this

chapter, and the duly authorized deputy or assistant of such person.

- (2) "Board" means the Lincoln County Board of Commissioners.
- (3) "Collection Vehicle" means any vehicle used to collect or transport solid waste.
- (4) "Committee" means the Solid Waste Advisory Committee created pursuant to this chapter.
- (5) "Disposal Site" means land and facilities used for the disposal, handling, processing or transfer 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 indirectly or through a service, and which is used by the owner or tenant thereof to dispose of sawdust, bark, soil, rock, building demolition material, or nonputrescible industrial waste products resulting from the process of manufacturing.
- (6) "Franchise" means a general privilege to provide specified solid waste management services in a service territory issued by the

Board. A "franchisee" is the holder of a franchise.

- (7) "Hazardous Waste" means any solid waste as defined by or pursuant to ORS Chapter 459 and any solid waste that may by itself or in combination with other solid wastes, be infectious, explosive, poisonous, caustic, toxic, or otherwise dangerous or injurious to human, plant, or animal life. "Hazardous waste" shall also include "hazardous waste" as defined by other governmental units which have legislative or administrative jurisdiction.
- (8) "Incinerator" means combustion devices specifically designed for the reduction of solid wastes by burning.
- (9) "Landfill" means any tract or parcel of land at which solid waste is disposed of in or onto the land.
- (10) "Service Territory" means the geographic area in which, pursuant to the solid waste franchise service shall be provided to every person requesting service of the type specified in the solid waste franchise.
- (11) "Person" means any individual, partnership, association, corporation, trust, firm, estate, joint venture or other private entity or any public agency.
- (12) "Putrescible Material" means organic matter that can decompose by bacteria, fungi and oxidation, resulting in the formation of foul smelling products.

- (13) "Service" means disposal, collection, transfer, or transportation of solid waste by persons.
- (14) "Solid Waste" means all solid and semi-solid putrescible and non-putrescible waste, including, but not limited to, garbage, rubbish, refuse, ashes; waste paper, corrugated paper, and cardboard; grass clippings; composts; residential, commercial, industrial, demolition, and construction waste; discarded residential, commercial, industrial appliances, equipment, and furniture; discarded, inoperable, or abandoned vehicles or vehicle parts, and vehicle tires; manure, vegetable or animal solid and semi-solid wastes and small dead animals.

"Solid Waste" does not include "sewage", as defined in section 2.110(9).

- (15) "Solid Waste Franchise" means a franchise to provide service as issued by the Board pursuant to sections 2.1060 through 2.1075.
- (16) "Solid Waste Management" means storage, collection, transportation, treatment, utilization, processing, and final disposal or salvage, recycling, or reuse of solid waste and sewage and necessary facilities therefor.
- (17) "Waste shall mean useless, unwanted, or discarded materials. The fact that materials, which would otherwise come within the definition of solid waste or waste, may, from time to time, have value and thus be utilized shall not remove them from the definition. The term "waste" does not include:

- (a) Environmentally hazardous wastes as defined in ORS 459.410.
- (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 nonagricultural purposes.
- (c) Septic tank and cesspool pumping or chemical toilet waste, or refuse from sewage treatment plants.
- (d) Reusable beverage containers as defined in ORS 459.860.

2.1010 Administration.

- (1) The administrator, under the supervision of the Board and with the assistance of the committee and the Code enforcement officer designated under Chapter 10 of the Lincoln County Code, shall be responsible for the enforcement of this ordinance. In order to carry out their respective duties, the administrator and Code enforcement officer may enter upon the premises of any person subject to the provisions of this ordinance at reasonable times and in a reasonable manner to determine compliance with this ordinance.
- (2) The administrator shall also review applications for solid waste franchises and make appropriate recommendations to the Board, as provided for in this ordinance.

- (3) The administrator shall establish service territories, subject to Board approval, as provided for in this ordinance.

2.1015 Solid Waste Advisory Committee

- (1) There is created the Solid Waste Advisory Committee. The committee shall have nine members appointed by the Board, including:
 - (a) County sanitarian, or his authorized representative.
 - (b) Two franchisees.
 - (c) Six citizen members representative of incorporated and unincorporated geographical areas of the county.
- (2) Members of the committee shall be appointed for 2-year terms and serve at the pleasure of the Board.
- (3) The Board shall appoint one member as chairman. Five members 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, may call a special meeting with 10-days' notice to other members of the committee.
- (4) The committee shall keep regular minutes of all meetings and provide copies of the minutes to the Board following each meeting.

2.1020 Duties of the Solid Waste Advisory Committee

- (1) In addition to other duties prescribed by this chapter, the committee shall make an

annual report to the Board containing recommendations on development and implementation of a solid waste management plan.

- (2) The committee shall, upon request by the Board, review any proposed changes in the rates charged for service by solid waste franchisees in accordance with the factors in section 2.1120(5), and reach a determination as to the reasonableness of the proposed rates under review and provide a written report to the Board concerning the same. The Board shall thereafter act upon the committee's recommendation in accordance with the provisions of this ordinance.

2.1025 Regional Solid Waste Committee

The Board may appoint one or more members of the committee to serve on any regional solid waste committee.

2.1030 Regulation of Solid Waste Management

Upon its own motion, or upon the recommendation of the committee, the Board may adopt rules implementing the provisions of this ordinance.

2.1035 Prohibitions

- (1) Unless exempted by subsections (2) through (7) of this section, no person shall solicit advertise for, or provide service except as authorized by a franchise issued pursuant to sections 2.1060 through 2.1075.

- (2) Nothing in this ordinance requires a franchise of the following persons or for the following business or practices:
- (a) The collection, transportation and reuse of repairable or cleanable discards by a private charitable organization regularly engaged in such business or activity including, without limitation, Salvation Army, St. Vincent DePaul, Goodwill, YMCA and similar organizations.
 - (b) The collection, transportation and reuse or recycling of totally source separated materials or operation of a collection center for totally source separated materials by a religious, charitable, benevolent or fraternal organization, which organization was not organized or operated for any solid waste management purpose and which organization is using the activity for fund raising including, without limitation, scouts and churches.
 - (c) The collection, transportation or redemption of returnable beverage containers under ORS Chapter 459 and that portion thereof commonly known as the "Bottle Bill."
 - (d) The generator or producer who transports and disposes of waste created as an incidental part of regularly carrying on the business of: auto wrecking, to the extent licensed by the State of Oregon;

janitorial service; gardening or landscaping service.

"Janitorial service" does not include primarily or solely accumulating or collecting wastes created, generated or produced by a property owner or occupant.

(e) A contractor employed to demolish, construct or remodel a building or structure, including but not limited to land clearing operation and construction wastes, when hauling waste created in connection with such employment in equipment owned by the contractor and operated by the contractor's employees as employees.

(f) Transportation by a person of solid waste generated or produced by such person to disposal sites, resource recovery sites or market so long as such person complies with this ordinance, other county ordinances and ORS Chapter 459, relating to solid waste management and regulations promulgated under any of the foregoing.

For purposes of this subsection, waste is "generated or produced by" the individual owner or occupant of a residential dwelling unit, whether the unit is individually owned, non-owner

occupied or grouped through an association or cooperative of property owners, and not by the landlord, property owner, cooperative or association or property manager or agent of such landlord, property owner, property manager, cooperative or association.

(g) The collection by the County or other subordinant jurisdiction of leaves or similar wastes and transportation to a disposal site, resource recovery site or market.

(3) Nothing in this ordinance requires a franchise for the purchase of totally source separated solid wastes for fair market value.

(4) Except as may be provided by agreement with a city, nothing in this ordinance shall apply within the boundaries of any incorporated city.

(5) Nothing in this ordinance shall apply to a disposal site which:

(a) Is a sludge lagoon, sludge treatment facility, or disposal site for septic tank or cesspool cleanings.

(b) A landfill which is used by the owner or person in control of the premises to dispose of rock, soil, concrete or other similar non-decomposable material.

(c) Is a portion of land or a facility specifically operated under the requirements of ORS 468.740 for a waste

water discharge permit and in compliance with all Oregon Environmental Quality Commission regulations on solid waste management.

- (d) Is land on which solid wastes are used for fertilizer or for other productive purposes in agricultural operations and the growing or harvesting of crops and the raising of fowl or animals.
- (6) Nothing in this chapter requires a franchise for the operations of a collection center for totally source-separated materials operated under a contract with the county.
- (7) Nothing in this chapter shall require a person who has a disposal site franchise issued by any city in this county to obtain a disposal site franchise under this chapter for the same disposal site franchised by the city.

2.1040 Requirements for Disposal Site Franchise

- (1) Applicants for a disposal site franchise shall submit:
 - (a) a duplicate of the site information submitted to the Oregon Department of Environmental Quality under ORS chapter 459;
 - (b) a plan for rehabilitation and use of the site after disposal has been terminated. The plan shall have a scale of 1"=400' with topographical contours at intervals of not less than 25 feet. In the discretion of the Board, the applicant may

be required to furnish a plan showing greater detail to ensure compliance with applicable standards. Amended plans may be submitted for approval in the same manner as the initial plan.

- (c) An agreement signed by the applicant and the landsite owner containing the following if the land upon which a disposal site would be located is privately owned:
- (A) A right of entry upon the subject premises for inspection by the administrator.
 - (B) A promise to properly establish, maintain, and operate the disposal site as required by this ordinance and any other applicable statutes or rules.
 - (C) A promise to rehabilitate or restore the site upon termination of disposal under the land use plan submitted pursuant to subsection (b) hereof.
 - (D) Permission for the county to rehabilitate or restore the site if the landowner or franchisee does not comply with the agreement or franchise terms. County reserves the right to seek reasonable reimbursement from franchisee if rehabilitation by county is necessary.

- (d) The Board may, by order, cause any agreements executed pursuant to this section to be entered in the deed records of the county.
- (2) Applicants shall specify the type of disposal site and the transfer, disposal, processing, or resource recovery method or combination thereof to be employed, together with any proposed special regulations dealing with hazardous wastes or what waste will be accepted or rejected at the disposal site.
- (3) The applicant must show to the satisfaction of the Board that applicant:
- (a) Has available land, equipment, management, facilities, and personnel to meet the standards established by this ordinance, ORS chapter 459, and the rules and regulations thereof; and has insurance equal to that required for a solid waste franchise.
- (b) Has sufficient experience to ensure compliance with this ordinance and any regulations thereunder. If the applicant does not have sufficient experience, the Board may either deny the application or require the applicant to submit a corporate surety bond in the amount of up to \$300,000 guaranteeing full and faithful performance by the applicant of the duties and obligations of a franchise holder under the provisions of this ordinance and compliance with all applicable laws.

- (c) In determining whether or not a bond, insurance, or other financial assurance is required during construction, operation, closure, or post-closure of a disposal site, and the amount thereof, the Board shall give due consideration to the size and type of the site, the solid waste handling methods proposed, the population or type of customers to be served, alternative sites, availability of the bond, cost to the ratepayer, adjacent or nearby land uses, the potential danger of failure of service and such other factors as the Board deems relevant.
 - (d) When requesting a transfer of franchise, the applicant must submit, as part of the application, a letter from the current franchisee requesting said transfer.
 - (e) Notwithstanding other provisions of this subsection, those requirements specifically relating to a landfill shall not be applicable to a transfer station, incinerator, resource recovery facility, compost plant, or similar disposal facility.
- (4) Before issuance of a disposal site franchise, applications shall be reviewed by the administrator. The administrator shall make such investigation as he deems appropriate. Written notice of the application shall be given by the administrator to any person who holds a disposal site 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 administrator shall issue findings on the qualifications of the applicant and whether or not additional service, land, equipment, or facilities should be provided and what conditions of service should be imposed, including without limitation, whether the site should be opened to the public and under what conditions, whether or not certain types of wastes, solid wastes, or hazardous wastes should be excluded from the site or types of wastes which 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, whether the site complies with all rules and regulations adopted pursuant to this ordinance or ORS chapter 459. The Board may impose any conditions deemed necessary to carry out the purposes and policy of this ordinance. On the basis of these findings, the administrator shall recommend to the Board whether or not the application should be granted, denied, or modified. The Board shall conduct a public hearing to consider the application as provided for in section 2.1070.

- (5) A disposal site franchise applicant shall submit a proposed rate structure for charges associated with disposal of solid waste in

the applicant's disposal site. The rate structure shall be subject to review in the same manner as provided in section 2.1120.

- (6) Upon receipt of said order granting a franchise, the applicant shall enter into a written franchise agreement with the county.
- (7) These provisions are in addition to, and not in lieu of, any provisions of the county zoning ordinance and comprehensive plan.
- (8) Disposal site franchisees shall supply disposal services covered by their franchises to those persons who contract for disposal, handling, or recovery of solid wastes collected under a franchise; those local government units and public agencies located within the county for wastes generated by activities of such units or agencies; and, subject to limitation by the Board, members of the general public hauling wastes generated by such person and not collected from other persons.
- (9) All service under a franchise shall be subject to applicable laws, rules, regulations, and ordinances; and decisions of administrative, legislative, and judicial agencies having jurisdiction.
- (10) Franchisee may discontinue service to any customer in the following cases:

- (a) where weather or safety conditions prevent said service;
- (b) where access is blocked;
- (c) where the user does not pay any rate schedule or authorized payment;
- (d) where prevented by Act of God, public enemy or vandal;
- (e) where user violates any reasonable regulation imposed by franchisee or any governmentally imposed regulation.

2.1045 Disposal Franchise Fees

An annual fee to be established by order of the Board shall be assessed on a disposal site franchise based on the cost of monitoring the franchised site. The annual disposal site franchise fee, if any, shall be payable to the Board on December 31 of each year. Where reasonably required by the Board, a disposal site franchisee shall maintain books and records disclosing gross receipts at the disposal site, which books and records shall be available at reasonable times and places for audit by authorized personnel of the county.

2.1050 Length of Term

The term of a disposal site franchise shall be determined by the Board following a recommendation from the administrator. The recommendation shall be based upon site longevity, population to be served, and probable use, but not to exceed 25 years. The term of the disposal site franchise shall be provided for in the written franchise agreement between franchisee and county referred to in subsection 2.1040(6).

2.1055 Renewal of a Disposal Site Franchise

- (1) The Board and the franchisee may, by mutual agree-

ment, renew the franchise pursuant to this ordinance.

- (2) Renewal of a franchise shall be based upon application filed with the administrator. The application and procedure for review and renewal shall be the same provided in section 2.1040. The grounds for denial shall be those specified in section 2.1040 and/or inability of the applicant to demonstrate continuing compliance with criteria set forth in this ordinance.

2.1060 Applications for Solid Waste Franchises

- (1) Application for a solid waste franchise shall be made on forms provided by the administrator. Within 15 days from the effective date of this ordinance, the administrator shall advertise in a newspaper of general circulation to solicit solid waste franchise applications. Said advertisement shall state that franchise applications will be received for a period of two weeks following the advertisement and will be opened at the next regular meeting of the Board following that period. The advertisement shall inform prospective franchisees of the application procedures and identify the service territory required to be served by the franchise being advertised. No application received after the expiration of the two-week period will be accepted.

- (2) In the event a franchise is to be terminated for any reason, the administrator shall advertise for franchise applications to replace the franchise to be terminated. Said advertisement and subsequent franchise award shall be conducted pursuant to the provisions of subsection (1) above, and shall be coordinated in such a manner as to prevent a lapse or interruption of service. In the event it is not possible to prevent a lapse or interruption of service through solicitation of franchise applications, the Board may take appropriate measures pursuant to section 2.1085. Upon receipt of the franchise applications, the administrator shall review the applications and require such additional information as necessary to determine compliance with the provisions of this ordinance, ORS chapter 459, and other applicable laws and regulations.
- (3) The administrator shall, upon the basis of the application and evidence submitted, make recommendation to the Board as to the qualifications of the applicant(s) and shall determine which applicant(s) shall be awarded franchises and the service territory to be served by each franchisee. The recommendation shall include findings of fact supporting the recommendation, and a statement of the reasoning supporting the recommendation.
- (4) Applications shall include:
- (a) Proof that the applicant has sufficient collection vehicles, equipment, land, facilities, and personnel;

- (b) Proof the applicant has in force public liability insurance in an 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 up to \$20,000 guaranteeing full and faithful performance by the applicant of the duties and obligations of a franchisee naming county as additional insured.
- (e) Evidence that the applicant has contracted with a disposal site for the right to dispose of wastes collected under and during the term of the franchise. Applicant shall sign a statement which provides that as a franchisee he shall use disposal sites authorized by the Board and that Board approval is required prior to applicant's

disposing of solid wastes in alternate locations, and that the Board may, upon six months' notice to any affected franchisee, by order, direct franchisee to dispose of solid wastes in a specific disposal site; provided, however, that in the event the Board by order selects a disposal alternative in its long-range solid waste disposal plan and makes a finding by language in that order that it is necessary for a franchisee to enter into a contract for a period exceeding 6-months' duration in order to render disposal of solid waste economically feasible, the language contained herein granting the Board authority to direct, upon 6-months' notice to any affected franchisee, that solid wastes be disposed of in a specific disposal site shall automatically by said order be repealed and of no further effect. Nothing contained herein shall affect the authority of the Board to determine authorized disposal sites or affect the requirement that a franchisee obtain Board approval prior to changing the site at which solid wastes are disposed.

- (f) If the applicant is not already serving the territory proposed to be served, applicant shall show that:
- (A) the service territory has not been franchised to another person;
 - (B) the service territory is not being served presently by a franchisee pursuant to any schedule established as a part of the franchise in accordance with this ordinance;
 - (C) the service territory is not being adequately served by the franchisee as evidenced by substantial history of recorded complaints



from customers within the territory
for a change of service to that
area.

- (5) Applicants shall specify the nature, type, and extent of service to be provided; the service territory for which application is made; solid wastes that will not be accepted for collection or disposal; and, any special requirements for the handling of hazardous solid wastes.
- (6) Applicants shall furnish a statement identifying familiarity with and knowledge of the service territory for which application is made. This statement may include information on geographic, demographic, and other characteristics germane to collection of solid wastes in the service territory. Applicants shall also supply a statement describing the proposed routes within the service area, including frequency of collection, hours of service, and other relevant information.

2.1065 Service Territories

Four exclusive service territories shall be established initially by the administrator, subject to Board approval, to ensure that remote or otherwise nonlucrative areas of the county are provided solid waste service. Each franchisee shall serve the service territory specified in the franchise, including all customers eligible for and requesting the type of service authorized by the franchise.



2.1070 Issuance of Collection Franchises

The Board shall conduct a public hearing to consider the application within 30 days of receipt of the administrator's recommendation. Notice shall be served by certified mail on the applicant and any affected franchisee and shall be published once in a newspaper of general circulation within the franchise area not less than seven days prior to the hearing. The Board's decision shall be supported by written findings. The determination of the Board after conclusion of said public hearing shall 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 territory, or a portion thereof, or 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. If the Board finds that an applicant is able to provide adequate service of all types within the service territory, it shall issue an exclusive franchise for that area to applicant. Upon receipt of said order granting a franchise, the applicant shall enter into a written franchise agreement with county. If the Board finds that two or more applicants for a service territory who are otherwise equally qualified, the Board may give preference to the applicant having a record of prior experience and service and who presently serves a majority of the customer and service accounts in the service territory.

2.1075 Solid Waste Franchise Subcontracts

- (1) If a franchise applicant is unable to provide service for a particular type or unusually large quantities of solid waste, the administrator, subject to Board approval, 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 and may request the recommendation of the committee on the subcontract. The administrator shall submit a written recommendation on the subcontract to the Board.
- (2) Upon recommendation of the administrator and a finding by the Board that the need for service 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, requiring the person to serve a service territory or customers.

2.1080 Responsibilities of Franchisees

Franchisees may discontinue service to any customer in the following cases:

- (1) when a change, restriction, or termination of service is required by any public agency;
- (2) when a customer fails to pay for services in accordance with an established rate system. Holders of solid waste franchises shall not discontinue service under this paragraph without 10-days' written notice to the customer. If service has been refused to a customer for failing to pay for service, the franchisee may require a reasonable deposit to guarantee payment for future service before reinstating such service;
- (3) if 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; or the customer has violated a rule or regulation adopted by the Board pursuant to this chapter;

- (4) if a subcontract is signed pursuant to section 2.1075 and the Board has approved the subcontract after finding that the quality or extent of service would not be jeopardized. In making its determination, the Board and/or the administrator may request a recommendation from the committee and information deemed necessary to ensure compliance.

2.1085 Enforcement of Franchises

- (1) If the franchisee shall at any time fail to promptly and fully conform and comply with any duty or obligation herein imposed after written notice to the franchisee and a reasonable opportunity to comply, the Board may authorize county personnel, or others, to perform the same at the sole cost and

expense of the franchisee, and, the franchisee shall immediately become and remain liable to county for any and all loss, expense and cost or damage incurred by county in that connection. 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' written 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) The Board reserves the right to make such further regulations as may be deemed necessary to protect the interests, safety, welfare, and property of the public and carry out policy, purposes, and findings stated herein.
- (3) A franchisee shall at all times be subject to reasonable rules and regulations and any ordinance that may be passed by the Board. A franchisee shall at all times be subject to applicable laws, rules, and regulations of the state of Oregon. A violation of such law, rules, regulations, or ordinance, if found by the Board to be substantial and material to the policy, purposes, and findings stated herein, may be deemed

by the Board as a breach going to the essence of the franchise or permit.

- (4) A franchisee shall be further bound as follows:
- (a) It shall make the payments as herein provided promptly as they become due;
 - (b) Time is of the essence of a franchise;
 - (c) A waiver by county of any breach of any term, covenant, or condition of a franchise of this ordinance shall not operate as a waiver of a subsequent breach of the same or any other term, covenant or condition of a franchise or of this ordinance.
 - (d) If a franchisee shall default in any of the terms, covenants, or conditions required to be performed, or in the payment of any sum required to be paid under the terms of this chapter, and said default shall continue for a period of 15 days after receipt of written notification sent by certified mail by the administrator, then and in that event, the franchise may, at the option of county, be and become null and void and a franchisee shall thereafter be entitled to none of the privileges or rights herein extended and said franchisee shall thereupon cease and desist from any solid waste service under said franchise within the county; provided, however, that county may, at its option, pursue any other and different or additional remedy provided to it at law or in equity.
 - (e) This subsection applies to conditions within the control of a franchisee. Where the de-

fault or breach occurs by reason of lack of specialized equipment, availability of equipment or personnel, or similar reasons, a franchisee shall be given a reasonable opportunity to comply. Nothing in this paragraph shall limit the rights and remedies of county under other provisions of this chapter.

- (f) In the event a franchisee becomes insolvent, then county may, at its option, terminate the franchise and all leases and other agreements, if any, entered into in connection therewith.

2.1090 Enforcement of Ordinance

County has authority to enforce the provisions of this ordinance by administrative, civil, or criminal proceedings or a combination thereof as necessary to achieve compliance with this ordinance.

2.1095 Parties Bound

The terms of a franchise shall be binding upon a franchisee, its heirs, executors, administrators, successors, and assigns.

2.1100 Franchise Term

Unless the Board finds that, in the public interest, a longer or shorter term is required, the term for a solid waste franchise shall be ten years.

2.1105 Franchise Fees

The holder of a franchise granted pursuant to this chapter shall pay the following fees in the manner prescribed:

- (1) Any solid waste franchisee shall pay a fee of three percent of the gross cash receipts from franchised collection service provided to the service territory included in the franchise.
- (2) The collection franchise fee shall be computed and be payable to county annually within 30 days from the anniversary of the franchise agreement. The fee shall be accompanied by a sworn statement of such cash gross receipts. Each collection franchise holder shall maintain sufficient books and records to disclose the gross receipts from the service territory and shall make such books and records available at franchisee's premises at reasonable times and places for audit by authorized county personnel. The Board may specify reasonable requirements for keeping such books and records.

2.1110 Renewal of Solid Waste Franchise

- (1) Renewal of a franchise shall be based on an application filed with the administrator. The procedure for review and renewal shall be the same as provided in sections 2.1060 and 2.1070.
- (2) Based upon timely application of a franchisee, the Board may provide for renewal of the 10-year franchise term or such other term as the Board deems to be in the public interest prior to the expiration of the 10-year franchise term if the following conditions exist:

- (a) franchisee demonstrates a substantial need to purchase additional capital equipment to effectively discharge his obligations under the franchise agreement;
- (b) franchisee, through satisfactory documentation, demonstrates an inability to procure reasonable financing for such additional equipment without a franchise extension or renewal;
- (c) based upon franchisee's record of performance in his service territory, the administrator finds that franchisee has complied with all provisions of this chapter, the franchise agreement, other applicable laws, rules, and regulations, and has adequately and competently rendered solid waste service.

2.1115 Franchise Termination

In the event a franchise is terminated prior to the expiration of the normal franchise term for any reason, the Board may prevent interruption of service as provided in section 2.1085.

2.1120 Rate Structure

County reserves the right, at any time during the period of a franchise, to examine the rate structure of a franchisee and to modify rate changes which, in the discretion of the Board, are reasonably required in view of

the following considerations:

- (1) A franchisee shall have the right to charge and collect reasonable compensation from persons to whom it shall furnish franchised services.

"Reasonable compensation" shall be determined in light of the factors enumerated in section 2.1120(5).

- (2) To facilitate considerations as in this section provided, a franchisee shall furnish and provide to the Board a certified copy of the published rate schedule, which rate schedule shall contain the rates and charges made for all its operations. Said rate schedule, after having been filed as herein provided, shall be kept current and a franchisee shall file with the Board, at least 90 days prior to any contemplated change, a new and revised rate schedule which shall be examined by the Board in an appropriate public proceeding affording due process. Notification of the decision of the Board shall be made to the franchisee by certified mail. In the event of disapproval, franchisee shall not put the new rate schedule into effect, but may file with the Board, either on its own motion or in compliance with the Board's request,

further information to justify the rate schedule changes. Negotiations shall be had in good faith between the parties. The existing approved rate schedule, as of the effective date of this ordinance, shall be deemed to be in effect. The Board may require annual statements and other records to be furnished to the Board to carry out the intentions of this section.

- (3) In the event of approval of a new and revised rate schedule, the new and revised rate schedule shall not apply to persons and groups who have an advance payment agreement with the franchisee until the normal expiration of said advance payment agreement.
- (4) The rates in effect at the time this ordinance takes effect and thereafter shall be subject to review and change only one time in a calendar year beginning January 1 and ending December 31 of the same year; provided, however, that:
 - (a) Upon application and without prior notice, the Board may, by order, grant an interim or emergency rate for new, special, or different service. The Board may specify the duration of said rate or continue it until final determination by the Board on the next overall rate adjustment.
 - (b) In addition to an annual rate adjustment, a supplemental rate adjustment may be requested when the cost of service is increased by governmental regulations and compliance therewith; or when there is substantial increase in a single expense that was not

anticipated at the time of the last rate adjustment; or, when the total cost of service exceeds projected costs by five percent, or more.

- (5) In reviewing rates, the Board shall make a finding that the rates comply with this section. The Board may consider rates charged by other persons performing the same or similar service. The Board shall give due consideration to current and projected revenue and expense; actual and overhead expense; the cost of acquiring and replacement of equipment; the services of management; local wage scales; concentration of customers in the area served; promotion of, and providing source separation services; a reasonable return to franchisee; length of haul; cost of disposal; research and development; future service demands; cost of alternate method of disposal; interest payments; and such other factors as the Board deems relevant.

2.1125 Accounting Records

The franchisee herein shall keep a complete and accurate set of books which shall reflect the gross receipts from service rendered inside the county outside the boundaries of incorporated cities, which books shall be balanced at least annually. A statement showing the basis for the annual fee payment shall be furnished to county on each payment date. County shall have the right to inspect the books and records of a franchisee at franchisee's premises at reasonable times and places, and a franchisee shall render reasonable assistance to county, its officers, agents, and employes, if and when county desires to audit or inspect said books and records.

2.1130 Service to be Rendered

- (1) In addition to serving regular customers, the franchisee shall pick up and haul away all solid waste at the request of any resident of the county in franchisee's area where service is provided. The Board may specify when remote, sparsely populated areas will be served and the frequency of service. A franchisee shall not, without good cause proved by franchisee to the administrator, refuse to provide service to any person living or conducting business within its service territory in the county: provided, however, a franchisee may refuse to provide service upon one or more of the following conditions:
- (a) Upon nonpayment of a billing or portion thereof for service within the time provided therein and after 10-days' further written notice, from the date of mailing to the customer that service will be terminated unless full payment is made.
 - (b) Upon refusal to pay any required advance payment for service, or, if provided in the rate schedule, a charge for reinstating service after discontinuance for nonpayment, or a charge for starting a new service.
 - (c) Street or road access is blocked.

- (d) Excessive weather conditions, as determined by a franchisee, render the providing of service hazardous to the persons actually providing the service or to the public.
 - (e) Where prevented by an Act of God, public enemy or vandal.
 - (f) Customer violation of service standards in section 2.1140.
- (2) Any franchisee shall, where applicable, provide, maintain, and use adequate equipment to handle and dispose of or resource-recover solid waste; will handle collected solid wastes in a good and workmanlike manner; will transport all liquids in a watertight, drip-proof container; and, will provide equipment that meets all applicable laws, ordinances, regulations, and standards including, without limitation, amendments to this ordinance.
- (3) Equipment and work supplied by any franchisee shall be to the reasonable satisfaction of the administrator.
- (4) No franchisee is required to store, collect, transport, transfer, dispose of, or resource-recover any hazardous waste; provided, however, that such franchisee may engage in one or more of those activities separate and apart from this ordinance, but in compliance with all applicable local, state, and federal laws.

September 22, 1983

MEMORANDUM

To: ✓ Files ##81-064 and 83-022 and 8-096

On page 42 of Ordinance #199, section 2.1135, this office prepared a hold harmless clause which would, in effect, require the franchisees to hold the county harmless for any and all actions under the terms of the franchise. This would include anti-trust lawsuits which may be filed against the county or its officers, agents, employes, etc.

During the public hearing on September 21, 1983, based on the request of the attorney for the franchisees over this office's objection, the Board approved an amendment to the hold harmless clause which included the last sentence (except final clause beginning with "unless. . .") of the final ordinance. I have some concern regarding this language and particularly insofar as it may drag the county into an antitrust lawsuit with the franchisees. There also may be some question as to the application of our insurance (antitrust endorsement) when liability is assumed under an ordinance or contract.

NC:SSS



2.1135 Hold Harmless

The privileges granted to a franchisee are upon the express condition that said franchisee shall be liable for all damages or injuries to persons or property caused by the negligence or mismanagement of the franchisee or any employes or agents of franchisee while engaged in the business under the terms of the franchise. Should county, or any of its officers, agents, or employes in the scope of their employment be sued for damages caused in whole or in part by the operations of a franchisee under the terms of the franchise, the franchisee shall be notified in writing of such suit and thereupon it shall be the duty of the franchisee to defend or settle the suit and should judgment go against county, its officers, agents, or employes, the amount thereof shall be recovered with costs and attorneys' fees from franchisee. The record of judgment against county, or any of its officers, agents, or employes, in any such case, shall be conclusive evidence to entitle county, its officers, agents, or employes to recover against the franchisee. This section shall not require a franchisee to defend, indemnify, or settle any suit or action against county, its officers, agents, or employes brought under, or indemnify county, its officers, agents, or employes for damages awarded pursuant to ORS 646.705, et seq, or Title 15 of the United States Code, unless such suit or action arises out of activities of the franchisee, or any agents or employes of franchisee, not authorized by this ordinance.

2.1140 Public Responsibilities

- (1) No person shall place hazardous wastes out for collection or disposal by the franchisee nor place it into any solid waste container or box supplied by the franchisee without prior notice to and prior written approval from the franchisee. A person placing such wastes for collection shall, prior to the notice to the franchisee, obtain the approval of the disposal site to be used for the disposal of such wastes. Where required, an additional approval shall be obtained from the local



government unit having jurisdiction over the disposal site. This disposal approval shall be in writing, signed by the person designated by the disposal site or local government unit affected. Either the franchisee or the disposal site or the local government unit having jurisdiction of the disposal site may require written authorization from the Oregon Department of Environmental Quality for the handling of such hazardous wastes. This subsection does not apply to household waste generated at and by a single family residential dwelling unit.

- (2) A franchisee is not required to service an underground container unless the person responsible for it places the can above ground prior to collection.
- (3) No can for residential service shall be located behind any locked or latched gate or inside any building or structure nor exceed 60 pounds gross loaded weight.
- (4) Each customer shall provide safe access to the solid waste or solid waste container without hazard or risk to a franchisee's employees or a franchisee.

2.1145 Rate Preferences Prohibited

- (1) No franchisee subject to rate review by this chapter 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, trans-

ported, or disposed; 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 reviewed by the committee and 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.

21150 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.

2.1155 Agreements for Joint or Regional Franchising

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.

2.1160 Creation of Nuisance Prohibited

- (1) Except as otherwise provided in this ordinance, no person shall store, collect, maintain, or display 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 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 and abated at the expense of said owner or occupant. 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.

invalid or declared unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity or constitutionality of the remaining portion hereof. The Board hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid, or unconstitutional.

2.1170 Penalties

Violation of this ordinance, or any rules or regulations adopted by the Board pursuant to this ordinance, 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.

2.1175 Appeals from Decision of 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


- (1) no person shall dispose of solid waste 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 solid waste in receptacles provided for that purpose in compliance with ORS chapter 459 and rules promulgated thereunder.

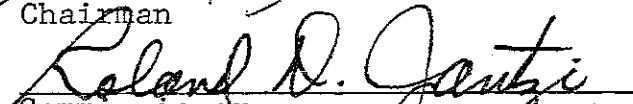
SECTION II: EMERGENCY CLAUSE

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 21st day of September, 1983.

LINCOLN COUNTY BOARD OF COMMISSIONERS


Chairman


Commissioner


Commissioner

ment of air, water, and ground pollution, and prevention of litter;

- (4) research, studies, surveys, and demonstration projects on developing more sanitary, efficient and economical management systems;
- (5) coordination between cities in the county;
- (6) agreements between county and other counties involving joint or regional franchising of collection or disposal;
- (7) minimum standards for location and operation of disposal sites to protect adjacent or nearby residents;
- (8) utilization of private industry to accomplish the above.

2.105 Scope and Authority

Sections 2.100 through 2.225 deal solely with the regulation of sewage. These sections provide the regulations for operation of the two existing franchises for collection and disposal of sewage. The Board finds that franchising of sewage collection and disposal as defined in ORS 459.005(10) and section 2.110(9) is authorized by ORS 459.015(7). Nothing in this ordinance shall be construed to impair the existing franchises for sewage collection.

2.110 Specific Definitions

As used in sections 2.100 through 2.225, unless the context otherwise requires:

- (1) "Administrator" means county sanitarian or other person designated by resolution of the Board to administer this chapter and the duly authorized deputy or assistant of such person.
- (2) "Collection Vehicle" means any vehicle used to collect or transport sewage.
- (3) "Committee" means the Solid Waste Advisory Committee created by this chapter.

