

TILLAMOOK COUNTY
SOLID WASTE ORDINANCE

NO. 4

FILED
for
MAR 25 2009
3:43p
TASSI O'NEIL
COUNTY CLERK

ADOPTED
February 14, 1973

AMENDED
June 18, 1985
February 17, 1993
July 28, 1993,
(TBA) 2009

ORDINANCE NO. 4

The Tillamook County Board of Commissioners, sitting as the Board of Directors of Tillamook County Solid Waste Disposal District, hereby ordains as follows:

ARTICLE I. GENERAL PROVISIONS

Section 1.01. Short Title.

This ordinance shall be known as the "Solid Waste Ordinance" and may be so cited and pleaded and shall be cited herein as "this ordinance".

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Section 1.03. Purpose and Policy.

To protect the health, safety and welfare of the people, and the natural and scenic resources of Tillamook County to provide a coordinated solid waste program, it is declared to be the public policy of Tillamook County to regulate solid waste management to:

- A. Provide for safe and sanitary accumulation, storage, collection, transportation, transfer and disposal of solid wastes.
- B. Provide for public awareness and participation in solutions for all aspects of solid waste management and disposal.
- C. Provide for the opportunity to recycle to every person in Tillamook County.
- D. Provide for a waste prevention, reduction and recycling education, promotion and notification program on reasons for recycling, recycling awareness and how to recycle.
- E. Promote application of recycling systems by preventing or reducing, at the source, materials which otherwise would constitute solid waste, thereby preserving and enhancing the quality of air, water and land resources.
- F. Reduce the amount of solid waste generated; to reuse material for the purpose for which it was originally intended; and to recycle material that cannot be reused.
- G. To prohibit accumulation of solid waste and junk on private property in such a 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.
- H. Provide adequate disposal sites and disposal facilities to meet future demands.
- I. 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.
- J. Provide for and encourage research, studies, surveys and demonstration projects on developing more sanitary, efficient and economical solid waste management systems.
- K. Provide for a coordinated solid waste management plan with cities within Tillamook County and with other counties or cities should regional plans be developed.
- L. Provide for cooperation and agreements between Tillamook County and other counties involving joint or regional franchising of solid waste collection or disposal.
- M. Develop a regional long-range plan to provide adequate disposal sites and disposal facilities to meet future demands.
- N. Provide minimum standards for location and operation of disposal sites to protect adjacent or nearby residents.
- O. Reduce use of highways and roads and encourage highway safety by reducing unnecessary traffic in connection with solid waste and recyclables in order to encourage economic and

efficient collection and reduce wasteful use of fuel, equipment, and capital by providing a franchised collection system.

- P. Prevent theft or vandalism of source separated recyclable materials in order to preserve the economic viability of collection, transportation, disposal, storage or utilization of recyclables.
- Q. Prevent the unauthorized collection, transportation, disposal, storage, reuse or utilization of solid waste or recyclables.
- R. Encourage utilization of the capabilities and expertise of private industry in accomplishing the purposes of this ordinance.
- S. Ensure service rates and charges that are just and reasonable and adequate to provide necessary public service.
- T. Prohibit rate preferences and other discriminatory practices.

Section 1.04. 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 1.05. Specific Definitions.

ADMINISTRATOR: The County Official designated by resolution of the Board to administer and enforce this ordinance and any assistant or agent duly authorized by the Administrator.

BOARD: The Board of County Commissioners for Tillamook County.

COLLECTION VEHICLE: Any vehicle used to collect or transport Solid Waste or recyclable materials.

COMMITTEE: The solid waste Advisory Committee created pursuant to this ordinance.

COMPENSATION: Includes any type of consideration paid for service, including but not limited to, rent and any other direct or indirect provisions for payment of money, goods or benefits by tenants, members, licensees or similar persons. It shall, also, include any exchange of services, including the hauling of solid waste. Compensation includes the flow of consideration from the person owning or possessing the solid waste to the person collecting, storing, transporting or disposing of solid waste. Compensation does not include wages paid by an employer to an employee when that employee is acting in the regular course of their employment.

DEBRIS:

- A. **CLEAN FILL:** Includes rock, concrete, brick, building block, tile or asphalt paving, or other similar non-decomposable material, which do not contain contaminants which could adversely impact the waters of the State or public health.
- B. **CONSTRUCTION AND DEMOLITION:** solid waste resulting from the construction, repair or demolition of buildings, roads or other structures. Such waste typically consists of materials including untreated or chemically treated wood, glass, masonry, roofing, siding, plaster, pipes and similar material. This term does not include industrial solid waste, and municipal solid

waste, as defined under state law, generated in residential or commercial activities associated with construction and demolition activities.

- C. **DISASTER:** Removal clause giving the board the power to pre-authorize and arrange contracts with haulers and private companies in case of emergency.
- D. **LAND CLEARING:** Includes stumps and other vegetative materials, but does not include the composting of materials or debris, or the storage of materials or debris for more than six months.
- E. **YARD DEBRIS:** Includes grass clippings, leaves, hedge trimmings and similar vegetative waste generated from residential property or landscaping activities, but does not include stumps or similar bulky wood materials.

DISPOSE OR DISPOSAL: Includes accumulation, storage, collection, transportation, transfer and disposal of solid waste and recyclable materials.

DISPOSAL SITE: Land and facilities used for the disposal, handling or transfer of or resource recovery from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, resource recovery facilities, incinerators for solid waste delivered by the public or by a solid waste collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site; but the term does not include:

- A. A facility subject to the permit requirements of ORS 468B.050 (Surface Water Discharge).
- B. A landfill site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar non-decomposable material, unless the site is used by the public either directly or through a solid waste collection service.
- C. A site operated by a wrecker issued a certificate under ORS 822.110.

ENERGY RECOVERY: Recovery in which all or a part of the solid waste materials are processed to utilize the heat content, or other forms of energy, of or from the material.

FRANCHISE: A franchise to provide service issued by the Board pursuant to this ordinance. Includes a franchise, certificate, contract or license issued by the Board authorizing a person to provide solid waste management services pursuant to this ordinance.

FRANCHISE, COLLECTION: A franchise granting exclusive rights to provide solid waste collection and transport services for compensation within a defined service area in accordance with this ordinance.

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

GENERATOR: "Generator" (of solid waste) is a person who possesses and controls an item or material immediately prior to and at the time it becomes a solid waste, or a person who last used an item or material and makes it available for recycling or reuse.

HAZARDOUS WASTE: All materials included in the definitions for "hazardous waste" in ORS 466.005.

HAZARDOUS SOLID WASTE: Solid waste that may, by itself or in combination with other solid waste, be infectious, explosive, poisonous, caustic or toxic or otherwise dangerous or injurious to human, plant or animal life, as defined in ORS 466.005.

HOUSEHOLD HAZARDOUS WASTE: Any discarded, useless or unwanted chemical, material, substance or product that is or may be hazardous or toxic to the public or the environment and is commonly used in or around households and is generated by the household. "Household hazardous

waste” may include but is not limited to some cleaners, solvents, pesticides, and automotive and paint products.

INCINERATOR: A combustion device specifically designed for the reduction, by burning, of solid, semisolid or liquid combustible wastes.

INOPERABLE VEHICLES: A vehicle which has been left on public or private property thirty (30) days or more and is not currently licensed or has been extensively damaged, vandalized, or stripped, including but not limited to missing wheels, tires, motor or transmission, or is otherwise inoperable.

JUNK: Articles of personal property that have outlived their usefulness in their original form, or articles of personal property that have been discarded and are no longer used for their manufactured purpose, regardless of value. Junk includes but is not limited to: (a) any derelict motor vehicle, i.e., any used motor vehicle without a vehicle license or with an expired license; (b) neglected motor vehicle, i.e., a motor vehicle that is missing critical parts required for the normal and legal operation of the vehicle, but has all of its body parts intact, including fenders, hood, truck, glass, and tires; or (c) wrecked motor vehicle, or part thereof, i.e., a motor vehicle that is dismantled or partially dismantled or having a broken or missing window or windshield, or lacking a wheel or tire; (d) machinery or parts thereof that are inoperative, worn out, or in a state of disrepair; (f) any worn out or dilapidated indoor fixtures or furnishings, or parts thereof; (g) any debris; and (h) non-solid waste items that are of a type or quantity inconsistent with normal and usual use such as bulk, wood, metal, scrap and other similar items.

MATERIAL RECOVERY: Any process of obtaining from Solid Waste, by presegregation or otherwise, materials which still have useful physical or chemical properties and can be reused or recycled for some purpose.

MIXED RECYCLING (co-mingled materials): The process where two or more recyclable materials are collected together, in a combination of recyclable materials allowed by the Board.

PERSON: Includes individuals, corporations, associations, firms, partnerships and cooperatives.

PUTRESCIBLE MATERIAL: Organic materials that can decompose and may give rise to foul smelling, offensive odors or create a health hazard or which are capable of attracting or providing food for birds and vectors which are potential disease carriers.

RECYCLING:

- A. Any process by which waste materials are transformed into new products in such a manner that the original products lose their identity.
- B. It shall, also, include the collection, transportation or storage of products by other than the original user or consumer giving rise to the product being in the stream of commerce for resource recovery.

RECYCLABLE MATERIALS: Any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

REGULATIONS: Regulations promulgated by the Board pursuant to this ordinance.

RESOURCE RECOVERY: The process of obtaining useful material or energy resources from solid waste and includes energy, recovery, material recovery, recycling and reuse.

REUSE: The return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

RULES: Rules promulgated by the state agencies pursuant to ORS Chapters 459 and 459A.

SECURE LOAD: Load is covered, enclosed and restrained so that the contents do not drop, sift, leak or otherwise escape from vehicle or trailer.

SELF-HAULING: Transportation by a generator of such person's own waste, solid waste or recyclable material directly to a disposal or recycling site or depot. "Self-hauling" includes the transportation of Solid Waste or recyclable material which the generator produces as an incidental part of the generator's business, such as waste incidental to restaurants, janitorial service, gardening or landscaping, carpentry, remodeling, etc. Waste incidental to the generator's business does not include the accumulated or stored waste, of the generator's customers, clients, tenants, lessees' or members.

SERVICE: The collection, transportation or disposal of, or the resource recovery from, solid waste.

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

SOLID WASTE: All putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, waste paper, cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial demolition and construction wastes; partially burned materials, discarded or abandoned vehicles or parts thereof; discarded home and industrial appliances; manure, vegetable or animal solid and semisolid wastes, dead animals, infectious waste as defined in ORS 459.386, and other wastes; but the term does not include:

- A. Hazardous wastes as defined in ORS 466.005.
- B. Materials used for fertilizer or for other productive purposes or which are salvageable as such materials used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals.

SOLID WASTE MANAGEMENT: Prevention or reduction of Solid Waste accumulation, including management of storage, collection, transportation, treatment, utilization, processing and final disposal or salvage, source-separation, recycling or reuse of the resource recovery from solid waste, and necessary facilities therefore.

SOURCE SEPARATED MATERIALS. Recyclable materials that have been separated by type of recyclable material and removed from the solid waste stream by the person who last used the recyclable materials.

TRANSFER STATION: A fixed or mobile facility normally used, as an adjunct of a solid waste collection and disposal system or resource recovery system, between a collection route and disposal site, including but not limited to, a large hopper, railroad gondola, barge, stationary compaction drop box facility, processing center, or facility that accepts solid waste from persons for the purpose of removing the solid waste to a disposal site or utilization center.

UTILIZATION: The terms utilize, utilization, or utilization of solid waste shall mean productive use through recycling, reuse, salvage, resource recovery, energy recovery, or landfilling for reclamation, habitation, or rehabilitation of land.

WASTE: Useless or discarded materials.

WASTE PREVENTION: To reduce the amount of Solid Waste generated or resources used, without increasing toxicity, in the design, manufacture, purchase or use of products or packaging. "Waste prevention" does not include reducing, recycling or composting.

WASTE REDUCTION: Reduction of the volume of waste that would otherwise be disposed of in a landfill disposal site through techniques such as source reduction, recycling, reuse or other resource recovery.

WASTESHED: An area of the state having a common solid waste disposal system as designated by the Environmental Quality Commission as an appropriate area of the state within which to develop a common recycling program.

WASTESHED AGENT: A person identified as the representative for the wasteshed to act as a contact between the affected persons in a wasteshed and the Department of Environmental Quality (DEQ) in matters relating to recycling and to the DEQ Recycling Report.

Section 1.06. 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 1.07. Persons and Agencies Exempted.

- A. This ordinance shall not apply to:
 - a. Areas lying within the limits of any incorporated municipality actively operating as such.
 - b. Federal or state agencies that collect, store, transport or dispose of 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 or operation of a state or federal disposal site. This exemption shall not apply to disposal on a disposal site operated by a franchisee under this ordinance.

- B. In addition to the exemptions in subsection "A" of this section, Section 8.01 and 8.02 of this ordinance shall not apply to:
 - a. Disposal sites franchised under provisions of this ordinance and in compliance with this ordinance.
 - b. A person who transports Solid Waste which such person produces directly to an authorized disposal site or resource recovery facility. Solid Waste produced by a tenant, lessee or member shall be considered to be produced by such tenant, lessee or member and shall not be collected or transported by the owner, manager or employee of the facility being rented, leased or for which membership benefit may accrue.
 - c. Construction or demolition contractors who transport Solid Waste incidental to such construction or demolition operations, so long as the Solid Waste is transported in such contractor's own equipment.
 - d. A person engaged in the practice of pumping, transporting and disposing of septic tank and cesspool pumpings or other sludge, provided such activity is conducted in compliance with applicable state and local laws.

- e. A person engaged in the practice of towing or otherwise removing damaged, discarded or abandoned vehicles or parts thereof, so long as such activity is conducted in compliance with applicable state and local laws.
- C. Farming practices and agricultural land uses that are regulated by state or federal law or Oregon Administrative Rule, such as Confined Animal Feeding Operations (CAFO), shall be exempt from the provisions of Sections 8.01 and 8.02 of this ordinance. Accumulations of solid waste or other activities on agricultural lands or on farming operations that would otherwise constitute a violation of this ordinance on non-farm lands are not exempt from said sections.

ARTICLE II. SOLID WASTE ADVISORY COMMITTEE

Section 2.01. Solid Waste Advisory Committee.

There is hereby created a Solid Waste Advisory Committee including:

- A. Nine members:
 - a. Two representatives of the solid waste collection industry not representing the same organization.
 - b. One representative of the dairy farming industry.
 - c. One representative of the timber manufacturing industry.
 - d. One representative of the incorporated cities of Tillamook County.
 - e. Two representatives of the public at large representing the unincorporated areas of Tillamook County.
 - f. One representative from a transfer station or principle organization responsible for marketing recyclables from within the watershed.
 - g. One representative from the construction industry.
- B. Non voting Ex-Officio members of the Committee, including but not limited to:
 - a. The Solid Waste Administrator and County Staff.
 - b. Representatives of incorporated cities may be appointed by each city annually by resolution.
 - c. Any industry professional so designated by formal action of the Solid Waste Advisory Committee.

Section 2.02. Appointment of Solid Waste Advisory Committee.

- A. Members 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 in the event of emergency or short term leave of absence.
- B. Public employees shall serve for the term of their Office. Appointment of other persons as members shall be for staggered terms of the initial Committee not to exceed the three-year terms. Members shall serve until their qualified successors are appointed vacancies shall be filled by the Board for the balance of a members' expired term.
- C. The Committee shall vote one member as Chairperson and another as Vice-Chairperson. The Chairperson shall serve for a period of two years beginning July 1 and ending June 30 of the

second year. The Chairperson shall be succeeded by the Vice-Chairperson. The Committee shall nominate and vote for a new Vice-Chair person in April of the year of succession.

- D. Five members of the Committee shall constitute a quorum for the transaction of business. The committee shall meet at such time as deemed necessary or as called by the Board. The Chairperson 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 2.03. Duties of the Solid Waste Advisory Committee.

In addition to other duties prescribed by this ordinance, the committee shall:

- A. Make an executive summary to the Board for the prior fiscal year. Summary shall contain recommendations on development and implementation of a solid waste management plan and any necessary regulations or amendments to this ordinance as needed.
- B. In consultation with responsible public officials and with persons providing service:
 - a. Provide a review and periodically update the county solid waste management plan.
 - 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.
- C. Provide input and recommendations to the Board on policies, projects, enforcement, budget, rate reviews, contracts and franchises.
- D. Supports the county and franchisees in all aspects of waste prevention, reduction, reuse and recycling activities.
- E. 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 2.04. Regional Solid Waste Committee.

The Committee 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 3.01. Regulation of Solid Waste Management.

Upon its own motion or upon recommendation of the Committee, the Board may adopt reasonable and necessary ordinances, resolutions, or orders regulating solid waste management or implementing this ordinance. Such regulations shall not conflict with ORS Chapters 459 and 459A and rules promulgated pursuant thereto.

ARTICLE IV. FRANCHISING OF SOLID WASTE COLLECTION AND DISPOSAL

Section 4.01. Persons, Activities and Practices Regulated.

Except as provided in Section 1.07 of this ordinance, no private person shall provide service for compensation except, as defined in Section 1.05 of this Ordinance, as authorized by a collection or disposal franchise issued pursuant to this article.

Section 4.02. Applications for Franchises.

A. Application for a franchise shall be submitted to the Administrator. The Administrator may require filing of additional information necessary to determine compliance with this ordinance, ORS Chapters 459 and 459A, and regulations and rules promulgated thereunder together with any other applicable laws or county ordinances.

B. The applicant shall prove to the Board that:

- a. Applicant can furnish sufficient collection vehicles, equipment, land, facilities, or personnel to meet the standards established by this ordinance and ORS Chapters 459 and 459A, and regulations or rules promulgated thereunder.
- b. Applicant has in force public and damage insurance as will protect the Franchisee from any and all claims for damage or personal injury, including death, which may arise from operations under the franchise. Such insurance shall name the County as an additional insured. Such insurance shall provide coverage for not less than the following:

PROPERTY DAMAGE:	\$1,000,000.00 per occurrence
PERSONAL INJURY:	\$1,000,000.00 per occurrence
GENERAL AGGREGATE:	\$2,000,000.00

A Certificate of Insurance documenting the above conditions shall be provided to the County prior to issuance of the Franchise.

- c. Applicant 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 the applicant 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.
- d. The applicant shall provide the Opportunity to Recycle in accordance with Chapter 459A of Oregon Revised Statutes. In addition, the franchisee shall comply with any and all rules and regulations adopted by the Department of Environmental Quality.

C. Applicants shall specify the nature, type and extent of service to be provided; any solid wastes that will not be accepted for collection or disposal; and, any special requirements for the handling of hazardous wastes. Applicant shall provide information to customers upon request regarding the proper disposal of any wastes not handled by applicant.

Section 4.03. Specific Collection Franchise requirements.

An applicant for a collection franchise shall prove to the satisfaction of the Board that:

- A. Applicant will use disposal sites authorized by the Board.
- B. Applicant is either:
 - a. Providing service in the service area for which the applicant applies 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.
- C. Applicant will, if applying for all or a part of a service area franchised to another person pursuant to subsection (B) of this section, have available on the first day of such proposed service collection vehicles, containers or other equipment equal to that presently used providing such service and that service would be equal to existing service.
- D. The Franchisee shall have in force public and damage insurance as will protect the Franchisee from any and all claims for damage or personal injury, including death, which may arise from operations under the franchise. Such insurance shall name the County as an additional insured. Such insurance shall provide coverage for not less that the following:

PROPERTY DAMAGE:	\$1,000,000.00 per occurrence
PERSONAL INJURY:	\$1,000,000.00 per occurrence
GENERAL AGGREGATE:	\$2,000,000.00

A current Certificate of Insurance documenting the above conditions shall be provided to the County.

Section 4.04. Specific Site Disposal Franchise Requirements.

- A. An applicant for a disposal site franchise shall submit a duplicate of the information submitted to the Department of Environmental Quality on such site under ORS Chapters 459 and 459A and rules promulgated thereunder.
- B. 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 the initial plans.
- C. 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 franchisee and the land owner.

- b. Proper establishment, maintenance and operation of the disposal site as required by this ordinance and applicable provisions of ORS Chapters 459 and 459A, rules promulgated thereunder and other laws or county ordinances.
 - c. Rehabilitation or restoration of the site upon termination of disposal under the land use plan submitted pursuant to subsection (B) 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 (B) of section 4.10 of this ordinance.
- D. 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.
- E. The Franchisee shall have in force public and damage insurance as will protect the Franchisee from any and all claims for damage or personal injury, including death, which may arise from operations under the franchise. Such insurance shall name the County as an additional insured. Such insurance shall provide coverage for not less than the following:

PROPERTY DAMAGE:	\$1,000,000.00 per occurrence
PERSONAL INJURY:	\$1,000,000.00 per occurrence
GENERAL AGGREGATE:	\$2,000,000.00

A current Certificate of Insurance documenting the above conditions shall be provided to the County.

Section 4.05. Review of Applications for Franchises.

- A. Applications shall be reviewed by the Administrator who shall make such investigation as the Administrator deems appropriate and who may request assistance of other persons as necessary.
- B. 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.
- C. Unless the time is extended by the Board for good cause, the Administrator shall make the recommendation to the Committee within 30 days after the application and any required supplemental information has been filed.
- D. 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 4.06. Board Action on Applications for Franchises.

The Board:

- A. May require additional investigation by the Administrator or the Committee if it finds that there is insufficient information on which to base its action.
- B. 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.
- C. Shall not make an order adverse to the applicant or 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 4.07. Exclusive or Joining Service under a Franchise.

- A. 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.
- B. If a franchisee 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 the Administrator finds that the quality and extent of service would not be jeopardized. The Administrator may require the filing of such information as the Administrator 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.
- B. 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 4.08. Appeal from Determination of Board on Franchise.

- A. 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.
- B. Unless an emergency order has been entered, the filing of the notice of appeal shall suspend operation of the order until a final determination by the Board on the appeal.
- C. The appellant may request a public hearing as part of the appellant's notice of appeal. The Board may, upon its own motion or upon the request, set a public hearing not more than 30 days from the date of notice of appeal.
- D. 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.
- E. Upon the basis of submission 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.
- F. 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 4.09. Responsibilities of Franchisees

- A. Except as provided in subsection "C" of this section, no franchisee shall voluntarily discontinue service to all or a substantial portion of the franchisee's service area or at the franchisee's disposal site until the franchisee has:
 - a. Given 90 days written notice to affected customers in the service area.
 - b. Posted 90 days notice at the disposal site.
 - c. Given 90 days written notice to the Administrator.
 - d. Obtained approval of the Board.
- B. Where a franchise is not serving a service area or portion thereof at the time of granting the franchise, the Board may order that service is provided at such time as it finds the service to be necessary and reasonable.
- C. Subsection "A" 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 service in accordance with rates established pursuant to this ordinance. Holders of collection franchises shall not discontinue service under this paragraph without a minimum of seven days prior written notice to the customer. 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 franchise pursuant to section 4.15 of this ordinance.
 - d. Refusal of service to a customer upon reasonable grounds, 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 waste 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 4.07 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 the determination, the Administrator may request a recommendation from the Committee, information the Administrator deems necessary to insure compliance and written approval of the owner of the land on which the site is located.
 - f. Administrator reserves the right to request records or documentation in regard to any of the above actions taken by the Franchisee.

Section 4.10. Enforcement of Franchise Provisions.

In addition to the remedy provided in section 4.11 and penalties provided elsewhere in this ordinance:

- A. 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 judgment of the Administrator, there is sufficient evidence to constitute a violation of this ordinance, ORS Chapters 459 or 459A or the rules or regulations promulgated thereunder, the Administrator shall notify the franchisee in writing of the alleged violation and what steps the franchisee 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.

- B. In the event that the landowner or franchisee under a disposal franchise does not comply with agreements executed pursuant to section 4.04 to this ordinance within a reasonable time after written notice to comply, the Board may institute proceedings under subsection "C" 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 Tillamook 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.

- C. 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.
- D. The cost incurred by the County in carrying out subsection "C" 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 4.11. Suspension, Modification, Revocation or Refusal to Renew a Franchise.

- A. Upon the 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 Chapters 459 or 45A 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.
- B. In lieu of immediate suspension, modification, revocation or refusal to renew a franchise, the Board may order compliance and make the suspension, modification, revocation or refusal to renew a franchise contingent upon compliance with the order of the Board within the period of time stated therein.
- C. If the Board suspends, modifies, revokes or refused 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 the 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.

Any applicant for a franchise or franchise renewal agrees that it is a condition of the applicant's 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 nuisance, the Board shall, after reasonable notice but not less than 24 hours notice to the franchisee and a public hearing, if the franchisee request 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 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 4.12. Franchise Term and Renewals.

- A. Unless the Board finds that a longer or shorter term is required in the public interest, the term for collection franchise shall be ten years. A franchise term shall be automatically extended one (1) additional year unless the Board, in its sole discretion provides written notice to the Franchisee that it elects not to approve such annual extension. Written notice of the Board's election not to grant an annual extension shall be delivered to the Franchisee within thirty (30) days prior to the next applicable anniversary date. Nothing in this section restricts the Board from suspending, modifying or revoking the Franchise Agreement in the event of gross misconduct, negligence or non-performance on the part of the Franchisee.
- B. The term for disposal franchises shall be determined by the Board upon the basis of a recommendation by the Committee based upon site longevity, populations to be served and probable use.
- C. Unless grounds exist for refusal to renew a franchise under sections 4.11 and 4.12 of this ordinance, franchises shall be renewable

Section 4.13. 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 \$75 per collection vehicle per year. This fee shall be payable on the 30th day of January of each year to be subject to annual review by the Board. Collection vehicle is described as any truck providing hauling service in Tillamook County at any time during the designated year. Annual fee is transferable in the event of vehicle replacement.
- B. Any disposal site franchise an annual fee of \$75 payable to the Administrator on the 30th day of January of each year.

Section 4.14. Use of Franchise Fees.

Fees collected pursuant to section 4.13 of this ordinance shall be paid into the Solid Waste 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 1.03 of this ordinance.

Section 4.15. Transfer of Franchises.

A franchisee may transfer the franchisee's 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 existing 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 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 condition it deems appropriate to guarantee maintenance of service.

ARTICLE V. RATES FOR COLLECTION AND DISPOSAL SERVICE

Section 5.01. Determination of Rates.

- A. Requests for rate adjustments must be submitted to the Administrator on or before March 31 of each calendar year for Board consideration and review. Rates go into effect June 1 of the same year. Requests for rate adjustments made after March 31 may be considered under special circumstances at the discretion of the Board.
- B. Upon recommendation by the Committee, the Board may by ordinance or order:
 - a. Approve and establish rates filed by applicants for franchises if it finds that such rates are not demonstratively unreasonable and 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.
- C. 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 service 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 refuse.
 - f. A reasonable return to the franchisee.
 - g. The length of haul to disposal facilities.
 - h. The cost of disposal.
 - l 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 on days where service is not normally provided on a collection route.
- m. Extra charges where the type or character of solid waste, including but not limited to, solid waste with peculiarly offensive odors, requires special handling or service.
- n. Extra charges for providing janitorial service 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.

D. 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 5.02. Rate Preferences Prohibited.

- A. No franchise 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.
- B. 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 reasonable 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 5.03. 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 premises if the tenant does not pay for the service.

ARTICLE VI. REGIONAL COLLECTION AND DISPOSAL

Section 6.01. 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 6.02. 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.

Section 6.03. Annexation of County Franchised Service Areas.

- A. Where a city annexes all or a portion of a service area previously franchised by a county, the city, county and affected persons or local government units providing service shall attempt to reach an agreement to protect the extent and quality of service in areas remaining outside the city, to protect the quality of service within the city and to protect the rights of affected persons or local government units.
- B. As provided in Section 6.01 of this ordinance the county and city therein may by agreement provide for the recognition of county franchised areas upon annexation questions and assignment of service areas upon annexation and provide for appropriate procedures. By agreement, a city may authorize the Board to assign the annexed service area subject to city requirements and the Board may submit the question to the Committee for recommendation.

ARTICLE VII. RECYCLING

Section 7.01. Opportunity to Recycle.

All persons in the County shall have the opportunity to recycle, pursuant to ORS 459A, as follows:

- A. Landfills and Transfer Stations
 - a. All landfills and transfer stations open to the public for the disposal of solid waste shall provide a place for the deposit of recyclable material, unless an alternative depot or site is approved by resolution of the Board.
 - b. The recycling areas shall be kept clean at all times. All recyclable items must be baled or in a container ready to haul in a reasonable time.
- B. Recycle Shacks and Depots
 - a. The county may purchase or otherwise acquire buildings for use as recycling depots (Recycle Shacks) when there is a person or group willing to take responsibility to operate them. This does not preclude franchised haulers or others from supplying and operating their own recycling depots.
 - b. The Administrator shall be notified of the location and use of temporary or permanent recycle depots for the public deposit of recyclable material, and the hours of operation and types of materials accepted at them.
 - c. The operator of any recycling depot shall be responsible to keep it clean and in good repair at all times. Recyclable materials shall not be allowed to accumulate into unsightly or unsanitary piles, and shall be stored out of the weather. The depots shall be properly signed and be highly visible to the public.
 - d. The county may close the operation of a depot if its continued misuse or neglect becomes a liability to the county.
- C. Recycling Collection
 - a. The Board may require franchised solid waste haulers to provide regularly scheduled on-route collection of recyclable materials as defined by ORS 459A.005.
 - b. The franchisees may establish rates, subject to Solid Waste Advisory Committee recommendation and Board approval, which encourage customers to source separate recyclable materials.
 - c. Others (individuals, firms or charitable organizations) may collect recyclable materials from within the service areas of franchised haulers, provided that they receive no

compensation from the person supplying the recyclable materials. This provision does not allow any person to remove recyclable materials set out for collection by the franchised hauler, or violate any of the provisions in Section 7.03 of this Ordinance.

D. Recycling Report

All persons responsible for maintaining or providing any of the recycling services provided in Section 7.01 shall submit to the Administrator an annual report. The report shall indicate the monthly estimated types and quantities of recyclable materials collection, and shall indicate where each type of material is delivered.

Section 7.02. Education, Promotion and Notification.

- A. The county, in cooperation with the franchisees, cities and schools within the County, shall provide a program of education and promotion to encourage recycling and the reduction of solid waste within Tillamook County.
- B. Notice of the opportunity for recycling shall be provided by disposal and collection Franchises to those persons utilizing the Franchisee's services.

Section 7.03. Prohibited Activities in Recycling.

- A. No person shall take recyclable materials that have been set out for collection by a franchised hauler or other persons providing such service.
- B. No person shall remove recyclable materials from a container, box collection vehicle, depot or other receptacle for recyclable material without permission of the owner or person in control of the receptacle.
- C. No person collecting recyclable materials shall allow such materials to accumulate into unsightly or unsanitary piles. Recyclable materials shall be stored out of the weather.
- D. Mixing source separated recyclable materials with solid waste in any vehicle, box, container or receptacle used in solid waste collection or disposal is prohibited.
- E. Placing solid waste in any vehicle, box, container, depot or receptacle used for recyclable material is prohibited.

ARTICLE VIII. SOLID WASTE NUISANCES

Section 8.01. Nuisance by Accumulation of Solid Waste.

- A. Except as otherwise authorized under this Ordinance, no person shall:
 - a. Deposit, accumulate, store, collect, maintain, or display on private or public property, 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.
 - b. Deposit, accumulate, store, collect, maintain, or display on private or public property, abandoned, discarded, or unattended appliances, to include, but not limited to: refrigerators, freezers, washers, dryers, or other containers. It shall be unlawful to maintain refrigerators and/or freezers in an unsecured area with a compartment of

more than one and one-half cubic feet capacity and a door or lid which locks or fastens automatically when closed.

- c. Deposit, accumulate, store, collect, maintain, or display upon private or public property, abandoned or inoperable vehicles. This provision shall not apply to vehicles stored inside of secured buildings. Inoperable vehicles as defined in Section 1.05 or any vehicle whose condition is not in conformance with the rules and regulations of the Department of Motor Vehicles.
- B. Private households, commercial or industrial businesses generating putrescible solid waste which creates offensive odors or a condition of unsightliness may be required to have such solid waste removed for disposal at an authorized facility at least every seven days or more often if a greater frequency is required for preserving public health and safety.
- C. In determining the condition of unsightliness, the zoning of the property and the proximity to residences, commercial businesses or roadways shall be considered.
- D. Any deposits, accumulations, storing, collection, maintaining, or displaying of any solid waste in violation of this section shall be considered to be a public nuisance.

Section 8.02. Nuisance by Unauthorized Disposal of Solid Waste.

- A. Except as provided in Section 1.07 and in the definition of Disposal Site as provided in this Ordinance, no person shall:
 - a. Dispose of solid waste on any land subject to this Ordinance of which the person is not the owner or occupant, except at a disposal site authorized by the Board. The Board shall list the disposal sites which may be used by the public and shall furnish copies of the list upon request.
 - b. Use or permit to be used any land within the County as a public or private disposal site without approval from the Board, and without approval of the Oregon Department of Environmental Quality.
- B. Private households, commercial or industrial businesses shall not burn any solid waste except for clean wood products, free from rubber, asphalt, asbestos, insulation or other products which would cause toxic air contamination. All burning shall be in accordance with local fire rules, regulations, and restrictions.
- C. Persons desiring to bury or dispose in any other manner their own solid waste on their own property may do so in accordance with rules promulgated pursuant to ORS Chapter 459, the Oregon Department of Environmental Quality, and this Ordinance and rules and regulations promulgated thereunder.
- D. Any disposing of any solid waste in violation of this section shall be considered to be a public nuisance.

Section 8.03. Nuisance by Littering.

- A. No person shall:
 - a. Discard any glass, cans or other similar refuse in any of the waters of the state, as defined in ORS 468B.005.

- b. Discard any glass, cans or other trash, rubbish, debris or litter on land within 100 yards of any of the waters of the state, as defined in ORS 468B.005, other than in receptacles provided for the purpose of holding such trash, rubbish, debris or litter.
 - c. Discard any dead animal carcass or part thereof, excrement, putrid, nauseous, noisome, decaying, deleterious or offensive substance into or in any other manner be foul, pollute, or impair the quality of any spring, river, brook, creek, branch, well, ditch, cistern or pond of water.
 - d. Discard any dead animal carcass or part thereof, excrement, putrid, nauseous, noisome, decaying, deleterious or offensive substance into any road, street, alley, lane, railroad right of way, lot, field meadow or common, or any public land.
 - e. Create an objectionable stench or degrade the beauty or appearance of property or detract from the natural cleanliness or safety of property by intentionally:
 - i. Discarding or depositing any rubbish, trash, garbage, debris or other refuse upon the land of another without permission of the owner, or upon any public way or in or upon any public transportation facility.
- B. Nothing in this section shall apply to the storage or spreading of manure or like substance for agricultural, silvicultural or horticultural purposes, except that no sewage sludge, septic tank or cesspool pumpings shall be used for these purposes unless treated and applied in a manner approved by the Department of Environmental Quality.
- C. A name found on various items in a deposit of rubbish or other solid waste placed on land or in water in violation of this section constitutes rebuttable evidence that the person whose name appears on the items has violated the ordinance. However, the rebuttable presumption created by this subsection exists only when a name on items denotes ownership of the items, such as the name of an addressee on an envelope.
- D. In accordance with ORS 459 and Secure Load requirements defined herein, all rubbish, trash, garbage, debris or other refuse transported in Tillamook County must be secured. All persons transporting rubbish, trash, garbage, debris or other refuse shall not permit such material to be leaked, blown, or otherwise escape from a vehicle which the person is operating.

ARTICLE IX. ENFORCEMENT, PENALTIES AND ABATEMENTS

Section 9.01. Enforcement.

It shall be the duty of the Solid Waste Administrator to supervise the administration and the enforcement of this ordinance, except as otherwise specified in this ordinance.

Section 9.02. Penalties.

- A. The violations of this ordinance shall be deemed to be a violation and shall be punishable upon conviction by a fine of between \$500 and \$1,000 per day, with a total fine not to exceed \$10,000.
- B. Violation of this Ordinance is subject to citation under the Tillamook County Enforcement Ordinance, Ordinance No. 35, as it may be amended from time to time.
- C. Each day of violation of any provision of this Ordinance constitutes a separate offense and is separately punishable, but may be joined in a single prosecution.

- D. The provisions of this section are in addition to, and not in lieu of, any criminal prosecution or penalties as provided by county or state law.

Section 9.03. Abatement.

- A. The deposit, accumulation, storage, collection, transportation, or disposal of solid waste by any person in violation of this Ordinance or regulations promulgated thereunder is a nuisance, and the Board or County Counsel 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.
- B. The express or implied repeal or amendment of any ordinance, or parts of ordinance (s), by adoption of this Ordinance, shall not be construed as abating any actions or legal proceedings now pending under or by virtue of such ordinance so repealed or amended, nor as discontinuing, abating, or modifying any penalty accruing or to accrue nor as affecting the liability of any person, firm or corporation, nor as waiving any right of Tillamook County to enforce any violation of the Solid Waste Franchising and Nuisance Abatement Ordinance of 1973 or its subsequent amendments.

Section 9.04. Abatement by County.

If, in the judgment of the Administrator, a solid waste nuisance violation can best be remedied by having Tillamook County, its employees or its agents remove or otherwise abate the violation, then the provisions of this section shall be implemented.

- A. The Administrator may order a person who is in violation of Section 8 of this ordinance to remove, discontinue or otherwise abate the violation.
 - a. An order issued under this section shall:
 - i. Describe the nature and location of the violation;
 - ii. Direct the person to abate the violation within a specified period of time.
 - iii. Explain that a hearing will be held if the violation is not abated.
 - iv. Explain remedies available to the County and the penalties that may be imposed if the person fails or refuses to comply with the order.
- B. If the violation is not abated within the time allowed by Administrator's order, the Board shall hold a hearing.
 - a. Notice of the hearing shall.
 - i. Establish a place, date and time for a hearing to be held if the violation is not abated before the date of the hearing.
 - ii. Include a copy of the Administrator's order.
 - iii. Be given by service under ORS 368.406 to the owner of the land.
 - b. At the hearing the Board shall determine the person responsible for the violation and what must be done to abate the violation.
 - c. The owner of the property that is the location of the violation shall be responsible for the abatement unless the owner can establish at the hearing there was no reasonable method for the owner to control or abate the violation. The owner shall be considered responsible for the actions of any tenants or other persons lawfully using the owner's property.
 - d. The Board shall issue an Order for abatement ordering the owner to abate the violation within a time fixed by the Board, which time shall not be less than 10 days.

- C. The Administrator may abate a violation of Section 8 of this Ordinance at any time if any of the following occur:
- a. The period of time established for abatement by the Board Order passes and the person ordered to abate the violation has not done so within that time.
 - b. If a reasonable attempt to provide service for the hearing has been made and no owner, or person believed responsible for the violation, has been located and served.
 - c. The Administrator determines that the violation creates a substantial risk of damage, injury, health hazard or other emergency condition that requires abatement without delay and without notice of hearing. The administrator is not required to comply with Sections 9.04 (A) and 9.04 (B) of this Ordinance when the Administrator abates a violation under this paragraph.
- D. The Administrator may take any reasonable actions under Section 9.04 to abate the violation. The County and its officers, agents and employees are exempt from liability for any reasonable acts performed under this section, including, but not limited to, any reasonable trespass or conversion of personal property.
- E. If the Administrator performs any acts under Section 9.04 of this Ordinance, the Administrator shall file a written report with the Board. The report shall contain:
- a. Copies of all correspondence to date concerning this abatement.
 - b. An explanation of the acts performed;
 - c. The reasons for performing the acts described;
 - d. The costs incurred in abating the violation. These costs shall include all costs necessary for the County to provide inspections and to prepare and serve notices and orders; and
 - e. Any other information required by the Board.
- F. Upon receipt of the written report, the Board shall hold a hearing to assess costs for acts performed under Section 9.04(C) of this Ordinance, and to determine persons liable for payment of those costs.
- a. Notice of the time, place and date for the hearing shall be given by service under ORS 368.406 to:
 - i. The person determined under Section 9.04 (B)(b) of this Ordinance to be in violation; or
 - ii. If no determination of violation has been made under Section 9.04(B)(b) of this Ordinance, to the owner of the land.
 - b. After consideration of matters presented at the hearing, the Board shall issue a Board Order:
 - i. Establishing the costs to be paid;
 - ii. Directing the person who the Board determines to be responsible for payment of the costs to pay the costs within the time established by the Board, which shall not be less than 60 days.
 - c. The owner of the property that is the location of the violation shall be responsible for payment unless the owner can establish that there was no reasonable method for the owner to control or abate the violation. The owner shall be considered responsible for the actions of any tenants or other persons lawfully using the owner's property.
 - d. The Board shall provide notice of the results of the hearing to persons ordered to pay costs by service under ORS 368.406.
- G. The Board may recover costs ordered under section 9.04(F) by:

- a. Bringing an action for recovery of the costs in any court of competent jurisdiction; or
- b. If the person ordered to pay costs owns real property within the county, filing a copy of the order with the County Clerk to be entered as a lien upon the real property of that person within the county.
- c. If a lien is filed under paragraph (b) of this section:
 - i. That lien, when docketed, is prior and superior to all other liens or charges on the property except taxes; and
 - ii. If the costs ordered to be paid are not paid within the time established by the Board in the Board Order, the Board shall cause the lien to be foreclosed as provided in ORS Chapter 87.
 - iii. The Board may increase the Solid Waste budget by the amount of costs recovered or to be recovered under this section.

Section 9.05. Repeated Offenses.

- A. Any person convicted more than once for offenses of any of the provisions of this article of this ordinance, in addition to the penalties set forth in Section 9.02, shall be required to obtain solid waste collection service from the franchisee designated to serve their specific area.
- B. After the second conviction the offender shall be required to use the collection service for a period of one year. The fee for such service shall be paid in advance for the one year period.
- C. After the third conviction the offender shall be required to use the collection service thereafter. The fee for such service shall be paid at least 12 months in advance. Failure to maintain the advance payments to the franchisee shall be an additional violation of this ordinance.

ARTICLE X. APPEALS

Section 10.01. 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 10.02. Appeals of Decisions of the Board.

All decisions of the Tillamook County Board of Commissioners under this ordinance shall be reviewable by the Circuit Court of the State of Oregon for the County of Tillamook.

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

Section 11.01. Amendment.

Upon recommendation of the Committee or upon its own motion, the Board may from time to time amend the provisions of this ordinance. Amendments shall be made only after public hearing before the Board with such advance notice of the hearing as deemed appropriate by the Board or as generally provided by ordinance, regulation or order of the Board.

Section 11.02. Severability.

If any Section, Subsection, Provision, Clause or Paragraph of this Ordinance shall be adjudged or declared by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect the validity of the remaining portions of this Ordinance, and it is hereby expressly declared that every other Section, Subsection, Provision, Clause or Paragraph of this Ordinance, irrespective of the portion thereby declared to be unconstitutional or invalid, be valid.

Section 11.03. Repeal of Conflicting Ordinances.

Any portions of any other ordinance previously enacted by this county which are inconsistent with the provisions of this ordinance are hereby repealed.

Section 11.04. Effective Date.

This Solid Waste Ordinance as amended being necessary for the immediate preservation of public peace, health, safety and welfare, an emergency is declared to exist, and this Ordinance takes effect immediately upon its adoption.

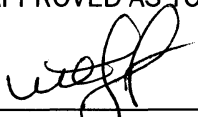
DATE of First Reading: February 25, 2009

DATE OF Second Reading: March 4, 2009

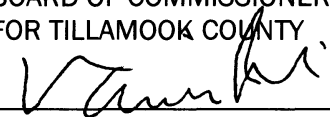
DATE OF Third Reading: March 25, 2009

Dated March 25, 2009

APPROVED AS TO FORM:

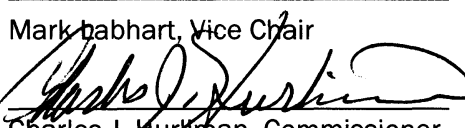


William K. Sargent
County Counsel

BOARD OF COMMISSIONERS
FOR TILLAMOOK COUNTY


Tim Josi, Chair

ATTEST: Tassi O'Neil
County Clerk

(absent)
Mark Babhart, Vice Chair


Charles J. Hurlman, Commissioner

By: *Susan L. Beckett*
Special Deputy

