

CHAPTER 1864
Solid Waste Franchising and Nuisance Abatement

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CROSS REFERENCES

Abatement of private nuisances - see ORS 105.505 et seq.
Enforcement of county ordinances re public nuisances - see ORS 203.065
Solid waste management - see ORS 459.005 et seq.
Local administration of solid waste - see ORS 459.065 et seq.
Beverage containers - see ORS 459A.700 et seq.
Hazardous waste - see ORS 466.005 et seq.
Garbage containers and trucks at Airport - see S.U. & P.S. 1062.55
Garbage and rubbish in County parks - see S.U. & P.S. 1064.12, 1066.16
Sanitation Code - see H. & S. Ch. 1860

1864.01 PURPOSE.

To protect the health, safety and welfare of the people of Jackson County, and to provide a coordinated program on accumulation, collection and disposal of solid wastes, it is hereby declared to be the public policy of the County to regulate the accumulation, collection and disposal of solid waste and recyclable materials and the establishment and operation of disposal sites and transfer stations in order to:

- (a) Provide for the safe and sanitary accumulation, storage, collection, transportation and disposal of solid waste and recyclable materials;
- (b) Prohibit and provide for the abatement of accumulation of solid waste causing a public nuisance, a hazard to health or a condition of unsightliness;
- (c) Develop a regional long-range plan to provide adequate disposal sites and disposal facilities to meet future demands;
- (d) Provide a coordinated Countywide program of control of solid wastes in cooperation with Federal, State and local agencies responsible for the prevention, control or abatement of air, water and ground pollution;
- (e) Provide for and encourage research, studies, surveys and demonstration projects for the purpose of developing more sanitary, efficient and economical solid waste disposal systems and programs;
- (f) Provide for a coordinated solid waste disposal program with cities within the County and with other counties or cities if regional programs are developed;
- (g) Provide for cooperation and agreements between the County and other counties involving joint or regional franchising of solid waste collection or disposal;

- (h) Provide minimum standards for the location and operation of disposal sites to protect adjacent or nearby residents;
- (i) Provide for economically feasible resource recovery;
- (j) Provide for economically and environmentally sound waste reduction through such techniques as reduction at source, recycling, re-use, materials resource recovery and energy recovery; and
- (k) Encourage the use of the capabilities and expertise of private industry and encourage volunteer efforts in accomplishing the purposes of this chapter.

(Ord. 83-14. Passed 6-22-83; E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93.)

1864.02 DEFINITIONS.

For the purpose of this chapter, words used in the present tense include the future, the singular number includes the plural, the word "shall" is mandatory and the term "this chapter" shall be deemed to include all amendments hereafter made to this chapter.

- (1) "Abandoned vehicle" means any vehicle which reasonably appears to be inoperable, wrecked, discarded, abandoned or totally or partially dismantled.
- (2) "Administrator" means the County Administrator of Jackson County.
- (3) "Board" means the Board of County Commissioners for Jackson County.
- (4) "Collection vehicle" means any vehicle used to collect or transport solid waste or recyclables.
- (5) "Compensation" means and includes any type of consideration paid for service, including, but not limited to, direct or indirect compensation by tenants, licensees or similar persons.
- (6) "Condition of unsightliness" means solid waste or inoperable vehicles upon private property subject to view from public or private property.
- (7) "Danger to public health" means a condition which is conducive to the propagation of communicable or contagious disease-producing organisms and which presents a reasonably clear possibility that the public generally is being exposed to the risk of disease-caused physical suffering or illness, including a condition such as:
 - A. Impure or inadequate domestic water;

- B. Inadequate installations for the disposal or treatment of sewage, garbage or other contaminated or putrefying waste;
 - C. Inadequate improvements for the drainage of surface water and other fluid substances; and
 - D. Conditions conducive to the propagation of public health vectors.
- (8) "Director" means the Development Services Director or his or her authorized agent.
(Ord. 2007-2. Passed 1-31-07.)
- (9) "Disposal site" means any land used for the disposal of solid waste, including, but not limited to, dumps, landfills, sanitary landfills and composting plants. "Disposal site" does not include a landfill site which is not used by the public, either directly or through a service, but which is used by the owner or tenant thereof to dispose of sawdust, bark, soil, rock, building demolition material or nonputrescible industrial waste products of manufacturing.
- (10) "Dispose" or "disposal" means and includes the accumulation, storage, collection, transportation and disposal of solid waste or recyclables.
- (11) "Energy recovery" means a process by which solid waste materials are converted to a form of energy.
- (12) "Franchise" means a franchise to provide service, issued by the Board of County Commissioners pursuant to Sections 1864.15 to 1864.29.
- (13) "Franchise, collection" ("collection franchise") means a franchise to store, collect or transport solid waste.
- (14) "Franchise, disposal" ("disposal franchise") means a franchise to create or maintain a disposal site.
- (15) "Hazardous solid waste" means solid waste that may, by itself or in combination with other materials, be or become dangerous to human, plant or animal life.
- (16) "Health Officer" means the Health Officer of the County or his or her authorized agent.
- (17) "Hearings officer" means a person appointed by the Board of County Commissioners to hear proceedings under this chapter.
- (18) "Illegal drug manufacturing site" means any property on which there is a reasonably clear possibility of contamination with chemicals associated with the manufacturing of controlled substances, other than marijuana, and:
- A. Where activity involving the unauthorized manufacture of a controlled substance listed on Schedules I and II or any precursor chemical for such substances occurs; or

B. Wherein are kept, stored or located any of the devices, equipment, things or substances used for the unauthorized manufacture of a controlled substance listed on Schedules I and II.

(19) "Incinerator" means a combustion device specifically designed for the reduction, by burning, of solid, semisolid or liquid combustible waste.

(20) "Infectious waste" means biological waste, including medical waste described as:

A. Blood and blood products, excretions, exudates, secretions, suctionings and other body fluids that cannot be lawfully directly discarded into a municipal sewer system, including solid or liquid waste from renal dialysis and waste materials reasonably saturated with blood or body fluids;

B. Cultures and stocks of etiologic agents and associated biologicals, including specimen cultures and disks and devices used to transfer, inoculate and mix cultures, wastes from production of biologicals and serums and discarded live and attenuated vaccines, but does not include throat or urine cultures;

C. Sharps that have been removed from their original sterile containers, including needles, I.V. tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes;

D. Pathological waste, including biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures and animal carcasses exposed to pathogens in research, the bedding of the animals and other waste from such animals. Pathological waste does not include teeth, formaldehyde, or other preservative agents.

(21) "Inoperable vehicle" means a vehicle which:

A. Has been left out of an enclosed structure on private property for more than thirty days;

B. Has broken or missing windows, windshield, wheels or tires, lacks an engine or has an inoperable engine or lacks a transmission or has an inoperable transmission; and

C. Has a market value of less than three hundred dollars (\$300.00) or is over three years old.

For the purpose of this paragraph, a showing that the vehicle in question is unlicensed and, if operated on a public highway of this State, would be in violation of three or more of the provisions of ORS Chapters 815 and 816, constitutes a rebuttable presumption that the vehicle is inoperable.

(22) "Landfill" means a disposal site operated by means of compacting and covering solid waste at specific designated intervals, but not each operating day.

- (23) "Material recovery" means any process of obtaining from solid waste, by presegregation or otherwise, materials which retain useful physical or chemical properties and may therefore be used or recycled.
- (24) "Person" means the United States or agencies thereof; any state, public or private corporation; local government unit; public agency; individual; partnership; association; firm; trust; estate or any other legal entity, subcontractor or combination thereof.
- (25) "Property" means any:
- A. Real property, improvements on real property or portions of the improvements;
 - B. Boat, trailer, motor vehicle or manufactured dwelling; or
 - C. Contents of the items listed in paragraph (a) or (b) of this subsection."
- (26) "Public health vector" means arthropods or vertebrates of public health significance. The term does not include any domesticated animal.
- (27) "Putrescible material" means organic material that may decompose into foul-smelling or otherwise offensive products.
- (28) "Recyclable material" shall have the meaning given it in ORS 459.005(15), including, but not limited to, newspaper, mixed paper, cardboard, glass containers, metal containers, small scrap metal, used motor oil and aluminum.
- (29) "Recycling" means any process by which solid waste materials are transformed into new products in such a manner that the original materials may lose their identity.
- (30) "Recycling depot" means a center, depot, drop box, or other place for receiving source separated recyclable materials with or without compensation. This shall not include a salvage, junk, or auto wrecking yard.
- (31) "Regulations" means regulations promulgated by the Board of County Commissioners pursuant to this chapter.
- (32) "Re-use" means the return of a commodity into the economic stream for use in the same kind of application as before without a change in the identity of the original material.
- (33) "Rules" means rules promulgated by State agencies pursuant to ORS Chapter 459.
- (34) "Sanitary landfill" means a disposal site operated by means of compacting and covering solid waste at least once each operating day.
- (35) "Service" means the collection, transportation or disposal, by a private person, of solid waste for compensation.

(36) "Service area" means the geographical area in which service, other than the operation of a disposal site, is provided by any person.

(37) "Solid waste" means all putrescible and nonputrescible wastes, whether in solid or liquid form, except liquid-carried industrial wastes or sewage hauled as an incidental part of a septic tank or cesspool-cleaning service. "Solid waste" includes, but is not limited to, garbage, rubbish, ashes, sewage, sludge, infectious waste, street refuse, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, vehicle tires, discarded home and industrial appliances, manure, vegetable or animal solid or semisolid wastes, dead animals and other discarded solid materials.

(38) "Transfer station" means a fixed or mobile facility normally used as an adjunct of a solid waste management system between a collection route and a disposal site. The term includes, but is not limited to, a stationary compaction drop box facility, processing center, railroad gondola, barge or other facility that accepts solid waste for the purpose of removal to a disposal site or utilization center.

(39) "Transfer station franchise" means a franchise to establish or maintain a transfer station.

(Ord. 83-14. Passed 6-22-83; Ord. 92-7. Passed 7-1-92; E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93; Ord. 2003-4. Passed 1-22-03; Ord. 05-18. Passed 9-28-05.)

1864.03 ADMINISTRATION AND ENFORCEMENT.

(a) The Development Services Director is responsible for the administration and enforcement of this chapter.

(b) The Director may adopt regulations necessary for the administration and enforcement of this chapter.

(Ord. 83-14. Passed 6-22-83; E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93; Ord. 2003-4. Passed 1-22-03; Ord. 2007-2. Passed 1-31-07.)

1864.04 EXEMPTIONS.

(a) Except as specifically provided by Section 1864.15, this chapter shall not apply to:

(1) Areas within the incorporated limits of any city, unless said city enters into an intergovernmental agreement with the County for solid waste and waste management services under this chapter.

(2) Those persons who hold a valid waste tire storage or carrier permit pursuant to OAR Chapter 340.

- (3) A private charitable organization which regularly engages in the collection and reuse of reparable or cleanable discards, such as the Salvation Army, St. Vincent DePaul, Goodwill, and similar organizations.
 - (4) A religious, charitable, benevolent or fraternal organization, which organization is not organized for solid waste management purposes, and which collects recyclable materials no more than four times per year for fund raising or charitable purposes, or which collects and reuses or recycles totally source separated materials, or operates a collection center for totally source separated materials.
 - (5) The collection, transportation or redemption of returnable beverage containers under the "Bottle Bill" (ORS Chapter 459).
 - (6) A producer who transports and disposes of waste created as an incidental part of the regular operation of a licensed auto wrecking business or a janitorial service or a gardening or landscaping service, or a septic tank pumping or sludge collection or disposal service. "Janitorial service" does not include transportation or collection of wastes produced by a property owner or occupant.
 - (7) The transportation of solid waste or recyclable material by the generator to a disposal site or resource recovery site or market.
 - (8) The collection by the County or other subordinate jurisdiction of leaves, street sweepings or similar wastes, and transportation to a disposal site, resource recovery site or market.
 - (9) A person engaging in the practice or business of the purchase of totally source separated solid wastes for fair market value.
- (b) The following disposal sites are exempted from the requirements of this chapter:
- (1) A sludge lagoon, sludge treatment facility or disposal site for septic tank or cesspool cleanings.
 - (2) A landfill which is used by the owner or person in control of the premises to dispose of rock, soil, concrete or the similar noncompostable materials.
 - (3) A portion of land or a facility specifically possessing a waste water discharge permit pursuant to ORS Chapter 468 and in compliance with all Oregon Environmental Quality Commission regulations on solid waste management.

1864.05 REGIONAL SOLID WASTE COMMITTEE.

If an agreement is reached with one or more counties pursuant to Section 1864.14(a) for regional franchising of collection or disposal of solid wastes, the Board of County Commissioners may appoint one or more persons to serve on a regional committee established by such agreement to advise the Boards of Commissioners or County Courts of the affected counties.

(Ord. 83-14. Passed 6-22-83; E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93.)

1864.06 SOLID WASTE ACCUMULATIONS PROHIBITED; MAINTAINING ILLEGAL DRUG MANUFACTURING SITE PROHIBITED; DECLARATION OF NUISANCE.

(a) Except as set forth in Section 1864.07, no person shall maintain, display or allow to exist on any property, or within a public road right of way adjacent to any property, the following:

(1) Any accumulation, collection, storage or display of inoperable vehicles or solid waste that is offensive or hazardous to the health and safety of the public, creates offensive odors or creates a condition of unsightliness;

(2) An abandoned, discarded or unattended icebox, refrigerator or other container 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; or

(3) Any abandoned or inoperable vehicle upon private or public property, unless the owner of the property is lawfully authorized to operate a business specifically for that purpose.

(b) No owner of property or person responsible for property that has been determined to be not fit for use pursuant to ORS 453.855 to 453.912, or as a result from contamination as an illegal drug manufacturing site, shall fail to lawfully and effectively remove or abate such contamination of property later than 60 calendar days after such determination or as otherwise ordered by the building official, whichever time is earlier.

(c) A violation of subsection (a) or (b) hereof constitutes a nuisance.

(Ord. 83-14. Passed 6-22-83; E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93; Ord.05-18. Passed 9-28-05.)

1864.07 EXCEPTIONS FOR DISPOSAL SITES, AGRICULTURE, WRECKING YARDS AND AUTOMOBILE JUNK YARDS.

Section 1864.06 does not apply to:

(a) Disposal sites franchised under Sections 1864.15 through 1864.32, provided that such

disposal sites comply with rules promulgated by any State agency under ORS Chapter 459 and with regulations adopted by the County pursuant to this chapter;

(b) Agricultural operations, the growing or harvesting of crops and the raising of fowl or animals. This subsection shall not apply to any solid waste accumulation which is declared by the Health Officer to be a danger to the public health.

(c) Any person who holds a valid and current certificate to operate a wrecking yard under ORS 822.005 through 822.150; or

(d) The outdoor storage of inoperable vehicles outside an urban growth boundary, provided that the use of such vehicles is not in conflict with the County Land Development Ordinance or other County ordinances, and provided that there is a six-foot high sight-obscuring fence surrounding the inoperable vehicles.

(Ord. 83-14. Passed 6-22-83; Ord. 92-7. Passed 7-1-92; E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93.)

1864.08 UNAUTHORIZED DUMPING PROHIBITED.

(a) No person shall dispose of solid waste at any place other than at a disposal site approved by the Board of County Commissioners. The Board will designate, in writing, places where solid waste collected in the County shall be disposed of.

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

(Ord. 83-14. Passed 6-22-83; E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93.)

1864.09 OWNERSHIP OF SOLID WASTE.

(a) Solid waste, including source separated recyclable materials or solid waste set out for collection by a franchised collector, remains the property and the responsibility of the generator until the solid waste or recyclable material is either:

(1) Collected by a person franchised by Jackson County to provide collection of solid waste or recycled material in a defined service area encompassing the property of the generator; or

(2) Properly disposed of in a landfill authorized to receive the solid waste or, in the case of recyclable material, taken to a recycling depot authorized to accept said recyclable material.

(b) It is a violation of this section for any generator of solid waste or recyclable materials to hire any person, other than a franchised collector of solid waste or recyclable materials, to collect, transport or dispose of such materials. The generator of any solid waste or recyclable material which is deposited of illegally shall be responsible and liable for the proper cleanup and legal disposal of such material and/or all costs of such cleanup.

(E. Ord. 93-9. Passed 5-19-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93.)

1864.10 INSPECTIONS; NUISANCE ABATEMENT; COSTS.

(a) The purpose of this section and Sections 1864.11, 1864.12 and 1864.13 is to provide for nuisance abatement by County action and for the recovery of the cost of such abatement. This abatement procedure may be pursued as an alternative to the judicial remedies for a violation of any of the provisions of this chapter. If, after notice and hearing as prescribed by such sections, a nuisance is found to exist but is not abated within the time provided by the order of the County, the County may, after reasonable notice to the landowner, enter upon the property, abate the nuisance and, by order, charge the reasonable cost of abatement as a lien against the property or as a personal obligation of the generator. The first step in administrative abatement proceedings under such sections is an investigation, which may be conducted whenever the Health Officer, or the Development Services Director, or his or her authorized agent, receives a complaint that a nuisance exists.

(Ord. 2007-2. Passed 1-31-07.)

(b) Whenever the Director has inspected or caused to be inspected any property and has found and determined that a nuisance exists, or upon receipt of a declaration from the Health Officer, the Director shall commence proceedings to cause the abatement of the nuisance. The Director shall issue a notice and order directed to the record owner of the property. The notice and order shall contain:

- (1) The street address and a legal description sufficient for identification of the property upon which the nuisance is located.
- (2) A statement that the Director has determined that a nuisance exists, with a brief and concise description of the conditions found which constitute a violation of this chapter.
- (3) A statement of the action required to be taken to abate the nuisance as determined by the Director.
- (4) Statements advising that if any required work is not completed within the time specified, the Director may proceed to cause the work to be done and charge the costs thereof against the property or its owner.

(5) Statements advising:

A. That any person having any record title or legal interest in the property may appeal from the notice and order or any action of the Director, provided the appeal is

made in writing as provided in this chapter and filed with the Director within ten days from the date of service of such notice and order; and

B. That failure to appeal will constitute a waiver of all right to an administrative hearing and determination of the matter.

(c) The notice and order, and any amended or supplemental notice and order, shall be served upon the record owner; and one copy thereof shall be served on each of the following if known to the Director or disclosed from official public records; the holder of any mortgage or deed of trust or other lien or encumbrance of record; the owner or holder of any lease of record; and the holder of any other estate or legal interest of record in or to the land on which the nuisance is located. The failure of the Director to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed on him or her by the provisions of this section.

(d) Service of the notice and order shall be made upon all persons entitled thereto either personally or by mailing a copy of such notice and order by first class and certified mail, postage prepaid, return receipt requested, to each such person at his or her address as it appears on the last equalized assessment roll of the County or as known to the Director. If no address of any such person so appears or is known to the Director, then a copy of the notice and order shall be so mailed, addressed to such person, at the address of the property involved in the proceedings. The failure of any such person to receive such notice shall not affect the validity of any proceedings taken under this section. Service by first class and certified mail in the manner herein provided shall be effective on the date of mailing.

(e) Proof of service of the notice and order shall be certified to at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the time, date, and manner in which service was made. The declaration, together with any receipt card returned in acknowledgment of receipt by certified mail, shall be affixed to the copy of the notice and order retained by the Building Official.

(f) Where the property owner does not comply with the abatement order issued under Section 1864.10(b), within the time specified in the order, the Director may direct County personnel to remove the solid waste causing the nuisance, using County equipment. The Director may also contact the franchised collector assigned to the area where the nuisance exists. If the franchised collector has the equipment and personnel available to remove the solid waste, the collector shall be given the option of either removing the nuisance or refusing the job. If the collector accepts the job, the generator shall be charged the approved hourly rate for such service. If the collector

refuses the job, or does not have the equipment or personnel available, the Director may contract with another person to abate the nuisance. The cost of such abatement initially shall be paid by the Development Services Department, but the Jackson County Board of Commissioners may make the cost a special assessment against the property involved or a personal obligation of the generator.

(Ord. 2007-2. Passed 1-31-07.)

(g) In an emergency, the Health Officer or the Director may order the immediate abatement of a nuisance. The Director shall give notice of the requirement for immediate abatement to the owner.

(h) In an emergency, and in lieu of action under subsection (g) hereof, the Health Officer or the Director may proceed with immediate abatement of the nuisance. The Health Officer or the Director shall then immediately send written notice of abatement to the owner of the property. When such removal is performed by the County or its contractor, neither the County nor its contractor shall be liable for any trespass or conversion as to any real or personal property, and the costs of removal may be collected from the owner of the real property or any other person having possession of the property at the time the abatement measures are taken. Such costs may also be collected from the person causing or permitting the nuisance to exist.

(i) The provisions of this section are in addition to and not in lieu of the penalty and enforcement procedures provided for in this chapter or elsewhere in these Codified Ordinances.

(Ord. 83-14. Passed 6-22-83; Ord. 84-39. Passed 12-19-84; E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93; E. Ord. 98-4. Passed 1-21-98; P. Ord. 98-8. Passed 2-25-98; Ord. 2003-4. Passed 1-22-03.)

1864.11 APPEALS ON NOTICES OF ABATEMENT.

(a) Any person entitled to service under Section 1864.10(c) may appeal from any notice and order or any action of the Director under these Codified Ordinances by filing at the office of the Director a written appeal containing:

(1) A heading in the words: "Before the Hearings Officer of the Development Services Department of Jackson County."

(Ord. 2007-2. Passed 1-31-07.)

(2) A caption reading: "Appeal of," giving the names of all appellants participating in the appeal.

(3) A brief statement setting forth the legal interest of each of the appellants in the land involved in the notice and order.

- (4) A brief statement in ordinary and concise language of the specific order or action protested, together with any material facts claimed to support the contentions of the appellant.
- (5) A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested order or action should be reversed, modified or otherwise set aside.
- (6) The signatures of all parties named as appellants and their official mailing addresses.
- (7) The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

The appeal shall be filed within ten days from the date of the service of such order or action of the Director. Failure of any person to file an appeal in accordance with the provisions of this section shall constitute a waiver of his or her right to an administrative hearing and adjudication of the notice and order or any portion thereof.

(b) The Director shall, upon receipt of a request for a hearing, promptly appoint a hearings officer who shall set a time and place for a hearing at the earliest possible time, and the hearings officer shall promptly notify the person requesting the hearing as to the time and place of the hearing.

(c) The date of such hearing shall be not less than ten days nor more than thirty days from the date the appeal was filed with the Director. Written notice of the time and place of the hearing shall be given at least ten days prior to the date of the hearing to each appellant by the Director either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at his or her address shown on the appeal. Notice may also be given to such persons as the hearings officer determines to be interested persons.

(d) Only those matters or issues specifically raised by the appellant shall be considered in the hearing of the appeal.

(e) Enforcement of any notice and order of the Director issued under this section shall be stayed during the pendency of an appeal therefrom which is properly and timely filed.

(Ord. 83-14. Passed 6-22-83; E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93; Ord. 2003-4. Passed 1-22-03.)

1864.12 HEARINGS.**(a) General.**

- (1) The hearings officer shall exercise all powers relating to the conduct of hearings.
- (2) A record of the entire proceedings shall be made by tape recording by any other means of permanent recording determined to be appropriate by the hearings officer.
- (3) The proceedings at the hearing shall also be reported by a phonographic reporter if requested by any party thereto. A transcript of the proceedings shall be made available to all parties upon request and upon payment of the fee prescribed therefor. Such fees may be established by the Board, but shall in no event be greater than the cost involved.
- (4) The hearings officer may grant continuances for good cause shown.
- (5) In any proceedings under this chapter, the hearings officer has the power to administer oaths and affirmations and to certify to official acts.
- (6) The hearings officer shall proceed with reasonable dispatch to conclude any matter before it. Due regard shall be shown for the convenience and necessity of any parties or their representatives.
- (7) The notice to appellant shall be substantially in the following form, but may include other information:

"You are hereby notified that a hearing will be held before (name of hearing officer) at _____ on the _____ day of _____, 19____, at the hour _____, upon the notice and order served upon you. You may be present at the hearing. You may be, but need not be, represented by counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by filing an affidavit therefor with (name of hearings officer)."

(b) Subpoenas.

- (1) The hearings officer may obtain the issuance and service of a subpoena for the attendance of witnesses or the production of other evidence at a hearing upon the written demand of any party. The issuance and service of such subpoena shall be obtained upon the filing of an affidavit therefor which states the name and address of the proposed witness;

specifies the exact things sought to be produced and the materiality thereof in detail to the issues involved; and states that the witness has the desired things in his or her possession or under his or her control. A subpoena need not be issued when the affidavit is defective in any particular.

(2) Any person who refuses without lawful excuse to attend any hearing or to produce material evidence in his or her possession or under his or her control as required by any subpoena served upon such person as provided for herein shall be guilty of a misdemeanor.

(c) Conduct of Hearing.

(1) Hearings need not be conducted according to the technical rules relating to evidence and witnesses.

(2) Oral evidence shall be taken only on oath or affirmation.

(3) Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this State.

(4) Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this State.

(5) Irrelevant and unduly repetitious evidence shall be excluded.

(6) Each party shall have these rights, among others:

A. To call and examine witnesses on any matter relevant to the issues of the hearings;

B. To introduce documentary and physical evidence;

C. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;

D. To impeach any witness regardless of which party first called him or her to testify;

E. To rebut the evidence against him or her;

F. To represent himself or herself or to be represented by anyone of his or her choice who is lawfully permitted to do so.

(7) Official notice may be taken as follows:

A. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this State, or of official records of the Board or departments, or of ordinances of the County or of rules and regulations of the Board.

B. Parties present at the hearing shall be informed of the matters to be noticed, and these matters shall be noted in the record, referred to therein, or appended thereto.

C. Parties present at the hearing shall be given a reasonable opportunity, on request, to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the Board or hearings officer.

D. The hearings officer may inspect any premises involved in the appeal during the course of the hearing, provided that:

1. Notice of such inspection shall be given to the parties before the inspection is made;
2. The parties are given an opportunity to be present during the inspection; and
3. The hearings officer shall state for the record, upon completion of the inspection, the material facts observed and the conclusions drawn therefrom. Each party then shall have a right to rebut or explain the matters so stated by the hearings officer.

(d) Method and Form of Decision.

(1) The hearings officer shall within a reasonable time (not to exceed sixty days from the date the hearing is closed) prepare a written report. All hearings officers' reports shall be matters of public record. The decision shall contain findings of fact, a determination of the issues presented, and the requirements to be complied with. A copy of the decision shall be delivered to the appellant personally or sent to him or her by certified mail, postage prepaid, return receipt requested.

(2) The decision of the hearings officer shall be final; the effective date of the decision shall be as stated therein.

(3) After any order of the Director or the hearings officer made pursuant to these Codified Ordinances shall have become final, no person to whom any such order is directed shall fail, neglect or refuse to obey any such order. Any such person who fails to comply with any such order is guilty of a class A misdemeanor, punishable by no more than one year in jail and a fine of no more than two thousand, five hundred dollars (\$2,500).

(4) If, after any order of the Director or a hearings officer made pursuant to this chapter has become final, the person to whom such order is directed shall fail, neglect or refuse to obey such order, the Director may:

- A. Cause such person to be prosecuted under paragraph (d)(3) hereof; or
- B. Institute any appropriate action to abate such public nuisance.

(E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93.)

1864.13 RECOVERY OF COST OF ABATEMENT.

(a) The Director shall keep an itemized account of the expense incurred by the County or the contractors in the abatement of any nuisance done pursuant to the provisions of Section 1864.10. Upon the completion of the work of abatement, the Director shall prepare and file with the County Administrator a report specifying the work done, the itemized and total cost of the work, a description of the real property upon which the nuisance is or was located, and the names and addresses of the persons entitled to notice pursuant to Section 1864.10(c).

(b) Upon receipt of said report, the County Administrator shall present it to the Board of County Commissioners for consideration. The Board shall fix a time, date and place for hearing said report and any protests or objections thereto. The County Administrator shall cause notice of said hearing to be posted upon the property involved, published once in a newspaper of general circulation in Jackson County, and served by first class and certified mail, postage prepaid, addressed to the owner of the property as his or her name and address appear on the last equalized assessment roll of the County, if such so appear, or as known to the County Administrator. Such notice shall be given at least ten days prior to the date set for hearing and shall specify the day, hour and place when the Board will hear and pass upon the Director's report, together with any objections or protests which may be filed as hereinafter provided by any person interested in or affected by the proposed charge.

(c) Any person interested in or affected by the proposed charge may file written protests or objections with the County Administrator at any time prior to the time set for the hearing on the report of the Director. Each such protest or objection must contain a description of the property in which the signer thereof is interested and the grounds of such protest or objection. The County Administrator shall endorse on every such protest or objection the date it was received by him

or her. He or she shall present such protest or objection to the Board at the time set for hearing, and no other protest or objection shall be considered.

(d) Upon the day and hour fixed for the hearing the Board of County Commissioners shall hear and pass upon the report of the Director, together with any such objections or protests. The Board may make such revision, correction or modification in the report or the charge as it may deem just, and when the Board is satisfied with the correctness of the charge, the report (as submitted or as revised, corrected or modified), together with the charge, shall be confirmed or rejected. The decision of the Board of this jurisdiction on the report and the charge, and on all protests or objections, shall be final and conclusive.

(e) The Board of County Commissioners may thereupon order that said charge shall be made a personal obligation of the property owner or the person causing the nuisance, or assess said charge against the property involved.

(f) If the Board orders that the charge shall be a personal obligation of the property owner or the person causing the nuisance it shall direct County Counsel to collect the same on behalf of the Board by use of all appropriate legal remedies.

(g) If the Board orders that the charge shall be assessed against the property it shall confirm the assessment, cause the same to be recorded on the assessment roll, and thereafter said assessment shall constitute a special assessment against and a lien upon the property.

(h) The validity of any assessment made under the provisions of this chapter shall not be contested in any action or proceeding unless the same is commenced within thirty days after the assessment is placed upon the assessment roll as provided herein. Any appeal from a final judgment in such action or proceeding must be perfected within thirty days after the entry of such judgment.

(i) The Board of County Commissioners, in its discretion, may determine that assessments in amounts of five hundred dollars (\$500.00) or more shall be payable in not to exceed five equal annual installments. The Board's determination to allow payment of such assessments in installments, the number of installments, whether they shall bear interest, and the rate thereof, shall be by a resolution adopted prior to the confirmation of the assessment.

(j) Immediately upon its being placed on the assessment roll the assessment shall be deemed to be complete, the several amounts assessed shall be payable, and the assessments shall be liens against the lots or parcels of land assessed, respectively. The lien shall be subordinate to all existing special assessment liens previously imposed upon the same property and shall be paramount to all other liens, except for State, County and property taxes with which it shall be upon a parity. The lien shall continue until the assessment and all interest due and payable thereon are paid.

(k) All such assessments remaining unpaid after thirty days from the date of recording on the assessment roll shall become delinquent and shall bear interest at the rate of nine percent per annum from and after said date.

(l) After confirmation of the report, certified copies of the assessment shall be given to the Assessor and the Tax Collector for Jackson County, who shall add the amount of the assessment to the next regular tax bill levied against the parcel for municipal purposes.

A certified copy of the assessment shall be filed with the County Auditor on or before August 10 of every year. The descriptions of the parcels reported shall be those used for the same parcels on the County Assessor's map books for the current year.

(m) The amount of the assessment shall be collected at the same time and in the same manner as ordinary property taxes are collected and shall be subject to the same penalties and procedure and sale in case of delinquency as provided for ordinary property taxes. All laws applicable to the levy, collection and enforcement of property taxes shall be applicable to such assessment.

If the Board of County Commissioners has determined that the assessment shall be paid in installments, each installment and any interest thereon shall be collected in the same manner as ordinary property taxes in successive years. If any installment is delinquent, the amount thereof is subject to the same penalties and procedure for sale as provided for ordinary property taxes.

(E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93.)

1864.14 JOINT OR REGIONAL FRANCHISES; ALLOCATION OF FRANCHISE FEES.

(a) The Board of County Commissioners may enter into agreements with any city or county for joint or regional franchising of collection or disposal service.

(b) The Board may enter into agreements with any city or county providing for the allocation of franchise fees, if the franchise service area crosses city or county boundaries.

(Ord. 83-14. Passed 6-22-83; E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93.)

1864.15 COLLECTION AND DISPOSAL; FRANCHISE REQUIRED; EXCEPTIONS.

(a) Except as provided in Section 1864.04 or 1864.16 of this chapter, no person shall store, collect, transport or dispose of any solid waste for compensation, unless such person is franchised in accordance with this chapter. This subsection shall not apply to the collection, storage or transportation of wood waste, with or without compensation, for purposes of material or energy recovery, nor to noncontinuous organizational fund-raising activities, e.g. Christmas tree or aluminum can collections.

- (b) Except as provided in this chapter, no person shall establish or maintain a disposal site.
- (c) Except as provided in this chapter, no person shall establish or maintain a transfer station.
- (d) No person shall collect, transport or dispose of any residential or commercial recyclable material or materials unless such person is franchised in accordance with this chapter or unless such person is the generator of said recyclable materials.

(Ord. 83-14. Passed 6-22-83; E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93.)

1864.16 TRANSPORTATION OF SOLID WASTE BY GENERATOR.

- (a) The transportation by a person of solid waste or recyclable materials generated by such person, or those who reside in the same household, to an authorized disposal site, facility or market, is permitted.
- (b) When transporting solid waste or recyclable materials, the load must be covered or tied in such a way as to prevent the material from blowing, leaking, spilling or shifting off the load onto public rights of way or public or private lands.

(E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93.)

1864.17 FRANCHISE APPLICATIONS GENERALLY.

- (a) An application for a franchise required by this chapter shall be on a form provided by the County Administrator and/or his designee. In addition to information required on the form, the Administrator may require the filing of any additional information he or she deems necessary to ensure compliance with this chapter, ORS Chapter 459 and regulations and rules promulgated thereunder, together with any other applicable laws or County ordinances.
- (b) An applicant for a collection franchise shall state the type of service to be provided and shall supply information required to determine compliance with Section 1864.18.
- (c) An applicant for a disposal or transfer station franchise shall file a duplicate copy of the information required by the Oregon Department of Environmental Quality under ORS Chapter 459.

(Ord. 83-14. Passed 6-22-83; E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93; Ord. 2003-4. Passed 1-22-03; Ord. 2007-2. Passed 1-31-07.)

1864.18 COLLECTION FRANCHISES.**(a) Applications.**

(1) A person desiring to provide collection service may apply for a franchise pursuant to this chapter within ninety days prior to the expiration date of an existing franchise or at any time for an area not served by an existing franchise.

(2) Each application shall include the following information:

A. A list of all collection vehicles, equipment, facilities and personnel to be used in the operation;

B. A list of all disposal sites to be used;

C. A statement of experience in solid waste collection operations; and

D. Such other information as the County Administrator and/or his designee may request.

(3) If an application is for a service area not served by the applicant, the application must specify whether or not:

A. The proposed service area is included in any existing franchise agreement.

B. The proposed service area is being served by the holder of a franchise, or any existing franchise agreement will expire within ninety days.

C. The proposed service area is being adequately served by the holder of the franchise and there is a substantial demand from customers within the area for a change of service.

(b) Issuance.

(1) An application for a collection franchise shall be reviewed by the Director. The Director shall make such investigation as is deemed appropriate. The Director shall give written notice to any person who holds a franchise which includes any part of the area contained in the application for a franchise.

(2) Upon the basis of the application, the evidence submitted and results of any investigation, the Director shall make a finding on the qualifications of the applicant and shall determine whether or not additional areas should be included or additional service equipment should be provided.

On the basis of his or her findings, the Director shall recommend to the Board whether or not a franchise should be granted and any suggested special conditions for such franchise. The Board shall issue an order granting, granting with special conditions (subject to execution of a franchise agreement), or denying, a franchise.

(3) The County reserves the right to grant a franchise for collecting goods for recycling. Prior to granting a franchise for such purpose, any proposal shall be submitted to the franchise holder in whose franchise area the activity is proposed. Such franchise holder shall have the first right of refusal of the franchise.

(Ord. 83-14. Passed 6-22-83; E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93; Ord. 2003-4. Passed 1-22-03; Ord. 2007-2. Passed 1-31-07.)

1864.19 DISPOSAL FRANCHISES.

(a) Applications.

(1) An application for a disposal franchise shall provide sufficient information to demonstrate how the applicant will comply with this chapter, with the regulations adopted under this chapter and with rules of Federal, State or local agencies having jurisdiction, including, but not limited to, the Oregon Department of Environmental Quality, the Health Department, the County Administrator and/or his designee and the Board of County Commissioners.

(2) An application shall specify the following:

A. The type of disposal site and the disposal method to be employed, together with any proposed special self-imposed limitations on hazardous wastes or designating the categories of waste materials to be accepted at the disposal site;

B. Available land, equipment, facilities and personnel to conduct disposal operations; and

C. The experience of the applicant with disposal operations.

(b) Issuance.

(1) The County Administrator and/or his designee shall review and investigate the application for a disposal franchise. Written notice shall be given by the Administrator any person who holds a disposal franchise for service to all or part of the area that might reasonably be served under the application.

(2) The Director shall make a finding on the qualifications of the applicant based on the application, the evidence submitted and results of any investigation. Findings shall indicate if the applicant is qualified, if additional service, land, equipment and/or facilities are to be provided and the conditions of service to be imposed. Such conditions may include:

- A. Access to the site by the public;
- B. Conditions for public access;
- C. Types of waste to be excluded from the site;
- D. Types of waste required to be accepted at the site;
- E. Economic feasibility of the site;
- F. Potential at the site for integration with existing private and/or public sites;
- G. Compliance with the rules and regulations adopted pursuant to ORS 459;
- H. Compliance with the provisions of this chapter; and
- I. Any other conditions, applicable to the particular site, which would enhance the public health, safety and welfare.

(3) On the basis of his or her findings, the Director shall recommend to the Board whether or not a disposal franchise should be granted and any special conditions for such franchise. The Board shall issue an order granting, granting with conditions (subject to execution of a franchise agreement), or denying, a franchise.

(Ord. 83-14. Passed 6-22-83; E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93; Ord. 2003-4. Passed 1-22-03; Ord. 2007-2. Passed 1-31-07.)

1864.20 TRANSFER STATION FRANCHISES.

(a) Applications. An applicant for a transfer station franchise shall provide sufficient information to demonstrate how the applicant will comply with this chapter, with regulations promulgated under this chapter and with rules of Federal, State or regional agencies having jurisdiction. In particular, the application shall show that the applicant has available land, equipment, facilities and personnel to meet the standards established by this chapter, by ORS Chapter 459 and by the rules and regulations promulgated under either.

(b) Issuance.

(1) An application for a transfer station franchise shall be reviewed by the County Administrator and/or his designee. The Administrator shall make such investigation as is deemed appropriate. The Administrator shall give written notice to any person who holds a transfer station franchise for service to all or part of the area that would reasonably be served under the application.

(2) On the basis of the application, the evidence submitted and results of any investigation, the Director shall make a finding 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, but not limited to, whether or not certain types of wastes, solid wastes or hazardous wastes shall be excluded from the transfer station or accepted at the transfer station. Further, the Director shall make a finding as to whether or not the transfer station may be integrated with existing private or County-owned or operated transfer stations, and that the transfer station complies with all rules and regulations adopted pursuant to ORS Chapter 459.

(3) On the basis of his or her findings, the Director shall recommend to the Board whether or not a franchise should be granted and any suggested special conditions for such franchise. The Board shall issue an order granting, granting with special conditions (subject to execution of a franchise agreement), or denying, a franchise.

(Ord. 83-14. Passed 6-22-83; E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93; Ord. 2003-4. Passed 1-22-03; Ord. 2007-2. Passed 1-31-07.)

1864.21 EFFECTIVE DATE OF FRANCHISES; DENIALS; APPEALS.

(a) An order of the Board of County Commissioners, issued pursuant to Sections 1864.18(b), 1864.19(b), 1864.20(b) or 1864.26, shall not become effective until thirty days after the date of such order, unless the Board finds that there is an immediate and serious danger to the public or that a health hazard or public nuisance would be created by a delay.

(b) An applicant or a franchise holder may appeal the Board's order by filing a written notice of appeal with the Board within thirty days after the date of such order. On the filing of such notice, the Board shall set a time and place for a public hearing on the appeal, which hearing shall be held not more than thirty days from the date of such request for a hearing. Any interested person or affected public or private agency may appear and offer oral or written testimony. Following the public hearing, the Board may affirm, modify or rescind its prior order.

(c) If the Board makes a final order rejecting all or part of the application for a franchise, the applicant may not submit another application for the same service area or a portion thereof or the same disposal site for one year, unless the Board, upon motion of one of its members, finds that the public interest requires reconsideration within a shorter period of time.

(Ord. 83-14. Passed 6-22-83; E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93; Ord. 2007-2. Passed 1-31-07.)

1864.22 EXCLUSIVE OR JOINT SERVICE; TEMPORARY FRANCHISES.

(a) If the Board of County Commissioners finds, upon the recommendation of the County Administrator and/or his designee or upon its own motion, that an applicant for a collection franchise cannot provide service to a single customer, to a group or type of customers or for a particular type or unusually large quantity of solid waste or recyclable material, it may issue a franchise for joint service with another person who can provide that service. However, in all cases where the Board finds that the applicant is able to provide adequate service within the defined service area, it shall issue an exclusive franchise for that area to the applicant.

(b) If the holder of a franchise is unable to provide service for a particular type or unusually large quantity of solid waste or recyclable material, the Board may issue a temporary or permanent franchise to another person for the limited purpose of providing service to the customer having such particular type or unusually large quantity of solid waste or recyclable material.

(c) If the Board finds, upon recommendation of the Director or upon its own motion, that the need for service justifies action before a complete investigation and final determination can be made, it may order the Director 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 defined customers.

(Ord. 83-14. Passed 6-22-83; E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93; Ord. 2007-2. Passed 1-31-07.)

1864.23 TRANSFER OF FRANCHISES; FRANCHISES AS COLLATERAL.

(a) A franchise holder may transfer his or her franchise or a portion thereof to any other person, only upon written notice to, and approval of, the Board of County Commissioners.

(b) Upon a recommendation of the County Administrator and/or his designee, or upon its own motion, the Board may approve the transfer if it finds that the transferee meets all applicable requirements met by the original franchise holder. The Board shall approve or disapprove any application for the transfer of a franchise within thirty days of receipt of such notice by the Board, unless the Board finds that there is a substantial question of public health or safety involved which requires additional time for investigation and decision.

(c) Upon recommendation of the Director, or upon its own motion, the Board may permit a franchise to be pledged as security for the purchase of land, equipment or facilities needed to provide service or to finance the purchase of a business providing service under this chapter. The Board may attach whatever reasonable conditions it deems appropriate to guarantee maintenance

of service. Any such permission by the Board to pledge the franchise shall not be construed as encumbering any assets of the County. The County shall not be responsible for losses incurred by the franchisee or pledgee if the franchise is withdrawn for any reason.

(Ord. 83-14. Passed 6-22-83; E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93; Ord. 2003-4. Passed 1-22-03; Ord. 2007-2. Passed 1-31-07.)

1864.24 RESPONSIBILITIES OF FRANCHISE HOLDERS; INSURANCE; BONDS.

(a) The following shall apply to all franchise operations:

(1) All franchise operations shall be conducted in strict compliance with this chapter, with all applicable State and Federal laws and regulations and with the terms and conditions of any franchise agreement entered into pursuant to this chapter.

(2) All equipment listed in any application for a franchise shall be maintained in good operating condition and available for conducting all franchise operations.

(3) No operation under any franchise shall be conducted at any time unless the franchise holder has in force and effect public liability and property damage insurance in such amounts as the Board of County Commissioners may determine and unless such holder has filed with the County Administrator and/or his designee certificates of insurance showing the County and its elected officials, officers and employees as additional named insureds and with an endorsement that such insurance may not be cancelled without thirty days' notice to the County.

(Ord. 2007-2. Passed 1-31-07.)

(4) No operation under any franchise shall be conducted at any time, except as set forth in this paragraph, until the franchise holder has filed with the Director a performance bond in the principal sum of five hundred thousand dollars (\$500,000) or one-eighth of the estimated annual gross revenue from the franchise operation, whichever is less, issued by a company authorized to issue bonds in the State. Such bond shall guarantee full and faithful performance by the applicant of the duties and obligations of a franchise holder under this chapter. In lieu of submitting a performance bond, the franchisee may deposit cash in interest bearing accounts, with the right of withdrawal by the County, in the amount of the bond required under this paragraph, and execute a security agreement. The Board may, under a showing of appropriate circumstances, such as excessive cost of such bond in relation to the expected revenues or long experience as a franchisee with the County, reduce the amount or waive the requirement of such bond. Any person holding a valid franchise on the effective date of this section shall conform with the requirements of this paragraph within one year after the effective date of this section.

(5) Each and every franchise holder shall indemnify, hold harmless and defend Jackson County, the Board, the Director and any of their employees or agents from any and all loss, damage, claim, expense or liability arising out of operation by the franchise holder under his or her franchise. In the event that any suit or action is brought for injury or damage to persons or property of others against Jackson County, the Board, the Director or any of their employees or agents, based upon or alleged to be based upon any loss, damage, claim, expense or liability arising out of operations by the franchise holder under his or her franchise, the franchise holder shall defend the same at his or her own cost and expense; provided, however, that Jackson County, the Board and the Director reserve the right to retain counsel of their own choosing and join in the defense of any such suit or action.

(b) The holder of a collection franchise:

(1) Shall provide required service, equipment and facilities commensurate with those existing within the service area defined in the franchise, within one month from the date of issuance of the franchise, unless the Board extends the time upon a showing of reasonable grounds by the applicant. If an area is not receiving service on the date of the application for a franchise covering such area, the Board may order that service be provided at such time as it finds to be reasonable.

(2) Shall not voluntarily discontinue service to the service area or any substantial portion thereof without giving ninety days written notice of the proposed discontinuance of service to all affected customers and the Director and without receiving the approval of the Board. Nothing in this section shall prohibit a franchisee from refusing to provide service to a customer if the customer refuses to pay for the service in accordance with rates established pursuant to this chapter, or for other reasons as may be established by the Board by regulation. However, in no event shall the holder of any franchise terminate such service without giving seven days' prior written notice to his or her customers of his or her intention to terminate service. A franchise holder who has discontinued service may demand that the customer pay, in advance, a reasonable deposit to guarantee payment for future services before reinstating such service. Nothing in this paragraph shall apply to any order for a change, restriction or termination of service by any public agency, public body or court having jurisdiction.

(3) May contract with another person to provide service within a service area after giving written notice to and obtaining approval of the Director. The Director shall approve the contract unless he or she finds that the quality or extent of service would be jeopardized.

(4) May refuse service to a customer, for reasonable grounds approved by the Director, upon a finding that service at the particular location would jeopardize the safety of the driver of a collection vehicle or the motoring public, that the customer has not provided reasonable access to the pick-up point for the containers storing solid wastes without hazard or risk to the person providing service, or that weather conditions prevent service to the particular customer.

(c) The holder of a disposal franchise:

(1) Shall not voluntarily discontinue service without giving at least ninety days' written notice of the proposed discontinuance of service to the Board and to any franchisee using the disposal site and without receiving the approval of the Board prior to discontinuing such service. This paragraph shall not apply to any order for closure or restriction of use by any public agency, public body or court having jurisdiction.

(2) May contract with another person to operate the disposal site after giving written notice to and obtaining the approval of the Director. The Director shall approve the contract unless he or she finds that the quality or extent of service would be jeopardized. In making his or her determination, the Director shall consult with the Health Department.

(d) The holder of a transfer station franchise:

(1) Shall not voluntarily discontinue service without giving at least thirty days' written notice of the proposed discontinuance of service to the Director and to any franchisee using the transfer station and without receiving the approval of the Director prior to discontinuing such service. This paragraph shall not apply to any order, foreclosure or restriction of use by any public agency, public body or court having jurisdiction.

(2) May contract with another person to operate the transfer station after giving written notice to and obtaining approval from the Director; and

(3) May refuse service to any customer if the customer refuses to pay for this service in accordance with the rates established pursuant to this chapter. A franchise holder who has discontinued service for refusal of a customer to pay for such service may demand that the customer provide a reasonable deposit, in advance, to guarantee payment for future service prior to reinstating that service, or demand advance payment for service.

(Ord. 83-14. Passed 6-22-83; E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93; Ord. 2003-4. Passed 1-22-03.)

1864.25 INVESTIGATION OF FRANCHISES; NOTICE OF VIOLATIONS; REMEDIES.

The County Administrator and/or his designee may, upon reasonable cause, make an investigation to determine whether or not to suspend, modify, revoke or refuse to renew a franchise. If, in the opinion of the Administrator, there is sufficient evidence to constitute a violation of any of the provisions of this chapter, of ORS Chapter 459 or of the rules or regulations promulgated under either, the Administrator shall notify the holder of the franchise, in writing, of the alleged violation, shall delineate in such notice the steps that must be taken to cure the violation and shall inform the holder that he or she must comply with the requirements set forth in such notice. The

Administrator shall notify the Board of County Commissioners of such violation. Upon a finding that a violation exists and that the franchisee is unable or refuses to cure the violation, the Administrator shall make his or her recommendation to the Board that the franchise be suspended, modified, revoked or not renewed.

(Ord. 83-14. Passed 6-22-83; E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93; Ord. 2003-4. Passed 1-22-03; Ord. 2007-2. Passed 1-31-07.)

1864.26 SUSPENSIONS, MODIFICATIONS, REVOCATIONS OR NONRENEWALS OF FRANCHISES.

(a) Upon a recommendation by the County Administrator and/or his designee, or upon its own motion, the Board of County Commissioners, by order, may suspend, modify, revoke or refuse to renew a franchise upon a finding that the holder thereof has:

(1) Willfully violated any of the provisions of this chapter, ORS Chapter 459, the rules or regulations promulgated under either, or the terms of his or her franchise;

(2) Materially misrepresented facts or information given in the application for the franchise;

(3) 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

(4) Misrepresented the gross receipts from the franchised service area or, if required to report on such receipts, the gross receipts from operation of a franchised disposal site.

(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 within the period of time stated in such order.

(Ord. 83-14. Passed 6-22-83; E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93; Ord. 2003-4. Passed 1-22-03; Ord. 2007-2. Passed 1-31-07.)

1864.27 INTERRUPTION OF FRANCHISE SERVICE.

The holder of any franchise shall agree, as a condition of his or her obtaining and holding the franchise, that whenever the Board of County Commissioners finds that the failure of service may result in a danger to public health or constitute a public or private nuisance, the Board, after not less than twenty-four hours' notice to the franchisee, and a public hearing if the franchisee requests such hearing, may authorize another franchisee or other person to provide such service.

The Board may authorize the use and operation of the land, facilities or equipment of the delinquent franchisee to provide emergency service in the case of a serious interruption of service to all or part of his or her customers for so long as such interruption continues. The Board shall authorize payment to the holder of the franchise, or other owner of the equipment used in such emergency, in an amount equal to the reasonable rental value of such equipment, but less any actual costs incurred by the County as a result of the failure of service.

(Ord. 83-14. Passed 6-22-83; E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93.)

1864.28 TERMS OF FRANCHISES.

A franchise issued under this chapter is renewable, unless grounds exist for refusal to renew such franchise pursuant to Section 1864.26.

The term for a franchise shall be determined by the Board of County Commissioners upon the recommendation of the County Administrator and/or his designee, based on all circumstances of the case, including site longevity, population to be served, probable use and other relevant factors.

(Ord. 83-14. Passed 6-22-83; E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93; Ord. 2003-4. Passed 1-22-03; Ord. 2007-2. Passed 1-31-07.)

1864.29 FRANCHISE FEES; BOOKS AND RECORDS.

(a) The Board of County Commissioners shall collect, in the manner and at the time provided in this section, a fee from the franchise holder as may be set forth in and adjusted from time to time in accordance with a franchise agreement executed by the Board and the franchise holder. In the absence of such an agreement the fee shall be set as follows:

- (1) For any collection franchise, a fee equal to a percentage of the gross cash receipts from collection service provided to the service area included in the franchise;
- (2) For any disposal franchise, an annual fee as may be set from time to time by the Board; and
- (3) For any transfer station franchise, an annual fee as may be set from time to time by the Board.

(b) The amount and payment dates for collection of franchise fees shall be as established in the franchise agreement.

(c) Within sixty days after the end of each fiscal year, a collection franchise holder shall file with the Board a sworn and verified statement of the gross receipts for the past fiscal year.

(d) Every collection franchise holder shall maintain books and records disclosing the gross receipts from his or her service area, which books and records shall be open at reasonable times and places for audit by authorized personnel of the County. When reasonably required by the Board, the holder of a disposal or transfer station franchise shall maintain books and records disclosing gross receipts at the disposal site, which books and records shall be available for audit.

(e) Fees collected pursuant to this section shall be paid into the Solid Waste Management Fund.

(Ord. 83-14. Passed 6-22-83; E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93; E. Ord. 93-37. Passed 10-27-93; P. Ord. 93-36. Passed 11-10-93; Ord. 96-37. Passed 8-21-96.)

1864.30 DETERMINATION OF RATES.

(a) If the Board approves a franchise agreement that sets forth the rates to be charged and makes provision for determining periodic adjustments to such rates, the Board approval of the franchise agreement shall constitute approval of such rates and all adjustments thereto that are made in accordance with the terms and provisions of the franchise agreement.

(b) In the absence of a franchise agreement that sets forth the rates as set out in subsection (a) herein, upon the recommendation of the County Administrator and/or his designee, or on its own motion, the Board of County Commissioners may approve and establish rates filed by applicants for, or holders of, franchises, if it finds that such rates are not unreasonable or substantially higher than those charged generally in the County under similar service requirements and for the same or similar quality of service. Otherwise, the Board may establish a revised rate schedule. In determining whether or not rates are reasonable under this subsection, the Board shall give due consideration to the rate guidelines established by this section.

(c) Upon the recommendation of the Administrator, or on its own motion, the Board may establish uniform rates throughout the County or may establish uniform rates within zones based upon the length of haul or other factors which may, in the opinion of the Board, justify the establishment of rate differentials.

(d) When establishing rates for disposal sites for solid waste generated within Jackson County, the Board shall consider, in addition to other factors specified in this section, the type of site, the cost of the operation, closure and post-closure monitoring of such site, whether or not the site is open to the public, the type of waste to be disposed of and the cost of compliance with Federal, State and local laws and regulations, together with such other factors which may, in the opinion of the Board, affect the rates to be charged. The Board may establish uniform rates for all disposal sites or establish different rates based upon the factors specified in this section.

(e) In the determination of rates or proposed rate changes, the Director and the Board may give due consideration to the investment in facilities and equipment; the services of management; local wage scales; the concentration of customers in the area serviced; methods of storage, collection, transportation and disposal; the length of haul to disposal facilities; the cost of disposal; a reasonable rate of return to the owners of the business; the future service demands of the area or site which must be anticipated in equipment, facilities, personnel or land; extra charges for special routes; extra charges when the type or character of solid waste, including, but not limited to, wastes with peculiarly offensive odors, requires special handling or service; and extra charges for providing janitorial services on the premises where service is provided.

(f) The Board may require an investigation by the Administrator of any proposed rate or rate increase or decrease. For the purpose of making this investigation, the Administrator is hereby authorized to hold public hearings and to receive testimony relevant to the considerations to be made by the Board in establishing a rate or in allowing or denying the rate increase or decrease under this chapter. Upon completion of his or her investigation, the Administrator shall make a report of the public hearing and shall make recommendations to the Board regarding the proposed rate.

(g) In establishing rates or in considering rate increases or decreases, the Board shall find that the rates will be just, fair, reasonable and sufficient to provide proper service to the public. The Board may consider the rates charged by other persons performing the same or similar service in the same or other areas.

(h) If no rate is established for a particular type of service, the Administrator may establish an interim rate until the Board makes a final determination of the rate for that type of service. In establishing such a rate, the Administrator shall give due consideration to all of the factors established in this section as guidelines for the Board.

(Ord. 83-14. Passed 6-22-83; E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93; Ord. 96-37. Passed 8-21-96; Ord. 2003-4. Passed 1-22-03; Ord. 2007-2. Passed 1-31-07.)

1864.31 RATE PREFERENCES PROHIBITED.

(a) No franchise holder subject to rate regulation under this chapter shall give any rate preference to any person, locality or type of solid waste generated within Jackson County and which is stored, collected, transported or disposed of by such franchise holder.

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

(1) The reasonable establishment of uniform classes or rates based upon the length of haul, the type of solid waste stored, collected, transported or disposed of, the number, type and location of customers served, or other factors, so long as such rates are reasonably based upon costs of the particular service and are approved by the Board of County Commissioners in the same manner as other rates; or

(2) Any person from volunteering service at a reduced cost for a charitable, community, civic or benevolent purpose.

(3) Any person from charging and collecting fees for the storage, collection, transportation or disposal of solid waste in accordance with rates that are authorized under the terms of a franchise agreement executed by the Board and the franchise holder.

(Ord. 83-14. Passed 6-22-83; E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93; Ord. 96-37. Passed 8-21-96.)

1864.32 PAYMENT FOR SERVICE.

Whoever receives service under this chapter is responsible for payment for such service.

(Ord. 83-14. Passed 6-22-83; E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93.)

1864.33 EQUITABLE REMEDIES; CITATIONS; PENDING ACTIONS.

(a) The accumulation, storage, collection, transportation or disposal of solid waste by any person in violation of any of the provisions of this chapter or of regulations promulgated under this chapter is a nuisance, and the Board of County Commissioners or County Counsel may, in addition to other remedies provided by law, institute injunction, mandamus, abatement or other appropriate equitable proceedings to temporarily or permanently enjoin or abate such storage, accumulation, collection, transportation or disposal.

(b) The provisions of this section are in addition to, and not in lieu of, any criminal prosecution or penalty provided by this chapter or by State law. A violation of any of the provisions of this chapter may be prosecuted by a citation under Chapter 203 of the Administration Code.

(c) The express or implied repeal of any ordinance, or part of an ordinance, by the adoption of this chapter, shall not be construed as abating any action or legal proceeding now pending under or by virtue of such ordinance so repealed, as discontinuing, abating or modifying any penalty accruing or to accrue, as affecting the liability of any person, or as waiving any right of the County to enforce any violation of the Solid Waste Franchising and Nuisance Abatement Ordinance of 1983.

(Ord. 83-14. Passed 6-22-83; E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93.)

1864.34 APPEALS.

(a) Court Appeal. All decisions of the Hearings Officer or the Board of County Commissioners under this chapter shall be reviewable by the Circuit Court of the State for Jackson County.

(b) Appeals from Decisions of Administrator. Except for appeals under Section 1864.11, the Board may review decisions of the County Administrator and/or his designee made under this chapter. The review may be upon the Board's own motion or upon the request of an interested person or affected public agency.

(Ord. 83-14. Passed 6-22-83; E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93; Ord. 2003-4. Passed 1-22-03; Ord. 2007-2. Passed 1-31-07.)

1864.35 PRE-EXISTING VIOLATIONS.

Uses which are violations of County ordinances in effect prior to the effective date of this chapter are also violations of this chapter.

(Ord. 83-14. Passed 6-22-83; E. Ord. 93-9. Passed 3-31-93; P. Ord. 93-14. Passed 5-19-93; E. Ord. 93-15. Passed 5-5-93.)

1864.99 PENALTY.

EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.