

# **TITLE 10**

## **FRANCHISES**

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# TITLE 10

## FRANCHISES

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## **CHAPTER 10.01**

### **10.01 AMBULANCE SERVICE PLAN**

#### **10.01.010 Certification by Board of County Commissioners**

Clackamas County Code Chapter 10.01 is the Ambulance Service Plan for the County. The Board of County Commissioners hereby certifies that:

- A. The County has included in this plan each of the subjects or items set forth in Oregon Administrative Rule 333-260-0020 and has addressed and considered each of those subjects or items in the adoption process.
- B. In the Board's judgment, the ambulance service areas established in the plan will provide for the efficient and effective provision of ambulance services; and
- C. To the extent they are applicable, Clackamas County has complied with ORS 682.062 and 682.063 and with existing local ordinances and rules.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 08-2005, 12/15/05]

#### **10.01.020 Overview of County**

- A. Clackamas County has a population of approximately 338,391 as of April 1, 2000, and an area of 1,879 square miles. Provision of emergency medical services presents a challenge due to the widely varying demographic and geographic areas within the County. The urbanized areas of the County within the Portland metropolitan urban growth boundary are densely populated, while rural areas are much less densely populated. More than one-third of the County consists of federally owned National Forest or BLM land, which is less densely populated still. There are fourteen cities located wholly within the County, and two others partially inside County borders. Large parts of the urban area are unincorporated, with about 64% of County residents living outside of city boundaries. Geographically the County varies dramatically, rising from the 31-foot elevation at Oregon City to the 11,235-foot peak of Mt. Hood.

#### **B. History of ASAs**

In 1991 the Board approved the following Ambulance Service Areas: Canby ASA, Clackamas ASA, and Molalla ASA. Boundary descriptions are in the ASA Map (Section 10.01.040.A) and ASA Narrative Description (Section 10.01.040.B) of this Plan.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 04-2002, 3/14/02; Amended by Ord. 08-2005, 12/15/05]

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**10.01.030 Definitions**

- A. "AMBULANCE" means any privately or publicly owned motor vehicle, aircraft, or marine craft that is regularly provided or offered to be provided for the emergency transportation of persons suffering from illness, injury or disability including any unit registered with the State of Oregon as an advance life support ambulance.
  - B. "AMBULANCE PROVIDER" or "AMBULANCE SERVICE PROVIDER" means a licensed ambulance service that responds to 9-1-1 dispatched calls or provides pre-arranged non-emergency transfers or emergency or non-emergency inter-facility transfers.
  - C. "AMBULANCE SERVICE AREA" and/or "ASA" means a specific geographic area of Clackamas County which is served by one ambulance service provider.
  - D. "AMBULANCE SERVICES" means any individual, partnership, corporation, association, governmental agency or other entity that holds a Division-issued ambulance service license to provide emergency and non-emergency care and transportation to sick, injured or disabled persons.
  - E. "BOARD" means the Board of Commissioners for Clackamas County, Oregon.
  - F. "COUNCIL" or "EMS COUNCIL" means Emergency Medical Services Council.
  - G. "COUNTY EMS MEDICAL DIRECTOR" ("EMSMD") means a licensed physician employed by or contracted to the County to provide medical direction as required..
  - H. "DEPARTMENT" means the Clackamas County Department of Human Services.
  - I. "DIVISION" means the Oregon Health Division, Department of Human Services.
  - J. "EMERGENCY AMBULANCE SERVICE" means the provision of advanced or basic life support, and transportation by ambulance, if appropriate, to respond to all medical and traumatic emergencies, but the term does not include first responder services.
  - K. "EMERGENCY PHYSICIAN ADVISORY BOARD" ("EPAB") means a voluntary advisory board consisting, at a minimum, of the Supervising Physician of each EMS responding agency in the County. The County EMS Medical Director will initially chair the EPAB.
  - L. "EMS" or "EMERGENCY MEDICAL SERVICES" means those prehospital functions and services whose purpose is to prepare for and respond to medical and traumatic emergencies, including rescue and ambulance services, patient care, communications and evaluation.
  - M. "EMS PROVIDER" means any public, private or volunteer entity providing EMS.
  - N. "FIRST RESPONDER" or "FIRST RESPONSE AGENCY" means fire agencies providing Emergency Medical Services.
  - O. "FRANCHISE" means a right granted by the Board after a competitive request for proposal process to provide ambulance services as defined by ORS 682.325 on an exclusive basis but subject to the limits and conditions of this Plan. Assignment of an ASA to a rural fire protection district pursuant to Sections 10.01.070.A.1 and 10.01.070.A.2 of this Plan shall not be considered a franchise.
  - P. "FRONTIER AREA" means an area within an ASA which is designated as such on the map attached as Appendix A.
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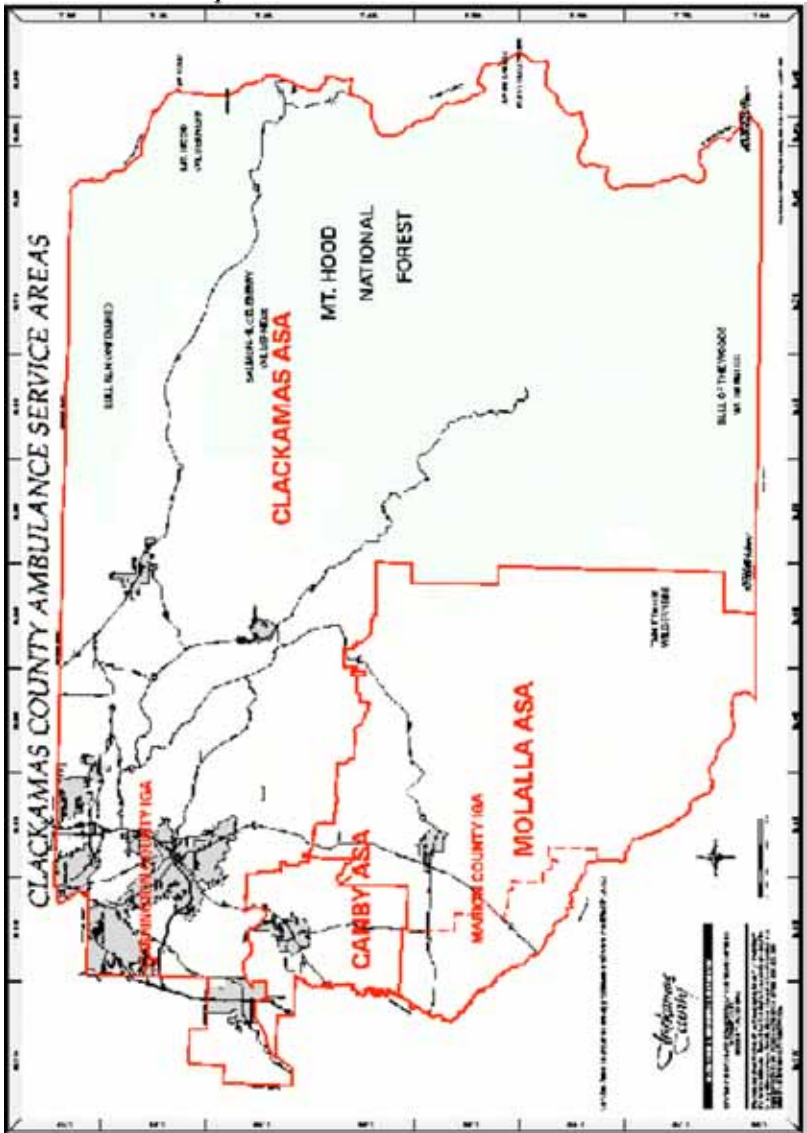
- Q. "NOTIFICATION TIME" means the length of time between the initial receipt of the request for emergency medical service by either a provider or an emergency dispatch center ("9-1-1"), and the notification of all responding emergency medical service providers.
- R. "PARTICIPATING PROVIDER" means a fire service agency (fire district or fire department) that has a contractual agreement with the County allowing the County to use agency responses to modify ambulance response time requirements.
- S. "RESPONSE TIME" means the length of time between the notification of each provider and the arrival of each provider's emergency medical service unit(s) at the incident scene.
- T. "RURAL AREA" means an area within an ASA which is designated as such on the map attached as Appendix A.
- U. "STAFFED" means qualified persons, physically located at or immediately accessible to an ambulance provider's base of operation within an ASA, available on a 24-hour basis.
- V. "SUBURBAN AREA" means an area within an ASA which is designated as such on the map attached as Appendix A.
- W. "SUPERVISING PHYSICIAN" means a licensed physician employed or contracted by an agency to serve as a Medical Director or Medical Advisor to a provider agency.
- X. "URBAN AREA" means an area within an ASA which is designated as such on the map attached as Appendix A.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 04-2002, 3/14/02; Amended by Ord. 08-2005, 12/15/05]

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10.01.040 Boundaries

A. ASA Map



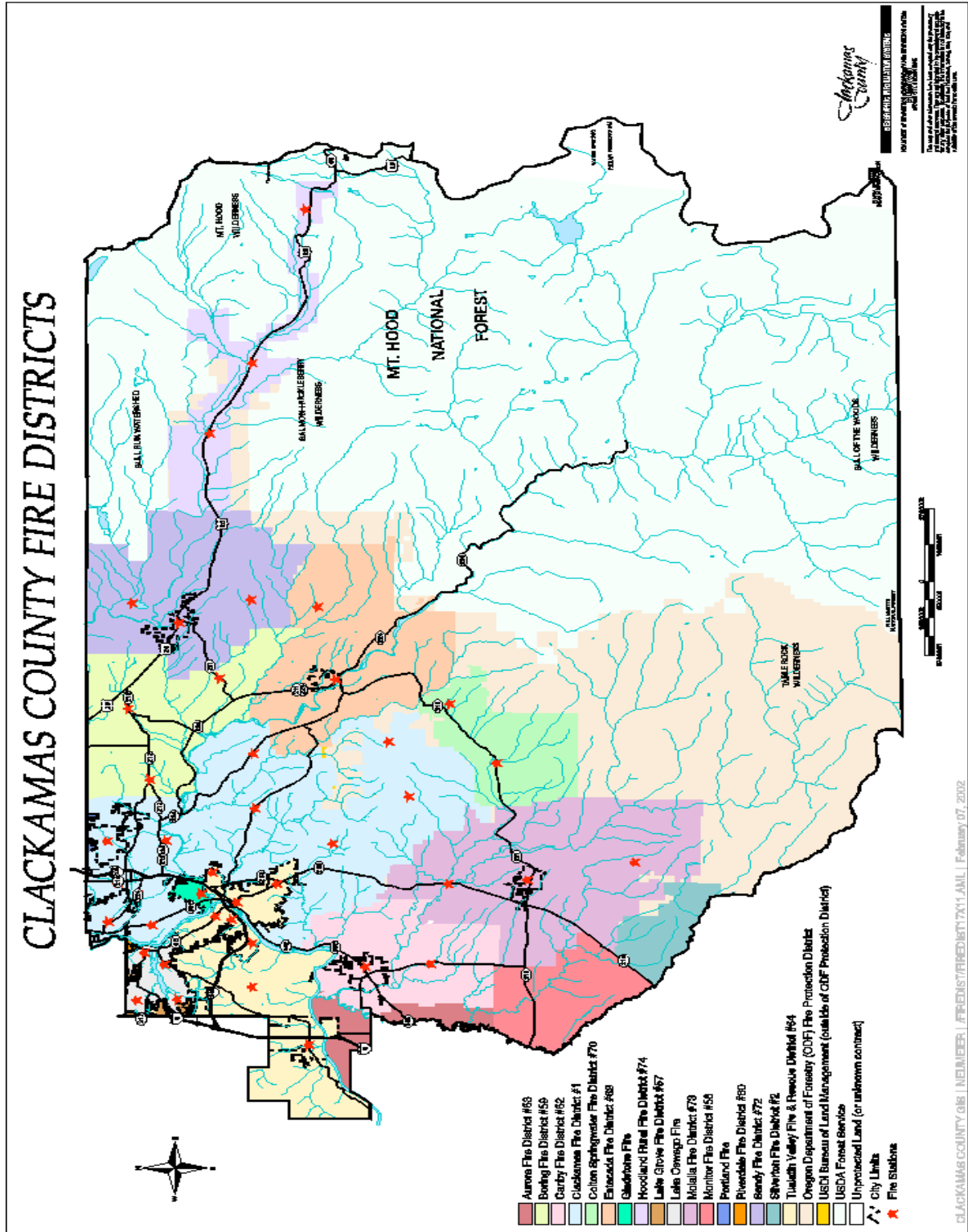
**B. ASA NARRATIVE DESCRIPTION**

1. Clackamas County is divided into the following ambulance service areas:
  - a. The City of Molalla and the area served by the Molalla Rural Fire Protection District ambulance, including the Colton and Molalla Fire Districts, the part of Clackamas County Fire District #1 south of a line drawn along Buckner Creek Road, Gard Road, and Unger Road, and the Oregon Department of Forestry Fire Protection District south of Highway 211, within Clackamas County, known as the "Molalla ASA."
  - b. The City of Canby and the area served by the Canby Fire Protection District ambulance, including the Aurora Fire District within Clackamas County, known as the "Canby ASA."
  - c. The Clackamas Ambulance Service Area is composed of the remaining part of the County except the part of the City of Tualatin located in Clackamas County that is served under an intergovernmental agreement with Washington County, and the parts of the Monitor and Silverton Fire Districts within Clackamas County that are served under an intergovernmental agreement with Marion County.

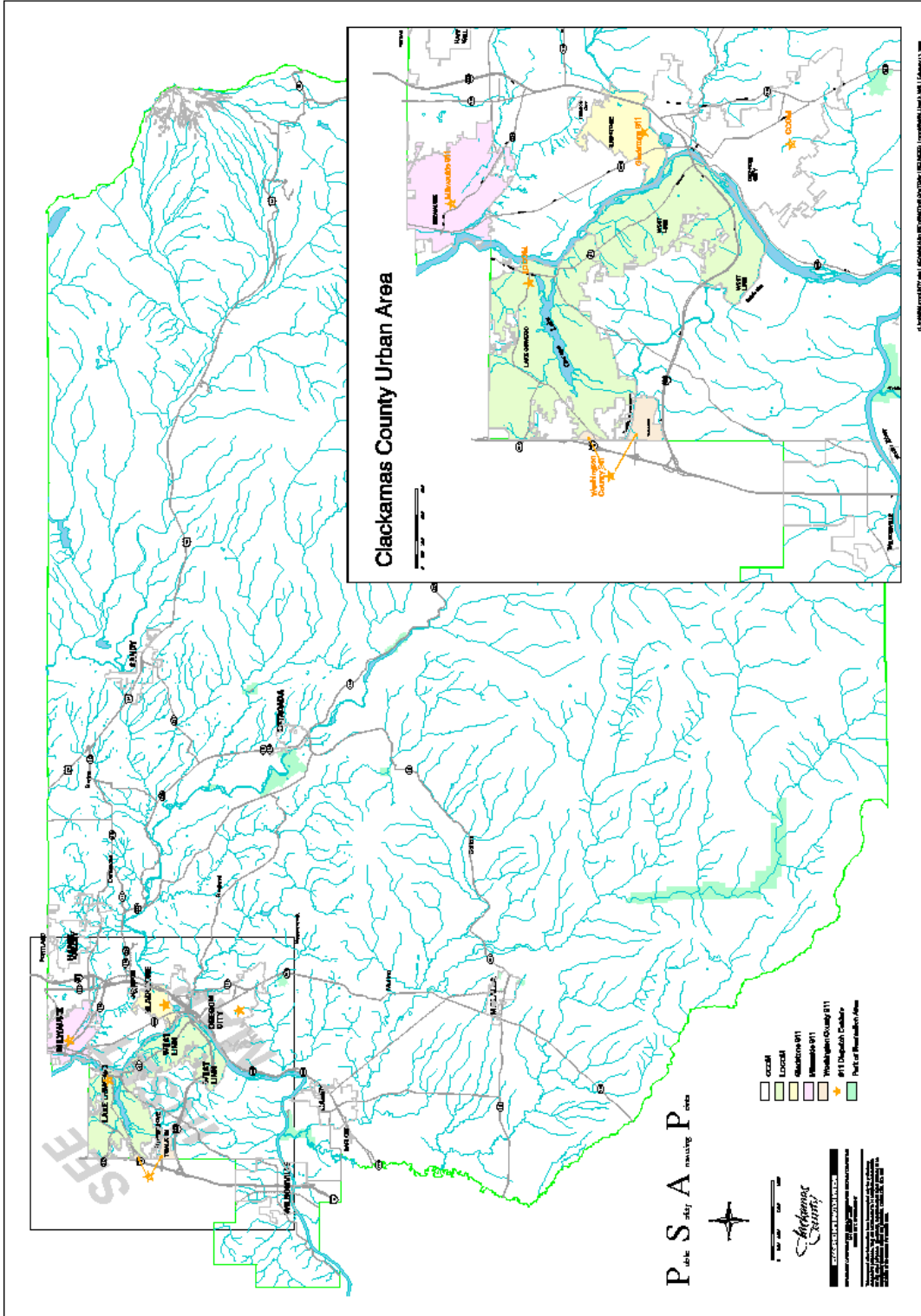
The following areas outside Clackamas County are served as part of the Clackamas ASA:

- The City of Wilsonville within Washington County is served under an intergovernmental agreement with Washington County.
  - The parts of the Cities of Lake Oswego and Rivergrove that are within Washington County are served under an intergovernmental agreement with Washington County.
  - The part of the City of Lake Oswego that is within Multnomah County, and the Alto Park Fire District and the Riverdale-Dunthorpe Fire District within Multnomah County are served under an intergovernmental agreement with Multnomah County.
2. The Board reserves the right, after further addressing and considering the subjects or items required by law, to change the boundaries of these ASAs, or create other ASAs, or incorporate or remove exclusive non-emergency services in one into one or more ASAs in order to provide for the effective and efficient provision of emergency medical service.
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C. Fire District Map



D. 9-1-1 Map



**E. Alternatives Considered to Reduce Response Times**

1. The County believes that, while there are many artificial and geographic barriers to improving response times, e. g., distance, rural population and density, etc., by establishing maximum response times based on urban, suburban, rural and frontier categories, establishing a procedure that monitors response time performance and establishing a system of times and penalties for failure to comply, the County has established the framework from which ambulance providers can operate to provide rapid response times in their service to the community. Additionally, by establishing market rights of sufficient size and duration, the County enables providers to serve the community more efficiently.
2. The County expects ambulance providers to use their best expert and professional judgment in deciding upon various methods of achieving and maintaining the level of ambulance service performance required. "Methods" include, but are not limited to, compensation programs, shift schedules, personnel policies, supervisory structure, vehicle deployment techniques and other internal matters which, taken together, comprise strategy for getting the job done in the most effective and efficient manner possible.

The County recognizes that different ambulance providers may employ different methods to achieve equal success. By allowing each ambulance provider a wide range of management methods, the County hopes to inspire innovation, improve efficiency, and reduce costs without sacrificing the system's performance.

3. The County believes that a well-designed, effective partnership between first response agencies and ambulance service providers may allow a reduction in ambulance response time requirements in the county. Through this plan the County encourages transport providers to work closely with advanced life support and other first response agencies to develop programs that will deliver medical care as rapidly as possible while enhancing countywide service or reducing rates. The county believes that well-articulated, cooperative efforts may improve patient outcomes and therefore encourages all EMS providers to work toward this goal.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 04-2002, 3/14/02; Amended by Ord. 08-2005, 12/15/05]

**10.01.050 SYSTEM ELEMENTS****A. 9-1-1 Dispatched Calls**

9-1-1 calls for medical assistance are currently received by three public safety answering points (PSAPs) for dispatch within the county.

The Molalla and Canby ASA providers are directly dispatched by Clackamas County Communications (CCOM).

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Currently, 9-1-1 requests for ambulance service to CCOM are transmitted electronically to the franchisee which operates a communications center in Multnomah County, Oregon. The franchisee may employ its own methods for deploying and notifying ambulances and will be electronically linked to key CCOM systems. The franchisee will employ an approved method of data capture and transmission to assure that specific verifiable and auditable data elements, required for dispatch and performance evaluation are made available in a format that allows the County to adequately measure, evaluate and regulate system performance. Dispatch tasks employed by the franchisee and the franchisee's computer links with CCOM will not reduce the franchisee's responsibility for its dispatch and response time performance.

All dispatch centers participating in 9-1-1 and non-emergency dispatch of EMS resources within the County, including non-emergency ambulance providers, will utilize and comply with protocols for Emergency Medical Dispatch and Priority Dispatch that have been approved by the County EMS Medical Director, with the advice of EPAB. All calls classified as emergency calls under the approved protocols will be immediately forwarded, transferred or otherwise communicated, in accordance with protocols established by the County, to the appropriate primary PSAP for dispatch of the County's appropriate emergency ambulance provider.

#### **B. Pre-arranged Non-emergency Transfers and Inter-facility Transfers**

The County reserves the right to grant exclusive market rights for non-emergency ambulance service in the future, at any time that the Board determines that it is in the County's interest.

The franchisee in the Clackamas ASA may specifically compete in the non-emergency and interfacility segment of the market and may utilize ambulances and personnel deployed to meet its emergency responsibilities in non-emergency service, provided that the franchisee complies with the requirements of the franchise contract and the requirements of the ambulance permit.

The Director of the County Department of Human Services may adopt regulations and requirements for the issuance of non-emergency ambulance permits. Failure to meet any of these requirements may be grounds for the denial or revocation of an ambulance permit.

The denial or revocation of any ambulance provider permit by the Director of the County Department of Human Services may be appealed to the Board, whose decision will be final.

#### **C. Notification and Response Times**

##### **1. NOTIFICATION TIMES**

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Notification Times will be expressed in terms of percent of calls that do not exceed a specified number of minutes and seconds. For example: a maximum notification time of 45 seconds for 90% of all emergency calls. All Communications Centers that receive requests for service and dispatch ambulances and /or first responders may be required to report call answer times, notification times, total call processing times and compliance with Emergency Medical Dispatch / Priority Dispatch protocols. The County may establish specific maximum times for use in calculating the performance of each center. If the County has not established maximum standards for any center, the center will report its performance at the 90<sup>th</sup> percentile. For example: 90% of calls answered within 23 seconds, 90% of notifications made within 54 seconds, 90 % of calls processed within 2 minutes and 14 seconds, and 92% compliance with EMD protocols.

If any ambulance service provider receives a call for emergency ambulance service on a non-emergency telephone line, that service shall immediately notify the appropriate primary PSAP within the jurisdiction. Each month, the emergency ambulance franchisee for the Clackamas ASA will report the number of calls that it turned over to be emergency dispatch provider and the time required to turn over the call. In no case shall the ambulance provider expend more than 30 seconds before notifying the appropriate PSAP.

## 2. RESPONSE TIMES

- a. Initially, response times for Code-3 calls must be within the following response time limits.
  - i. Urban Areas: Maximum response time of 8 minutes for 90% of all emergency calls.
  - ii. Suburban Areas: Maximum response time of 12 minutes for 90% of all emergency calls.
  - iii. Rural Areas: Maximum response time of 25 minutes for 90% of all emergency calls.
  - iv. Frontier Areas: Maximum response time of 2 hours for 90% of all emergency calls.

Where response time areas are divided along the centerline of a road, the shorter response time shall apply to both sides of the road and to all property having immediate access from that road. The County will monitor response times and if it is found that more than 10% of the emergency calls in any type of response zone are not responded to in the required maximum response times or less during any calendar month, the ambulance provider may be required to redeploy or add additional units, or the County may, if it is determined to be in the public interest, seek revocation of a franchise, ASA assignment, or other remedies.

- b. The County may modify the response time requirements detailed above, to promote efficient and appropriate responses to calls received by PSAPs, including modifications adopted in agreements to integrate first responder
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services delivered by Participating Providers. The County EMS Medical Director, with advice of the EPAB, will review all modifications to the requirements, giving consideration to the following:

- The level of acuity of each call, using modern emergency medical dispatch and priority dispatch capabilities.
  - Clinical evidence that any particular standard is more efficacious.
  - The efficient use of system resources.
  - Alternative delivery systems including, but not limited, to approved advanced life support first response.
  - The projected economic impact of any proposed change. And,
  - Requests from local governmental jurisdictions.
- c. Emergency response time for ambulances will be calculated from the time that a call is received by the ambulance provider until the time that the first ambulance arrives on the scene. In areas where a Participating Provider has a contractual agreement with the County, response time for the Participating Provider will be calculated from the time a call is received by the Participating Provider to the on-scene arrival of the Participating Provider. If a public safety answering point downgrades a call from emergency status, the above maximum response times will not apply. Ambulance providers shall be responsible, however, for responding to such a downgraded call within the appropriate response time criteria, if any, for the downgraded priority. Specific rules may be adopted to govern calculation of response time performance in cases of upgrades and downgrades of response priorities.

Ambulance providers will not be held responsible for response-time performance on an emergency call originating outside the County, unless it originates from an area that is served under Clackamas County regulation pursuant to intergovernmental agreement. However, ambulance providers shall use their best efforts in responding to mutual aid calls.

Responses to emergency calls originating outside the County will not be counted in the number of total calls dispatched used to determine contract compliance statistics. For the purpose of measuring contract compliance, each incident will be counted as only one call dispatched, no matter how many units respond to the incident

Each month ambulance providers shall document in writing, in a manner as required by the County, each ambulance call dispatched which was not responded to within a response time for the area of the call. If more than 10% of the emergency calls in any type of response zone are not responded to in the required maximum response times or less during any calendar month, the ambulance provider shall identify the cause of such extended response time and shall document its efforts to eliminate repetitions of that cause of poor response-time performance.

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When an ambulance provider utilizes mutual aid from outside the ASA to respond to a call, such response shall not be counted as a late response unless the response time standard is not met, or no response time is reported. Section 10.01.060.C addresses the use of mutual aid agreements.

d. Response Time Exemptions

It is understood that unusual circumstances beyond the ambulance provider's reasonable control can induce response times that exceed the aforementioned standards. Equipment failure, traffic accidents, dispatcher error, or lack of a nearby ambulance shall not furnish grounds for release from late run deductions or general response time standards. If the ambulance provider feels that any run or group of runs should be exempt from response time standards due to unusual circumstances beyond the ambulance provider's reasonable control, it may request that these runs be excluded from response time performance calculations and late run penalties. If the Department concurs that the circumstances were due to unusual circumstances beyond the ambulance provider's reasonable control, the Department will allow such exemptions in calculating overall response time performance and in assessing late run penalties. Additional detail and requirements regarding response time exemptions will be contained in the franchise RFP and any resulting contract.

e. Penalties for Failure to Meet Response Time/Performance Criteria

Ambulance provider response time performance shall be reviewed monthly. For those months that the provider fails to respond to 90 percent of all Code-3 calls within a time period specified under Response Times (Section 10.01.050.C.2), the County will review appropriate system-status plans, unit-hour production capacities, or other factors to determine the causes of noncompliance. For those months that the provider fails to meet the 90 percent standard, a \$100 financial penalty for each one-tenth of a percentage point less than 90 percent will be assessed for each individual zone (i.e., Urban, Suburban, Rural and Frontier).

For monitoring purposes, each zone (i.e., Urban, Suburban, Rural and Frontier) shall have, in addition to the 90-percent standard, a response time limit for every call. For every Code-3 call where the ambulance fails to arrive within the time limit (Code-3 everycall time limits are: 12 minutes-Urban, 20 minutes-Suburban, 45 minutes-Rural, 4 hours-Frontier), the penalty will be \$10 per excess minute (e.g., call response times of 13:00-13:59 minutes shall be fined \$10, 14:00-14:59 minutes shall be fined \$20).

Calls referred to another agency will be included as part of the response-time requirements.

Penalties for failure to report "at-scene" times for calls will be assessed at \$300 for each incident, but such at scene times may be established from appropriate data, including radio transmissions identifying the scene time or first responder reports. The contract governing a franchise may further define

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or restrict methods for reporting at-scene and other times. A penalty may be established for referral of a call to any unapproved ambulance provider.

A \$1,000 penalty will be assessed for any instance when an ambulance provider fails to respond to an emergency ambulance call and it is necessary for the public safety answering point to refer the call to another ambulance provider. No such penalty will be assessed if a call is handled by mutual aid referral. Each call referred by the public safety answering point to another provider due to lack of resources will be counted in the compliance statistics as a call over the 90% response time standard.

f. Response Time Map Changes

The response time map attached as Appendix A reflects the historical commitments made by the Board to various communities in the County regarding ambulance response times. It is the Board's intention to honor these historical commitments by maintaining these response time zones as shown on the map. However, in the event that changed circumstances, such as population growth or other changes, indicate a compelling need to change the response time map, the following procedure will be followed.

The Director of the County Department of Human Services shall proceed with proposed response time map changes by giving prior written notice of the proposed changes to any city or fire district whose territory would be affected. At the request of any affected city or fire district, any proposed changes will be forwarded to the Board for decision by the Board.

In reviewing proposed changes to the response time map, the County may consider the following general guidelines:

"Urban area" designation may be appropriate for areas within an ASA which are in an incorporated city with a population greater than 9,000 persons, or which consist of a census tract having a population density greater than 2,000 persons per square mile. "Suburban area" designation may be appropriate for areas within an ASA which are non-urban but are contiguous to urban areas, and are within a ten-mile radius of an urban community center and consist of a census tract having a population density between 1,000 and 2,000 persons per square mile, or for traffic corridors in which the 12-minute response time standard can be extended without unduly adding to system cost. "Rural area" designation may be appropriate for areas within an ASA which are not urban, not suburban, and which are either an incorporated city of greater than 2,000 and less than 9,000 population, or are within a 30-mile radius of such a city's center. "Frontier area" designation may be appropriate for areas within an ASA which are neither urban, suburban, nor rural areas, and for inaccessible or roadless areas of the National Forest where 25-minute response times cannot be achieved without unduly adding to system cost.

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The Director may make changes in the response time criteria detailed above to make the County criteria consistent with State mandated Trauma System and/or criteria used for similar purposes and reporting.

#### **D. Levels of Care**

1. All ambulance providers:
  - a. Assigned an ASA shall provide service at the advanced life support level, staffed by emergency medical technicians as described in Section 10.01.050.E, on a 24-hour basis, except that ambulances staffed with a volunteer or volunteers and responding in the rural area or frontier area may be staffed to meet or exceed minimum State standards.
  - b. Shall maintain vehicles and equipment that conform with the standards, requirements, and maintenance provisions stated in the rules adopted by the State Health Division and ORS Chapter 682.
  - c. Shall maintain and make available, upon request of the Department, patient care records in a form approved by the Department.
  - d. Shall prohibit the performance of EMT or EMT trainee activities by any EMT or EMT trainee who suffers suspension, revocation, or termination of certificate by the State Health Division.

#### **E. Personnel**

1. Advanced life support ambulances in service must have a minimum staff of two Emergency Medical Technicians, at least one of which is certified as an Emergency Medical Technician Paramedic, able to administer IV therapy, read and interpret cardiac monitor strips, and administer drugs authorized by a licensed physician. The second EMT must be certified as at least an EMT Basic. Proper medical equipment and drugs must also be provided to allow them to perform to their level of training.
  2. Volunteer EMTs may be utilized where available.
  3. First Responders and Emergency Medical Technicians responding to emergency and/or non-emergency calls in Clackamas County must be certified by the State of Oregon, and have a Supervising Physician who meets all requirements of the Oregon Health Division.
  4. Emergency Medical Technicians used to staff ambulances or respond to emergency and/or non-emergency calls in Clackamas County must be properly credentialed, certified and authorized to provide Basic or Advanced Life Support by their respective Supervising Physicians.
  5. Emergency Medical Technicians of Participating Providers that are deployed as a part of any plan that uses fire agency response to modify ambulance response time requirements within any jurisdiction must meet, at a minimum, the credentialing, certification and authorization standards established for ambulance Emergency Medical Technicians by the County EMS Medical Director. Compliance with these standards may be supervised by the appropriate agency Supervising Physician.
  6. The EPAB may, as part of its advisory role, review the staffing requirements of all EMS providers in the County and make recommendations to the County EMS
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Medical Director concerning ambulance services and coordination for other EMS services.

#### **F. Medical Supervision**

1. Clinical performance of all EMS providers must be consistent with approved medical standards and protocols.
2. To promote coordination among Supervising Physicians of EMS providers, the Emergency Physician Advisory Board will review and make recommendations regarding protocols and quality assurance, and will assist individual Supervising Physicians of EMS providers as requested.
3. The County will establish an Emergency Physician Advisory Board (EPAB), consisting, at a minimum, of the current agency Supervising Physician of each EMS responding agency in the County. The County EMS Medical Director will initially chair the EPAB. The EPAB will serve as the point of coordination of medical supervision among the agencies and make recommendations regarding protocols. The EPAB will advise the County and County EMS Medical Director about other matters of clinical significance as needed.
4. The Department will appoint a County EMS Medical Director (EMSMD) to serve as the medical advisor to the County on EMS matters. The EMSMD may also serve as the Supervising Physician of the provider selected to operate the Clackamas ASA and for all agencies of Clackamas County providing emergency medical services. The County EMS Medical Director may be designated as the Supervising Physician for any first response agency, BLS provider, or AED program that does not maintain an individual Supervising Physician. In the event that any first response agency chooses to use the County EMS Medical Director or loses the services of an individual medical advisor, this service may be provided at no charge. Transporting ambulance providers using the services of the County EMS Medical Director will be assessed a prorated fee for services, based on the actual cost of the Medical Director activities, annual transport volume and the degree to which they use the Medical Director.
5. Medical supervision is also addressed in the Quality Improvement provisions of this Plan (Section 10.01.050.J).

#### **G. Patient Care Equipment**

Patient Care Equipment is addressed in the Levels of Care provisions of this Plan (Section 10.01.050.D), and the Vehicles provisions of this Plan (Section 10.01.050.H).

#### **H. Vehicles**

All ambulance providers shall:

1. Supply a sufficient number of vehicles outfitted with necessary equipment and supplies as required by Oregon State law and Administrative Rules.
  2. Report annually to the Department the type, age and mileage of each vehicle as well as all financial details regarding ownership, lien holders or other obligations relating to said vehicles. Each ambulance provider will report, within 3 business
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days, any change in ownership, lien holder or other obligations relating to any of the vehicles. Additionally, each ambulance provider will report to the County within 3 business days any additions, deletions or significant change of status, including repairs that will remove a vehicle from service for longer than one week.

3. Provide to the Department a written description of its program of vehicle and equipment maintenance and inventory control. Providers may modify such maintenance and inventory control programs, from time to time, as necessary to improve performance and contain costs.

#### **I. Training**

1. The County expects all EMS providers to meet State required certification levels, to be certified and/or licensed by the appropriate State agency, to participate in a medical audit process, and to provide special training and support to personnel in need of specific training.
2. Participating Providers will assure that the Emergency Medical Technicians utilized in EMS responses meet the initial, recurrent and competency based training standards established by the County EMS Medical Director.
3. As part of its continuing role to assist the County and EMS providers in improving services, the EPAB may, as part of its regular duties, review and evaluate the continuing training needs of EMS providers and personnel, and make recommendations to the EMSMD concerning ambulance services training and coordination for other EMS services training.

#### **J. Quality Improvement**

1. Each agency Supervising Physician will be responsible for administering the Quality Improvement Program within each agency and assuring that the agency participates in the countywide program.
  2. The EPAB may make recommendations for establishing standards for Quality Improvement Programs.
  3. The County EMS Medical Director, with advice from EPAB, will be responsible for establishing a countywide coordinated Quality Improvement Program.
  4. The Quality Improvement Program will be integrated to include PSAP handling of medical calls, communications center EMS operations, Emergency Medical and Priority Dispatch, first response agencies, ambulance service providers and other related agencies and programs.
  5. Participating Providers will be required to participate in medical oversight as provided by contractual agreement with the County.
  6. At a minimum, the County expects EMS providers to:
    - a. Supervise the services provided by them.
    - b. Participate actively in the medical audit process, provide special training and support to personnel found in need of special assistance in specific skill or knowledge areas, and provide additional clinical leadership by maintaining a current and extensive knowledge of developments in EMS equipment and procedures;
    - c. Maintain State and local vehicle permits and personnel certifications;
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- d. Cause all official EMS policies and protocols to be properly implemented in the field. Where questions related to clinical performance are concerned, EMS providers shall satisfy the State EMS agency and the County's administrative representatives. EMS providers shall ensure that knowledge gained during the medical audit process is routinely translated into improved field performance by way of training, amendments to the operating procedures, bulletins, and any other method necessary to ensure it becomes standard practice.
  - e. Utilize the services of a physician, whether an Agency Supervising Physician or the County EMS Medical Director, to review the quality of care provided by them.
7. Problem Resolution: The County EMS Medical Director, with advice from the EPAB, will develop a procedure for the resolution of quality assurance problems. Where ambulance services are provided by a private company pursuant to a contract with Clackamas County, the contract shall set forth a procedure for addressing and resolving quality assurance problems.
  8. Sanctions: The EPAB may recommend sanctions for noncompliant personnel and make reports of noncompliant providers. Where ambulance services are provided by a private company pursuant to a contract with the County, the contract shall set forth sanctions to be applied in the event of a major breach by the provider, and shall set forth end-of-term provisions designed to provide an orderly transition in the event a different company wins a subsequent bid competition.

#### **K. Changes by Board**

The Board reserves the right, after further addressing and considering the subjects or items required by law, to change system elements described in Sections 10.01.050.A through 10.01.050.J in order to provide for the effective and efficient provision of emergency medical services.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 04-2002, 3/14/02; Amended by Ord. 08-2005, 12/15/05]

### **10.01.060 COORDINATION**

#### **A. The Entity that will Administer and Revise the ASA Plan**

The Director of the Clackamas County Department of Human Services or his/her designee shall be responsible for the administration of this Plan. The Board of County Commissioners of Clackamas County will be responsible for revisions to this Plan.

#### **B. Process for Input and Complaint Review**

1. Complaints will be reported to the Director or his/her designee for investigation.
  2. Complaints of a clinical nature and those that may have clinical components will be referred to the agency Supervising Physician and EPAB for investigation. Urgent issues and complaints of an egregious clinical nature may be referred directly to the County EMS Medical Director for assistance in generating an immediate investigation and/or intervention.
  3. To provide regular consultation on EMS issues, the Board shall appoint an Emergency Medical Services Council composed of eleven members as follows:
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- a. One representative of a commercial ambulance service provider;
  - b. One representative from a governmental agency that provides ambulance services, if there is such an agency;
  - c. One representative from the Clackamas County Fire Defense Board;
  - d. One emergency medicine physician from a hospital within Clackamas County.
  - e. One Supervising Physician to an EMS provider agency;
  - f. One governmental representative from Clackamas County as recommended by the Administrator of the Department of Human Services;
  - g. One Advanced Life Support Emergency Medical Technician currently providing prehospital emergency medical care in Clackamas County;
  - h. One Basic Life Support Emergency Medical Technician currently providing prehospital emergency medical care in Clackamas County;
  - i. One person representing a city in Clackamas County.
  - j. One person representing consumers of ambulance services.
  - k. One person representing a Primary Public Safety Answering Point (PSAP) Communications Center within Clackamas County.
4. Appointments shall be made for a term of three years. Members currently serving on the Council shall finish their terms. The PSAP representative will be appointed as soon as possible after approval of this plan.
  5. The Council shall adopt bylaws to govern the operations of the Council.
  6. The Council shall advise the Board and the Department in all matters relating to this Plan and/or matters relating to prehospital emergency medical services, and provide consultation or make recommendations as may be requested by the Board or the Department.

### **C. Mutual Aid Agreements**

Ambulance providers are required to use best efforts to provide a response to all requests for mutual aid from neighboring jurisdictions.

However, should delivery of mutual aid service to any neighboring jurisdiction become excessive, indicating that such jurisdiction is relying heavily upon another system for emergency service, the ambulance provider shall so inform the County and discuss adjustment of the delivery of mutual aid service to that neighboring jurisdiction to a level more consistent with mutual aid requests by other neighboring jurisdictions.

The ambulance provider and the County shall also discuss such instances when ambulance provider is relying on mutual aid agreement to compensate for poor coverage levels. Mutual aid responses shall be reviewed at least annually unless problems or deficiencies occur. If it is found the ambulance provider is relying on it to mask coverage deficiencies, the ambulance provider may be required to re-deploy units or add unit hours to cure deficiencies.

Ambulance providers shall not be held responsible for response-time performance on any emergency call originating outside their ASA.

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**D. Disaster Response**

1. County Resources Other than Ambulances  
The County will establish, in consultation with its Department of Homeland Security, the Fire Defense Board, Law Enforcement agencies and EPAB, an inventory of County resources available to assist in any disaster response.
2. Out of County Resources  
The County will establish, in consultation with its Department of Hoemeland Security, the Fire Defense Board, Law Enforcement agencies, EPAB, and neighboring jurisdictions, an inventory of out of County resources available to assist in any disaster response. Provisions for disaster response will be included in all mutual aid agreements.
3. Mass-Casualty Incident Plan  
The County will establish, in consultation with its Department of Homeland Security, the Fire Defense Board, Law Enforcement agencies, EPAB, and neighboring jurisdictions, a mass casualty plan to be used in any mass casualty incident. Provisions for mass casualty response will be included in all mutual aid agreements.
4. Response to Terrorism  
The County will establish, in consultation with its Department of Homeland Security, the Fire Defense Board, Law Enforcement agencies and EPAB, a plan for responding to terrorism incidents including, weapons of mass destruction / effect and bio-terrorism incidents. Law enforcement will be the lead agency in the immediate response and mitigation of terrorist threats or incidents. The County Community Health Division will be the lead health agency in determining the appropriate health agency response. The Public Health Officer will be the lead physician at the agency and the County EMS Medical Director will coordinate EMS resources.
5. The County has an obligation to provide assistance to other communities during disasters or other extraordinary emergencies. All ambulance providers shall cooperate with the County in rendering emergency assistance to its citizens and to other communities during such events.

During such periods, and upon authorization from the County, ambulance providers will be exempted from responsibilities for response-time performance until notified that the assistance within the County or to other communities is no longer required. At the scene of the disaster or other extraordinary emergency, the ambulance providers' personnel shall perform in accordance with local emergency management procedures and protocols established by the affected County.

When an ambulance provider is notified that disaster assistance is no longer required, it shall return all of its resources to the primary area of responsibility, and shall resume all operations in a timely manner.

6. Ambulance providers will be required to provide specialized training to their employees regarding incident command systems.
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Ambulance providers will be required to use the countywide incident command system (ICS) and personnel accountability system adopted by the Fire Defense Board.

7. Ambulance providers will be required to participate in County disaster planning and training exercises.

#### **E. Personnel and Equipment Resources**

1. Non-Transporting EMS Providers  
EPAB may recommend standards for certification, equipment, standards of care, clinical protocols and patient hand-off procedures for all non-transporting EMS providers. Individual agency Supervising Physicians will be responsible for implementing and supervising the agency's adherence to these standards.
2. Participating Provider agencies must comply with standards for certification, equipment, standards of care, clinical protocols and patient hand-off procedures established by the County EMS Medical Director. Should any Participating Provider utilize an Agency Supervising Physician, in addition to the County EMS Medical Director, compliance with this provision may be supervised by the Agency Supervising Physician.
3. All EMS providers shall provide training for their crews to the hazardous materials first responder (awareness) level as determined by the Occupational Safety and Health Administration.
4. The Fire Department having jurisdiction will be the lead agency in matters of hazardous materials and heavy extrication.
5. The most appropriate lead agency for Search and Rescue and Specialized Rescue may vary with location and will be that agency identified through the incident command system.
6. All ambulance providers will participate in and comply with the countywide incident command and personnel accountability systems established by the Fire Defense Board.

#### **F. Emergency Communication and System Access**

1. Telephone and Dispatch Procedures  
There are two public safety answering points (PSAP) in Clackamas County. Clackamas County Communications (CCOM), operated by the County and Lake Oswego Communications (LOCOM), operated by the City of Lake Oswego. A third PSAP operated by Washington County (WCCCA) dispatches calls in a portion of the Clackamas ASA.

CCOM, LOCOM, and WCCCA provide dispatching service which include twenty-four hour per day staffing of dispatch personnel for dispatch of police, fire and medical service requests; emergency and routine radio communications with police and fire user agencies; communications between users and other resources relating to the functions of user agencies; and other specific functions needed and requested by user agencies to aid in the performance of their functions.

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- PSAP dispatch personnel are trained in CPR (cardio pulmonary resuscitation) and EMD (emergency medical dispatch) techniques and will provide instructions for pre-arrival treatment if calling party is willing to perform treatment to ill or injured victims.
2. **Radio System**  
The County is implementing a 800-megahertz radio system. Ambulance providers are required to provide, install and utilize 800-megahertz radios that are compatible with the County system.
  3. **Emergency ambulance providers** must be able to communicate with all Clackamas County first response agencies on VHF and 800 megahertz Fire Defense Board 'A' bank template.
  4. **Emergency ambulance providers** must meet requirements for communication with on-line medical control and receiving hospitals established by the County EMS Medical Director.
  5. **Emergency Medical Services Dispatcher Training**  
All Communication Centers handling EMS Calls will be required to operate under Emergency Medical Dispatch (EMD) and Priority Dispatch procedures approved by the County EMS Medical Director. EPAB may provide advice and consultation to the County EMS Medical Director in the development, evaluation and selection of EMD and Priority Dispatch systems. All persons assigned to EMS duties and call taking will be required to complete a prescribed training program in EMD.

#### **G. Changes by the Board**

The Board reserves the right, after further addressing and considering the subjects or items as required by law, to change coordination provisions described in Sections 10.01.060.A through 10.01.060.F in order to provide for the effective and efficient provision of emergency medical services.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 04-2002, 3/14/02; Amended by Ord. 08-2005, 12/14/05]

### **10.01.070 PROVIDER SELECTION**

#### **A. Initial Assignment of Ambulance Providers**

Initial assignment of ambulance providers has been as follows:

1. The Molalla Rural Fire Protection District (RFPD) was assigned as the provider for the Molalla ASA under the 1991 Ambulance Service Plan, and will continue to provide service to that area.
  2. The Canby Rural Fire Protection District was assigned as the provider for the Canby ASA under the 1991 Ambulance Service Plan, and will continue to provide service to that area.
  3. American Medical Response was assigned as the provider for the Clackamas ASA in a competitive request-for-proposal process under the 1993 Ambulance
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Service Plan, and will continue to provide service to that area, under the terms and conditions of the current franchise agreement, as amended.

### **B. Reassignment**

1. An emergency reassignment may be made at any time for a period of up to one year if the Board determines that the inability or failure of a provider to perform in the delivery of ambulance services constitutes an emergency related to public health and safety.
2. Should an ambulance provider notify the County that it is no longer willing or able to provide service to an ASA, or should the County take action to terminate the agreement for service or assignment to the ASA, the County shall then select a replacement provider by a competitive selection process recommended by the County Administrator and approved by the Board.
3. At the end of the term of an agreement for ambulance service, the Board may extend the agreement, renegotiate the agreement, or seek a service provider by a competitive selection process recommended by the County Administrator.

### **C. Application for an ASA**

. The County will solicit applications for an ASA from ambulance providers if it determines that additional providers are needed. The format for such applications will be determined by the County Administrator.

### **D. Notification of Vacating an ASA**

Assignees and Franchisees must comply with the requirements of franchise or assignment agreements in serving notice of intent to vacate an ASA. Generally these agreements contain performance security measures that are adequate to assure uninterrupted service. Any provider that does not have an agreement that specifies procedures for vacating an ASA must give adequate notice and fully cooperate with the County in the takeover of ASA responsibilities.

### **E. Maintenance of Level of Service**

1. In the event that any provider vacates an ASA, the County will consider reassignment of the ASA as provided in subsection (B) above.
  2. In all agreements related to ASA assignments and franchises, the County intends to require adequate performance security to assure adequate services levels are maintained.
  3. Revocation: Upon recommendation by the Department, or upon its own motion, and after proper notice and opportunity to correct, the Board may modify, revoke, or refuse to renew a franchise, ambulance permit, or ASA assignment upon finding that the franchise holder or provider has:
    - a. Violated this Plan, a County ordinance, the terms of a permit, franchise, assignment, or the conditions thereunder, or other State laws or regulations herein applicable; or
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- b. Materially misrepresented facts or information given in the application for a franchise, or materially misrepresented facts and justification of rate adjustments; or
  - c. Failed to provide adequate service in an assigned service area; or
  - d. Misrepresented the gross receipts from the franchise service area or such other reports required by the Board; or
  - e. Willfully charged rates in excess of those authorized by the Board; or
  - f. Generated an excessive number of investigated and confirmed complaints from police agencies, fire departments, health care facilities, the medical community, or the public concerning the provider's performance;
  - g. Failed conscientiously to comply with any and all requirements of this Plan; or
  - h. Failed to follow the requirements as listed in the permit, Request for Proposal or the franchise contract.
4. The Board shall notify the ambulance provider in writing of the alleged failure.
  5. The County shall have the right to revoke a permit, ASA assignment or franchise if it finds that there has been a violation of the terms of the permit, assignment, or a major breach of the terms of the franchise. The County shall have the right to exercise immediate takeover of the franchise operations if it finds that there has been a major breach of the terms of the franchise, and, in the County's opinion, public health or safety are endangered thereby. Such action may be effective immediately at the direction of the County.
  6. No franchise, permit, or ASA assignment shall be revoked without providing a right to a hearing in the matter. The ambulance provider shall have the right to appear and defend against the charges, and if desired, to be represented by counsel. In the event of an emergency or immediate situation, the hearing may be conducted after the takeover of the system.
  7. The County will include, in its contract with the ambulance provider selected to serve the Clackamas ASA, notification and termination provisions to provide for performance security.
  8. In areas of the County where geographic or other limitations might hinder the adequate provision of ambulance services, the County may enter intergovernmental agreements with counties, cities or fire districts in order to provide efficient and effective ambulance service by means of public or private ambulance providers.
  9. The assignments of Section 10.01.070.A shall be exclusive; however, such exclusivity shall not apply to:
    - a. Vehicles owned by or operated under the control of the United States Government or the State of Oregon;
    - b. Vehicles being used to render temporary assistance in the case of a disaster, or an emergency with which ambulance services of surrounding localities are unable to cope, or when directed to be used to render temporary assistance through an alarm/dispatch center or a public official at the scene of an accident;
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- c. Vehicles operated solely on private property or within the confines of institutional grounds, whether or not the incidental crossing of any public street, road or highway serving the property of grounds is involved;
- d. Any person who owns or who drives or attends a patient transported in a vehicle under this subsection 10.01.070.E.9;
- e. Ambulance companies that provide service only to fulfill mutual service agreements, or non-emergency transportation contracts with specific organizations (if the County does not incorporate non-emergency ambulance services into an exclusive franchise agreement), provided the ambulance company and the organization are on a current basis identified and on file with the Department;
- f. Vehicles operated solely for the transportation of lumber industry employees;
- g. Transport of persons who do not require pre-hospital or out of hospital emergency assessment or treatment (if the County does not incorporate non-emergency ambulance services into an exclusive franchise agreement);
- h. Transport of persons through an ASA, or patient delivery from another ASA.

**F. Changes by the Board**

The Board reserves the right, after further addressing and considering the subjects or items required by law, to change ambulance provider selection procedure or standards, or service provisions, as described in Sections 10.01.070.A through 10.01.070.E, in order to provide for the effective and efficient provision of emergency medical services.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 04-2002, 3/14/02; Amended by Ord. 08-2005, 12/15/05]

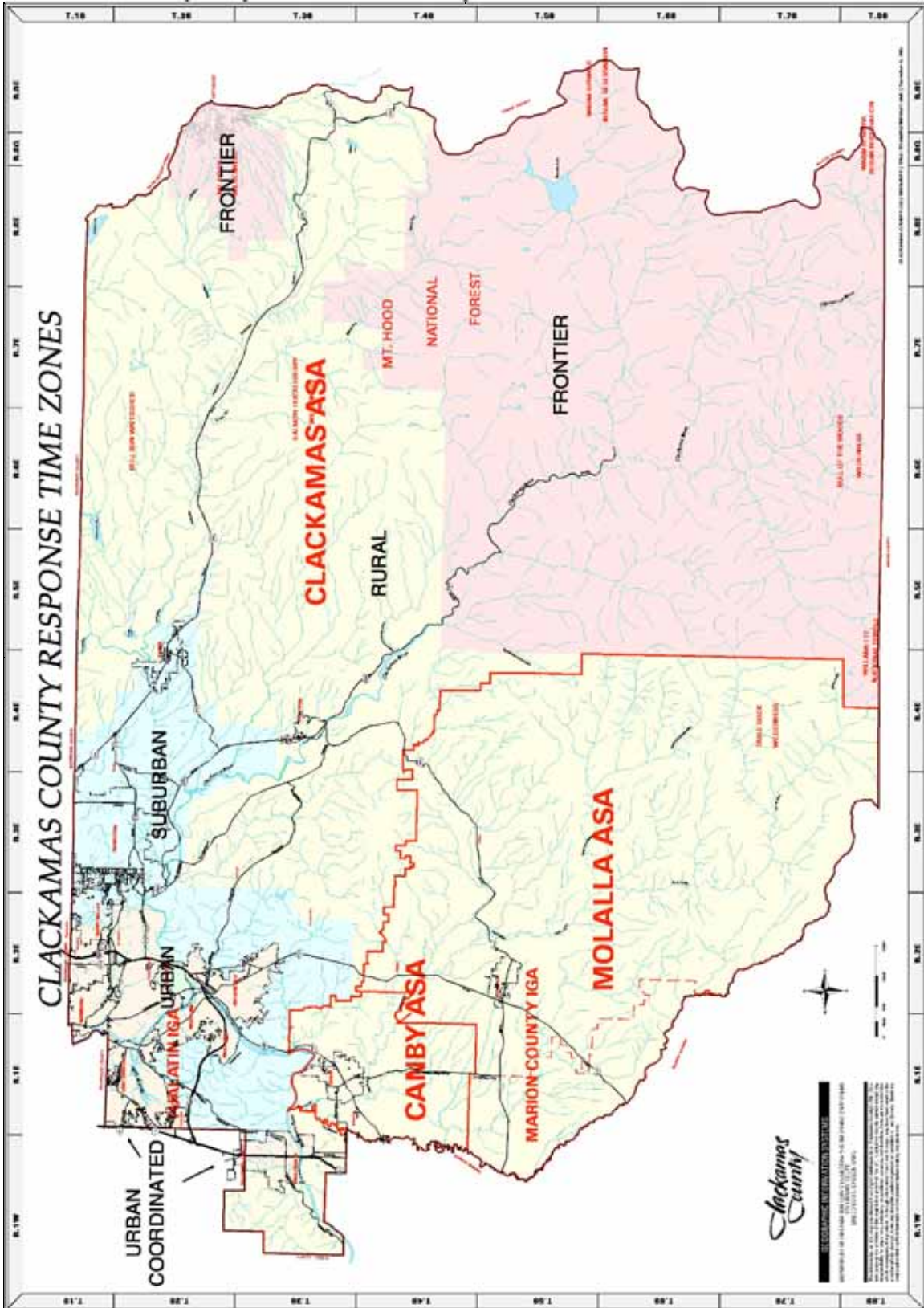
**10.01.080 COUNTY ORDINANCES AND RULES**

A. Clackamas County Code Chapter 10.01, Ambulance Service, is the codified form of the County's Ambulance Service Plan, and is adopted by County ordinance.

[Added by Ord. 04-2002, 3/14/02; Amended by Ord. 08-2005, 12/15/05]

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APPENDIX A  
Clackamas County Response Time Zone Map



## **APPENDIX A**

Clackamas County Response Time Zone Map

## Chapter 10.02

# 10.02 CABLE TELEVISION COMMUNICATIONS SYSTEMS REGULATION

### 10.02.010 Definitions

For the purpose of this chapter, unless the context requires otherwise:

- A. ACCESS or PUBLIC ACCESS means the use by various agencies, institutions, organizations, groups and individuals in the community, including the County and its designees, of the cable system to acquire, create, and cable cast programming not under the editorial control of the Grantee. Access also refers to the specific channels (and portions thereof), services facilities, equipment, technical components, maintenance, resources and/or other capital or operating support and all other means by which this right is exercised.
  - B. CABLE OPERATOR means any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.
  - C. CABLE SERVICE means the one-way transmission to subscribers of video programming, or other programming service and, subscriber interaction, if any, which is required for the selection of such video programming or other programming service.
  - D. CABLE COMMUNICATIONS SYSTEM or CABLE TELEVISION SYSTEM means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:
    - 1. a facility that services only to retransmit the television signals of one or more television broadcast stations;
    - 2. a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility or facilities uses any public right-of-way;
    - 3. a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, other than for purposes of Section 621 C, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or
    - 4. any facilities of any electric utility used solely for operating its electric utility systems.
  - E. FRANCHISE means an initial authorization, or renewal thereof (including renewal of an authorization which has been granted subject to Section 626 of the Cable Act), issued by a franchising authority, whether such authorization is designated as a
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- franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system.
- F. FRANCHISEE means the person, firm or organization to which a franchise is granted to operate a cable communications system pursuant to the authority of this chapter.
- G. FRANCHISE FEE means any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such; but the term “franchise fee” does not include, as per sec. 622 G of the Cable Act:
1. any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers);
  2. in the case of any franchise in effect on the date of the enactment of this chapter, payments which are required by the franchise to be made by the cable operator during the term of such franchise for, or in support of the use of, public, educational, or governmental access facilities;
  3. in the case of any franchise granted after such date of enactment, capital costs which are required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities;
  4. requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or
  5. any fee imposed under Title 17, United State Code.
- H. LEASED ACCESS CHANNEL means any channel or portion of a channel available for programming by persons or entities other than Franchisee for a fee or charge.
- I. PROGRAMMING means the process of causing television programs or other patterns of signals to be transmitted on the cable communications system, and includes all programs or patterns of signals transmitted or capable of being transmitted, on the cable communications system.
- J. PUBLIC RIGHT-OF-WAY means the surface of, and the space above and below, any public street, road, alley, highway, dedicated way, local access road or road easement used or intended to be used by the general public for motor vehicles, and any public utility easement within the County, to the extent the County has the right to allow the Franchisee to use them.
- K. VIDEO PROGRAMMING means programming provided by, or generally considered comparable to programming provided by a television broadcast station.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.02.020 Authority**

The County of Clackamas recognizes, declares and establishes its authority to regulate the construction, operation and maintenance of cable communications systems (hereinafter “system”) for the area located within the unincorporated areas of Clackamas County, and to exercise all powers necessary for that purpose, including, but not limited to, the following:

- A. To grant by resolution, nonexclusive franchises for the development and operation of a system or systems;
  - B. To impose different franchise requirements based on reasonable classifications.
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- C. To contract, jointly agree or otherwise provide with other local or regional governments; counties or special districts for the development, operation, and/or regulation of systems, or franchises;
- D. In the event of unusual circumstances not presently anticipated to occur, the County may purchase, hire, construct, own, maintain, operate or lease a system and to acquire property necessary for any such purpose.
- E. To regulate, subject to applicable law, all facets of a system, including but not limited to:
  - 1. Consumer service, consumer protection and privacy standards;
  - 2. Disputes among the County, franchisees, and subscribers;
  - 3. The development, management and control of access channels;
  - 4. Rates and review of finances for rate adjustments;
  - 5. Construction timetables, standards, and service extension policies;
  - 6. Modernization and upgrade of technical aspects;
  - 7. Leased access channels;
  - 8. Ensuring adherence to federal, state, and local regulations;
  - 9. Franchise transfer and transfer of control of ownership;
  - 10. Franchise renewal;
  - 11. Franchise revocation;
  - 12. Enforcement of buy-back, leaseback or option-to-purchase provisions;
  - 13. Receivership and foreclosure procedures; and
  - 14. Compliance with County standards for public rights-of-way.
- F. To reserve the power to exercise this grant of authority to the fullest extent allowed by law.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.02.030 Grant of Franchise, Renewal**

- A. In the event that a cable television operator seeks a franchise the procedures set forth in this chapter shall be followed subject to applicable law.
  - B. The Cable Manager of Clackamas County shall have authority to establish and provide:
    - 1. Information and instructions relating to the preparation and filing of proposals to provide cable communications service;
    - 2. Requirements for proposals to be referred to the Board of County Commissioners regarding the development, operation and regulation of a system, including but not limited to the following:
      - a. The length, renewal and transfer or assignment of the franchise, including foreclosure and receivership provisions;
      - b. A description of the franchise territory and the extension of service;
      - c. Access requirements;
      - d. The system design;
      - e. Technical performance standards;
      - f. Fees, records and reporting;
      - g. Indemnification, insurance, and liability for damages; and
      - h. Provision of an option for the County to acquire the system upon revocation or expiration of the franchise.
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- C. Subject to the provision of 10.02.100, it shall be unlawful to commence or engage in the construction, operation or maintenance of a cable communications system without a franchise issued under this chapter.
  - D. The Board of Commissioners by Board Order may:
    1. Approve and award the submitted franchise, as proposed, or modify or otherwise make amendments thereto as it deems necessary;
    2. Authorize the Cable Manager to seek bids for a system pursuant to a Request For Proposal.
  - E. The Board of Commissioners may award a franchise only after a public hearing on the proposed franchise, notice of which shall be published in a local newspaper of general circulation in the County at least ten days prior to the date of the hearing. The potential Franchisee shall be notified by mail of the public hearing; provided, however, that no defect in the notice or failure to notify shall invalidate the franchise awarded. The Board of Commissioners may award the franchise, modify the proposed franchise and award or take no action.
  - F. No franchise or award thereof shall be deemed final until adoption of a Board Order containing the terms and conditions thereof. The franchisee shall bear the costs of all publications and notices given in connection with the award of the franchise, and the costs incurred by the County in evaluating the proposed franchise.
  - G. A request for renewal of a franchise will be considered and processed in conformance with Federal Law.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.02.040 Administration of Cable Communications**

The Board of County Commissioners, (BCC) or its designee, shall have the power to carry out any or all of the following functions:

- A. Employ the service of a consultant, to assist in the analysis of any matter related to any franchise, Request For Proposal or proposed franchise under this chapter;
- B. Act on applications for franchises;
- C. Act on matters which might constitute grounds for revocation or termination of a franchise pursuant to its terms;
- D. Attempt to resolve disagreements among Franchisees and public and private users of the system;
- E. Consider requests for rate settings or adjustments, as permitted by Federal Law;
- F. Coordinate and facilitate the use of access channels;
- G. Act in intergovernmental matters relating to cable systems;
- H. Review all Franchisee records required by the franchise;
- I. Conduct evaluations of the system and the Franchisee's compliance with franchise requirements;
- J. Adopt and amend regulations and procedures necessary to enforce franchises and to clarify interpretation thereof;
- K. Appoint advisory committees to assist the County in exercising its authority concerning Public Access.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.02.050 Customer Service**

A cable operator shall be subject to the customer service standards, set forth in Federal law (Section 8 of the Cable Television Consumer Protection and Competition Act of 1992; 47

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U.S.C. §§552; 47 C.F.R. Section 76.309) and as herein detailed:

- A. Cable system office hours and telephone availability.
1. The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.
    - a. Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.
    - b. After normal business hours, a service or an automated response system, including an answering machine may answer the access line. A trained company representative must respond to inquiries received after normal business hours on the next business day.
  2. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.
  3. The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
  4. Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.
  5. Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.
- B. Installations, outages and service calls: Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:
1. Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.
  2. Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.
  3. The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time blocks during normal business hours (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.).
  4. An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
  5. If a cable operator representative is running late for an appointment with customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.
- C. Communications between cable operators and cable subscribers:
1. Notifications to subscribers:
    - a. The cable operator shall provide written information on each of the
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following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Installation and service maintenance policies;
- (4) Instructions on how to use the cable service;
- (5) Channel positions of programming carried on the system; and,
- (6) Billing and complaint procedures, including the address and telephone number of the local franchise authorities cable office.

b. Customers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the cable system and/or in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding paragraph.

2. Billing

a. Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

b. In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within thirty (30) days.

3. Refunds

Refund checks will be issued promptly, but no later than 30 days after:

- a. Resolution of the request, or
- b. Return of all company equipment to the cable operator if service is terminated.

4. Credits

Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

D. Definitions

1. **NORMAL BUSINESS HOURS** means the term "normal business hours" are those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.
  2. **NORMAL OPERATING CONDITIONS** means the term "normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to: natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to: special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.
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3. SERVICE INTERRUPTION means the term “service interruption” is the loss of picture or sound on one or more cable channels.

This section does not preclude the County from requiring more stringent customer service standards in franchise agreements.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.02.060 Consumer Protections**

- A. The County reserves the right to enforce customer service and consumer protection standards as such standards are established by State or Federal law or regulation as applicable to cable system operations. In addition the County reserves the right to establish additional specific customer service and consumer protection standards and procedures to the extent permitted by applicable law.
- B. Negative Option Marketing: Franchisee shall not engage in “negative option” marketing, prohibited by State or Federal Law or regulation.
- C. Billing Credit for Service Interruptions: Franchisee shall make provision for subscriber credit for service interruptions or poor watchable cable reception, as per written company policy filed in the County Cable Office.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.02.070 Compensation for Franchise**

- A. Franchise Fee
  1. As compensation for the franchise to be granted, and in consideration of permission to use the streets and public ways of the County for the construction, operation, and maintenance of a cable communications system within the franchise area and to defray the costs of franchise regulation, the cable operator shall pay to the County five percent (5%) of the gross receipts generated through the operation of the cable system in the area franchised by Clackamas County, as permitted by Federal law.
  2. In the event Federal law limits franchise fees below the five percent (5%) of gross receipts required herein, the Franchisee shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, the Franchisee shall pay the higher amount up to the maximum allowable by Federal law.
- B. Payment of Franchise Fees
  1. Payments due under this provision shall be computed and paid quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty-five (45) days after the dates listed in the previous sentence. A quarterly report shall be made as hereinafter provided which shall contain the relevant facts necessary for the County to verify the amounts of franchise fee payments.
  2. No acceptance of any payment shall be construed as accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim, the County may have further or additional sums payable under the provisions of the franchise. All amounts paid shall be subject to audit and re-computation by the County, not to exceed three (3) years from date of payment.

[Codified by Ord. 05-2000, 7/13/00]

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**10.02.080 Intergovernmental Agreements**

The Board of County Commissioners may enter into intergovernmental agreements as authorized by Oregon law, with any other jurisdiction to provide for the cooperative regulation and control of any aspect of a cable communications system. Such agreements may provide for the delegation of any and all powers of the BCC to an entity provided for in the intergovernmental agreement, except for the powers to enter into or revoke a franchise agreement.

[Codified by Ord. 05-2000, 7/13/00]

**10.02.090 Violation, Penalties, and Remedies**

- A. Violation and Penalties: Any violation of the terms of this chapter is punishable by a fine in an amount set by resolution of the Board of County Commissioners.
- B. Injunctive Relief: Upon authorization by the Board of County Commissioners, the County may commence an action in the Circuit Court or other appropriate court to enjoin the continued violation of any provision of this chapter.
- C. Violation by a franchisee of any provision of a franchise granted pursuant to this chapter is:
  - 1. Subject to the enforcement provisions of the franchise;
  - 2. Punishable by fines set forth above; and
  - 3. Subject to injunctive relief as set forth above.
- D. Cumulative Remedies: The rights, remedies and penalties provided in this section are cumulative and not mutually exclusive and are in addition to any other rights, remedies and penalties available to the County under any other Ordinance or law.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2003, 3/13/03]

**10.02.100 New and Existing Agreements**

- A. This chapter shall govern all new applications, transfers and renewal requests for franchises.
- B. Terms and conditions in existing franchise permit agreements are not amended with the exception of 10.02.050, Customer Service; 10.02.060, Consumer Protection, 10.02.070, Compensation for Franchise, and 10.02.080, Intergovernmental Agreements.

[Codified by Ord. 05-2000, 7/13/00]

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## Chapter 10.03

### 10.03 SOLID WASTE AND WASTES MANAGEMENT

#### 10.03.010 Coverage Of Chapter

This chapter shall govern the collection, storage, transportation, and disposal of all solid waste and wastes. It shall also govern recycling, resource recovery, reuse and utilization of solid waste and wastes by franchisees and permittees. It shall govern solid waste management. It creates a program by which persons can be lawfully franchised to collect solid waste and wastes or operate a Disposal Site or Transfer Station, and which provides for franchisees or permittees to engage in recycling, resource recovery, or utilization of solid waste and wastes. No person shall collect solid waste or wastes or recyclable materials or operate a Disposal Site or Transfer Station for compensation or engage in recycling, resource recovery, or utilization of solid waste and wastes or recyclable materials except as provided for by this chapter or the Recycling License chapter.

[Codified by Ord. 05-2000, 7/13/00]

#### 10.03.020 Purpose and Policy

- A. To protect the health, safety, and welfare of the people of Clackamas County and to provide a coordinated program on accumulation, collection, and disposal of solid waste and wastes and recyclable materials, it is declared to be the policy of Clackamas County to regulate the accumulation, collection, and disposal of solid waste and wastes; the recycling resource recovery and utilization of recyclable materials; and the creation and operation of disposal sites and transfer stations to:
1. Provide for safe and sanitary accumulation, storage, collection, transportation, and disposal of solid waste and wastes and recyclable materials. To accomplish this and other purposes of this chapter, it is the policy of the County and the intent of this chapter that all solid waste and wastes, including materials involved in recycling, resource recovery, reuse and utilization, be collected and transported by those persons holding a collection franchise under this chapter, or by their subcontractors under 10.03.30 A (59) of this chapter, or by those organizations or corporations holding a permit under this chapter, or by a licensee holding a license under the Recycling License Chapter.
  2. Provide for a coordinated solid waste and wastes and recycling collection and disposal program with cities within Clackamas County so as to benefit all citizens of the County.
  3. Provide the opportunity to recycle for every person in Clackamas County.
  4. Provide for a recycling education, promotion and notification program on the reasons for recycling, recycling awareness and how to recycle.
  5. 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.
  6. 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.

7. Provide a coordinated countywide program of control of solid waste and wastes and recyclable materials in cooperation with city, regional, Metropolitan Service District, state, and federal programs.
8. Provide for, and encourage research, studies, surveys, and demonstration projects on developing more sanitary, efficient and economical solid waste and wastes and recyclable materials collection and disposal systems and programs.
9. Develop a long-range plan to provide adequate disposal sites and disposal facilities to meet future demands.
10. Provide for cooperation and agreements between Clackamas County, the Metropolitan Service District and other counties involving joint or regional franchising, licensing or permitting of solid waste and wastes disposal; provide for recycling, resource recovery, or utilization of recyclable and solid waste or wastes; and provide for recycling and solid waste and wastes management.
11. Reduce use of highways and roads and encourage highway safety by reducing unnecessary traffic in connection with solid waste and wastes and recyclables in order to encourage economic and efficient collection of same and to reduce wasteful use of fuel, equipment and capital by providing a franchised, licensed and/or permitted collection system.
12. Prohibit the accumulation of solid waste and wastes on private property when such accumulation creates a public nuisance, a health or safety hazard, or a condition of unsightliness and to provide for abatement of the same.
13. 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.
14. Prevent the unauthorized collection, transportation, disposal, storage, reuse or utilization of solid waste or wastes or recyclables.

[Codified by Ord. 05-2000, 7/13/00]

### **10.03.030 Definitions**

- A. 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 not directory; and the term "this chapter" shall be deemed to include all amendments hereafter made to this chapter. The definitions applicable to this chapter are:
    1. BOARD means Board of County Commissioners for Clackamas County.
    2. BUSINESS: any entity of one or more persons, corporate or otherwise, engaged in commercial, professional, charitable, political, industrial, educational, or other activity that is non-residential in nature, including public bodies.
    3. CERTIFICATE means permission granted in writing by the Director to operate a Compactor/Train Waste Management System at a multi-family development subject to the criteria to establish said system as required by this chapter.
    4. COLLECTION SERVICE means the collection, transportation, storage, or disposal, of solid waste or wastes for compensation, solid waste management and utilization as defined in this chapter, and reuse or recycling of recyclable materials.
    5. COLLECTION SERVICE FRANCHISE means the Franchise issued for collection service.
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6. COLLECTION SERVICE FRANCHISEE means the person to whom a Collection Service Franchise is granted by the Board.
  7. COLLECTION VEHICLE means any vehicle used to collect or transport solid waste or wastes or recyclables.
  8. COMMISSION means the solid waste and wastes Disposal Commission established by this chapter hereinafter referred to as the solid waste Commission.
  9. COMPACTOR means any self-contained, power-driven, mechanical equipment designed for the containment and compaction of solid waste or wastes or recyclable materials.
  10. COMPENSATION includes any type of consideration paid for service including, but not limited to, rent, the sale of recyclable materials, 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 and wastes. Compensation includes the flow of consideration from the person owning or possessing the solid waste or wastes to the person collecting, storing, transporting, or disposing of solid waste or wastes.
  11. COMPOST means the end product resulting from composting, commonly known as humus or soil amendments.
  12. COMPOSTING means a controlled biological decay of organic waste where moisture, heat, bacteria, earthworms and microorganisms found in nature transforms the organic waste into compost in a manner which does not create offensive odors, a health or safety hazard, or a condition of unsightliness.
  13. CONTAINER means a receptacle, one (1) cubic yard or larger in size, used to store solid waste or wastes or recyclable material, but not a drop box or compactor.
  14. COUNTY ROAD means shall mean a public road under the jurisdiction of Clackamas County that has been designated as a County road pursuant to ORS 368.016.
  15. CURBSIDE or ROADSIDE means a location within three (3) feet of a County Road, Public Access Road, State Road or Federal Road. This does not allow the garbage or recycling receptacle to be placed on the inside of a fence or enclosure even if the receptacle is within three (3) feet has said road or roads. For residences on “Flag Lots”, private roads, or driveways, “Curbside or Roadside” shall be the point where the private road or driveway intersects a County Road, Public Access Road, State Road or Federal Road.
  16. DEPARTMENT means the State of Oregon Department of Environmental Quality, cited as D.E.Q.
  17. DIRECTOR means The Director of the Department of Transportation and Development of Clackamas County, or his/her authorized representative.
  18. DISPOSE OR DISPOSAL includes accumulations, storage, collection, transportation and disposal of solid waste and wastes or recyclable materials.
  19. DISPOSAL FRANCHISE means a franchise to create or maintain a disposal site.
  20. DISPOSAL SITE means any land and facilities used for the disposal, handling or transfer of, or resource recovery from, solid waste and wastes including but not limited to dumps, landfills, sanitary landfills and composting plants, but does not include a landfill site which is not used by the public either directly or
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through a service and which is used by the owner or tenant thereof to dispose of soil, rock, or nonputrescible industrial waste products resulting from the process of manufacturing.

21. **DROP BOX** means a single container designed for the storage and collection of large volumes of solid waste or wastes or recyclable materials, which is usually ten (10) cubic yards or larger in size, and provides for transportation of large volumes of solid waste or wastes or recyclable materials and is transported to a disposal site for transfer, land-filling, recycling, materials recovery or utilization and then emptied, and returned to either its original location or some other location.
  22. **EQC** means the Environmental Quality Commission of Oregon, cited as EQC.
  23. **ENERGY RECOVERY** means recovery of all energy forms from any part of solid waste or wastes materials.
  24. **EXCHANGE** means a mutual act of giving or taking of one item or service for another. This includes any transaction into which money enters either as the consideration or as a basis of measure.
  25. **FAIR MARKET VALUE** means the cash price (or its equivalent in terms of savings on collection and disposal fees) that is at least equal to the cost of collection and disposal of a recyclable material or group of recyclable materials, that would be purchased or exchanged between the collector of said recyclable material or group of recyclable materials and the generator of said recyclable material or group of recyclable materials. Collection includes type, frequency, condition and extent of collection service, together with education and promotion for said service.
  26. **FAIR MARKET VALUE EXEMPTION** means the exemption set forth under ORS 459A.075 wherein a source-separated recyclable material must be purchased from the generator, or exchanged between the generator and the franchisee or licensee with a resulting measurable savings in solid waste collection or disposal cost to the generator, in order to qualify for the exemption.
  27. **FRANCHISE** means a franchise granting the right and responsibility to provide collection service, a disposal site, or a transfer station pursuant to Section 10.03.140 of this chapter.
  28. **HEALTH OFFICER** means shall mean the Health Officer of Clackamas County or his/her duly authorized representative.
  29. **HAZARDOUS WASTE** means solid waste or wastes that may, by itself or in combination with other waste, be infectious, explosive, poisonous, caustic, toxic, or otherwise dangerous or injurious to human, plant or animal life.
  30. **INCINERATOR** means a combustion device specifically designed for the reduction by burning of solid, semi-solid or liquid combustible wastes.
  31. **INFECTIOUS WASTE** means biological waste including medical waste described as:
    - a. Blood and blood products, excretions, exudates, secretions, suctioning and other body fluids that cannot be directly discarded into a municipal sewer system, including solid or liquid waste from renal dialysis and waste materials reasonably contaminated 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
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- 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 formaldehyde or other preservative agents.
32. **INOPERABLE VEHICLE** for the purpose of the Nuisance Abatement provisions of this chapter, shall mean a vehicle designed for use on a public highway which has been left on public or private property thirty (30) days or more and is not currently licensed, or not in operating condition, or which has been extensively damaged, vandalized or stripped, including, but not limited to, missing wheels, tires, motor or transmission. An inoperable vehicle shall not mean an unlicensed operable vehicle or vehicles, which are used on private property for the production, propagation or harvesting of agricultural products grown or raised on such lands.
33. **LANDFILL** means a disposal site operated by means of compacting and covering solid waste or wastes at specific designated intervals, but not each operating day.
34. **LICENSE** means permission granted (pursuant to the Recycling License Chapter) by the Director to a person to engage in a business or occupation or in an activity, which would otherwise be unlawful, for the purpose of providing recycling services which include collection, storage, reuse and utilization of recyclable materials.
35. **MATERIAL RECOVERY** means any process of obtaining from solid waste materials that still have useful physical or chemical properties and can be reused or recycled.
36. **METROPOLITAN SERVICE DISTRICT (METRO)** means a district organized under ORS Chapter 268 and exercising solid waste authority granted to such district under ORS Chapters 268, 459 and 459A.
37. **NON-PROFIT CIVIC COMMUNITY, BENEVOLENT, OR CHARITABLE CORPORATION OR ORGANIZATION** means a Corporation or organization whose purpose is civic, community, benevolent, or charitable in nature, which distributes no part of its income to its members, directors or officers and which is not organized for purposes of profit, nor for the purpose of solid waste or wastes collection service. This may include but not be limited to churches, private or public schools, Boy Scouts, United Way, Lions and Kiwanis clubs or similar non-profit corporations or organizations.
38. **NON-PUTRESCIBLE MATERIALS** for purposes of this chapter shall include, but not be limited to, inoperable vehicles; vehicle parts; tires; residential, commercial and industrial appliances, equipment and furniture; scrap metal; residential, commercial and industrial building demolition or construction waste; plastic; glass; cardboard; and wastepaper.
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39. NUISANCE means the unlawful use by a person of real or personal property contrary to the terms of this chapter.
  40. ON-ROUTE COLLECTION means the pick up of source-separated recyclable materials from the generator at the place of generation.
  41. OPERABLE VEHICLE means a vehicle that is currently licensed and in operating condition to be used on a public road or highway.
  42. ORGANIC WASTE includes but is not limited to yard debris, dust, wood, sod, manure, agricultural and fruit and vegetable waste, and paper recyclable material which are generally a source of food for bacteria.
  43. PERMIT means permission granted in writing by the Director to a non-profit organization or corporation that shall contain conditions for the collection of recyclable materials.
  44. PERSON means, and includes: individuals, members, corporations, cooperatives, associations, firms, partnerships, joint stock companies, trusts and estates, municipalities, and any other legal entities whatsoever.
  45. PUBLIC ACCESS ROAD shall mean any public road under the jurisdiction of Clackamas County which is not a County Road, State Highway, Federal Road, or road within the corporate limits of any city.
  46. PURCHASE means the legal transmission of property from one person to another through a voluntary act or agreement, with compensation in the form of money paid or to be paid, by a buyer to a seller of the property.
  47. PUTRESCIBLE MATERIAL means solid waste or wastes, including: bones; meat and meat scraps; fat; grease; fish and fish scraps; food containers or products contaminated with food wastes, particles or residues; prepared vegetable and fruit food wastes or scraps; manure; feces; sewer sludge; dead animals or similar wastes which cause offensive odor or create a health hazard, or which are capable of attracting or providing food for potential disease carriers, such as birds, rodents, flies and other vectors.
  48. RECEPTACLE means a can, cart, container, drop box, compactor, recycling bin, or any other means of containment of solid waste or wastes or recyclable materials.
  49. RECYCLING means the process by which waste materials are transformed into new products in such a manner that the original products lose their identity. 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 collection, disposal, recycling, resource recovery or utilization.
  50. 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.
  51. RECYCLABLE MATERIAL means 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 materials.
    - a. Residential - A group of recyclable materials as designated from time to time by the Department of Environmental Quality or the County.
    - b. Commercial/Industrial - Recyclable materials that are purchased or exchanged for fair market value from commercial or industrial sources.
    - c. Exemption - An inoperable vehicle commonly designed of ferrous metals is not included as a recyclable material.
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52. REGULATIONS mean regulations promulgated by the Board or Director pursuant to this chapter.
  53. RESOURCE RECOVERY means any process of obtaining from solid waste and wastes, materials which still have useful physical or chemical properties after serving a specific purpose, and therefore can be reused or recycled for the same or other purpose.
  54. REUSE means the return of a commodity into the economic stream for use in the same or similar kind of application as before, without change in its identity.
  55. SERVICE means the collection, transportation storage, disposal, solid waste management and utilization by a private company of solid waste or wastes or recyclable materials for compensation.
  56. SERVICE AREA means the geographical area, in which service, other than operation of a disposal site is provided.
  57. SIGHT OBSCURING SCREEN means a structure or partition which is a minimum of six (6) feet in height, built for the purpose of separating properties, or uses, and arranged in such a way as to obscure normal human vision.
  58. SOLID WASTE OR WASTES shall include all putrescible and non-putrescible waste, including but not limited to, garbage; compost; organic waste; yard debris; brush and branches; land-clearing debris; sewer sludge; residential, commercial and industrial building demolition or construction waste; discarded residential, commercial and industrial appliances, equipment and furniture; discarded, inoperable or abandoned vehicles or vehicle parts and vehicle tires; special vehicles and equipment that are immobile and/or inoperable, mobile homes or trailer houses which are dilapidated, partially dismantled or fire damaged; manure; feces; vegetable or animal solid and semi-solid waste and dead animals; and infectious waste. Waste shall mean useless, unwanted or discarded materials. The fact that materials which would otherwise come within the definition of solid waste may, from time to time, have value and thus be utilized shall not remove them from the definition. The terms solid waste or wastes do not include:
    - a. Environmentally hazardous wastes as defined in ORS Chapter 466.
    - b. Materials used for fertilizer or for other productive purposes on land in agricultural operations in the growing and harvesting of crops or the raising of fowl or animals. This exception does not apply to the keeping of animals on land which has been zoned for residential non-agricultural purposes.
    - c. Septic tank and cesspool pumping or chemical toilet waste;
    - d. For purposes of Section 10.03.140 to 10.03.330 of this chapter, reusable beverage containers as defined in ORS 459A.
    - e. Source-separated, principal recyclable materials as defined in ORS 459A and the rules promulgated thereunder and under this chapter, which have been purchased or exchanged for fair market value, unless said principal recyclable materials create a public nuisance pursuant to Section 10.03.060 to 10.03.080 of this chapter.
    - f. Applications of industrial sludge or industrial waste by-products authorized through a Land Use Compatibility Statement or Management Plan approval and that have been applied to agricultural lands according to accepted agronomic practices or accepted method approved by the Land
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Use Compatibility Statement or Management Plan, but not to exceed 100 dry tons per acre annually.

- g. Stabilized municipal sewage sludge applied for accepted beneficial uses on land in agricultural, non-agricultural, or silvicultural operations. Sludge derived products applied for beneficial uses on land in landscaping projects.
59. **SOLID WASTE AND WASTES MANAGEMENT** means the management of the accumulation, storage, collection, transportation, treatment, processing and final disposal or utilization of solid waste and wastes or resource recovery from solid waste, and facilities necessary or convenient to those activities. The Collection Franchisee may contract with another person to provide service of any type under the Franchisee's Collection Service Franchise, but the Collection Franchisee shall remain ultimately responsible for solid waste and wastes management in the Collection Franchisee's franchised area.
  60. **SOLID WASTE STREAM** means the total flow of solid waste and wastes and recyclable materials from residential, institutional, commercial, agricultural, construction and industrial generators to disposal and utilization facilities.
  61. **SOURCE-SEPARATED MATERIALS** means that the person who last uses recyclable material separates the recyclable material from other solid waste.
  62. **SPECIAL VEHICLE OR EQUIPMENT** for purposes of this chapter, shall include, but not be limited to, a travel or camp trailer, motor home, boat, recreational vehicle, tractor or farm implement, utility trailer, stock trailer, semi-trailer, motorcycle, snowmobile or any other equipment or mechanism designed to serve a special purpose or perform a special function.
  63. **SUBCONTRACT** means a written contract for the performance of all or a portion of Franchised Collection Service.
  64. **TRANSFER STATIONS** means a fixed or mobile facility normally used as an adjunct of a solid waste management system between a collection route and disposal site including, but not limited to, a stationary compaction drop box facility, processing center, railroad gondola, barge or facility that accepts solid waste or wastes for the purpose of removing the solid waste or wastes to a disposal site or utilization center.
  65. **TRANSFER STATION FRANCHISE** means a Franchise to create or maintain a transfer station.
  66. **URBAN GROWTH BOUNDARY** means that boundary adopted by the Metropolitan Service District pursuant to ORS 268.390.
  67. **UTILIZATION**, and the terms utilize, utilization, or utilization of solid waste or wastes shall mean productive use through recycling, reuse, salvage, resource recovery, energy recovery, or land filling for reclamation, habitation, or rehabilitation of land.
  68. **WASTE REDUCTION** means the reduction of solid waste, or of wastes generated, or of wastes that would otherwise be land filled.
  69. **WASTESHED** means 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 waste reduction program.
  70. **WASTESHED AGENT** means a person identified as the representative for the wasteshed to act as a contact between the affected persons in a wasteshed and the
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Department of Environmental Quality (D.E.Q.) and METRO in matters relating to waste reduction and to the D.E.Q. Recycling Report.

71. YARD DEBRIS means grass clippings, leaves, tree and shrub pruning of no greater than four (4) inches in diameter, or similar yard and garden vegetation. Yard debris does not include dirt, sod, stumps, logs, tree and shrub pruning greater than four (4) inches in diameter, or rocks, plastic, animal waste or manure, cat litter, potting soil, prepared food wastes or non-putrescible material.
72. YARD DEBRIS PROCESSING CENTER means a facility which processes yard debris into compost or other products, through controlled mechanical and/or biological means.

[Codified by Ord. 05-2000, 7/13/00; Subsection 2 added and subsection 61 amended by Ord. 04-2009, 7/9/09]

#### **10.03.040 Administration**

The Director, under the supervision of the Board, shall be responsible for the administration and enforcement of this chapter. In order to carry out the duties imposed by this chapter, the Director shall have authority to administer oaths, certify to all official acts, subpoena and require the attendance of witnesses at public hearings before the Commission or the Board; require production of relevant documents at public hearings; swear in witnesses; take testimony of any person by deposition; enter or authorize personnel to enter upon the premises of any person regulated by this chapter at reasonable times to determine compliance with this chapter and with the regulations promulgated by the Board pursuant thereto.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.03.050 Persons and Agencies Exempted**

- A. Except as specifically provided by Section 10.03.060 to 10.03.080, this chapter shall not apply to:
  1. areas within the incorporated limits of any city, or to Federal or State agencies, unless said city or agency enters into an intergovernmental agreement with the County for solid waste and wastes management services under this chapter; or
  2. Those who contract with such agencies as to the terms or rates to be charged for the collection, storage, transportation, disposal or utilization of solid waste or wastes. This exemption shall not apply to a disposal site or transfer station operated by a franchise holder under this chapter.
  3. Those persons who hold a valid, waste tire storage or carrier permit pursuant to OAR Chapter 340. Such persons shall not be regulated by Section 10.03.330 of this chapter.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.03.060 Solid Waste or Wastes Accumulation Prohibited**

- A. Except as provided in subsection D of this Section, no person shall store, collect, maintain, or display on private property, solid waste or wastes or recyclable material that is offensive or hazardous to the health and safety of the public, or which creates offensive odors, or a condition of unsightliness. Storage, collection, maintenance, or display of solid waste or wastes in violation of this Section shall be considered to be a public nuisance which may be abated as provided in 10.03.070 of this chapter.

- B. In addition to the provisions of subsection A, the following conditions or actions are also specifically identified as creating a public nuisance under this chapter:
1. Placing a tarp, plastic, cloth, or similar screening apparatus over or around solid waste or wastes for purposes of keeping it out of sight from the road or surrounding properties.
  2. Placing a tarp, plastic, cloth, or similar screening apparatus over or around solid waste or wastes that is stored in a utility trailer, pickup truck, semi-trailer or similar device for purposes of keeping it out of sight from the road or surrounding properties.
  3. Constructing a tire fence for any purpose.
  4. Storing waste tires except as permitted pursuant to OAR Chapter 340.
  5. Storing putrescible waste, whether it is visible or not visible from the road or adjacent properties, that is not kept in a rodent proof container with a tight fitting lid, and not removed from the property to an authorized disposal facility within seven (7) days.
  6. Composting which causes offensive odors, or creates a health hazard, or which is capable of attracting or providing food for potential disease carriers such as birds, rodents, flies and other vectors.
  7. Storing, collecting, maintaining, or displaying any licensed or unlicensed special vehicle or equipment that is immobile, inoperable, partially dismantled or dismantled, dilapidated, or fire damaged and is visible from the road or surrounding properties.
  8. Storing, collecting, maintaining, or displaying a mobile home or trailer house, which is dilapidated or partially dismantled, or fire damaged, and is visible from the road or surrounding properties.
  9. Storing, collecting, maintaining or displaying: residential, commercial and industrial appliances, equipment and furniture; vehicle parts; tires; scrap metal, or any other useless, unwanted or discarded material, or other similar non-putrescible solid waste or wastes, that is visible from the road or surrounding properties.
  10. Storing, collecting, maintaining or displaying any antique, classic, race car or collectible vehicle that is inoperable and is visible from the road or surrounding properties.
  11. Storing any inoperable vehicle or vehicles unless said vehicle or vehicles are housed within a permitted structure or development, except up to two vehicles per premise may be stored behind a sight-obscuring screen, in accordance with 10.03.060 C, and shall not be visible from the road or surrounding properties. For purposes of this Subsection 11, two or more contiguous tax lots that are under common ownership shall be considered one premises.
  12. When commercial, industrial, multi-family or residential developments that use a compactor or compactors for on-site waste management, do not keep the areas around the compactor free of solid waste and debris, and washed down on a regular basis.
- C. Any sight obscuring screen used to abate a solid waste nuisance shall consist of one of the following options:
1. Construct a wood fence unpainted or painted with neutral or earth tone colors of which the upright posts shall consist of a decay resistive material a minimum of four (4) inches in diameter and anchored a minimum of two (2) feet below
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ground level. There shall be a maximum post separation of eight (8) feet. The railings shall be a minimum of 2-inch by 4-inch lumber with the 4-inch side attached vertically to the posts. The attached vertical or horizontal fence boards shall be set with a maximum separation of 1/4 inch.

2. Construct a metal fence consisting of chain link or woven fabric with metal upright posts anchored a minimum of two (2) feet below ground level with metal railings and connectors. Water and insect resistive wood or plastic slats shall be inserted in the chain link or woven fabric, with a maximum separation of 3/8 inch between slats.
3. Construct a combination fence consisting of metal sheeting attached to wood framing as defined in Section C 1 above, or durable metal framing, which is painted a neutral or earth tone color.
4. Construct a wall consisting of solid material, built of concrete, masonry, brick, stone or other similar materials or combinations thereof.
5. Construct an earthen berm consisting of dirt, soil, sand, clay or any combination thereof and shall be planted with grass and/or ornamental plantings and shall be maintained at all times.
6. Plant a hedge consisting of evergreen plantings or other ornamental plantings a minimum of six (6) feet in height, planted not more than two (2) feet on center and which is maintained at all times.

In addition to the minimum fencing requirements, wood, metal, masonry fences or combination thereof greater than six (6) feet in height are subject to County review pursuant to the Oregon State Uniform Building Code, and all earthen berms are subject to County review pursuant to the County's Grading and Excavation Chapter.

For purposes of this chapter, no sight obscuring screen shall be located, placed, constructed or installed contrary to the Clackamas County Zoning and Development Ordinance.

- D. 10.03.060 to 10.03.080 of this chapter do not apply to:
  1. Areas within the limits of incorporated cities unless a city enters into an Intergovernmental Agreement with the County for solid waste and wastes management services under this chapter.
  2. Disposal sites and transfer stations franchised under provisions of 10.03.180 to 10.03.210 of this chapter, provided that such disposal sites and transfer stations comply with rules promulgated by any State agency under ORS Chapter 459 and regulations adopted by Clackamas County pursuant to this chapter.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.03.070 Abatement of Nuisance**

- A. The Director, which by definition includes an authorized representative, upon the written or oral complaint of any person, may make an investigation to determine whether or not storage, collection, maintenance, display or illegal dumping of solid waste or wastes is in violation of 10.03.060 or 10.03.080 of this chapter. For the purpose of such investigation the Director may enter upon private property at reasonable times to determine compliance.
- B. If, after investigation, the Director finds that a nuisance does exist as defined by 10.03.060 or 10.03.080 of this chapter, a notice shall be mailed to the property owner

and/or person in possession by regular mail, giving them not less than ten (10) days to abate the nuisance. The notice to abate shall contain:

1. A description of the property by tax lot number and/or address.
  2. The length of time in days that the property owner and/or person in possession has to abate the nuisance, from the receipt of the notice to abate.
  3. A description of the nuisance to be abated.
  4. A statement that unless the nuisance is abated by the property owner and/or person in possession within the given length of time, the County will cause the nuisance to be abated.
  5. That the costs of the nuisance abatement and/or civil penalties shall be collected from the owner and/or person in possession of the property, and may be made a lien against the property.
- C. If the owner and/or person in possession of the property does not remove the solid waste or wastes so that no nuisance exists within the time specified by the Director pursuant to subsection B of this Section, the Director shall:
1. Order the violation referred to the Compliance Hearings Officer pursuant to the Compliance Hearings Officer Chapter and the rules and regulations promulgated thereunder for abatement of the nuisance, which may result in the imposition and collection of a civil penalty for the violation and/or costs of the nuisance abatement, and which if not paid, may be made a lien against the property; or
  2. Order County Counsel to institute injunction, mandamus, or abatement proceedings which may result in a court order and the imposition and collection of a civil penalty for the violation; or
  3. Order a notice to be issued and served upon the owner of the property and the occupant of the property where the nuisance is alleged to be maintained, requiring the owner and/or person-in-possession occupant to appear before the Board at a time and place named in the notice, to show cause why a nuisance should not be declared to exist. The time for appearance shall not be less than ten (10) days after the service of the notice. The notice shall be served in the manner provided by law for the service of Summons. At the time and place fixed in the notice issued by the Board, the Board shall hold a hearing on the question of the existence of the nuisance and shall have power to subpoena witnesses to compel their attendance. If, after the hearing, the Board finds that a nuisance exists, it shall declare the existence of a nuisance by Order entered in its Journal, and shall order the nuisance abated within thirty (30) days after the entry of the Order.

If the owner and/or person in possession of the property fails to abate the nuisance within thirty (30) days after the entry of the Order of the Board, the Board may direct the County Counsel's Office of Clackamas County to institute suit in the name of Clackamas County for the abatement of the nuisance or the Board may direct the Director or his/her representative to cause the nuisance to be abated by removing from the subject property the solid waste or wastes found to be the cause of such nuisance.

- D. In an emergency, the Director may order summary abatement of a nuisance. For purposes of this section, an emergency exists when the Director has reasonable cause to believe that a nuisance constitutes an immediate danger to the public health, safety and welfare. The Director shall not be required to give notice as set forth in subsection B of this section before proceeding with summary abatement. If the
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Director elects to proceed with summary abatement without prior notice to the owner, then notice of the action taken for abatement shall be sent to the owner immediately after it has been accomplished. When summary abatement of the nuisance is ordered, the nuisance shall be abated by the County's own forces, or forces contracted by the County.

- E. If either the Board or the Compliance Hearings Officer declares that a nuisance exists and the owner and/or person in possession does not remove the solid waste or wastes within the time specified, then the removal from the subject property of the solid waste or wastes found to be the cause of the nuisance may be done by the County, by contract or the utilization of County personnel and County equipment.
1. Where the Director determines that said removal would not be best accomplished by County personnel and County equipment, s/he shall (unless public bidding is otherwise required) contact the franchised collector of the area where the nuisance exists, providing said collector has the available equipment and personnel to remove the type of solid waste or wastes that was found to be the cause of the nuisance. The collector shall be given the option of removing the nuisance or refusing the job. If the collector accepts the job, s/he shall charge his/her approved hourly rate for cleanups. If the collector refuses the job, or does not have the available equipment or personnel, the Director may contract with another person to abate the nuisance. The Director shall keep an accurate record of expenses incurred by the County in abating the nuisance and shall submit a copy of this record to the County Clerk for filing.
  2. After the removal of the solid waste or wastes by the County, the Director shall forward to the property owner and the person in possession by registered or certified mail, a notice stating:
    - a. The total cost of the nuisance abatement.
    - b. That the cost as indicated will be assessed to, and become a lien against, the property unless paid within thirty (30) days from the date of the notice.
    - c. That, if the owner or the person in possession of the property objects to the cost of the abatement as indicated, s/he may file a written notice of objection with the County Clerk not more than ten (10) days from the date of the notice.
  3. If within ten (10) days the written statement of objection as provided for in 2 C of this section is filed, the Board or the Compliance Hearings Officer, whichever has declared the nuisance, shall in its regular course of business herein determine the objections to the cost to be assessed. If the nuisance has been summarily abated, the Compliance Hearings Officer shall determine any objections to the costs to be assessed, or challenges to the need for summary abatement, and the County shall have the burden of proving by a preponderance of the evidence that a nuisance existed, and that the manner and costs of abatement were reasonable.
  4. If the costs of the abatement are not paid within thirty (30) days from the date of notice, or from the date of the determination by the Board or Compliance Hearings Officer of the cost to be assessed pursuant to a written statement of objection, an assessment of the costs as stated or as determined by the Board or Compliance Hearings Officer shall be made. An assessment of costs by the Board shall thereupon be entered in the docket of County Liens, and upon such entry being made, shall constitute a lien on the property from which the nuisance was removed and abated. The lien shall be enforced in the same manner as liens
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for street improvements are enforced, and shall bear interest at the legal rate established by State statutes for judgments from the date of entry of the lien in the Lien Docket. An error in the name of the property owner or person in possession shall not void the lien, nor will failure to receive the notice of the proposed lien render the lien void. An assessment of costs by the Compliance Hearings Officer may be collected in the same manner as any other debt allowed by law.

5. Where the nuisance is abated by the removal of the nuisance by the County, the County and its officers and employees shall not be liable for any trespass or conversion as to any real or personal property.
- F. The provisions of this Section are in addition to, and not in lieu of, the penalty and enforcement procedures provided for in Section 10.03.390 and Section 10.03.400 of this chapter.

[Codified by Ord. 05-2000, 7/13/00; Subsection B amended by Ord. 04-2009, 7/9/09]

### **10.03.080 Unauthorized Dumping Prohibited**

- A. Except as provided in subsection C of this Section, it shall be unlawful to dispose of solid waste or wastes at any other place other than a disposal site approved by the Board, DEQ, or the Metropolitan Service District. The Board will, upon recommendation of the Commission, designate in writing the places at which solid waste and wastes collected in the County shall be disposed of.
  - B. No person shall use, or permit to be used, any land within unincorporated areas of the County as a public or private disposal site, unless recommended by the Commission and approved by the Board.
  - C. Persons desiring to bury or dispose in any manner of their own, domestic solid waste or wastes generated on that subject property under their ownership, may do so in accordance with rules promulgated pursuant to ORS Chapter 459 and 459A and regulations promulgated by the Director pursuant to this chapter, provided that:
    1. The subject property is located outside the urban growth boundary;
    2. The subject property is a minimum of five (5) acres in size;
    3. The solid waste or wastes is buried at least one hundred (100) feet from the nearest well;
    4. The solid waste or wastes is buried at least one hundred (100) feet from adjacent property lines, except property lines between contiguous tax lots under common ownership;
    5. The solid waste or wastes is not buried within one hundred (100) feet of a jurisdictional wetland, natural or manmade drainage way, creek, stream, river, pond or lake; and
    6. The solid waste or wastes shall not fall within the DEQ definition of special or hazardous waste given the term in ORS Chapter 466.005; household hazardous waste as defined in ORS Chapter 459.005; or infectious waste as defined in ORS Chapter 459.386.
  - D. If any person uses a motor vehicle or other type of device that is so identified in the transport and illegal dumping of solid waste or wastes in any area of the unincorporated limits of the County, said identified motor vehicle or device shall be subject to impoundment by order of the Board. Such identified motor vehicle or device, if so impounded, shall be placed in storage and remain in custody of such persons authorized to receive the same, and be held as security in addition to any such
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fine or costs that may be assessed to further secure the clean-up and removal cost of any such solid waste and wastes so unlawfully deposited in violation of this chapter. In addition to the right of impoundment as provided in the preceding paragraph, if the violator, owner, or operator of said identified motor vehicle or device, or any party asserting lawful claim to said identified motor vehicle or device, fails to redeem said motor vehicle or device, or fails to post an adequate bond as security for the clean-up and relocation and removal of the solid waste and wastes that violated this chapter, then the Board authorized to enforce this chapter shall publish a notice of sale in a newspaper of general circulation in the County of Clackamas in conformity with applicable notice provisions of the law for repossession of said identified motor vehicles or devices. The Board shall be empowered to sell said identified motor vehicles or devices so impounded in satisfaction of said lien or costs and expenses for the removal of solid waste or wastes illegally dumped in the unincorporated areas of the County. If there is any money remaining after the costs of clean up are paid, said money shall be reimbursed to the owner of the identified motor vehicles or devices that were sold to pay for the cost of said clean up.

- E. No person shall discard, deposit, throw, permit to be thrown, place or cause to be placed, or drain any rubbish, trash, debris, garbage, solid waste or wastes in a manner prohibited by ORS 164.775, 164.785 or 164.805. Any person violating this subsection shall be subject to a civil penalty to enforce the provisions of this subsection pursuant to ORS 459.108.
- F. No person shall throw or place, or direct another person to throw or place, any rubbish, trash, debris, and garbage, solid waste or wastes in the receptacles of another person without the permission of the owner.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.03.090 Solid Waste Commission**

- A. Under this solid waste and wastes management Chapter, there is hereby created a solid waste Commission of seven members:
    - 1. Director of the Department of Transportation and Development or his/her authorized representative.
    - 2. Health Officer or his/her authorized representative.
    - 3. One Member of the public.
    - 4. One Member of the public.
    - 5. One Member of the public.
    - 6. One Collection Service Franchise holder.
    - 7. One Collection Service Franchise holder.
  - B. The following shall be advisors to the Commission, if they so elect or desire:
    - 1. Representatives of the Metropolitan Service District Board.
    - 2. Director of the State Department of Environmental Quality or his/her authorized representative.
    - 3. Clackamas County Extension Agent or his/her authorized representative.
    - 4. Clackamas County Legal Counsel.
    - 5. Director of Clackamas County Vector Control.
    - 6. Advisor to the Clackamas County Refuse and Recycling Association or its authorized representative.
    - 7. Representatives from the Recycling Industry or Persons interested or associated with Recycling.
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- C. Subject to the approval of the Board, public employee members, or advisors or the Commission may designate alternates to serve in their place. The Board may designate alternates to serve in place of members of the general public, or of Collection Service Franchise holders or their representatives.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.03.100 Appointments to the solid waste Commission**

- A. The Board shall appoint members of the solid waste Commission. Except for public employees who serve by reason of and for the term of the position they hold, and except as provided in subsection b of this Section, the term of the office of a member is four (4) years. Upon recommendation of the Commission, the Board may reappoint a Commission member whose term has expired. Members of the Commission shall serve until their successors are appointed and qualified.
- B. If for any reason the Commission vacates a member's position prior to the expiration of the member's term, this vacancy, upon recommendation, shall be filled by the Board for the balance of the unexpired term.
- C. The Chairman and Vice-Chairman shall be elected by members of the Commission; both positions shall serve at the pleasure of the Commission. The Chairman and Vice-Chairman positions shall be for a term of two (2) years. At the end of the said term, the Commission may re-elect the incumbent Chairman and/or Vice-Chairman.
- D. Five members of the Commission shall constitute a quorum for the transaction of business. The Commission shall meet at such times as deemed necessary, or as called by the Board or by the Director. The Chairman, or any three members of the Commission, may call a special meeting with ten (10) days notice to other members of the Commission; provided however, members may waive such notice.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.03.110 Duties of the solid waste Commission**

In addition to other duties prescribed by this chapter, the Commission shall:

- A. Make an annual report containing its recommendations, if any, regarding proposed changes or additions to regulations promulgated by the Board or amendments to this chapter, for the purpose of carrying out the intent of this chapter.
  - B. Cooperate with any regional or state authority, such as Metro (Metropolitan Service District) or D.E.Q., to develop a long-range plan to provide adequate disposal sites and disposal facilities to meet future demands and for regional disposal sites. If an authorized regional or state authority sites such a facility, the plan for such a site shall be recommended to the Board for approval.
  - C. Promote community involvement and make recommendations to the Board for wastes reduction and recycling programs.
  - D. Monitor franchise agreements between Clackamas County and its franchised solid waste collectors, and make recommendations to the Board to grant, modify or revoke a franchise. The Commission shall also hear all appeals for the granting, modifying, or revoking of permits or licenses issued by the Director.
  - E. Review collection rate changes and make recommendations to the Board for a specific action.
  - F. Make recommendations to the Department of Environmental Quality, Metropolitan Service District, and local political jurisdictions regarding local and regional policy and legislative changes in solid waste Management.
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- G. At the request of the Director, or upon a written request by a person, review the Department of Transportation and Development's enforcement action regarding solid waste nuisance abatement appeals, as provided in 10.03.040 and 10.03.060 of this chapter.
  - H. Review changes in legislation affecting solid waste management and recycling in the County and make recommendations to the Board for appropriate action.
  - I. Perform such other acts or duties as directed by the Board or as established by other chapters as may be necessary, proper, or desirable to carry out effectively the functions and duties of the Commission.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.03.120 Regional solid waste Commission**

If agreement is reached with one or more counties pursuant to 10.03.370 of this chapter for regional cooperation in the collection, disposal or utilization of solid waste or wastes, the solid waste Commission shall serve on a Regional Committee established to advise the Board of Commissioners or County Courts of the affected counties. [Codified by Ord. 05-2000, 7/13/00]

#### **10.03.130 Regulation**

Upon recommendations of the Commission or Board, the Director may promulgate regulations pertaining to administration of this chapter. [Codified by Ord. 05-2000, 7/13/00]

#### **10.03.140 Persons, Activities and Practices Regulated**

- A. Except as provided in 10.03.050 of this chapter, it shall be unlawful for any person to store, collect, transport, or dispose of any solid waste or wastes for compensation unless such person is franchised, in accordance with the provisions of Section 10.03.140 to 10.03.330 of this chapter, or is a subcontractor of a Collection Service Franchise holder under Section 10.03.260.
- B. Except as provided in 10.03.050 and Section 10.03.140 of this chapter, it shall be unlawful for any person to create or maintain a disposal site unless METRO, DEQ and the County approve such site.
- C. Except as provided in 10.03.050 and Sections 10.03.140 to 10.03.330 of this chapter, it shall be unlawful for any person to create or maintain a Transfer Station unless METRO, DEQ and the County approve such site.
- D. No person shall collect, transport, or dispose of any solid waste or wastes or recyclable material of their tenant. The only exceptions are:
  - 1. The use of an on-site compactor at multi-family developments whereby said development owners, management, or their employees transport the on-site containers and empty their contents into the compactor, subject to the following conditions:
    - a. The development owner, management, their employees or agents shall apply for and receive an annual certificate, on forms provided by the County, prior to installing said system and shall pay an annual certification fee in an amount established by the County. The certificate shall require the owner, management, their employees or agents to comply with all criteria of this subsection. After final inspection by the County, when it is determined that the development owners, management, their employees or

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agents have complied with the criteria of this subsection, the County shall issue a Certificate of Compliance.

A certificate holder shall be required to apply annually for re-certification not less than ninety (90) days prior to expiration of the original certification. Continued certification shall be subject to approval by the County, and payment of the annual re-certification fee.

- b. The collection service for the compactor shall be provided by a Collection Service Franchisee or the Franchisee's authorized subcontractor.
  - c. The compactor and containers shall be compatible with the Collection Service Franchisee's or the Franchisee's subcontractor's equipment. The cost of retrofitting any collection equipment shall be the responsibility of the owners of the compactor.
  - d. All manufacturer standards for proper use and maintenance of said equipment shall be followed. In addition, the weight of said equipment and its contents when transported for disposal should not exceed the legal weight limits of state and local laws or the Collection Service Franchisee's equipment. Any costs associated with overweight violations on public roadways, including the costs of citations and down time, shall be the responsibility of the development owners, management, their employees or agents.
  - e. Collection service for the compactor shall be provided at least once every seven- (7) days and the compactor shall be sized to accommodate that period of on-site waste generation.
  - f. No on-site nuisance conditions shall be created as a result of infrequent container or compactor servicing.
  - g. The compactor and container location and the site development shall comply with design review and development standards of the Clackamas County Zoning and Development Ordinance and the Building and Structural Specialty Codes. All sites shall meet the accessibility requirements of the Collection Service Franchisee or the Franchisee's subcontractor, but such requirements shall not exceed those set forth in the design review and development standards of the Clackamas County Zoning and Development Ordinance.
  - h. An on-site recycling program, approved by the County, shall be developed and implemented concurrent with the use of an on-site compactor.
  - i. A special waste management fee shall apply towards providing recycling collection services by the Collection Service Franchisee or the Franchisee's authorized subcontractor.
  - j. The area around the compactor shall be kept free of solid waste and debris and be washed down on a regular basis.
  - k. Only the development manager or their employees shall conduct the on-site transport and collection system of the containers or compactors, if a Collection Service Franchisee is not used for said transport.
2. If any condition in l. a. through l. k. of this Subsection D. is violated or fails to be implemented at a multi-family development by the owner, management, their employees or agents, then the exception allowed under this subsection shall terminate upon order of the Director and the certificate under this subsection shall be revoked.
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3. When the on-site management or their employees collect and transport recyclable materials for the purpose of consolidating said recyclable materials at a central location or locations, for collection by a Collection Service Franchisee or the Franchisee's subcontractor
  - E. No person shall solicit, collect, transport or dispose of any residential recyclable material or materials, unless such person is franchised or permitted in accordance with the provisions of 10.03.330 of this chapter, or unless such person is the generator of said recyclable materials. In addition, no person licensed under the Recycling License Chapter shall solicit or collect any residential recyclable material at the place of residence of the generator of the material unless all of the materials identified as residential materials under 10.03.030 are simultaneously solicited for fair market value.
  - F. No person shall collect, transport or dispose of any recyclable material or materials, that are placed at the curb/road for residential collection by a Collection Service Franchise holder, unless such person is a subcontractor of a Collection Service Franchisee under 10.03.260
  - G. No person shall collect or transport any commercial or industrial recyclable material or materials without first obtaining a permit in accordance with 10.03.330 of this chapter, or first obtaining a license in accordance with the Recycling License Chapter, unless such person is exempt from the Licensing chapter or is the generator of said material.
  - H. No recycling depot, including a buy-back center or drop box, shall be located or placed at any location in the unincorporated area of the County in violation of land use and zoning laws.
  - I. No person shall remove the cover of a residential or commercial container or receptacle except when depositing or removing the contents, nor in any manner interfere with the container or its contents, except those authorized for such duty.
  - J. It shall be unlawful to deposit solid waste or wastes in the recycling receptacle or the solid waste receptacle of another person, dwelling unit, or establishment without the consent of the person in charge of the premises or receptacle.
  - K. No person shall place hazardous materials, chemicals, paint, corrosive materials, infectious waste or hot ashes into a receptacle intended for collection service. When materials, or customer abuse, or fire, or vandalism causes excessive wear or damage to a receptacle, the cost of repair or replacement may be charged to the collection service customer.
  - L. No person shall place solid waste or wastes or recyclable materials in a drop box or compactor in an amount that exceeds the legal weight limits of State and local laws, or which exceed the weight limits of the franchised collectors' equipment or manufacturers' specifications.
  - M. No person shall store putrescible materials in a receptacle in excess of seven (7) days. Said material shall be removed from the premises at regular intervals not to exceed the seven- (7) days.
  - N. No commercial recycling receptacle shall be constructed of materials other than those approved by the local fire marshal, nor shall the receptacle be placed in a location that violates the local fire ordinance.
  - O. An inoperable vehicle commonly designed of ferrous metals shall only be collected, transported, and disposed of by the owner of the vehicle or by a licensed auto wrecker or towing company.
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- P. Pursuant to OAR Chapter 340 no person shall store waste tires without first obtaining a waste tire storage permit from the Department of Environmental Quality.
  - Q. Any person picking up or transporting waste tires shall comply with the permit requirements of the DEQ.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.03.145 Business Recycling Requirement**

All businesses within the County shall comply with waste prevention, recycling and composting requirements as set forth in this Chapter and the regulations promulgated hereunder.

- A. Business will source-separate all recyclable paper, cardboard, glass and plastic bottles and jars, and metal cans for reuse or recycling.
- B. Businesses will ensure the provision of recycling receptacles for internal and/or external maintenance or work areas where recyclable materials are collected, stored, or both.
- C. Businesses will post accurate signs:
  - 1. Describing the location where recyclable materials are collected, stored, or both;
  - 2. Identifying the materials the business must source-separate for reuse or recycling; and
  - 3. Providing recycling instructions
- D. Persons and entities that own, manage or operate premises with business tenants, and that provide garbage collection service to those business tenants, shall provide recycling collection systems adequate to enable those business tenants to comply with the requirements of subsections A, B and C of this section.

[Added by Ord. 04-2009, 7/9/09]

#### **10.03.150 Applications**

Applications for Franchises shall be on forms provided by the Commission. In addition to information required on the forms, the Commission may require the filing of special guarantees and indemnities, and any additional information it deems necessary, to insure compliance with this chapter.

- A. Applicants for Collection Service Franchises shall state the type of service to be provided, and shall supply information required to determine qualifications for such franchise under Section 10.03.160 of this chapter.
- B. Applicants for Disposal Franchises shall file a duplicate copy of the information required by the Department of Environmental Quality pursuant to Chapter 459, Oregon Revised Statutes.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.03.160 Requirements for Collection Service Franchises**

- A. Existing Collection Services:
  - 1. Collection Service Franchisee's shall make application for renewal of their Collection Service Franchise within thirty (30) days of the County's written notice of the requirement for filing an application for renewal. The County will normally give such written notice to said Collection Service Franchisee not less than one (1) year prior to expiration of the Collection Services Franchises. Upon filing an application for renewal, and furnishing required information for

renewal of such Franchise, said applicant might continue to provide collection service until the Board makes a final decision on the application for renewal. Such person shall furnish the information required by subsection B of this Section and prove to the satisfaction of the Board that the applicant has a majority of the service accounts in the service area for which he/she is applying for renewal, which shall be evidenced by a list of customers served. If such person is also applying for an area which he/she is not currently serving, he/she shall also supply the information required by subsection C or D of this Section.

2. Franchisees shall submit to the Director any information necessary to satisfy which recyclables are being collected or received, methods of and/or copies of materials providing for public education and promotion or any other information required by the Director, METRO, and the Department of Environmental Quality pursuant to ORS Chapter 459 or 459A and Rules promulgated thereunder.
  3. Upon proper application and a finding by the Board that the applicant is providing adequate service and otherwise qualifies for a franchise under this Section, the Board shall issue a Collection Franchise covering the area served by the applicant on the effective date of this chapter. However, if this Board finds that the applicant should not be granted a Collection Franchise on the basis of inadequate existing service or that the applicant does not meet the requirements of this Section, the Board may deny, or partially deny, the application or may specify additional requirements to be met by the applicant to guarantee service. By the same Order, the Board may grant, modify, or deny, in whole or part, an applicant's request to serve an additional area not being served on the effective date of this chapter, or may assign an additional service area. Any such order is subject to appeal and hearing as provided in 10.03.220 of this chapter.
- B. Applicants for a Collection Service Franchise or renewal of said Franchise shall provide sufficient information to the Board to prove to its satisfaction that:
1. The applicant has available collection vehicles, equipment, facilities and personnel sufficient to meet the standards of equipment and service established by this chapter, and ORS Chapter 459 or 459A, and the rules and regulations promulgated thereunder.
  2. The applicant has good moral character, or if the applicant is a firm or corporation, that the principal partners or officers are of good moral character.
  3. The applicant shall use disposal sites authorized by the Board, DEQ, and METRO, and list such sites.
  4. The applicant shall furnish the County with a Certificate of Insurance for comprehensive general liability insurance, including contractual and products/complete operations liability insurance in an amount established by the Board for combined, single limit for personal injury and property damage for the protection of the County, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to the applicant's or any subcontractor's performance of this chapter.
  5. The applicant shall indemnify, save harmless and defend the County, its officers, commissioners and employees from and against all claims and action, and all expenses incidental to the investigation, and defense thereof, arising out of, or based upon, damage or injuries to persons or property caused by the errors, omissions, fault, or negligence of the applicant, any subcontractor, anyone
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directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

6. The insurance shall include the County as an additional insured and refer to and support the applicant's obligation to hold harmless the County, its officers, commissioners and employees. Such insurance shall provide thirty (30) days written notice to the County in the event of cancellation, non-renewal, or material change, and include a statement that no act on the part of the insured shall affect the coverage afforded to the County under this insurance.
- C. In the matter of an application for a Collection Service Franchise, if the applicant is not already serving an area proposed to be served, the applicant shall show in addition that:
1. The defined service area has not been franchised to another person; or,
  2. The holder of the franchise is not adequately serving the defined service area and there is substantial demand by customers within the area for a change of service to that area.
- D. If the applicant for a Collection Service Franchise proposes to serve an area or portion thereof that is under franchise to another person, or to replace such person upon expiration of the existing franchise, he/she shall have available, on the day beginning the proposed franchise term, adequate personnel, collection vehicles, containers, and other equipment for the service to be rendered. The Board shall require that such applicant supply a corporate bond, or cash, or acceptable negotiable securities to guarantee such availability to the satisfaction of the Board.
- E. If it appears to the Board through its own knowledge, or through knowledge of its agents, or through written notice from any person, that there are conflicting claims to a Service Area, then a public hearing shall be called by the Board to resolve such conflicting claims and the claim shall be resolved by the Board, upon the basis of the recommendation of the Commission, the requirements of this chapter for Collection Service Franchises as set forth in this Section, and the Board's determination as to which applicant can best serve a given service area in the public interest. The decision of the Board in resolving any conflict between persons claiming the Service Area shall, in addition, be made by the Board upon its finding of which person or applicant has the greatest claim to the Service Area or portion thereof the Commission's recommendation shall be based on a review as to past Service of record in the area and the requirements of this chapter. The Board's decision shall be final.

[Codified by Ord. 05-2000, 7/13/00]

### **10.03.170 Issuance of Collection Service Franchises**

Applications for Collection Service Franchises and renewal of Collection Service Franchisees shall be reviewed by the Commission and by the Director. They shall make such investigation, as they deem appropriate. The Commission shall give written notice to the current Collection Service Franchisees when any person applies for a franchise within an established franchised area.

Upon the basis of the application, evidence submitted and results of any investigation by the Commission and by the Director, the Commission shall review the qualifications of the applicant pursuant to the requirements for a Collection Service Franchise under 10.03.160

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and shall determine whether additional areas should be included or additional service or equipment should be provided.

On the basis of its review, the Commission shall recommend to the Board whether the application should be granted, be denied, or be modified. The Board shall issue an Order granting, denying, or amending the application. [Codified by Ord. 05-2000, 7/13/00]

#### **10.03.180 Disposal Franchise Requirements**

- A. Applicants for a Disposal Franchise shall provide sufficient information to determine compliance with the requirements of this chapter; the regulations promulgated thereunder and rules of Federal, State and local agencies having jurisdiction.
- B. Applicants shall specify the type of disposal site and the disposal method to be employed together with any proposed special regulations dealing with hazardous wastes, recyclable materials or what waste or recyclable material will be accepted or rejected at the disposal site.
- C. The applicant must show to the satisfaction of the Board that he/she:
  - 1. Has available land, equipment, facilities, and personnel to meet the standards established by this chapter and ORS Chapter 459 or 459A, and the rules and regulations promulgated thereunder and that he/she has insurance equal to that required by 10.03.150 of this chapter.
  - 2. Has good moral character or, if the applicant is a firm or corporation that the principal partners or officers are of good moral character.
  - 3. The Board shall require the applicant to submit a corporate surety bond in the minimum amount of \$50,000, or such other sum as the Board may require, or such other acceptable guarantees or substitutes in an amount to be designated by the Board, guaranteeing full and faithful performance by the applicant of the duties and obligations of the franchise holder under provisions of this chapter and applicable Federal, State, and local laws and rules or regulations. In determining the amount of bond to be required, the Board shall give due consideration to the size of the site, the method of disposal proposed, the population to be served, adjacent or nearby land uses, and the potential danger for failure of service.
- D. Where the applicant is providing disposal service on the effective date of this chapter, and has filed his/her application within thirty (30) days thereafter, he/she may continue service until the final decision of the Board on his/her application.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.03.190 Issuance of a Disposal Franchise**

The Commission shall review applications for Disposal Franchise. The Commission shall give written notice of the application to any person who holds a Disposal Franchise for Service to all or part of the area that reasonably would be served under the application.

Upon the basis of the application, evidence submitted, and results of any investigation, the Commission shall make a finding on the qualifications of the applicant and whether or not additional service, personnel, land, equipment or facilities should be provided and what conditions of service should be imposed including, but not limited to, whether the site should be opened to the public and under what conditions, whether or not certain types of wastes, solid waste, hazardous wastes or recyclable materials should be excluded from the site or

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should be required to be accepted at the site, and shall make a finding as to whether or not the site is economically feasible, whether or not the site may be integrated with existing private or county-owned or operated sites, and further that the site complies with all rules and regulations adopted pursuant to ORS Chapter 459 or 459A, and by this chapter.

On the basis of its review, the Commission shall recommend to the Board whether or not the application should be granted, be denied, or be modified. The Board shall issue an Order granting, denying, or amending the application.

These provisions are in addition to, and not in lieu of, any provisions of the Clackamas County Zoning and Development Ordinance and the Clackamas County Comprehensive Plan. [Codified by Ord. 05-2000, 7/13/00]

### **10.03.200 Transfer Station Franchise Requirements**

- A. Applicants for a Transfer Station Franchise shall provide sufficient information to determine compliance with the requirements of this chapter, the regulations promulgated thereunder and rules of Federal, State or regional agencies having jurisdiction.
  - B. Applicant must show to the satisfaction of the Board that he/she:
    - 1. Has available land, equipment, facilities, and personnel to meet the standards established by this chapter and ORS Chapter 459 or 459A, and the rules and regulations promulgated thereunder.
    - 2. Has good moral character, or if the applicant is a firm or corporation, that the principal partners or officers are of good moral character.
    - 3. Shall furnish the County with a Certificate of Insurance for comprehensive general liability insurance, including contractual and products/completed operations liability insurance in an amount established by the Board for combined, single limit for personal injury and property damage for the protection of the County, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, or damage to property, including loss of use thereof, in any way related to the applicant's or any subcontractor's performance of this chapter.
    - 4. Shall indemnify, save harmless and defend the County, its officers, commissioners and employees from and against all claims and action, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the applicant, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.
    - 5. Has insurance which shall include the County as an additional insured, and which shall refer to and support the applicant's obligation to hold harmless the County, its officers, commissioners and employees. Such insurance shall provide thirty (30) days written notice to the County in the event of cancellation, non renewal or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the County under this insurance.
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- C. Where the applicant is providing transfer service on the effective date of this chapter, and has filed his/her application within thirty (30) days thereafter, he/she may continue service until the final decision of the Board on his/her application.

[Codified by Ord. 05-2000, 7/13/00]

**10.03.210 Issuance of a Public Transfer Station Franchise**

- A. The Commission shall review applications for Transfer Station Franchises. The Commission shall give written notice to any person who holds a transfer station franchise for service to all or part of the area that reasonably would be served under the application.
- B. On the basis of the application, evidence submitted, and results of any investigation, the Commission shall make a finding on the qualifications of the applicant and whether or not additional personnel, 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, sold wastes, hazardous wastes or recyclable materials should be excluded from the transfer station or should be required to be accepted at the transfer station, and the Commission 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 further that the transfer station complies with all rules and regulations adopted pursuant to Chapter 459 or 459A. On the basis of its review, the Commission shall recommend to the Board whether or not the application should be granted, be denied, or be modified. The Board shall issue an Order granting or denying a Transfer Station Franchise to the applicant.
- C. Provisions of this section of this chapter are in addition to, and not in lieu of, any provisions of the Clackamas County Zoning and Development Ordinance, the Clackamas County Comprehensive Plan or rules or regulations of the Oregon Department of Environmental Quality and the Federal Government.

[Codified by Ord. 05-2000, 7/13/00]

**10.03.220 Appeal of a Franchise**

If the Order of the Board is adverse to the applicant or to the holder of an existing franchise, it shall not become effective until thirty (30) days after the date of said 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. The applicant or a franchise holder may request a public hearing before the Board upon the Board's Order by filing a written request for an appeal hearing with the Board within thirty (30) days after the date of said Order. On the filing of such request for an appeal hearing, the Board shall set a time and place for a public hearing upon its Order, which hearing shall be not more than thirty (30) days from the date of said request for an appeal hearing. The applicant or franchise holder may submit relevant evidence to the Board upon the Board's Order. Other interested persons or affected public or private agencies may appear and offer oral or written testimony. The Board may, following the public hearing, affirm, modify or rescind its prior Order.

Subject to provisions of 10.03.410, the determination of the Board after conclusion of said public hearing should be final.

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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 portion thereof, or for the same disposal site, for a period of six months unless the Board finds that the public interest requires reconsideration within a shorter period of time. [Codified by Ord. 05-2000, 7/13/00]

**10.03.230 Exclusive or Joint Service Under a Collection Service Franchise**

Upon recommendation of the Commission, if the Board finds that an applicant for a Collection Service Franchise cannot provide adequate Service for the collection of solid waste or wastes, or the curbside/roadside collection of recyclable materials to a single customer, a group or type of customer, or for a particular type or unusually large quantity of solid waste or wastes, or for recyclable material, it may issue a franchise for joint service with another person who can provide that service; provided, however, that 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 Collection Service Franchise.

If the holder of a Collection Service Franchise is unable to provide service for particular types, or unusually large quantities, of solid waste or wastes or recyclable materials, the Board may issue a temporary or permanent Collection Service Franchise to another person for the purpose of providing limited service to the customer or customers having such particular types or unusually large quantities of solid waste or wastes or recyclable materials.

Upon recommendation of the Commission, if the Board finds that the need for service justifies action before a complete investigation and final determination can be made, it may issue a temporary Collection Service Franchise valid for a stated period not to exceed six months, entitling a person to serve a defined Service Area or customers. [Codified by Ord. 05-2000, 7/13/00]

**10.03.240 Transfer of Franchise**

The holder of a solid waste or wastes Collection Service Franchise may transfer his/her franchise and/or right to provide residential curbside/roadside or multi-family collection service of recyclable materials, or a portion thereof, to other persons only upon written notice to, and approval by, the Board.

Upon recommendation and finding of the Commission, the Board may approve the transfer if it finds that the transferee meets all applicable requirements met by the original Collection Service Franchise holder. The Board shall approve or disapprove any application for transfer of a Collection Service Franchise and/or right to provide residential curbside/roadside or multi-family collection of recyclable materials within thirty (30) days of receipt of notice by the Board, unless the Board finds there is substantial question of public health or safety involved which requires additional time for investigation and decision.

Upon recommendation of the Commission, the Board may permit a Collection Service Franchise to be pledged as a security for purchase of land, equipment, or facilities that are needed to provide service, or to finance purchase of a business providing service under this chapter. The Board may attach whatever condition it deems appropriate to guarantee maintenance of service. [Codified by Ord. 05-2000, 7/13/00]

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**10.03.250 Change In Control of Franchises**

The holder of a solid waste or wastes Collection Service Franchise shall promptly notify the County of any proposed change in control, or transfer of a controlling interest in stock ownership. 'Change in control' shall mean the occurrence of either A or B of this Section:

- A. Any person, corporation, limited liability company, partnership, trust or association, or any group within the meaning of Section 13 D 3 of the Securities Exchange Act of 1934, as amended, 15 USC §78m D 3, and the rules and regulations promulgated thereunder, 17 CFR §240.13d-3, (the "Exchange Act") shall have acquired, after the date hereof, beneficial ownership (within the meaning of Rule 13d-3 of the Exchange Act), directly or indirectly, of common stock representing fifty percent (50%) of the combined voting power of all common stock of the franchise holder, or of any parent company of the franchise holder, immediate or otherwise, (hereinafter called a 'Controlling Person'). "Common stock" as used in the preceding sentence shall mean common stock eligible to vote in the election of directors, or other securities convertible into such common stock, other than securities having such voting power only by reason on the happening of a contingency. Or
- B. A majority of the Board of Directors or the franchise holder shall cease for any reason to consist of:
  1. Individuals who are currently serving as directors of the franchise holder; and
  2. Individuals who subsequently become members of the board if such individuals' nomination for election, or election to, the board is recommended or approved by a majority of the board of directors or stockholders of the franchise holder, provided that use of the provisions of this clause shall not be used to evade the intent of this section.
- C. For purposes of paragraph A above, a person or group shall not be a Controlling Person if such a person or group holds voting power in good faith and not for the purposes of circumventing this provision as an agent, bank, broker, nominee, trustee, or holder of revocable proxies given in response to a solicitation pursuant to the Exchange Act, for one or more beneficial owners who do not individually, or, if they are a group acting in concert, as a group, have the voting power specified in paragraph A.
- D. The franchise holder shall give County a written request to approve the change in control prior to any change in control taking effect. If a change in control occurs without written notice to County, such change shall be grounds for revocation of franchise by the County, at its sole discretion.
- E. A change in control shall make a franchise subject to revocation, unless and until the Board, after receiving the recommendation of the Commission, has approved the change in control. The Board shall approve or disapprove any change in control within ninety (90) days of receipt of written request to enter into the transaction and receipt of all information required in writing by the County. For the purpose of determining whether it will consent to such change in control, the County may inquire into the qualifications of the prospective controlling party to perform under the County's solid waste collection system and the effects of the change on that system. The franchise holder shall assist the County in any such inquiry.

[Codified by Ord. 05-2000, 7/13/00]

**10.03.260 Responsibilities of Franchise Holders**

- A. The holder of a Collection Service Franchise:
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1. Shall provide required service, personnel, equipment and facilities, but not less than the service, personnel, equipment and facilities commensurate with existing service provided within the Service Area defined in the franchise, within one month from the date of issuance of the Collection Service Franchise or renewal of the Franchise, unless the Commission extends the time upon showing of reasonable grounds by the franchisee. Where an area is not receiving service on the date of the application for a Collection Service Franchise covering such area, the Commission 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 substantial portion thereof, or any customer without giving ninety (90) days written notice of the proposed discontinuance of service to the Commission and to the customers within the franchised Service Area, and shall not discontinue the service 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 waste management fees established pursuant to this chapter, or for other reasons as may be established by the Board or Director by regulation; provided, however, in no event shall the holder of the Collection Service Franchise terminate such service without seven (7) days prior written notice to the customers of the franchisee's intention to terminate service. The franchisee shall retain a copy of said notice. A Collection Service Franchise holder who has discontinued service on the basis of refusal of a customer to pay for such service may require a reasonable deposit to guarantee payment for future services before reinstating such service or demand advance payment for service.

Nothing in this subsection 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 subcontract with another person to provide service, or a particular type of service, within a Service Area after giving written notice to, and obtaining approval of, the Board.
  4. May refuse Service to a customer where service at a particular location would jeopardize the safety of the driver of the collection vehicle, or the motoring public, or cause damage to the collection vehicle or equipment, or where the customer has not provided reasonable access to the pickup point for the receptacle(s) storing solid waste or wastes or recyclable materials. Service may also be refused where there is undue hazard or risk to the person providing service due to natural or manmade constraints, such as overhanging branches, slope, topography, wet ground conditions; vicious animals; or private roads, driveways, or bridges where damage may occur to said road, driveway, or bridge, or equipment from the weight of the collection vehicle or equipment whether empty, partially full, or full. In addition, weather conditions may temporarily prevent service to a particular customer or customers. The Board, Commission, or Director, may from time to time, develop regulations establishing adequate standards of safety for the driver of a collection vehicle, the motoring public, and the public generally, and the solid waste or wastes or
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recyclable materials collection vehicle or equipment. If a customer is refused service for any condition other than temporary weather conditions, a written notice stating the reasons for refusal of service shall be given to said customer and the Director within seven (7) days from when service is first refused by the Collection Service Franchisee.

5. Shall provide the opportunity to recycle as follows:
    - a. Shall provide at least weekly residential on-route curbside/roadside collection of recyclable materials and weekly on-route collection of yard debris within the urban growth boundaries of Clackamas County and cities within the Metropolitan Service District.
    - b. Shall provide other on-route collection of recyclable materials as required by the County or State law.
    - c. Shall have the right to compete in the purchase or exchange for fair market value in the collection of commercial/industrial source-separated recyclable materials.
    - d. Shall design, commit resources, and provide an education, promotion and notification program to enhance recycling awareness and to provide the opportunity to recycle as provided by this chapter and ORS Chapter 459 or 459A and the rules promulgated thereunder.
    - e. Shall report to the County on recycling activities and supply all necessary information for purposes of preparing the D.E.Q. or METRO recycling report.
    - f. At the request of a permit holder shall haul any load of recyclable materials collected by the permit holder to a legally established utilization facility and may charge a fee pursuant to 10.03.330 to cover the cost of this service. The franchisee shall remit to the permit holders all revenue derived from the sale of this material at the utilization facility.
  6. Shall indemnify Clackamas County, the Board, the Commission, the Director and any of their employees or agents, and save them harmless from any and all loss, damage, claim, expense or liability arising out of operation by the Collection Service Franchise holder under his/her franchise. In the event that any suit or action is brought for injury or damage to persons or property of others against Clackamas County, the Board, the Commission, 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/her franchise, the Collection Services Franchise holder shall defend the same at his/her own cost and expense; provided, however, that Clackamas County, the Board, the Commission 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 Disposal Franchise:
1. Shall not voluntarily discontinue service without giving at least ninety (90) days written notice of the proposed discontinuance of service to the Commission and to any Collection Service Franchisee using his/her disposal site; and further, shall receive the approval of the Board prior to discontinuing said 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.
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2. May contract with another person to operate the disposal site after giving written notice to, and obtaining the approval of, the Board.
  3. May refuse disposal service to any customer if the customer refuses to pay for the service in accordance with the rates established pursuant to this chapter. A Disposal 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 such service, or may demand advance payment for service.
  4. Shall provide the necessary service and facilities for collecting source-separated recyclable materials as designated by D.E.Q., METRO, or the County. This shall also include development of education and promotion literature on the opportunities to recycle and recycling awareness for distribution to the user.
  5. Shall indemnify Clackamas County, the Board, the Commission, the Director and any of their employees or agents, and save them harmless from any and all loss, damage, claim, expense or liability in any manner occurring in connection with, or arising out of, operations under this Disposal Franchise. In the event any suit or action is brought for injury or damage to persons or property of others against Clackamas County, the Board, the Commission, the Director or any of their employees or agents based upon or alleged to be based upon any loss, damage, claim, expense or liability in any manner occurring in connection with or arising out of operations under this Disposal Franchise, the Disposal Franchise holder shall defend the same at his/her own cost and expense; provided, however, that Clackamas County, the Board, the Commission, and the Director reserve the right to retain counsel of their own choosing and join in the defense of any suit or action.
- C. The holder of a Transfer Station Franchise:
1. Shall not voluntarily discontinue service without giving at least thirty (30) days written notice of the proposed discontinuance of service to the Commission and to any Collection Service Franchisees using his/her Transfer Station; and further shall receive the approval of the Board prior to discontinuing said service. This subparagraph 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 Board.
  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 Transfer Station 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 may demand advance payment for service.
  4. Shall provide the necessary service and facilities for collecting source-separated recyclable materials as designated by D.E.Q., METRO or the County. This shall also include development of education and promotion literature on the opportunities to recycle and recycling awareness for distribution to the user.
  5. Shall indemnify Clackamas County, the Board, the Commission, the Director and any of their employees or agents and save them harmless from any and all loss, damage, claim, expense, or liability in any manner occurring in connection with or arising out of operations under the Transfer Station Franchise. In the
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event any suit or action is brought for injury or damage to persons or property of others against Clackamas County, the Board, the Commission, the Director or any of their employees or agents, based upon or alleged to be based upon any loss, damage, claim, expense or liability, in any manner occurring in connection with or arising out of operations under his/her Transfer Station Franchise, the franchise holder shall defend the same at his/her own cost and expense; provided, however, that Clackamas County, the Board, the Commission, and the Director reserve the right to retain counsel of their own choosing and join in the defense of any such suit or action.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.03.270 Enforcement of Franchise Provisions**

The Commission 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 section. If, in the opinion of the Commission, there is sufficient evidence to constitute a violation of this chapter or ORS Chapter 459, or 459A, or the rules or regulations promulgated thereunder, the Commission shall notify the holder of the franchise in writing of the alleged violation and the steps necessary to be taken to cure the violation. Upon a finding that a violation exists and that the franchisee is unable to, or refuses to, cure the violation, the Commission shall make a recommendation to the Board that the franchise be suspended, modified, revoked, or that it not be renewed. [Codified by Ord. 05-2000, 7/13/00]

#### **10.03.280 Suspension, Modification, Revocation or Refusal to Renew a Franchise**

- A. Upon recommendation by the Commission, or upon its own motion, the Board may suspend, modify, revoke, or refuse to renew a franchise upon finding that the holder thereof has:
    1. Willfully violated this chapter or ORS Chapter 459, or 459A, or the rules, or the regulations promulgated thereunder; or
    2. Willfully misrepresented material facts or information given in the application for the franchise; or
    3. Willfully refused to provide adequate service in a defined Service Area or at the franchised Disposal Site, Transfer Station or Depot after written notification and a reasonable opportunity to do so; or
    4. Willfully misrepresented the total number of collection service customers in the Franchised Service Area.
  - 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 or permit contingent upon compliance with the Order within the period of time stated in said Order.
  - C. If the Board suspends, modifies, revokes, or refuses to renew the franchise, the action shall not become effective until thirty (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 upon the Board's Order by filing a written request for such hearing with the Board within thirty (30) days after the date of said Order. Upon the filing of said request for hearing, the Board shall set a time and place for a public hearing; and upon its Order, said hearing shall not be more than thirty (30) days from the date of filing of said request for hearing. The franchise holder and other interested
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persons or affected public agencies 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. Subject to provisions of Section 10.03.410, the determination of the Board, after conclusion of said public hearing, shall be final.  
[Codified by Ord. 05-2000, 7/13/00]

### **10.03.290 Preventing Interruption of Service**

The holder of any franchise agrees, and it is a condition of his/her obtaining and holding the franchise, that whenever the Board finds that the failure of service would result in creation of a health hazard or a public or private nuisance, the Board shall, after reasonable notice of not less than 24 hours to the franchisee, and a public hearing, if the franchisee requests such hearing, have the right to authorize another franchise holder or another person to provide service, or to use and operate the land, facilities or equipment of the franchise holder, for reasonable compensation 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. [Codified by Ord. 05-2000, 7/13/00]

### **10.03.300 Terms of Franchises**

- A. Franchises, other than Collection Service Franchises, shall be renewable unless grounds exist for refusal to renew pursuant to Section 10.03.280 of this chapter.
- B. The term for a Disposal Franchise shall be determined by the Board upon the recommendation of the Commission, based upon site longevity, population to be served, and probable use.
- C. The term for a Transfer Station Franchise shall be ten (10) years, unless upon recommendation of the Commission, the Board may adjust the term of the franchise as deemed necessary due to the cost of land, equipment, or facilities.
- D. Unless grounds exist for suspension, modification, or revocation of the Collection Service Franchise under Section 10.03.280 of this chapter, each Collection Service Franchise shall be considered as a continuing ten- (10) year term. Beginning January first (1st) of each year, the Franchise will be considered renewed for an additional ten (10) year term, unless at least thirty (30) days prior to January first (1st) of any year the County notifies all the Franchisees of intent to terminate the continuing franchise system. Upon the giving of such notice, the Franchisees will each have a Franchise which will terminate on the January first (1st) which is ten years from the date of the last renewal prior to the notice of termination.
- E. The County may initiate proceedings for suspension, modification, or revocation of a Collection Service Franchise under Section 10.03.280 of this chapter, at any time, whether or not a review is being conducted.
- F. Collection Service Franchises shall be subject to a review by the Director every five (5) years. The Director shall provide a report of the review to the Commission and the Board. Upon recommendation by the Commission, or upon its own motion, the Board may order that conditions be attached to a Collection Service Franchise or that modifications be enacted by a Collection Service Franchisee, based upon the review. Any such order for conditions or modifications shall be subject to the notification and hearing process set forth in Section 10.03.280 C of this chapter.

[Codified by Ord. 05-2000, 7/13/00]

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**10.03.310 Franchise Fees**

- A. The Board shall collect in the manner and at the time provided in this Section, from the holder of:
  - 1. Any Collection Service Franchise, an annual fee based on gross cash receipts from collection service provided to the service area included in the Collection Service Franchise. Said fee shall be in an amount established by the Board and shall not include cash receipts from the sale of recyclable materials.
  - 2. Any Disposal Franchise, an annual fee based on gross annual disposal fees. Said fee shall be in an amount established by the Board.
  - 3. Any Transfer Station Franchise, an annual fee based on gross annual disposal fees. Said fee shall be in an amount established by the Board.
  - 4. These fees may be changed by resolution of the Board, upon thirty- (30) days written notice, to give an opportunity for each franchisee to be heard.
- B. Annual Collection Service Franchise fee shall be computed quarterly and shall be paid on a quarterly basis, not later than thirty (30) days after the end of each calendar quarter.
- C. Within sixty (60) days after the end of each calendar year, a Collection Service Franchise holder shall file with the Board a sworn and verified statement of his/her total gross cash receipts; and, in order that the Board may have a way of keeping up with the total number of customers in the franchised areas, the Collection Service Franchise holder shall include in the sworn and verified statement the figure for his/her total number of customers.
- D. The annual Disposal Franchise fee shall be computed monthly and paid by the 20th of the following month. Within sixty (60) days after the end of each calendar year, a Disposal Franchise holder shall file with the Board a sworn and verified statement of his/her total gross cash receipts for disposal; and, in order for the Board to have a way of keeping up with the volumes disposed, the Disposal Franchise holder shall submit a sworn statement of the total volumes disposed during the previous calendar year.
- E. Every Collection Service Franchise holder, Disposal Franchise holder or Transfer Station Franchise holder shall maintain books and records disclosing the total number of customers in his/her franchised area, which records shall be open at reasonable times and places for audits by authorized personnel of Clackamas County.

[Codified by Ord. 05-2000, 7/13/00]

**10.03.320 Use of Franchise Fees**

Fees collected pursuant to Section 10.03.310 of this chapter shall be placed in a fund to be known as the Solid Waste Disposal Fund and shall be used only for the purposes outlined in 10.03.020 of the Purpose and Policy Statements of this chapter, unless transferred to another fund by budget transfer approved by the Board of County Commissioners. The solid waste disposal fund shall not be used for general County purposes unless first transferred by such a budget transfer. Said fund shall be kept and accounted for separately and apart from the Clackamas County General Fund or any other fund. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 09-2001, 9/27/01]

**10.03.330 Permit for Civic Community, Benevolent or Charitable Non Profit Organization or Corporation**

- A. Unless franchised under Section 10.03.140 to 10.03.330 of this chapter, any civic, community, benevolent or charitable nonprofit organization or corporation
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- conducting activities for the collection, transportation, processing or disposal of recyclable materials, shall apply for a permit therefor from the Director on forms supplied by the Director. The Collection Service Franchise holder for the area in which the permittee shall conduct such activities shall be notified of the issuance of the permit. There shall be no fee for such a Permit. The duration of the permit shall be twelve (12) months or such other time as fixed by the Director. The Director shall furnish the permittee a list of applicable regulations and such available information as may assist the permittee in his/her endeavor. The Director may reject a permit application on the grounds that the applicant is unable or unwilling to meet the standards or requirements applied by the Director. The Director may apply any reasonable standard or requirement to such permit to prevent the creation of health, fire or safety hazards, the sustenance leading to the production of vectors or anything leading to a condition of unsightliness or foul odors. Any condition applied by the Director shall become a part of the permit, and violation by the permittee of any such condition shall automatically revoke the permit granted.
- B. The permittee shall make arrangements to have the recyclable materials transported to market and shall designate who is to transport the recyclable materials when the permit is applied for. The assistance of the Collection Service Franchise holder whose Collection Service Area the recyclables are taken from may be used. If the Collection Service Franchise holder participates in transporting the recyclable materials, the said franchisee shall have the right to charge a fee pursuant to Section 10.03.340 to cover the cost of this service. Said Franchisee shall remit to the permit holder all revenue derived from the sale of the material.
- C. The Director may suspend, modify, revoke, or refuse to issue or renew a permit upon the grounds set forth in A of this section. The applicant for a permit, or the permittee, may appeal any such decision of the Director to the Commission for their decision on the matter. If the Commission suspends, modifies, revokes or refuses to renew the permit, the action shall not become effective until thirty (30) days after the date of the Commission's decision, unless the Commission 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 permit may request a public hearing before the Commission by filing a written request for such hearing with the Commission within thirty (30) days after the decision of the Commission. Upon filing of said request for hearing, the Commission shall set a time and place for a public hearing, and upon its Order, said hearing shall not be more than thirty (30) days from the date of filing of said request for hearing. The permit holder and other interested persons or affected public agencies may submit oral or written evidence to the Commission relevant to the Commission's decision. The Commission may, following the public hearing, affirm, amend or rescind its prior decision. The determination of the Commission, after conclusion of said public hearing, shall be final.

[Codified by Ord. 05-2000, 7/13/00]

**10.03.340 Determination of Waste Management Fees (WMF).**

- A. Upon recommendation of the Commission, the Board may establish uniform Waste Management Fees (WMF) for collection service throughout the County, or may establish uniform WMF for collection service within zones based upon the length of haul or other factors which may, in the opinion of the Board, justify establishment of WMF differentials. The Board may also establish WMF by class of collection service
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customer for recycling collection costs, if said costs exceed the revenues produced by sale of recyclable materials collected. In no case shall a customer that recycles be charged more than one that does not recycle.

- B. Upon recommendation of the Commission, the Board shall consider Disposal or Transfer Station WMF based upon the type of site, the cost of operation 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 WMF to be charged. The Board may establish uniform WMF for all Disposal sites or Transfer Stations, or may establish different WMF based upon the factors specified in this Section.
- C. Increases or decreases in WMF approved under this Section may not be made by the Board unless the Board, upon the recommendations of the Commission, finds that the increase or decrease is based upon an increase or decrease in the cost of doing business, or an increased cost of additional, better, or more comprehensive service.
- D. In determining the proposed WMF for Collection Services, the Commission and the Board shall give due consideration to: the investment in facilities and equipment; the services of management; local wage scales; the concentration of collection service customers in the service area; methods and costs of storage, collection, transportation and disposal; the length of haul to disposal facilities; a reasonable return and operating margin for the owner(s) 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 pickup or pickups on days where service is not normally provided on a route; extra charges where the type of character of solid waste or wastes, including, but not limited to wastes with peculiarly offensive odors, requires special handling or service; extra charges for providing janitorial services on the premises where service is provided; and extra costs for providing the opportunity to recycle under ORS 459 and 459A.
- E. The Board may require an investigation by the Commission of any proposed WMF increase or decrease. For the purpose of making this investigation, the Commission, in cooperation with the Director, is authorized to hold public hearings, and to take and receive testimony relevant to the consideration to be made by the Board, in allowing or denying the WMF increases or decreases under this chapter. Upon completion of its investigation, the Commission shall make a report of the public hearing and shall make recommendations to the Board regarding the proposed WMF.
- F. In considering WMF increases or decreases, the Board must find that the WMF will be just, fair, reasonable, and sufficient to provide required service to the public. The Board may consider the WMF charged by other persons performing the same or similar service in the same or other areas.
- G. Where no WMF has been established for a particular type of service, the Commission may establish an interim WMF until the Board makes a final determination on the WMF for that type of service. In establishing such a WMF, the Commission shall give due consideration to all the factors established as a guideline for the Commission and Board in this Section.

[Codified by Ord. 05-2000, 7/13/00]

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**10.03.350 Waste Management Fee (WMF) Preference Prohibited**

- A. No Collection Service Franchise holder subject to Waste Management Fee (WMF) regulation under this chapter shall give any WMF preference to any person, locality, or type of solid waste or wastes or recyclable materials stored, collected, transported, disposed or utilized.
- B. Nothing in this Section is intended to prevent:
  - 1. The reasonable establishment of uniform classes of WMF for collection service based upon length of haul; type of solid waste or wastes or recyclable materials stored, collected, transported, disposed or utilized; the number, type, and location of customers served; or upon other factors as long as such WMF are reasonably based upon costs of the particular service and are approved by the Board in the same manner as other WMF.
  - 2. Any Collection Service Franchisee from volunteering collection or recycling service at reduced cost for a charitable, community, civic or benevolent purpose.

[Codified by Ord. 05-2000, 7/13/00]

**10.03.360 Responsibility for Payment Charges for Service**

Any person who receives service shall be responsible for payment for such service. The owner of any premises shall be responsible for payment for services provided to those premises to the extent permitted by Oregon Law. [Codified by Ord. 05-2000, 7/13/00]

**10.03.370 Agreement for Joint Franchises**

The Board may enter into agreements with any city or county for joint or regional franchising of collection or disposal service. [Codified by Ord. 05-2000, 7/13/00]

**10.03.380 Agreements for Allocation of Franchise Fees**

The Board may enter into agreements with any city or county providing for allocation of franchise fees where the franchise service areas crosses city or county boundaries. [Codified by Ord. 05-2000, 7/13/00]

**10.03.390 Abatement**

- A. The accumulation, storage, collection, transportation, disposal, or illegal dumping of solid waste or wastes by any person in violation of this chapter, or regulations promulgated thereunder, is a nuisance, and the Board or County Counsel may, in addition to other remedies provided by law, institute injunction, mandamus, abatement, and/or collection of a fine for the violation, or any other appropriate legal proceedings to temporarily, or permanently, enjoin or abate such accumulation, storage, collection, transportation, disposal, or illegal dumping.
- B. It is unlawful for any person to collect, store, transport, dispose, utilize, destroy, vandalize in any fashion, steal or take source-separated recyclable materials set out or deposited for recycling collection, without the consent of the generator and the intended recipient of such materials, and without first obtaining a franchise, subcontract, recycling license or permit.

If any person is in violation of this Section, or this chapter, or the regulations thereunder, the Board or County Counsel may, in addition to other remedies provided by law, institute injunction, mandamus, abatement, and/or collection of a fine for the

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violation or any other appropriate legal proceedings to temporarily, or permanently, enjoin or abate the violation.

- C. In addition to the provisions of subsections A and B of this section, if any person is in violation of these Sections or this chapter, and the regulations thereunder, the Board or Director may, in addition to other remedies provided by law, refer said violation to the Compliance Hearings Officer pursuant to the Compliance Hearings Officer Chapter to abate the violation and/or collect civil penalties or costs for the violation.
- D. The provisions of this Section are in addition to, and not in lieu of, any criminal prosecution as provided by this chapter or State law.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.03.400 Penalties**

A violation of Section 10.03.060, 10.03.070, 10.03.080, 10.03.140, 10.03.310 or 10.03.340 of this chapter shall be punishable by a civil penalty in an amount set by resolution of the Board of County Commissioners, or any other penalty to the extent permitted by State law.

A penalty imposed for a violation of Section (E) of 10.03.080 may, in addition, be increased as permitted in ORS 459.108 to include all of the costs incurred by the County in removing rubbish, trash, debris, garbage, solid waste or wastes polluting substance unlawfully placed on the property and eliminating the effects of such unlawful placement. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2003, 3/13/03]

#### **10.03.410 Court Appeal**

All decisions of the Board under this chapter shall be reviewable by the Circuit Court of the State of Oregon for the County of Clackamas by Writ of Review as provided in ORS 34.010 – 34.100. [Codified by Ord. 05-2000, 7/13/00]

#### **10.03.420 Appeals From Decisions of the Director or Commission**

The Commission or the Board, upon their own motion, or upon the request of an interested person or affected public agency, may review decisions of the Director or Commission made pursuant to this chapter. [Codified by Ord. 05-2000, 7/13/00]

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## Chapter 10.04

### 10.04 RECYCLING LICENSE

#### 10.04.010 Purpose

The Board of County Commissioners of Clackamas County has determined that Chapter 459 of Oregon Revised Statutes, requires the County to develop a program of recycling recyclable materials, which includes public information and advertising to promote recycling; and, in order to further the development of recycling in Clackamas County, it would be appropriate to develop a recycling licensing program for those persons doing business as recyclers who are not covered under the Solid Waste and Waste Management Chapter. Accordingly, this chapter is enacted to promote recycling, collect information on recycling volumes, provide public education and promote the welfare of the citizens of Clackamas County. This chapter will raise funds from recycling operators who will benefit from the program, that will be used to offset the costs of administering the licensing program. [Codified by Ord. 05-2000, 7/13/00]

#### 10.04.020 Definitions

- A. DEPOT OPERATOR means a person who does business from a location at which he receives and stores source-separated recyclable materials.
- B. FAIR MARKET VALUE means the cash price (or its equivalent in terms of savings on collection and disposal fees) that is at least equal to the cost of collection and disposal of a recyclable material or group of recyclable materials, that would be purchased or exchanged, between the collector and the generator of said recyclable material or group of recyclable materials. Collection includes type, frequency, condition and extent of collection service.
- C. PERSON means a natural person, partnership, joint venture, solicitor, association, club, trust, estate, corporation, or any other entity capable of doing business, but does not include cities or municipal or quasi—municipal corporations or political subdivisions of the State of Oregon.
- D. RECYCLABLE MATERIALS means any waste 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 materials. Collection includes the type, frequency, condition and extent of collection service.
- E. RECYCLING BROKER means a person who buys from a recycling operator and sells source-separated recyclable materials or a group of recyclable materials, or who collects them for the purpose of selling them at a profit. This does not include common carriers that only transport material, which they do not buy or sell.
- F. RECYCLING OPERATOR means a person who collects and purchases and/or exchanges for fair market value from various locations within unincorporated Clackamas County, source-separated recyclable materials or group of recyclable materials. This does not include common carriers that only transport material, which they do not buy or sell.

- G. **RECYCLING RECEPTACLE OPERATOR** means a person who does business delivering empty receptacles (containers or drop boxes) which he owns or rents to various locations for the purpose of soliciting deposits of source-separated recyclable materials, and who returns periodically to collect the receptacles, or the materials deposited therein.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.04.030 License Required**

No person shall operate a business within unincorporated Clackamas County as a depot operator, recycling broker, recycling receptacle operator or recycling operator without first paying a license fee and obtaining a recycling license under this chapter. [Codified by Ord. 5-2000, 7/13/00]

#### **10.04.040 Exemption**

The following persons are exempt from the licensing requirement:

- A. A person who sells his own source-separated recyclable material, or group of recyclable materials, generated from their residence or business, excluding those source-separated recyclable materials or group of recyclable materials generated by his/her tenant(s).
- B. Persons who are authorized by permit or franchise, under the Clackamas County Solid Waste and Waste Management Chapter to collect recyclables.
- C. Persons who transport recyclable materials from outside Clackamas County, or through Clackamas County, to markets within the County.
- D. Persons who collect, dispose of, or recycle:
  1. Renderings from animal products;
  2. Forest products (not to include principal recyclable materials as determined by the State Department of Environmental Quality from time to time);
  3. Industrial residues (not to include principal recyclable materials as determined by DEQ from time to time); or
  4. Materials used for productive purposes in agricultural operations.
- E. Persons licensed by the State of Oregon and engaged in conducting business as an auto wrecker or dismantler.
- F. Any retail outlet that accepts used motor oil from the public at no charge.
- G. Persons whom the County is prohibited from licensing under the Constitution or laws of the State of Oregon or of the United States.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.04.050 Term of License**

Each license shall be dated as of the first day of the month in which it is issued, or when required to have been obtained, and shall expire one year from that date. [Codified by Ord. 05-2000, 7/13/00]

#### **10.04.060 Record Keeping**

Each person required to be licensed under this chapter shall furnish to the Director of the Department of Transportation and Development of Clackamas County, on such forms as s/he shall provide, the following information:

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- A. The manner in which recyclables are being collected or received; and
- B. The amounts of such materials received.

Such report shall be furnished every six months at times designated by the Director. Failure to furnish such information as required by the Director shall be grounds for refusal to issue another recycling license upon expiration of the current license.

[Codified by Ord. 05-2000, 7/13/00]

**10.04.070 Fee**

The Board of County Commissioners shall determine the fee for a recycling license issued under this chapter. Such fees shall be expended for programs which, in the opinion of the Director of the Department of Transportation and Development, will be used to police, promote, and report on recycling in Clackamas County. [Codified by Ord. 05-2000, 7/13/00]

**10.04.080 Fee as Debt**

The fee imposed by this chapter, and any interest and penalties, shall be a debt due and owing to Clackamas County and may be collected by civil action in the name of Clackamas County. [Codified by Ord. 05-2000, 7/13/00]

**10.04.090 Enforcement**

In the case of violations of this chapter, County Counsel may initiate legal proceedings to enforce the terms and provisions of this chapter. Such proceedings may be commenced either by filing a complaint with the compliance Hearings Officer, or by filing a civil action in Circuit Court, or both. The County may, in addition to other remedies provided by law, institute injunction, mandamus, or other appropriate legal proceedings to temporarily or permanently enjoin such violation or collect any civil penalty or debt under this chapter. [Codified by Ord. 05-2000, 7/13/00]

**10.04.100 Civil Penalty**

The civil penalty for violation of this chapter shall be in an amount set by County Code Chapter 2.07 as determined by the Compliance Hearings Officer, or any other penalty to the extent permitted by state law. [Codified by Ord. 05-2003, 7/13/00; Amended by Ord. 5-2003, 3/13/03]

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