

# YAMHILL COUNTY CODE

## TITLE 5: HEALTH AND SAFETY

### **Chapter 5.20: Yamhill County Solid Waste Management Code**

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LEGISLATIVE HISTORY

FIGURE 1: THREE FACTOR ALLOCATION FORMULA

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## SECTION 1 - POLICY, PURPOSE, AND TITLE

**5.20.01.01 Policy and Purpose.** To protect the health, safety, and welfare of the people of Yamhill County and to provide a coordinated program on accumulation, collection, and disposal of waste and solid waste, Yamhill County shall regulate accumulation, collection, and disposal of waste and solid waste and the creation and operation of disposal sites to:

- a) Provide for safe and sanitary accumulation, storage, collection, transportation, and disposal of solid waste.
- b) Prohibit and provide for abatement of accumulation of waste, or solid waste, on private property in a manner that would create a public nuisance, a hazard to health, or a condition of unsightliness.
- c) Develop a regional long range plan to provide adequate disposal sites and disposal facilities to meet future demands.
- d) Provide a coordinated countywide program of control of solid waste in cooperation with federal, state, and local agencies responsible for the prevention, control, or abatement of air, water, and ground pollution.
- e) Provide for and encourage research, studies, surveys and demonstration projects on developing more sanitary, efficient, and economical solid waste disposal systems and programs.
- f) Provide for a coordinated solid waste disposal program with cities within Yamhill County and with other counties or cities, should regional programs be developed.
- g) Provide for cooperation and agreements between Yamhill County and other counties involving joint or regional franchising or licensing of solid waste collection or disposal.
- h) Provide minimum standards for location and operation of disposal sites to protect adjacent or nearby residents.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

## SECTION 2 - DEFINITIONS

**5.20.02.01 General Definitions.** As used in this ordinance, the terms defined in this section shall have the defined meaning, unless the context requires otherwise. Where appropriate, words in the present tense include the future, the singular includes the plural, plural usage includes the singular, and “shall” means mandatory, not discretionary

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**5.20.02.02 Specific Definitions.** As used in this ordinance:

- a) “**Acceptable Waste**” means any and all waste that is “Solid Waste” as defined herein but is not “Unacceptable Waste” as defined hereafter and which, in compliance with governmental licenses and permits in effect, may be disposed of at a Disposal Site.
- b) “**Accepted Farming Practice**” means a mode of operation on a farm that: (a) is or may be used on a farm of a similar nature; (b) is a generally accepted, reasonable and prudent method for the operation of the farm to obtain a profit in money; (c) is or may become a generally accepted, reasonable and prudent method in conjunction with farm use; (d) complies with applicable laws; and (e) is done in a reasonable and prudent manner.
- c) “**Administrator**” or “**Coordinator**” means the solid waste coordinator or other designate of the Board.
- d) “**Beneficial Use**” of Solid Waste shall mean the use or reuse of any Solid Waste in lieu of other materials, in the construction or operation of the Disposal Site or any ancillary facilities, including but not limited to road construction, landscaping, soil amendment, disposal cell construction, leachate or landfill gas management, daily, interim or final landfill cover material, all as may be approved by DEQ. Except for purposes of calculating the unrestricted host fee under a License Agreement, Solid Waste beneficially used or reused as described above, shall not be considered “disposed” at a Disposal Site.
- e) “**Board**” means the Yamhill County Board of Commissioners.
- f) “**Collection Vehicle**” means any vehicle used to collect or transport solid waste.
- g) “**Committee**” means the Yamhill County Solid Waste Advisory Committee (SWAC) established by this ordinance.
- h) “**Compensation**” means any type of consideration paid for service including, but not limited to, direct or indirect compensation by tenants, licensees, or similar persons.

- i) **“DEQ”** shall mean the Oregon Department of Environmental Quality.
- j) **“Dispose or Disposal”** means accumulation, storage, collection, transportation, and disposal of solid waste.
- k) **“Disposal site”** means any land used for the disposal or temporary storage of solid waste as permitted by license or franchise issued under authority of this ordinance. It does not include a site which is not used by the public either directly or through a service and which is used by the owner or tenant thereof to dispose of sawdust, bark, soil, rock, building demolition material or nonputrescible industrial waste products resulting from the process of manufacturing.
- l) **“Engineer”** means the Yamhill County engineer.
- m) **“Franchise”** means a permit to provide solid waste disposal or collection service issued by the Board pursuant to Section 9 of this ordinance. The Board shall establish rates of service for all solid waste disposal or collection franchises.
- n) **“Franchise Collection”** means a permission to store, collect or transport solid waste.
- o) **“Franchise Disposal”** means a permission to create or maintain a disposal site.
- p) **“Hazardous Waste”** or **“Hazardous Solid Waste”** shall have the meaning set forth in ORS 466.005(7) (1993 replacement part) and/or is required to be accompanied by a written manifest or shipping document describing the waste as “hazardous waste or dangerous waste,” pursuant to any state or federal law, including but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., and the Hazardous Waste Management Act, Chapter 466 ORS, as amended, and the regulations promulgated thereunder. Hazardous Waste shall not include incidental Household Hazardous Waste or Small Quantity Generator Waste which is commingled with Solid Waste,
- q) **“Incinerator”** means a combustion device specifically designed for the reduction by burning of solid, semi-solid or liquid combustible waste.
- r) **“Landfill”** means a disposal site operated by means of compacting and covering solid waste at specific designated intervals.
- s) **“License”** means a solid waste disposal license issued by the Board to allow operation of a disposal site. Subject to the terms of the license agreement, the licensee shall establish rates of service for all solid waste disposal authorized at the disposal site,
- t) **“Motor Vehicle Tires”** means any motor vehicle tire made wholly or in part of rubber or of any other synthetic material, including tire bodies, carcasses, casings, or parts of tires in whatever form, originally designed for use by any vehicle propelled by a motor, including any vehicle pushed or pulled by a motorized vehicle.
- u) **“Permittee”** means any person who has obtained a permit under this ordinance in order to pick up or transport scrap tires for salvage or disposal, whether or not incidental to another business, but excluding franchisees under this ordinance.
- v) **“Person”** means individuals, corporations, associations, firms, partnerships, and joint stock companies.
- w) **“Putrescible Material”** means organic materials that can decompose, and may give rise to foul-smelling, offensive products.
- x) **“Regulations”** means the authoritative rules established by the Board pursuant to this ordinance.
- y) **“Rules”** mean the rules established by state agencies, pursuant to ORS Chapter 459.
- z) **“Salvage”** means the use of a scrap tire for a purpose other than on a motor vehicle. The term “salvage” does not include the recycling of scrap tires through recapping or other means which make the scrap tires suitable for use on a motor vehicle.
- aa) **“Scrap Tire”** means any motor vehicle tire, new or used, whether or not it is in a condition to be reused, retreaded, or otherwise salvaged.
- bb) **“Solid Waste”** means all putrescible and non-putrescible wastes, whether in solid or semi-solid form, including but not limited to: garbage, trash, rubbish, refuse, ashes, sewage sludge; septic tank and cesspool pumpings or other sludge; commercial and industrial wastes; demolition and construction wastes; manure, vegetable or animal solid or semi-solid wastes including yard debris, dead animals. Medical and infectious waste as defined in ORS 459386 and OAR 340-93-030(42) and (52); all wastes capable of being recycled that are commingled with other wastes; and, incidental Household Hazardous Waste or Small Quantity Generator Hazardous Waste as defined under 40 CFR 261.5. The term “Solid Waste” shall not include Hazardous Waste as defined in ORS 466.005.

- cc) “**Special Waste**” shall mean Acceptable Waste resulting from an industrial and/or manufacturing process or waste which requires special handling or extraordinary management at the Disposal Site, including, without limitation, asbestos, petroleum contaminated soil, sludge, containerized or bulk tanker waste, waste from pollution control processes, waste containing free liquids and other wastes that may be covered by a Special Waste Handling Plan for the Disposal Site as approved by DEQ in accordance with the Disposal Site Permit.
- dd) “**Suspicious Waste**” shall mean waste which an operator of a Disposal Site, based on visual inspection or other information, reasonably suspects may be or contains “Unacceptable Waste.”
- ee) “**Unacceptable Waste**” shall mean any and all waste that is either:
  - (i) waste which is prohibited from being received at a Disposal Site by state, federal or local law, regulation, rule, code, ordinance, order, permit or permit condition; or
  - (ii) Hazardous Waste as defined above.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

<b>SECTION 3 - SOLID WASTE ADVISORY COMMITTEE</b>
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**5.20.03.01 Solid Waste Advisory Committee.** There shall be a seven member Solid Waste Advisory Committee, comprised of five voting members and two nonvoting members. The five voting members will be selected with due regard to geographical considerations. The two nonvoting members shall be holders of franchises or licenses issued by the Board to collect or dispose of solid waste. Neither of the two non-voting members may serve as Chair or Vice-chair of the committee.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97; AMENDED VIA ORDINANCE 676 eff 12/09/99; AMENDED VIA ORDINANCE 911 eff 11/05/20]

**5.20.03.02 Ex Officio Members.** In addition to the membership listed in Section 5.20.03.01, the Board may designate other members to serve *ex officio* without vote to advise and assist the committee. The *ex officio* members may include the following persons who may, with Board approval, designate persons to serve in their place:

- a) Director of DEQ
- b) Yamhill County Extension Agent
- c) Yamhill County Health Officer
- d) Yamhill County Engineer
- e) Yamhill County Planning Director
- f) Yamhill County Solid Waste Coordinator
- g) Yamhill County Senior Environmental Health Specialist

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97; AMENDED VIA ORDINANCE 911]

**5.20.03.03 Appointment of the Solid Waste Advisory Committee.**

- a) Members of the Solid Waste Advisory Committee shall be appointed by the Board. A public employee who serves by reason of such employment shall serve for the term of the public position held. The term of office of all other members appointed under section 5.20.03.01 is three years. The term of *ex officio* members shall be as specified by the Board at the time of appointment. A member of the committee appointed under section 5.20.03.01 shall serve until a successor is appointed and qualified, with vacancies filled by the Board for the balance of the unexpired term.
- b) A committee member may be removed from the committee by the Board due to excessive absenteeism, which is defined as missing more than fifty percent (50%) of regularly scheduled committee meetings in a twelve-month period.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97; AMENDED VIA ORDINANCE 676 eff 12/09/99; AMENDED VIA ORDINANCE 911 eff 11/05/20]

**5.20.03.04 Officers; Meetings; Minutes.**

- a) At the first meeting in January of each year, the committee shall elect a chair and a vice-chair. A majority of the voting members of the committee currently appointed shall constitute a quorum for the transaction of business. The committee shall meet at least once a month or at such times deemed necessary or called by the committee. The chair or any three members of the committee may call a special meeting with ten days’ notice

to other members of the committee; provided, however, that members may waive such notice. Updates shall be provided by each franchisee or licensee to the committee at each meeting, the detailed contents of such updates to be determined by the committee and reflected in its bylaws (see below). Update materials shall be provided to the coordinator for distribution with the agendas and minutes from the prior meeting not less than 72 hours before a scheduled meeting.

- b) The minutes of each Committee meeting shall include at least the following information:
  - (i) All members of the Committee present.
  - (ii) All motions, proposals, resolutions, orders and measures proposed and their disposition, including the substance of any discussion on the matter.
  - (iii) The results of all votes and the vote of each member by name; and
  - (iv) All public comment, if any, received at the committee meeting.
- c) The committee shall use reasonable best efforts to circulate at least a draft of the minutes of each committee meeting to the Board within seventy-two (72) hours of the committee meeting.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97; AMENDED VIA ORDINANCE 676 eff 12/09/99; AMENDED VIA ORDINANCE 911 eff 11/05/20]

**5.20.03.05 Duties of the Solid Waste Advisory Committee.** In addition to advising the Board on solid waste matters and performing other duties assigned by this ordinance, the committee shall:

- a) Within six (6) months of the effective date of this ordinance draft and present the Board with a set of bylaws providing for the detailed functioning and operation of the committee.
- b) Compile periodic and annual reports containing its recommendations, if any, regarding proposed changes or additions to regulations promulgated by the Board or amendments to this ordinance in order to carry out the intent of the ordinance. The precise frequency and contents of these reports, including but not limited to reports to be received by the committee from franchisees and licensees for presentation to the Board, shall be determined by the committee and reflected in its bylaws.
- c) Develop a long-range plan to provide adequate disposal sites and disposal facilities to meet future needs for county and regional disposal sites, in cooperation with the coordinator and other appropriate county officials selected by the Committee or the Board.
- d) Develop minimum standards for the location and operation of disposal sites including, but not limited to, protection of adjacent or nearby residents. This shall be accomplished through consultation with the coordinator and other appropriate county officials selected by the Committee or the Board.
- e) Carry out the responsibilities listed in ORS 459.325 as to any regional disposal site located within the county; and
- f) Perform other acts or duties as directed by the Board, established by other ordinances, or as may be necessary, proper, or desirable to effectively conduct the functions and responsibilities of the committee.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97; AMENDED VIA ORDINANCE 911 eff 11/05/20]

## SECTION 4 - ADMINISTRATION

**5.20.04.01 Role of Coordinator.** The solid waste coordinator, under the supervision of the Planning Director and the Board, shall be responsible for the administration and enforcement of this ordinance. In order to carry out the duties imposed by this ordinance, the coordinator shall have authority to administer oaths, certify to all official acts, subpoena, and require the attendance of witnesses at public hearings before the committee or the Board; require production of relevant documents at public hearings; swear witnesses; take testimony of any person by deposition; to the extent allowed by law, enter or authorize personnel to enter upon the premises of any person regulated by this ordinance and the regulations established by the Board under this ordinance.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97; AMENDED VIA ORDINANCE 911 eff 11/05/20]

**5.20.04.02 Persons and Agencies Exempted.** Except as otherwise specifically provided by this ordinance, this ordinance shall not apply:

- a) To federal, state, or local agencies that collect, store, transport, or dispose of solid waste or those who contract with such agencies to perform the service, except to establish terms for collection service or rates to be charged

for such service. This exemption shall not apply to disposal on a disposal site operated by a franchise under this ordinance.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

## SECTION 5 - PROHIBITED CONDUCT

**5.20.05.01 Solid Waste Accumulation Prohibited.** Except as provided in Section 5.20.05.03, no person shall store, collect, maintain, or display on private property, solid waste that is offensive or hazardous to the health and safety of the public, or which creates offensive odors or a condition of unsightliness. In addition to any other penalty provided in this ordinance or in any other applicable county ordinance, the storage, collection, maintenance, or display of solid waste in violation of this subsection shall be considered to be a public nuisance which may be abated as provided in Section 5.20.05.04 of this ordinance or as otherwise provided by Oregon law.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**5.20.05.02 Unauthorized Dumping Prohibited.**

- a) Except as provided in subsection (c) of this section, it shall be unlawful to dispose of solid waste at any other place than a disposal site designated by written approval of the Board.
- b) No person shall use or permit to be used any land within the county outside of incorporated cities as public or private disposal site without approval of the Board.
- c) Persons desiring to bury or dispose of solid waste in any other manner on their own property may do so only in accordance with rules promulgated pursuant to ORS Chapter 459 and regulations approved by the Board pursuant to this ordinance.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**5.20.05.03 Exemptions.** The prohibition established in Section 5.20.05.01 shall not apply to:

- a) Areas within the limits of incorporated cities.
- b) Disposal sites franchised or licensed under authority of this ordinance, provided that the disposal sites comply with rules promulgated by any state agency under ORS Chapter 459 and regulations adopted by Yamhill County.
- c) Accepted fanning practices as defined in Section 5.20.02.02 of this ordinance.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**5.20.05.04 Nuisance Abatement.** The abatement of nuisances under this ordinance shall occur in the following manner:

- a) The coordinator may, on the written complaint of any person or the coordinator's own initiative, make an investigation to determine whether or not the storage, collection, maintenance, or display of solid waste constitutes a violation of this ordinance. In making an investigation, the coordinator shall have the right of entry at reasonable times to determine the existence of a violation of this ordinance and to insure compliance with this ordinance.
- b) Upon completion of the investigation, the coordinator shall make a written report to the Solid Waste Advisory Committee. The committee shall review the report and determine whether a violation of this ordinance exists.
- c) If, after review of the report, the Solid Waste Advisory Committee determines that a violation exists, the committee shall send written notice to both the owner and the occupant of the real property upon which the violation exists, by registered or certified mail. The notice shall include the information that a violation of this ordinance has been found and shall give the owner and occupant a reasonable length of time either to comply with this ordinance or to appear before the committee to show cause why the violation should not be referred to the Board for abatement under the ordinance. The notice shall provide:
  - (i) Identification of the property.
  - (ii) Specific description of the violation.
  - (iii) Length of time within which the owner and occupant are to comply with this ordinance.
  - (iv) A statement that if the violation is not eliminated within the time specified, the violation will be referred to the Board of Commissioners for action which could result in the county abating the

violation and charging the costs of that abatement to the land upon which the violation is found by placing a lien thereon.

- d) If the violation is not abated within the time specified, the Solid Waste Advisory Committee shall notify the Board that there is probable cause to believe that a violation of the ordinance exists, that a reasonable time was provided to abate the violation, and that the time expired without abatement of the violation.
- e) Following notice as provided in subsection (d) above, the Board shall order a notice to be issued and served upon the owner and occupant to appear before the Board, at the time and place specified, to show cause why a violation of this ordinance shall not be declared to exist. The time for appearance shall be not less than 10 days following service of the notice. The notice shall be served in the manner provided by law for the service of summons.
- f) At the time and place scheduled in the notice provided, the Board shall hold a hearing on the alleged violation of this ordinance and shall have the power to subpoena witnesses and compel their attendance.
- g) If the Board finds a violation to exist, it shall declare the existence of a violation by order entered in its journal and shall order the violation abated within 30 days after the entry of its order.
- h) If the owner or occupant of the property fails to abate the violation within 30 days of the order, the Board may either refer the matter to the Yamhill County Counsel's office for appropriate legal action, or cause the violation to be abated and have the costs thereof charged to the owner of the property, through a lien on the property.
- i) In abating a violation under this ordinance, the county and its employees shall not be liable for either trespass or conversion.
- j) Appeals from orders of the Board under this ordinance shall be by writ of review to the Yamhill County Circuit Court.
- k) The coordinator 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 in a lien docket of Yamhill County.
- l) The coordinator or the coordinator's representative shall forward to the property owner, by registered or certified mail, a notice to include:
  - (i) The total cost of the nuisance abatement;
  - (ii) The statement that the cost will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice.
  - (iii) That a notice of objection to the cost of the abatement may be filed with the Board not more than 10 days from the date of the notice.
- m) If the written statement of objection is provided within 10 days, the Board shall, at the second regular meeting, hear the objections and shall determine whether an adjustment of the assessment should be made.
- n) If the costs of the abatement are not paid within 30 days from the date of determination by the Board of the assessed cost, an assessment of the costs shall be made by resolution and shall be entered in the docket of county liens created in subsection (k) above. The amount of the charges and expenses shall constitute a First Lien upon the land or premises, except as to taxes. If the charges and expenses are not paid and the lien discharged by the owner or occupant of the land within 90 days from the date the lien is docketed, the county clerk shall certify the lien to the Yamhill County tax collector, who shall extend the amount thereof on the current tax rolls. When so extended, the amount shall constitute a valid lien against the premises and shall be collected by the tax collector in the same manner as taxes are collected. All liens so certified by the county clerk to the tax collector after September 1 of each year shall be extended on the next roll delivered to the tax collector under ORS 311.115.
- o) The provisions of this section are in addition to and not in lieu of the any other penalty provided by law.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

## SECTION 6 - REGULATIONS

**5.20.06.01 Establishments of Regulations.** Upon recommendation of the Committee, or upon its own motion, the Board may establish reasonable regulations pertaining to the administration of this ordinance.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**5.20.06.02 General Regulations.** The Board may establish reasonable rules governing storage, accumulation, collection, transportation and disposal of solid waste including, but not limited to, the following:

- a) Accumulation, storage, collection, transportation and disposal of solid waste to prevent:
  - (i) Vector production and sustenance;
  - (ii) Conditions for transmission of disease to man or animals;
  - (iii) Air pollution by dust fumes, gas, smoke, odors, or particulate matter, or any combination thereof;
  - (iv) Pollution of surface or ground water;
  - (v) Hazards to service or disposal workers or to the public.
- b) Storage of solid waste at the point of origin to eliminate conditions conducive to the creation of vector nuisances or air or water pollution through proper container construction and design, and through solid waste handling practices, including, but not limited to, container maintenance.
- c) Disposal sites with respect to adaptability of the site to the population served, topography and geology of the area, protection of ground and surface water, air pollution, accessibility, longevity, salvage, ultimate site use, standards of design, management, and operation, regulation and limitation of open burning and salvage operations and protection of adjacent or nearby residents.
- d) Construction, loading, and operation of collection vehicles used in performing service to prevent the contents thereof from dropping, sifting, leaking, or escaping onto public roads and highways.
- e) Safe handling of hazardous waste.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**5.20.06.03 Regulations Regarding Service.** The Board may establish reasonable regulations with respect to service governing:

- a) The quality and character of service provided by any person or to any area outside of an incorporated city.
- b) Rates for service.
- c) Minimum requirements to guarantee service.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

## SECTION 7 - FRANCHISING AND LICENSING SOLID WASTE COLLECTION AND DISPOSAL

**5.20.07.01 Persons, Activities, and Practices Regulated.**

- a) Except as expressly allowed in Section 5 of this ordinance, it shall be unlawful for any person to store, collect, transport, or dispose of any solid waste for compensation unless such person is franchised or licensed by the Board in accordance with the provisions of this ordinance.
- b) It shall be unlawful for any person to create or maintain a disposal site unless that person has obtained a disposal franchise or license from the Board.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**5.20.07.02 Applications.** Applications for a franchise or license shall be on forms provided by the coordinator. In addition to information required on the forms, the coordinator may require the filing of information deemed necessary to insure compliance with this ordinance.

- a) Applicants for a collection franchise shall list the type of service to be provided, and shall supply other information deemed necessary by the coordinator to insure compliance with this ordinance.

- b) Applicants for a disposal franchise or license shall list the type of service to be provided, and shall supply other information deemed necessary by the coordinator to insure compliance with this ordinance, Applicants for a disposal franchise or license shall file with the coordinator a duplicate copy of all information provided to DEQ in connection with their DEQ application.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**5.20.07.03 Minimum Requirements for Collection Franchise.** An applicant for a collection franchise shall submit all information required by the coordinator to determine compliance with this ordinance. At a minimum, the coordinator shall require at least the following:

- a) That the defined service area has not been franchised to another person or that the defined service area is currently not served by a franchisee or
- b) That the defined service area is not being adequately served by the franchisee and that there is a substantial demand from customers within the area for a change of service to that area; and
- c) That the applicant has current public liability insurance of not less than \$500,000 and property damage insurance not less than \$ 1 00,000. The applicant shall provide a certificate of insurance to county.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**5.20.07.04 Review and Issuance of Collection Franchise.**

- a) Applications for collection franchises shall be reviewed by the coordinator and persons selected by the Committee or the Board. The coordinator shall give written notice to a current franchisee of an application which would affect any part of the area already franchised.
- b) Following review of the application and recommendation of the coordinator, the Committee shall determine if the qualifications of the applicant are adequate and shall also determine if additional areas should be included or additional service or equipment should be provided. The Committee shall recommend to the Board whether the application should be granted, denied, or modified.
- c) The Board shall issue an order granting, denying, or amending the application.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**5.20.07.05 Disposal Franchise or License Requirements.**

- a) Applicants for a disposal franchise or license shall provide sufficient information to determine compliance with the requirements of this ordinance, its regulations, and the rules of federal, state, or 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 or the type of waste that will be accepted or rejected at the disposal site.
- c) The applicant must demonstrate to the Board that:
- (i) There is available land, equipment, facilities and personnel to meet the standards established by this ordinance and ORS Chapter 459, and the rules and regulations promulgated thereunder, and that the application has insurance equal to that required by this ordinance.
  - (ii) The applicant is sufficiently experienced to properly provide disposal service to insure compliance with this ordinance and any related regulations. If the Board determines the applicant does not have sufficient experience, a surety bond in an amount deemed adequate by the Board may be required. The bond shall guarantee full and faithful performance of the duties and obligations of a franchise holder under the provisions of this ordinance, and applicable federal, state, and local laws, rules, and regulations. In determining the bond amount to be required, the Board shall consider the size of the site, the method of disposal proposed, the population to be served, adjacent or nearby land uses, and the potential danger of failure of service.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**5.20.07.06 Review and Issuance of Disposal Franchise or License.**

- a) Applications for a disposal franchise or license shall be reviewed by the coordinator and persons selected by the Committee or Board, and, where required by Yamhill County land use ordinances, the Yamhill County Planning Commission. The coordinator, Yamhill County Planning Department and Yamhill County Planning

Commission shall investigate as deemed appropriate. Written notice shall be given by the coordinator 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.

- b) The Committee shall make a finding, based on the application, evidence submitted, and investigation results, on the qualifications of the applicant, and whether or not additional service, land, equipment, and facilities should be provided. Conditions of service to be imposed shall include, but not be limited to, whether the site should be open to the public and any restrictions; whether certain types of waste, solid waste, or hazardous waste should be excluded from the site, or should be required to be accepted at the site. The Committee shall make a finding regarding the economic feasibility of the site, whether the site may be integrated with existing private or county-owned or operated sites, and whether the site complies with all rules and regulations adopted pursuant to ORS Chapter 459 or this ordinance.
- c) The Committee shall recommend to the Board whether or not the application should be granted, denied, or modified. The committee may recommend reasonable conditions of service to be imposed. The conditions may include, but not be limited to, whether the site should be open to the public and any restrictions; whether certain types of waste, solid waste, or hazardous waste should be excluded from the site, or should be required to be accepted at the site.
- d) The Board shall issue an order granting, denying, or amending the application.
- e) These provisions are in addition to, and not in lieu of, any provisions of the Yamhill County land use ordinances.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

#### **5.20.07.07 Appeal on a Board Determination as to Franchise or License.**

- a) An order of the Board adverse to the applicant or to an existing franchisee shall not become effective for 30 days after the date of the order unless the Board finds that an immediate and serious danger to the public exists, or that a health hazard or public nuisance is created by the delay. The applicant or a franchisee may request a public hearing before the Board by filing a written request for hearing with the Board within 30 days after the date of the order.
- b) The Board shall set a time and place for a public hearing, not more than 30 days from the date of the request for hearing. The applicant or franchisee may submit relevant evidence to the Board. Other interested persons or affected public or private agencies may appear and offer oral or written testimony.
- c) The Board may, following the public hearing, affirm, modify, or rescind its prior order. The determination of the Board at the conclusion of the public hearing shall be final.
- d) Following rejection of all or part of the franchise application, the applicant may not re-submit an application for the same service area or a portion of 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.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

#### **5.20.07.08 Exclusive or Joint Service Under a Franchise.**

- a) If the Committee recommends and the Board finds that an applicant for collection franchise cannot provide service to a single customer, a group or type of customer, or for a particular type or unusually large quantity of solid waste, it may issue a franchise for joint service with another provider for that service. However, in all cases where the Board finds that the applicant is able to provide adequate service within the defined service area, an exclusive franchise for that area shall be issued to the applicant.
- b) If the franchisee is unable to provide service for particular types or unusually large quantities of solid waste, the Board may issue a temporary or permanent franchise to another provider for the limited purpose of service to the customer or customers having such particular types or unusually large quantities of solid waste.
- c) If the Board finds, upon the recommendation of the coordinator, that the need for service justifies action before a complete investigation and final determination can be made, the Board may issue a temporary certificate, not to exceed six months, entitling a provider to serve a defined service area or customers.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

#### **5.20.07.09 Transfer of Franchise or License.**

- d) A franchisee or licensee may transfer the franchise, or a portion thereof, to other providers only upon written notice to and approval by the Board.
- e) Upon recommendation by the Committee, the Board shall approve the transfer if it finds that the transferee meets all applicable requirements met by the original franchisee or licensee. The Board shall approve or deny any application for transfer of a franchise or license within 30 days of receipt of notice by the Board unless the Board finds there is a substantial question of public health or safety which requires additional time for investigation and decision.
- f) Upon recommendation by the Committee, the Board may permit a franchise to be pledged as security for purchase of land, equipment, or facilities needed to provide service or to finance purchase of a business providing service under this ordinance. The Board may attach whatever conditions it deems appropriate to guarantee maintenance of service.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

#### **5.20.07.10 Responsibilities of Collection Franchise Holders.**

- a) A collection franchise shall provide required service, equipment and facilities to the service area defined in the franchise within one month from the date of franchise approval unless the Board extends the time at the reasonable request of the applicant. Where an area is not receiving service on the date of the application for a franchise for that area, the Board may order that service be provided at such time as it determines to be reasonable.
- b) A collection franchise shall not discontinue service voluntarily to the service area or any substantial portion thereof or any customer without giving 90 days written notice of the proposed discontinuance of service to the coordinator and to the customers within the franchise and shall not discontinue service without the written consent of the Board. Nothing in this section shall prohibit a franchisee from refusing to provide service to a customer who refuses to pay for the service in accordance with rates established by the Board; provided, however, that in no event shall the franchisee discontinue service without 7 days prior written notice to the customer of the franchisee's intent to terminate service. A franchisee who discontinues service based on the customer's refusal to pay may demand that the customer pay in advance a reasonable deposit to guarantee payment for future service before reinstating regular 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.
- c) A collection franchise may contract with another person to provide service within a service area after giving written notice to and obtaining approval of the coordinator. The coordinator shall approve the contract unless there is a finding that the quality or extent of service would be jeopardized.
- d) A collection franchisee may refuse service to a customer on reasonable grounds approved by the coordinator if it is determined that service at the particular location would jeopardize the safety of the driver of the collection vehicle or the motoring public; that the customer has not provided reasonable access to the pickup point where the solid waste containers are stored without hazard or risk to the service provider; or that weather conditions prevent service to the particular customer.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97; AMENDED VIA ORDINANCE 676 eff 12/09/99]

#### **5.20.07.11 Responsibilities of Disposal Franchisees or Licensees.**

- a) A disposal franchisee or licensee shall not voluntarily discontinue operation without giving at least 90 days written notice of the proposed discontinuance of service to the Board and to any franchisee using the disposal site and without receiving the approval of the Board prior to discontinuing the 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.
- b) A disposal franchisee may contract with another person to operate the disposal site after giving written notice to and obtaining the approval of the coordinator. The coordinator shall approve the contract unless there is a finding that the quality or extent of service would be jeopardized.
- c) A disposal franchisee may refuse service to any customer who refuses to pay for the service in accordance with the rates established by board order. A franchisee who discontinues service based on the customer's

refusal to pay may demand that the customer provide a reasonable deposit in advance to guarantee payment for future service prior to reinstating service.

- d) A disposal licensee shall be governed by the terms and conditions established in the underlying license agreement.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**5.20.07.12 Enforcement of Franchise Provisions.** The coordinator shall, on reasonable cause, investigate whether there is sufficient reason and cause to suspend, modify, revoke, or refuse to renew a franchise or license as provided in this section. If, in the opinion of the coordinator, there is sufficient evidence to constitute a violation of this ordinance or ORS Chapter 459 or the applicable rules and regulations, the coordinator shall notify the franchisee or licensee in writing of the alleged violation and of the steps that must be taken to cure the violation and follow the requirements of the coordinator set forth in the notice. The coordinator shall notify the Committee. Upon a finding that a violation exists and that the franchisee or licensee is unable or refuses to cure the violation, the Committee shall recommend to the Board whether the franchise or license is to be suspended, modified, revoked, or that it shall not be renewed.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**5.20.07.13 Suspension, Modification, Revocation, or Refusal to Renew a Franchise or License.** Suspension, modification, revocation or refusal to renew a disposal license shall be governed by the terms and conditions established in the underlying license agreement. Suspension, modification, revocation or refusal to renew a disposal franchise shall be governed by this section.

- a) Upon recommendation by the Committee, or upon its own motion, and subject to the terms of the applicable franchise, the Board may suspend, modify, revoke, or refuse to renew a franchise upon finding that the franchisee has:

- (i) Willfully violated this ordinance or ORS Chapter 459 or their related rules and regulations; or
- (ii) Materially misrepresented facts or information given in the application for franchise; or
- (iii) Willfully refused to provide adequate service in a defined service area or at the franchised disposal site after written notification and a reasonable opportunity to do so; or
- (iv) Misrepresented the gross receipts from the franchised service area, or, if required to report on such receipts, the gross receipts from operation of a franchised disposal site.

- b) In lieu of immediate suspension, modification, revocation, or refusal to renew a franchise, the Board may order compliance and make the suspension, modification, revocation, or refusal to renew a franchise contingent upon compliance with the order within the time frame stated in the order.

- c) An action by the Board to suspend, modify, revoke, or refuse to renew a franchise shall not become effective for 30 days after 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 franchisee may request a public hearing before the Board by submitting a written request for hearing to the Board within 30 days following Board action. The Board shall then schedule a time and place for a public hearing within 30 days of the receipt of request for hearing. The franchisee and other interested persons or affected public agencies may submit oral or written evidence relevant to the Board's order. The Board may, following the public hearing, affirm, amend, or rescind its prior order. The determination of the Board after the public hearing shall be final.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**5.20.07.14 Preventing Interruption of Service.** If the Board finds that failure to provide service would result in creation of health hazards or public or private nuisance, the Board shall have the right to authorize another franchise holder or other qualified person to provide service or to use and operate the land, facilities, or equipment of the franchisee or licensee, by lease, in order to provide emergency service to reduce a serious interruption of service to all or a portion of franchisee's or licensee's customers for so long as the interruption continues. Reasonable notice and not less than 24 hours' notice shall be given to the franchisee or licensee, and a public hearing scheduled if the franchisee or licensee so requests.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**5.20.07.15 Term of Franchise or License.**

- a) The term for a **collection franchise** shall be ten years unless the Board finds that a longer or shorter term is required in the public interest.
- b) The term for a **disposal franchise or license** shall be determined by the Board based on the recommendation of the Committee’s review on site longevity, population to be served, and probable use.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**5.20.07.16 Collection Franchise Fees.**

- a) A collection franchise shall remit to the county a fee equal to 2% of the gross cash receipts from collection service to the franchise service area each quarter year. The collection franchise fee shall be computed on the basis of the previous quarter’s gross cash receipts, and shall be paid by the franchisee not later than 30 days after the end of the quarter.
- b) A collection franchisee shall maintain books and records disclosing the gross receipts from the franchise service area. The books and records shall be open at reasonable times and places for audit by authorized personnel of Yamhill County.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97; AMENDED VIA ORDINANCE 676 eff 12/09/99]

**5.20.07.17 Disposal Franchise Fees.**

- a) A disposal franchise shall remit to the county an annual fee of \$25.
- b) A disposal franchise shall, where reasonably required by the Board, maintain books and records disclosing gross receipts at the disposal site; these books and records shall be available for audit.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**5.20.07.18 License and Host Fees for License Agreements.** Where the Board has authorized a disposal site to operate under license instead of franchise, the licensee shall pay license and host fees according to the terms of the underlying license agreement.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**5.20.07.19 Use of Franchise and License Fees.** Fees collected as franchise fees under Section 5.20.07.16 shall be paid into the general fund or the solid waste fund of the county. Fees collected as franchise fees or license fees under Section 5.20.07.17 or 5.20.07.18 shall be paid into the solid waste fund of the county for the purposes of carrying out the provisions of Section 5.20.01.01 of this ordinance.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**SECTION 8 - RATES AND CHARGES FOR COLLECTION AND DISPOSAL SERVICE**

**5.20.08.01 Determination of Rates; Establishment of Initial Rates.** This section governs the establishment of rates and rate adjustments for collection and disposal franchises. This section does not regulate the rate charged for services provided under a solid waste disposal license agreement. Prior to the initial authorization of rates under the Solid Waste Ordinance, 1997, the coordinator shall certify to the Board of Commissioners that the coordinator has reviewed applicable documentation of the Franchisee and has concluded that the Franchisee has met all rate-setting criteria in this section. The certification shall include a recommended rate schedule. The Board shall consider the coordinator’s certification and recommended rate schedule upon receipt and shall act to accept or reject the recommended schedule at the next available formal Board session; provided that the Board’s consideration may be continued to subsequent sessions as deemed necessary by the Board. In no event shall initial rates established under this section become effective until the Board has acted to adopt the coordinator’s recommended rate schedule at a formal Board session. In no event shall rates established under this Solid Waste Ordinance, 1997 become effective prior to July 1, 1997.

- a) In consideration for its services hereunder, Franchisee shall be allowed to charge and collect those rates adopted each year in accordance with this Section.
- b) The rates set shall be fixed at a level sufficient to produce a Revenue Requirement for Franchisee that is equal to the quotient of Allowable Expenses divided by the Operating Ratio (expressed as a decimal). For purposes

of this Ordinance the rates shall include all monies collected by Franchisee for the services provided under this franchise, including but not limited to charges for collection of solid waste and recyclable materials, revenue from the sale of recycled material, disposal charges, surcharges, fees and taxes. Revenue shall also include any other monies received by Franchisee from any other entity as compensation for the services provided hereunder, allocated fairly and reasonably to the jurisdiction and customers receiving said services. For purposes of this Ordinance expenses shall be “Allowable” to the extent they are known and measurable, calculated in accordance with Generally Accepted Accounting Principles (GAAP), do not exceed the fair market value of like services, and are reasonably and prudently incurred by the Franchisee in the course of performing its obligations under this Franchise. Allowable expenses shall include but not be limited to the following:

- (i) the costs of complying with all laws, regulations or orders applicable to the obligations of Franchisee hereunder, as now or hereafter amended;
  - (ii) disposal fees as increased by the CPI. Disposal increases in excess of the CPI as called for in the Disposal Agreement between the Franchisee and The Disposal Site (currently Riverbend Landfill) will be considered allowable expenses with no application of the Operating Ratio;
  - (iii) labor costs, including supervisory labor, associated with provision of services under this Franchise, including workers’ compensation and benefits and third-party transportation costs;
  - (iv) vehicle and equipment expenses including depreciation, vehicle registration fees, motor fuel, oil, tires and repairs and maintenance of equipment;
  - (v) expenses of maintaining and replacing capital equipment and assets, including depreciation and repair and maintenance;
  - (vi) performance bonds and insurance in the amounts and coverages required by the County;
  - (vii) administrative costs including officer salaries, administrative staff, data processing, billing and supplies;
  - (viii) utilities;
  - (ix) training and worker safety;
  - (x) marketing, promotion and public education costs;
  - (xi) property or facility depreciation, rental or lease costs necessary to the provision of services required by this franchise;
  - (xii) professional fees and costs;
  - (xiii) debt service expenses;
  - (xiv) franchise fees in excess of 5 percent of gross revenues or business license fees established by the County. Franchise fees less than 5 percent of gross revenues shall be allowable expenses with no application of the Operating Ratio;
  - (xv) any expense incurred in the collection, handling, processing, storing, transporting, marketing, or sale or other disposition of recyclable materials (as defined in ORS 459.005(20)).
  - (xvi) all surcharges, taxes or fees, other than state or federal income taxes or franchise fees, which are imposed upon Franchisee or levied by federal, state or local governments in connection with Franchisee’s provision of solid waste collection, transportation, disposal and resource recovery services; and
  - (xvii) any other expense determined in advance by the County and Franchisee to be reasonable and necessary to the provision of the services required under this franchise.
- c) Under no circumstances will the following expenses be counted as allowable expenses:
- (i) Interest and amortization on the purchase of other franchise routes or other businesses.
  - (ii) Political and Charitable Contributions.
  - (iii) Federal, State, and Local Income Taxes.
  - (iv) Loss on Sale of Assets.
  - (v) Officers’ life insurance premiums.
  - (vi) Director fees.
  - (vii) Interest on the purchase of equipment or facilities to the extent that the purchase price exceeds the fair market value of the asset at the time of purchase.
  - (viii) Penalties and fines.

- (ix) Legal and other professional fees not directly related to the operation of the franchise.
- d) For purposes of this Ordinance, “Operating Ratio” shall equal 88 percent.
- e) Because Franchisee and its affiliates may use common resources (equipment, fuel, labor, etc.) to service the County and other nearby jurisdictions, it will be necessary to allocate the costs of such resources among the jurisdictions they serve. Franchisee and the County shall mutually agree upon an allocation formula which shall be attached to this Ordinance as Figure 1. Such allocation formula may be amended upon the written mutual consent of the Franchisee and the County and shall be applied, as amended, to determine Allowable Expenses throughout the term of this Ordinance.
- f) Except as provided in subsection (g) of this section, a cost-of-living rate adjustment shall be made annually according to the following procedures:
  - (i) Commencing on June 1, 1998 and on June 1 of each year thereafter throughout the term of this Ordinance (the “Adjustment Date”), the rates shall be adjusted in a percentage amount equal to the percent change in the Consumer Price Index for all Urban Consumers for West-B/C, All Items (1982 - 84 = 100) published by the Bureau of Labor Statistics (“the Index”) for the year ending in April; provided however, that the adjustment shall not exceed 4 percent in any year. The adjusted rates shall become effective on each July 1, 30 days following the Adjustment Date.
  - (ii) On or before each Adjustment Date, Franchisee shall send to the County a revised rate schedule reflecting the proposed new rates, as adjusted by the Index as provided in this subsection. Upon adoption, the revised rate schedule shall become effective on July 1 of each year.
- g) In addition to the annual cost of living adjustment provided in subsection (f) of this Section, each year on or before April 1, the Franchisee will submit to the County a rate review report (the “report”) showing the actual Allowable Expenses incurred by Franchisee in the preceding calendar year, all additional Allowable Expenses Franchisee reasonably anticipates will be incurred or imposed in the current calendar year, the allocation formulas used to determine expenses, the actual Operating Ratio for the preceding calendar year, and the expected Operating Ratio for the current calendar year. This rate review report shall be reviewed by an independent certified public accountant prior to submittal to Yamhill County. If the Report indicates that the Operating Ratio for the next succeeding 12-month period will be less than 85 percent or greater than 91 percent then rate review will automatically be implemented in accordance with this section. In addition, prior to April 15, either Franchisee or the County may request a rate review to confirm that the Operating Ratio for the next succeeding 12-month period will be not less than 85 percent and not greater than 91 percent, PROVIDED, however, that not more than five consecutive years shall pass during the term of this Franchise without a formal rate review as set forth in this subsection. In the event a rate review is requested or required as provided hereunder, the following procedures shall bind the County and Franchisee:
  - (i) No later than April 1, Franchisee shall submit to the County a rate review report (the “Report”). If there is reason to believe, based on the County’s review of the data from the report, that the Operating Ratio for the current calendar year will be less than 85 percent or greater than 91 percent, the Report shall also include proposed rates for the current calendar year that are calculated in accordance with subsection (b) above to produce Franchisee’s Revenue Requirement for such calendar year in light of all Allowable Expenses set forth in the Report.
  - (ii) The County shall review the Report and, if the County’s review of the Report indicates that the Operating Ratio is likely to be greater than 91 percent or less than 85 percent, the County shall adopt rates for the current calendar year, either as proposed by Franchisee in the Report or as modified by the County, no later than June 15. The duly adopted rates shall become effective not later than July 1 and shall supersede the rates that were previously in effect.
  - (iii) In the event the Report shows that the Operating Ratio for the current calendar year is not likely to be greater than 91 percent or less than 85 percent, the rates shall not be adjusted and the current rates shall continue in effect until adjusted in accordance with subsection (f) of this Section.
- h) The County shall set all policies and procedures respecting the implementation of rates and shall direct Franchisee to carry out such policies and procedures. The County, its agents or employees may, upon reasonable notice and during normal business hours, audit those records of Franchisee that pertain to Allowable Expenses; provided, however, in reviewing such records, the County shall, and shall direct its

agents and employees to maintain such records in strict confidence and not disclose, divulge or transmit such records or copies of such records to any third party.

- i) In the event Franchisee, at any time, becomes liable to pay any new or increased legislated costs, including surcharges, fees or expenses associated with regulatory requirements, or any new or increased disposal and/or long-haul transportation costs or fees, and these costs represent in excess of two (2) percent of Gross Revenue, then all such costs and/or fees shall be passed through and added to the then-existing rate structure immediately upon County's receipt and verification of Franchisee's documentation of and liability to pay the same. In the event Franchisee, at any time, experiences a reduction in such costs, in excess of two (2) percent of Gross Revenue, then all such savings shall be passed through and subtracted from the then existing rate structure immediately upon County's receipt and verification of Franchisee's documentation of the same. Franchisee shall include all such costs, cost savings, and/or fees in the next succeeding year's Report as actual Allowable Expenses of Franchisee.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97; AMENDED VIA ORDINANCE 647 eff 05/28/98; AMENDED VIA ORRDINANCE 669 eff 04/15/99]

#### **5.20.08.02 Dispute Resolution.**

- a) In the event of any dispute arising under this Ordinance, the County and Franchisee shall continue performance of their respective obligations under this Ordinance.
- b) In addition to and without waiving any rights and remedies under this agreement or under civil or common law, in the event of a dispute under this Ordinance, the parties may agree to Arbitration pursuant to the terms of this section. Within fifteen (15) days after agreement to arbitration has been reached, each party shall submit the name of its own arbitrator, selected from a panel of persons qualified with the Arbitration Service of Portland, Inc., or the American Arbitration Association, whichever organization is specified in the written notice of demand for arbitration, and the two arbitrators shall select a third arbitrator selected from such panel within 15 days, or in case of a disagreement concerning the appointment of the third arbitrator, the third arbitrator shall be appointed from such panel by the senior judge residing in Yamhill County for the Circuit Court for Yamhill County, Oregon. During such time that the arbitrators are being selected or appointed, the parties shall continue to negotiate in good faith to resolve their dispute in a cooperative manner.
- c) Arbitration shall be conducted in McMinnville, Oregon in accordance with the then-effective arbitration rules of Arbitration Service of Portland, Inc., or the then-effective commercial arbitration rules of the American Arbitration Association, whichever organization is specified in the written notice of request for arbitration. The decision of the arbitrator(s) in the matter shall be final and binding on the parties, and any judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof.
- d) The County and Franchisee shall use their best efforts to conclude all arbitration proceedings involving rate adjustment disputes within 30 days following the commencement of such arbitration proceedings. Any arbitration determination granting an increase in rates may include an award of interest at the statutory rate for the period between June 1 and the date the increase becomes effective. Such award may also include any adjustment necessary to meet or restore Franchisee's Revenue Requirement.
- e) The determination by the arbitrator shall be binding on the parties. The losing party shall pay all costs charged by the arbitrator for the arbitrator's fees and expenses. Each party is solely responsible for its own costs incurred in the arbitration, including fees and expenses of attorneys, witnesses and other representatives.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

#### **5.20.08.03 Annual Report by Franchisee.** An annual report shall be submitted to the Solid Waste Advisory Committee ("SWAC") in accordance with the following schedule:

- a) Commencing in 1997 and each year thereafter, The Franchisee shall submit to SWAC an annual report.
  - (i) Not later than August 15 of each year the SW AC or County Solid Waste Administrator may submit to the Franchisee a question or questions to be answered or areas of concern that the SW AC or Coordinator desires the Franchisee to discuss in its annual report to the SWAC.
  - (ii) Not later than September 15 of each year and regardless of whether the SW AC or Coordinator questions or areas of concern have been expressed, the Franchisee shall submit an annual report regarding the following topics.

1. Goals adopted and progress made in regard to goals adopted at the previous annual review of the franchise operation.
  2. Recycling activities.
  3. Service changes in place and service changes contemplated.
  4. Technology – new applications to existing and proposed new services.
  5. Regulatory changes adopted by the federal or state governments; anticipated changes in the coming franchise year.
  6. Changes proposed to franchised operations in the next franchise year.
  7. Complaints and resolution of complaints.
- (iii) Not later than October 15 of each year the SWAC shall submit for the Franchisee’s consideration new services or changes in existing services for the ensuing year. (Proposals submitted shall not affect the annual amendment to the rate structure as provided in this ordinance; however, the Franchisee may request an additional rate change in accordance with this ordinance.)

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**5.20.08.04 Rate Preferences Prohibited.**

- a) No franchisee subject to rate regulation under this ordinance shall give any rate preference to any person, locality, or type of solid waste stored, collected, transported, or disposed.
- b) Nothing in this section is intended to prevent the reasonable establishment of uniform classes of rates based upon length of haul, type of solid waste stored, collected, transported, or disposed of, or upon the number, type, and location of customers served, or upon other factors if such rates are reasonably based on costs of the particular service and are approved by the Board in the same manner as other rates.
- c) Nothing in this section is intended to prevent any person from volunteering service at reduced cost for a charitable, community, civic, or benevolent purpose.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**5.20.08.05 Responsibility for Payment of Charges for Services.** Any person who receives service shall be responsible for payment for the service. The landlord of any premise shall be responsible for payment for service provided to the premises if the tenant does not pay for the service.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**SECTION 9 - REGIONAL COLLECTION AND DISPOSAL**

**5.20.09.01 Agreements for Joint Franchising.** The Board may enter into agreements with any city or county for joint or regional franchising of collection or disposal service.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**5.20.09.02 Agreements for Allocation of Franchise Fees.** The Board may enter into agreements with any city or county to provide for allocation of franchise fees where the franchise service areas cross city or county boundaries.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**SECTION 10 - ENFORCEMENT AND PENALTIES**

**5.20.10.01 Restraining Orders.** In addition to all other authority granted to and inherent in the Board, the Board is hereby authorized to make and issue temporary restraining orders enjoining the alleged violation of any of the terms of this ordinance or franchises or regulations issued thereto. The order shall direct the alleged violator to immediately cease and desist from any act or acts described in the order until the Board determines whether or not a violation has occurred. Before issuing a temporary restraining order, the Board must have reasonable grounds to believe that the violation has occurred. In no event shall the Board make or issue such an order without having first received a written complaint containing allegations of a violation of this ordinance. The complaint

shall specify the alleged violation in brief, concise language sufficient to appraise the alleged violator of the act or acts to be enjoined. The order shall direct the alleged violator to appear at the time and place stated in the order and show cause, if any there be, why the alleged violator should not be immediately enjoined from doing the act or acts specified in the order. If a determination is made that a violation of the ordinance has occurred, the Board may make and enter an order permanently enjoining further violations.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

#### **5.20.10.02 Abatement.**

- a) The accumulation, storage, collection, transportation, or disposal of solid waste or waste by any person in violation of this ordinance or regulations established thereunder is a nuisance. The Board or county counsel may, in addition to other remedies provided by law, institute injunction, mandamus, abatement, or other appropriate legal proceedings to temporarily or permanently enjoin or abate such storage, accumulation, collection, transportation, or disposal.
- b) The provisions of this section are in addition to, and not in lieu of, any criminal prosecution or penalties as provided by this ordinance or state law.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**5.20.10.03 Penalties.** Violations of this ordinance shall be punishable, upon conviction, by a fine of not more than \$500 for a noncontinuing offense and a fine of not more than \$1,000 for a continuing offense.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

## **SECTION 11 - APPEALS**

**5.20.11.01 Court Appeals.** All decisions of the Board under this ordinance shall be subject to review in accordance with ORS 34.010 to 34.100.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**5.20.11.02 Appeals from Decisions of the Coordinator.** The Committee or the Board, upon their own motion or upon the request of an interested person or affected public agency, may review decisions of the coordinator made pursuant to this ordinance.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

## **SECTION 12 - REGULATION OF SCRAP TIRES**

**5.20.12.01 Applications for Salvage Permits.** Applications for salvage permits shall be made on forms provided by the coordinator. The coordinator may require additional information as deemed necessary to ensure compliance with this ordinance. No fee shall be charged for processing applications.

- a) Applicants shall state the particular use planned for the scrap tires, the number of tires required, date use shall be completed, and the source of the tires.
- b) The applicant shall state specifically the manner in which the scrap tires shall be screened from public view, or anchored to the ground, if applicable.
- c) The applicant shall identify any potential vector or pest breeding or habitat areas in the proposed use and the control methods to be utilized in order to avoid them.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

#### **5.20.12.02 Review.**

- a) All applications shall be subject to review by the Yamhill County Solid Waste Advisory Committee and the Yamhill County Solid Waste Coordinator who shall investigate as appropriate. The Committee shall review the application at its next regular meeting after completion of the investigation and the appropriate public notice is made, and shall make a finding on the application based on the following criteria:

- (i) Utility of the proposed use.

- (ii) Effect of the proposed use on the esthetics of the surrounding neighborhood.
  - (iii) Potential of the proposed use to create vector or pest breeding and/or habitat areas.
- b) The decision of the Committee may be appealed within 30 days of the decision to the Board of Commissioners for a review. Such review, on appeal, shall be de novo by the Board of Commissioners.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**5.20.12.03 Enforcement.** In addition to the penalties provided below, this section may be enforced by restraining order.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**5.20.12.04 Prohibitions.**

- a) No person shall knowingly sell or otherwise make available to any person more than 50 scrap tires for the purpose of salvage or disposal in Yamhill County in any given calendar year unless the other person is a permittee or franchisee under this ordinance.
- b) No person who is not a permittee or franchisee shall knowingly receive more than 50 scrap tires for salvage or disposal in Yamhill County.
- c) No person shall knowingly transport or cause to be transported wholly within, or to a destination within, Yamhill County more than 50 scrap tires for disposal or salvage in any calendar year unless the recipient of the tires is a permittee or franchisee under this ordinance.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**5.20.12.05 Penalties.** Violation of Section 5.20.12.04 of this ordinance shall be punishable, upon conviction, by a fine of not more than \$50 per tire furnished, received or transported; however the maximum fine shall not exceed \$500 for a noncontinuing offense or \$1,000 for a continuing offense.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**SECTION 13 - APPLICATION**

**5.20.13.01 Application.** This ordinance shall apply to all of unincorporated Yamhill County and shall also apply within a city when the governing body or the electors of the city have consented to the application of the ordinance.

[ADOPTED VIA ORDINANCE NO. 626 eff 05/01/97]

**LEGISLATIVE HISTORY**

Adopted via Ordinance No. 154 on 03/15/1978, effective 03/15/1978

Amended via Ordinance No. 192 on 03/07/1979, effective 03/07/1979

Amended via Ordinance No. 259 on 05/27/1981, effective 05/27/1981

Amended via Ordinance No. 350 on 07/13/1983, effective 07/13/1983

Amended via Ordinance No. 401 on 01/02/1985, effective 02/01/1985

Amended via Ordinance No. 434 on 08/06/1986, effective 08/15/1986

Amended via Ordinance No. 490 on 07/19/1989, effective 07/19/1989

Amended via Ordinance No. 509 on 06/27/1990, effective 06/27/1990

Amended via Ordinance No. 534 on 02/26/1992, effective 02/26/1992

Repealed via Ordinance No. 578 on 08/31/1994, effective 10/01/1994

Adopted via Ordinance No. 578 on 08/31/1994, effective 10/01/1994

Repealed via Ordinance No. 626 on 04/30/1997, effective 05/01/1997

Adopted via Ordinance No. 626 on 04/30/1997, effective 05/01/1997

Amended via Ordinance No. 647 on 05/28/1998, effective 05/28/1998  
Amended via Ordinance No. 669 on 04/15/1999, effective 04/15/1999  
Amended via Ordinance No. 676 on 12/09/1999, effective 12/09/1999  
Amended via Ordinance No. 911 on 11/05/2020, effective 11/05/2020

**FIGURE 1: THREE FACTOR ALLOCATION FORMULA**

In order to allocate common expenses incurred in the provision of refuse collection services between service types and service areas a three factor allocation formula will be used.

Basically, the majority of expenses in providing refuse collection are in Labor, Disposal, and Vehicle expenses. On average these expenses represent 70 to 85 percent of the total costs of operating.

The company could keep detailed cost accounting records of all expenses incurred on a franchise area and service type basis. However, it is the desire of the County to have the company maintain records in a more cost effective manner.

The three factors that will be used to allocate these costs are:

Labor hours:	Used to allocate labor costs. Vehicle costs will also be allocated on labor hours as a substitute for engine hours. If, in the opinion of the operator, these hours would not be materially similar then a four factor formula would need to be implemented which would include engine hours to allocate the cost of vehicles.
Weight:	Average Vessel Weights used to allocate disposal.
Customer Base:	Weighted customer counts used to allocate general and administrative and management expenses.

These factors will be captured and applied to the costs on a periodic basis. The County and the company agree that test periods shall be utilized, at least quarterly, to collect this data.

Currently, the methods for collecting this data are:

Labor hours:	A “time on route form” will be completed by route drivers one week each quarter. This data will then be summarized and averaged for application to the annual accounting data, or summarized and applied to the specific quarterly accounting data.
Weight:	Quarterly weight statistics will be generated by the company to obtain quarterly average vessel weights. These weights will then be applied to route list customer data to obtain relative weights per route. These relative weights per route will then be applied to the cost of disposal.
Customer Base:	This data is readily available from computer reports generated in conjunction with billing and route list preparation.
Engine hours:	If needed, these hours can be logged on a test basis by the drivers.

To perform the actual allocations, a model will be developed, with the factors applied to the appropriate accounting line items.