

# CHAPTER 2

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## **INVENTORY SEARCHES**

**2.075** [repealed 2006 o.442 §6]

### **2.080 Purpose**

LCC 2.080 to 2.090 are meant to apply exclusively to the process for conducting an inventory of the personal property in an impounded vehicle and the personal possessions of a person in police custody and shall not be interpreted to affect any other statutory or constitutional rights that police officers may employ to search persons or search or seize possessions for other purposes. [2006 o.442 §2]

### **2.082 Definitions**

For the purpose of LCC 2.080 to 2.090:

- (1) “Valuables” means:
  - (a) Cash money of an aggregate amount of \$50 or more; or
  - (b) Individual items of personal property with a value of \$500 or more.
- (2) “Open container” means a container which is unsecured or incompletely secured in such a fashion that the container’s contents are exposed to view.
- (3) “Closed container” means a container whose contents are not exposed to view.
- (4) “Police custody” means either:
  - (a) The imposition of restraint as a result of an ‘arrest’ as that term is defined at ORS 133.005(1);
  - (b) The imposition of actual or constructive restraint by a police officer pursuant to a court order;
  - (c) The imposition of actual or constructive restraint by a police officer pursuant to ORS Chapter 430, or Chapter 419B; or
  - (d) The imposition of actual or constructive restraint by a police officer for purposes of taking the restrained person to an approved facility for the involuntary confinement or detaining of persons pursuant to Oregon Revised Statute or this Code.
- (5) “Police officer” means any police officer employed or acting at the direction of or in collaboration with the Lincoln County Sheriff’s Office. [2006 o.442 §3]

### **2.086 Inventories of Impounded Vehicles**

(1) The contents of all vehicles impounded by a police officer will be inventoried. The inventory shall be conducted before constructive custody of the vehicle is released to a third-party towing company except under the following circumstances:

- (a) If there is reasonable suspicion to believe that the safety of either the police officer(s) or any other person is at risk, a required inventory will be done as soon as safely practical; or
- (b) If the vehicle is being impounded for evidentiary purposes in connection with the investigation of a criminal offense, the inventory will be done after such investigation is completed.

(2) The purpose for the inventory of an impounded vehicle will be to:

(a) Promptly identify property to establish accountability and avoid spurious claims to property;

(b) Assist in the prevention of theft of property;

(c) Locate toxic, flammable or explosive substances; or

(d) Reduce the danger to persons and property.

(3) Inventories of impounded vehicles will be conducted according to the following procedure:

(a) An inventory of personal property and the contents of open containers will be conducted throughout the passenger and engine compartments of the vehicle including, but not limited to, accessible areas under or within the dashboard area, in any pockets in the doors or in the back of the front seat, in any console between the seats, under any floor mats and under the seats;

(b) In addition to the passenger and engine compartments as described above, an inventory of personal property and the contents of open containers will also be conducted in the following locations:

(A) Any other type of unlocked compartments that are a part of the vehicle including, but not limited to, unlocked vehicle trunks and unlocked car-top containers; and

(B) Any locked compartments including, but not limited to, locked vehicle trunks, locked hatchbacks and locked car-top containers, if either the keys are available to be released with the vehicle to the third-party towing company or an unlocking mechanism for such compartment is available within the vehicle.

(c) Unless otherwise provided in LCC 2.080 to 2.090, closed containers located either within the vehicle or any of the vehicle's compartments will not be opened for inventory purposes, except a closed container in the vehicle or vehicle compartment will have its contents inventoried when:

(A) The closed container is to be placed in the immediate possession of such person at the time that person is placed in the secure portion of a custodial facility, police vehicle or secure police holding room;

(B) Such person requests that the closed container be with them in the secure portion of a police vehicle or a secure police holding room; or

(C) The closed container is designed for carrying money and/or small valuables on or about the person including, but not limited to, closed purses, closed coin purses, closed wallets and closed fanny packs.

(d) Upon completion of the inventory, the police officer will complete a report as directed by the Sheriff.

(e) Any valuables located during the inventory process will be listed on a property receipt. A copy of the property receipt will either be left in the vehicle or tendered to the person in control of the vehicle if such person is present. The valuables will be dealt with in such manner as directed by the Sheriff. [2006 o.442 §4]

### **2.090 Inventories of Persons in Police Custody**

(1) A police officer will inventory the personal property in the possession of a person taken into police custody and such inventory will be conducted whenever:

(a) Such person will be either placed in a secure police holding room or transported in the secure portion of a police vehicle; or

(b) Custody of the person will be transferred to another law enforcement agency, correctional facility, or "treatment facility" as that phrase is used in ORS 426.460 or such other lawfully approved facility for the involuntary confinement of persons pursuant to Oregon Revised Statute.

(2) The purpose of the inventory of a person in police custody will be to:

(a) Promptly identify property to establish accountability and avoid spurious claims to property;

(b) Fulfill the requirements of ORS 133.455 to the extent that such statute may apply to certain property held by the police officer for safekeeping;

(c) Assist in the prevention of theft of property;

(d) Locate toxic, flammable or explosive substances;

(e) Locate weapons and instruments that may facilitate an escape from custody or endanger law enforcement personnel; or

(f) Reduce the danger to persons and property.

(3) Inventories of the personal property in the possession of such persons will be conducted according to the following procedures:

(a) An inventory will occur prior to placing such person into a holding room or a police vehicle, whichever occurs first. However, if reasonable suspicion to believe that the safety of either the police officer(s) or the person in custody or both are at risk, an inventory will be done as soon as safely practical prior to the transfer of custody to another law enforcement agency or facility.

(b) To complete the inventory of the personal property in the possession of such person, the police officer will remove all items of personal property from the clothing worn by such person. In addition, the officer will also remove all items of personal property from all open containers in the possession of such person.

(c) A closed container in the possession of such person will have its contents inventoried only when:

(A) The closed container is to be placed in the immediate possession of such person at the time that person is placed in the secure portion of a custodial facility, police vehicle or secure police holding room;

(B) Such person requests that the closed container be with them in the secure portion of a police vehicle or a secure police holding room; or

(C) The closed container is designed for carrying money and/or small valuables on or about the person including, but not limited to, closed purses, closed coin purses, closed wallets and closed fanny packs.

(4) Valuables found during the inventory process will be noted by the police officer in a report as directed by the Sheriff.

(5) All items of personal property neither left in the immediate possession of the person in custody nor left with the facility or agency accepting custody of the person, will be handled in the following manner:

(a) A property receipt will be prepared listing the property to be retained in the possession of the respective police department and a copy of that receipt will be tendered to the person in custody when such person is released to the facility or agency accepting custody of such person;

(b) The property will be dealt with in such manner as directed by the Sheriff.

(6) All items of personal property neither left in the immediate possession of the person in custody nor dealt with as provided in subsection (5) of this section, will be released to the facility or agency accepting custody of the person so that they may:

- (a) Hold the property for safekeeping on behalf of the person in custody, and
- (b) Prepare and deliver a receipt, as may be required by ORS 133.455, for any valuables held on behalf of the person in custody. [2006 o.442 §5]

**2.100 through 2.210** [1983 o.198 §1; repealed 1996 o.364 §1]

**2.215** [1983 o.198 §1; repealed 1994 o.333 § 8]

**2.220** [1983 o.198 §1; repealed 1994 o.333 § 8]

**2.225** [1983 o.198 §1; repealed 1996 o.364 §1]

**2.230 through 2.255** [1982 o.171 §1; 1982 o. 173 §1; repealed 1983 o. 198 §1]

## **SUBSURFACE SEWAGE DISPOSAL**

### **2.405 Purpose**

LCC 2.405 through 2.445 are enacted for the purpose of ensuring that adequate and safe sewage disposal installations are provided to dispose of all liquid wastes in a manner which will minimize conditions that may cause stream and ground water pollution, endanger the water supply, create a nuisance, or endanger the public health.

### **2.410 Definitions**

As used in LCC 2.405 to 2.445, unless the context requires otherwise:

- (1) "Construct" means installing, altering, repairing, or extending.
- (2) "Environmental manager" means the person appointed by the Board to administer subsurface sewage disposal.
- (3) "Sewage disposal service" means:
  - (a) The construction of subsurface sewage disposal systems, alternative sewage disposal systems, or any part thereof;
  - (b) The pumping out or cleaning of subsurface sewage disposal systems, alternative sewage disposal systems, or nonwater-carried sewage disposal facilities;
  - (c) The disposal of materials derived from the pumping out or cleaning of subsurface sewage disposal systems, or nonwater-carried sewage disposal facilities;
  - (d) Grading, excavating, and earth-moving work connected with the operations described in paragraph (a) of this subsection, except streets, highways, dams, airports, or other heavy construction projects and except earth-moving work performed under the supervision of a builder or contractor in connection with and at the time of the construction of a building or structure; or
  - (e) The construction of drain and sewage lines from five feet outside a building or structure to the service lateral at the curb or in the street or alley or other disposal terminal holding human or domestic sewage.
- (4) "On-site sewage disposal system" means any installed or proposed sewage disposal facility including, but not limited to, a standard subsurface, alternative, experimental, or nonwater--carried sewage disposal system, installed, or proposed to be installed, on land of the owner of the system, or on other land upon which the owner of the system has the legal right of installation.

### **2.415 Violations**

- (1) No person shall construct a subsurface sewage disposal system except in compliance with ORS chapter 454 and rules promulgated thereunder.
- (2) No person shall habitate on or utilize land except in compliance with ORS chapter 454 and rules promulgated thereunder.

### **2.420 Unlawful Construction or Utilization a Nuisance**

Construction of a subsurface sewage disposal system or utilization of land without an authorized subsurface sewage disposal system in violation of LCC 2.415 shall be deemed a nuisance.

#### **2.425 Fees**

(1) A fee schedule for applications for permits, licenses, and services provided for in ORS chapter 454 shall be set by order of the Board of Commissioners which shall be subject to amendment from time to time. An annual review of the fee schedule shall occur during the month of January with the recommendations for changes made by the Department of Planning and Development. The Board shall consider the proposed changes as a discussion item at an open public meeting at least 13 days prior to the date of adoption of an order changing the fee schedule.

(2) The fee schedule shall also include fees for renewals, evaluation reports and feasibility soils and studies. [1991 o.299 § 1; 1993 o.313 §3]

#### **2.445 Penalties**

Violation of any provision of LCC 2.405 to 2.445 is punishable pursuant to LCC chapter 10. [1982 o.171 §1]

## **ANIMAL CONTROL**

### **2.605 Animal Bites**

(1) When an animal susceptible to rabies bites a person, and the animal is suspected of rabies, the bite shall be immediately reported to the law enforcement agency with jurisdiction in the area and to the Lincoln County Public Health Officer.

(2) For the purpose of this chapter, a dog is suspected of rabies if it does not have a current rabies vaccination. [1998 o.380 §1]

### **2.607 Quarantine**

(1) Upon receipt of a report required by LCC 2.605, the law enforcement agency shall promptly investigate the report and, if verified, shall cause the animal to be quarantined in compliance with OAR 333-019-0345(4)(b), and shall promptly notify the Lincoln County Public Health Officer of the time, place, and manner of quarantine. If the owner of the animal refuses to permit quarantine, the law enforcement officer shall immediately notify the Lincoln County Public Health Officer, who shall utilize the procedure provided by ORS 433.355 to force quarantine.

(2) A decision to quarantine a dog pursuant to this section does not by itself constitute a decision to impound pursuant to ORS 609.090(1). If a dog is also impounded pursuant to ORS 609.090(1) for allegedly having bitten a person, the law enforcement officer shall prepare and forward a report as required by LCC 2.720(3). [1998 o.380 §3]

### **2.610 Quarantine Order**

(1) Upon receipt of a report required by LCC 2.605, the Lincoln County Public Health Officer shall investigate the report. If the report is verified, and the animal has not been quarantined as provided in LCC 2.607(1), the health officer shall issue an order of quarantine in the form provided by LCC 2.615 and the law enforcement agency with jurisdiction in the area shall promptly quarantine the animal in compliance with the order and OAR 333-019-0345(4)(b), and promptly notify the Lincoln County Public Health Officer of the time, place, and manner of quarantine. If the owner of the animal refuses to permit quarantine, the law enforcement officer shall immediately notify the Lincoln County Public Health Officer, who shall utilize the procedure provided by ORS 433.355 to force quarantine.

(2) Upon being notified that an animal has been quarantined pursuant to LCC 2.607(1) or 2.610(1), the Lincoln County Public Health Officer shall determine whether the head of the quarantined animal must be submitted to the Oregon Public Health Laboratory as required by OAR 333-019-0345(4)(b)(B). If the Public Health Officer so determines, the Public Health Officer shall immediately take all actions as necessary under LCC 2.620, ORS chapter 433, and OAR 333-019-0345. [1998 o.380 §4]

**2.615 Quarantine Form**

An Order of Quarantine shall be in the following form:

BEFORE THE PUBLIC HEALTH OFFICER  
FOR THE COUNTY OF LINCOLN

In the Matter of )  
 )  
THE QUARANTINE OF AN ) ORDER OF QUARANTINE  
ANIMAL SUSPECTED OF ) No. \_\_\_\_\_  
RABIES )

WHEREAS, it has been reported to the Lincoln County Public Health Office that the following described animal:

\_\_\_\_\_ has bitten the following victim: \_\_\_\_\_  
address: \_\_\_\_\_, city of \_\_\_\_\_, state of \_\_\_\_\_,  
county of: \_\_\_\_\_, telephone # \_\_\_\_\_,  
on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_; and

WHEREAS, the owner of the animal is: \_\_\_\_\_  
address: \_\_\_\_\_, city of \_\_\_\_\_, state of \_\_\_\_\_,  
county of: \_\_\_\_\_, telephone # \_\_\_\_\_; and

WHEREAS, pursuant to ORS chapter 433 and LCC 2.605 to 2.620, the above described animal should be quarantined for the purpose of determining whether or not the animal has rabies; therefore,

**IT IS HEREBY ORDERED** as follows:

1. That the Lincoln County Animal Control Officer impound the above described animal and isolate said animal at \_\_\_\_\_ for a period of \_\_\_\_\_ days from the date of this order.

2. That the owner of the above described animal may recover the animal on the \_\_\_\_\_ day of \_\_\_\_\_.

DATED this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Public Health Officer

\_\_\_\_\_  
The above described animal was released to \_\_\_\_\_  
on the \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
(person releasing animal)

\_\_\_\_\_  
(person receiving animal)

### **2.620 Order to Destroy Animal**

When it is necessary for the public health and safety, the Lincoln County Public Health Officer may order the destruction of an animal suspected of rabies for the examination of body tissue.

### **2.705 Dog Licenses and Fees**

(1) Dogs are required to be licensed in Lincoln County in accordance with this section and the provisions of ORS 609.100. Licenses may be purchased through the Lincoln County Animal Shelter.

(2)(a) Except as provided in paragraph (b) of this subsection, wolf-dog hybrids are subject to all dog and animal control laws, ordinances, and rules that would otherwise apply to dogs.

(b) Animals declared by the owner to be wolf-dog hybrids must be licensed, but are exempt from the requirement for rabies vaccination. In the event that a rabies vaccine becomes licensed for use in wolf-dog hybrids, this exception will no longer apply.

(3) As provided in ORS chapter 609, fees for licenses shall be collected by the animal control officer, animal shelter, and appointed agent of the animal shelter, in amounts set by order of the Board of Commissioners. [1981 o.167 §1; 1993 o.313 §4; 1998 o.380 §5]

### **2.710 Proof of Sterilization**

In order to obtain the reduced license fee for a spayed or neutered dog, proof of sterilization shall be required in the form of a letter or receipt from a licensed veterinarian or publicly operated animal shelter.

### **2.712 Report of Rabies Vaccinations**

(1) A veterinarian, and any person operating under the authority of a veterinarian, who inoculates a dog against rabies in Lincoln County shall report that inoculation to the Lincoln County Health and Human Services Department.

(2) The Department may adopt rules or policies to facilitate the reporting required under subsection (1) of this section, and may share reported information with the Lincoln County Animal Shelter. [2006 o.443 §2]

### **2.715 Penalties**

In addition to any other remedies under law, failure to procure a license in accordance with ORS 609.100 and LCC 2.705 shall be deemed a violation of county laws, enforceable under LCC chapter 10 and punishable upon conviction by a fine of not more than \$100. This fine shall be separate from and in addition to required licensing fees and penalties established by Board order under LCC 2.705. [1990 o.286 §1]

### **2.730 Keeping Exotic Animal Prohibited; Exception**

(1) In accordance with the authority granted in ORS 609.205, the keeping of an exotic animal is prohibited in Lincoln County.

(2) The prohibition provided in subsection (1) of this section does not apply to the keeping of an exotic animal pursuant to a permit under ORS 609.335 that was first issued prior to December 27, 2006.

(3) As used in this section, “exotic animal” has the meaning provided in ORS 609.305.  
[2006 o.444 §2]

**2.720 Procedure and Disposition of Dog Impounded for Killing, Wounding, Injuring, or Chasing a Person or Livestock**

(1) For purposes of this section:

(a) “Animal Control Officer” means the Lincoln County Animal Control Officer or any Lincoln County Sheriff’s Deputy performing the functions of the Lincoln County Animal Control Officer.

(b) “Dog Judge” means the Lincoln County Legal Counsel, the Assistant Lincoln County Legal Counsel, or their duly appointed designee.

(c) “Livestock” has the meaning provided in ORS 609.125.

(d) “Shelter Manager” means the Lincoln County Animal Shelter Manager, or any Lincoln County Sheriff’s Deputy performing the functions of the Lincoln County Animal Shelter Manager.

(2)(a) In accordance with ORS 609.015, the following provisions of ORS 609.030 and 609.040 to 609.110 shall not apply in Lincoln County, and the provisions of this section shall apply in lieu of those sections:

(A) ORS 609.090(3), as applied to dogs that have been impounded for killing, wounding, injuring, or chasing a person, pet, or domestic animal; and

(B) ORS 609.090(7) and (8), as applied to dogs that have been impounded for killing, wounding, injuring, or chasing a person, pet, or domestic animal.

(b) In accordance with ORS 609.135, no provision of ORS 609.155, 609.158, 609.163, 609.166, and 609.167 shall apply in Lincoln County, and the provisions of this section shall apply in lieu of those sections, except for the following sections, which are mandatory in accordance with ORS 609.135: ORS 609.156, 609.158(4), 609.162 and 609.168.

(3) If a dog has been impounded pursuant to ORS 609.090(1) or ORS 609.155(1) for allegedly having killed, wounded, injured, or chased a person, pet, domestic animal, or livestock, the Animal Control Officer or other impounding law enforcement agency shall cause a report of that incident to be promptly filed with the Dog Judge. In addition to all other matters deemed relevant by the Animal Control Officer or other impounding law enforcement agency, the report shall specifically identify the names and mailing addresses of the owner of the dog and all alleged victims and interviewed witnesses.

(4) (a) (A) Except as provided in subparagraph (B) of this paragraph, upon receipt of a report described in subsection (3) of this section relating to allegations that a dog has killed, wounded, injured, or chased a person, pet, or domestic animal, the Dog Judge shall promptly set a hearing on the matter, and shall issue a notice of that hearing to all persons identified in the report as the dog owner, victim, witness, or law enforcement officer. The notice shall state the date, time, and location for the hearing, and shall include a copy of the report. The notice shall be mailed by regular first class mail.

(B) If the Animal Control Officer or other impounding law enforcement agency has issued a citation and summons to Circuit Court in addition to the impoundment, as authorized by ORS 609.090(1), then the Dog Judge shall be divested of all jurisdiction over the matter, and disposition of the impounded dog or dogs shall be left for determination by the Circuit Court in accordance with ORS 609.990.

(b) Upon receipt of a report described in subsection (3) of this section relating to allegations that a dog has killed, wounded, injured, or chased livestock, the Dog Judge shall issue a notice as required by ORS 609.156. The notice shall be mailed by regular first class mail.

(5) A hearing conducted by the Dog Judge pursuant to this section shall be informal and open to the public. No rules of evidence or civil procedure shall apply to the conduct of the hearing. The Dog Judge may establish reasonable parameters for the conduct of the hearing to ensure an orderly and complete presentation of the evidence. Upon request of a party, or upon the Dog Judge's own motion, the Dog Judge may elect to tape record the hearing.

(6) Upon completion of the hearing, the Dog Judge shall promptly issue written findings of fact and disposition order.

(7) If the Dog Judge finds that the allegations have not been proven by a preponderance of the evidence, then the Dog Judge shall enter an order directing release of the dog to the owner of the dog, without payment by the owner of any accumulated impound fees, but with full compliance with all licensing and vaccination requirements of ORS chapter 609 and 433.

(8) (a) If the Dog Judge finds that the allegations have been proven by a preponderance of the evidence, and the incident relates to the killing, wounding, injuring, or chasing of a person, pet, or domestic animal, then the Dog Judge shall determine whether to order that the dog be killed, or placed on probation in accordance with subsection (9) of this section. In making such a determination, the Dog Judge shall consider all relevant factors described in ORS 609.093 and any other factors that the Dog Judge may deem relevant.

(b) If the Dog Judge finds that the allegations have been proven by a preponderance of the evidence, and the incident relates to the killing, wounding, injuring, or chasing of livestock, then the Dog Judge shall issue an order in compliance with ORS 609.158(4), 609.162, and 609.168.

(9) If the Dog Judge releases the dog on probation as described in subsection (8)(a) of this section, the Dog Judge:

(a) Shall impose the following conditions of probation:

(A) That the dog and the person to whom the dog is to be released comply with all dog control laws and conditions of probation;

(B) That the term of probation shall last for a period of five years from the date of release of the dog;

(C) That the dog be immediately licensed and vaccinated in accordance with ORS chapters 609 and 433, if the dog is not already licensed and vaccinated;

(D) That upon probable cause to believe that there has been any violation of the probation, the dog may be immediately impounded by the Animal Control Officer pending a probation revocation hearing as described in subsection (11) of this section; and

(E) That the person to whom the dog is to be released sign an acceptance of all conditions of probation.

(b) May impose one or more of the following conditions of probation:

(A) That accrued impound fees, or a portion of the accrued impound fees, be paid by or on behalf of the person to whom the dog is to be released on probation; and

(B) Any other condition that is reasonably related to ensuring the welfare and safety of the victim, or the public.

(10) A certified true copy of the findings and order shall be forwarded to the Shelter Manager for execution of the order. The Dog Judge shall also forward a copy of the order, by regular first class mail, to each person to whom notice of the hearing was sent and who was also present at the hearing, and to any other person present at the hearing who specifically requests a copy of the order.

(11)(a) If a dog has been impounded pursuant to subsection (9)(a)(d) of this section, or pursuant to an order issued under subsection (8)(b) of this section, for allegedly having violated a condition of probation, the Animal Control Officer or other investigating law enforcement agency shall forward a report of that incident to the Dog Judge, who shall set a hearing on that matter, issue notice of the hearing, and conduct a hearing in the manner described in subsections (4) and (5) of this section.

(b) If the Dog Judge finds that the probation violation allegation has not been proven by a preponderance of the evidence, the Dog Judge shall order the probation to be continued and the dog to be released to the owner of the dog, without payment by the owner of any accumulated impound fees, but with full compliance with all licensing and vaccination requirements of ORS chapter 609 and 433.

(c) If the Dog Judge finds that the probation violation allegation has been proven by a preponderance of the evidence, the Dog Judge shall determine whether to order that the dog be killed, or continued on probation subject to all previous conditions of probation, and any additional conditions of probation imposed by the Dog Judge. In making such a determination, the Dog Judge shall consider all relevant factors described in ORS 609.093 and any other factors that the Dog Judge may deem relevant. [1996 o.360 §2; 1998 o.380 §6; 1999 o.391 §1; 2000 o.399 §1]

## **SOLID WASTE DISPOSAL SERVICES**

### **2.1000 Purpose, Policy, and Scope**

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

(a) Provide for a coordinated solid waste management program and administration with cities within the county and with other counties or cities under existing and future regional programs;

(b) Provide standards, regulations, and franchising to ensure the safe and sanitary accumulation, storage, collection, transportation, and disposal or resource recovery of solid wastes and ensure maintenance of solid waste collection, resource recovery, and disposal service;

(c) Encourage research, studies, surveys, and demonstration projects to develop a safe, sanitary, efficient, and economical solid waste management system;

(d) Provide for research, development, promotion of, and public education in technologically and economically feasible resource recovery, including, without limitation, recycling and reuse by and through the franchisees and other persons;

(e) Eliminate duplication of service or routes to conserve energy and material resources, reduce air pollution, noise pollution, truck traffic, and increase efficiency, thereby minimizing consumer cost for solid waste disposal and costs to the county in providing basic services;

(f) Encourage the use of the capabilities and expertise of private industry and encourage volunteer efforts in accomplishing the purposes of this title;

(g) Provide equitable classes of rates to classes of users of solid waste services that are just, fair, reasonable, and adequate to provide necessary services to the public, justify investment in solid waste management systems, and provide for equipment and systems modernization to meet environmental service requirements and current technology;

(h) Minimize the cost and burden of regulation, administration, and enforcement;

(i) Provide for public input in solid waste management; and

(j) Carry out local government responsibility and authority for solid waste management under ORS chapter 459 and carry out the mandate for waste reduction under 1979 Oregon Laws, chapter 773; and

(k) Provide financial security for the repayment of investments in:

(A) Collection and disposal equipment;

(B) A regional landfill provided by any franchisee under this title including, but not limited to, complying with minimum financial security requirements imposed by the Oregon Environmental Quality Commission, the state of Oregon, and the county in financing such a site; and

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

(2) After public hearing held on November 24, 1982 and subsequent continued hearings to consider this title and upon the basis of evidence submitted therein, the Board finds that:

(a) This title is authorized by ORS 459.015, 459.055, 459.065, 468.220(6), 459.085, 646.740(6), 279.011 to 279.061, ORS chapter 203, and OAR 127-10-040, together with rules or regulations promulgated under the foregoing, and is in compliance with Goals No. 6 on Environment and No. 11 on Public Facilities adopted by the Land Conservation and Development Commission, the Lincoln County Comprehensive Plan, the Lincoln County Solid Waste

Management Plan, the Oregon Department of Environmental Quality, Solid Waste Management Plan, and the Lincoln County Waste Reduction Plan.

(b) To achieve the purposes and carry out the policy of this title; to carry out the mandate of ORS 459.015 for local government to provide for a solid waste management program; and to carry out the planning and waste reduction required of local government by ORS 459.055 and 468.220; it is necessary for Lincoln County, in cooperation with other affected governmental units, to:

(A) Set the levels of service necessary for, and required by, the public in the fields of solid waste collection; solid waste disposal; and the recycling or reuse of source separated wastes;

(B) Make the necessary long-term governmental commitment to assure the investment in service facilities, equipment, personnel, and financial capital; and to assure service to the public; and

(C) Evaluate the costs of the various services and how that cost is to be collected or assessed; and

(c) To carry out paragraphs (a) and (b) of this subsection, it is necessary to:

(A) Reasonably regulate competition through a comprehensive program of solid waste management;

(B) Assign exclusive responsibility to one or more persons for each specified and regulated solid waste management service and service territory and to issue a franchise to such person or persons;

(C) Review service rates to the extent specified to protect consumers and the public generally and to assure adequate public service;

(D) Select persons to provide service on the basis of their demonstrated ability, capability, expertise, and experience in providing the service together with their equipment, management facilities, personnel, and financial capability, and investment available to provide service;

(E) In appropriate cases, the Board may contract for public education in recycling and reuse and contract for the promotion of recycling and reuse;

(F) Recognize that the Congress, through the Resource Conservation and Recovery Act of 1976, the Oregon Legislature in ORS chapter 459, and the Oregon Environmental Quality Commission, Department of Environmental Quality, Land Conservation and Development Commission, and the Board and county planning commission have, by developing and implementing a regional disposal site program, created a disposal monopoly. Under the regional program and concept, only a few regional disposal sites will be permitted in all of Western Oregon to force waste concentrations to finance environmentally acceptable disposal sites and methods and enhance the opportunities for resource recovery. Thus, only two municipal waste disposal sites have been permitted for disposal in a service area encompassing one county and future legislative action may limit this to one disposal site and a limited number of transfer stations; and

(G) Assign service territories to assure that persons in geographically remote or otherwise non lucrative areas receive adequate solid waste collection and disposal services. [1983 o.199 §1]

### **2.1005 Definitions**

As used in LCC 2.1000 to 2.1180, unless the context otherwise requires:

(1) "Administrator" means the county sanitarian or other person designated by resolution of the Board to administer provisions of this title, and the duly authorized deputy or assistant of such person.

(2) "Board" means the Lincoln County Board of Commissioners.

(3) "Collection Vehicle" means any vehicle used to collect or transport solid waste.

(4) "Committee" means the Solid Waste Advisory Committee created pursuant to this title.

(5) "Disposal Site" means land and facilities used for the disposal, handling, processing, or transfer of solid wastes, including, but not limited to, dumps, landfills, sanitary landfills, and composting plants; but does not include a landfill site which is not used by the public either directly or indirectly or through a service, and which is used by the owner or tenant thereof to dispose of sawdust, bark, soil, rock, building demolition material, or nonputrescible industrial waste products resulting from the process of manufacturing.

(6) "Franchisee" means a general privilege to provide specified solid waste management services in a service territory issued by the Board. A "Franchisee" is the holder of a franchise.

(7) "Hazardous waste" means any solid waste as defined by or pursuant to ORS chapter 459 and any solid waste that may by itself or in combination with other solid wastes, be infectious, explosive, poisonous, caustic, toxic, or otherwise dangerous or injurious to human, plant, or animal life. "Hazardous waste" shall also include hazardous waste as defined by other governmental units which have legislative or administrative jurisdiction.

(8) "Incinerator" means combustion devices specifically designed for the reduction of solid wastes by burning.

(9) "Landfill" means any tract or parcel of land at which solid waste is disposed of, in, or onto the land.

(10) "Service Territory" means the geographic area in which, pursuant to the solid waste franchise service, shall be provided to every person requesting service of the type specified in the solid waste franchise.

(11) "Person" means any individual, partnership, association, corporation, trust, firm, estate, joint venture or other private entity, or any public agency.

(12) "Putrescible material" means organic matter that can decompose by bacteria, fungi, and oxidation, resulting in the formation of foul smelling products.

(13) "Service" means disposal, collection, transfer, or transportation of solid waste by persons.

(14) "Solid waste" means all solid and semi-solid putrescible and nonputrescible waste, including, but not limited to, garbage, rubbish refuse, ashes; waste paper, corrugated paper, and cardboard; grass clippings; composts; residential, commercial, industrial, demolition, and construction waste; discarded residential, commercial, industrial appliances, equipment, and furniture; discarded, inoperable, or abandoned vehicles or vehicle parts and tires; manure, vegetable or animal solid and semi-solid wastes, and small dead animals. "Solid waste" does not include "sewage", as defined in LCC 2.110.

(15) "Solid waste franchise" means a franchise to provide service as issued by the Board pursuant to LCC 2.1060 through 2.1075.

(16) "Solid waste management" means storage, collection, transportation, treatment, utilization, processing, and final disposal or salvage, recycling, or reuse of solid waste and sewage and necessary facilities therefor.

(17) "Waste" means useless, unwanted, or discarded materials. The fact that materials, which would otherwise come within the definition of solid waste or waste, may, from time to time, have value and thus be utilized, shall not remove them from the definition. The term "waste" does not include:

(a) Environmentally hazardous wastes as defined in ORS 459.410;

(b) Materials used for fertilizer or for other productive purposes on land in agricultural operations in the growing and harvesting of crops or the raising of fowl or animals. This exception does not apply to the keeping of animals on land which has been zoned for residential nonagricultural purposes;

(c) Septic tank and cesspool pumping or chemical toilet waste, or refuse from sewage treatment plants; or

(d) Reusable beverage containers as defined in ORS 459.860. [1983 o.199 §1]

### **2.1010 Administration**

(1) The administrator, under the supervision of the Board and with the assistance of the committee and the code enforcement officer designated under chapter ten hereof, shall be responsible for the enforcement of this title. In order to carry out their respective duties, the administrator and code enforcement officer may enter upon the premises of any person subject to the provisions of this title at reasonable times and in a reasonable manner to determine compliance with this title.

(2) The administrator shall also review applications for solid waste franchises and make appropriate recommendations to the Board, as provided for in this title.

(3) The administrator shall establish service territories, subject to Board approval, as provided for in this title. [1983 o.199 §1]

### **2.1015 Solid Waste Advisory Committee**

(1) The Board may create a solid waste advisory committee or utilize the services of an advisory committee already in existence which performs substantially the same functions as provided for herein. The Solid Waste Advisory Committee as presently constituted is hereby dissolved. In the absence of the committee, the Lincoln County Solid Waste Administrator shall perform all functions of the committee as provided for herein. In the event a committee is created, the committee shall have nine members appointed by the Board, including:

(a) County Sanitarian, or his authorized representative;

(b) Two franchisees; and

(c) Six citizen members representative of incorporated and unincorporated geographical areas of the county.

(2) Members of the committee shall be appointed for 2-year terms and serve at the pleasure of the Board.

(3) The Board shall appoint one member as chairman. Five members shall constitute a quorum for the transaction of business. The committee shall meet at such times as deemed necessary or as called by the Board. The chairman or any three members, may call a special meeting with 10-days' notice to other members of the committee.

(4) The committee shall keep regular minutes of all meetings and provide copies of the minutes to the Board following each meeting. [1983 o.199 §1; 1984 o.224 §1]

### **2.1020 Duties of Solid Waste Advisory Committee**

(1) In addition to other duties prescribed by this title, the committee shall make an annual report to the Board containing recommendations on development and implementation of a solid waste management plan.

(2) The committee shall, upon request by the Board, review any proposed changes in the rates charged for service by solid waste franchisees in accordance with the factors in section 2.1120(5), and reach a determination as to the reasonableness of the proposed rates under review and provide a written report to the Board concerning the same. The Board shall thereafter act upon the committee's recommendation in accordance with the provisions of this title. [1983 o.199 §1]

### **2.1025 Regional Solid Waste Committee**

The Board may appoint one or more members of the committee to serve on any regional solid waste committee. [1983 o.199 §1]

### **2.1030 Regulation of Solid Waste Management**

Upon its own motion, or upon the recommendation of the committee, the Board may adopt rules implementing the provisions of this title. [1983 o.199 §1]

### **2.1035 Prohibitions**

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

(2) Nothing in this title requires a franchise of the following persons or for the following business or practices:

(a) The collection, transportation, and reuse of repairable or cleanable discards by a private charitable organization regularly engaged in such business or activity including, without limitation, Salvation Army, St. Vincent DePaul, Goodwill, YMCA, and similar organizations.

(b) The collection, transportation, and reuse or recycling of totally source separated materials or operation of a collection center for totally source separated materials by a religious, charitable, benevolent, or fraternal organization, which organization was not organized or operated for any solid waste management purpose and which organizations using the activity for fund raising including, without limitation, scouts and churches.

(c) The collection, transportation, or redemption of returnable beverage containers under ORS chapter 459 and that portion thereof commonly known as the "Bottle Bill."

(d) The generator or producer who transports and disposes of waste created as an incidental part of regularly carrying on the business of: Auto wrecking, to the extent licensed by the State of Oregon; Janitorial service; Gardening or landscaping service. "Janitorial service" does not include primarily or solely accumulating or collecting wastes created, generated, or produced by a property owner or occupant.

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

(f) Transportation by a person of solid waste generated or produced by such person to disposal sites, resource recovery sites, or market so long as such person complies with this title, other county ordinances, and ORS chapter 459 relating to solid waste management and regulations promulgated under any of the foregoing. For purposes of this subsection, waste is "generated or produced by" the individual owner or occupant of a residential dwelling unit, whether the unit is individually owned, nonowner occupied, or grouped through an association or cooperative of

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

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

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

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

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

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

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

(c) Is a portion of land or a facility specifically operated under the requirements of ORS 468B.050 for a waste water discharge permit, and in compliance with all Oregon Environmental Quality Commission regulations on solid waste management.

(d) Is land on which solid wastes are used for fertilizer or for other productive purposes in agricultural operations and the growing or harvesting of crops and the raising of fowl or animals.

(e) Is specifically exempt from Department of Environmental Quality (DEQ) solid waste permit requirements pursuant to OAR 340-61-020; or is a proposed disposal site that the DEQ has determined pursuant to OAR 340-67-020(4) is not likely to create a public nuisance, health hazard, air or water pollution, or other environmental problems; and has issued a special letter of authorization in accordance with OAR 340-61-027.

(6) Nothing in this title requires a franchise for the operations of a collection center for totally source-separated materials operated under a contract with the county.

(7) Nothing in this title shall require a person who has a disposal site franchise issued by any city in this county to obtain a disposal site franchise under this title for the same disposal site franchised by the city.

(8)(a) Notwithstanding LCC 2.1000 through 2.1175, a site or facility for processing land clearing debris, clean fill, and certain construction demolition debris is exempt from the requirement to obtain a disposal site franchise pursuant to this chapter, provided that:

(A) The land, facilities, equipment, processes, and storage meet all requirements and regulations of the Oregon Department of Environmental Quality (DEQ) applicable to the operation, or are exempt from those requirements and regulations; and

(B) The operation receives all necessary land use authorizations and permits, and complies with the conditions of those authorizations and permits.

(b) Construction demolition debris processed at the site is limited to that generated by the owner or operator of the site in accordance with LCC 2.1035(2)(e). Land clearing debris and clean fill processed at the site is limited to that collected in accordance with LCC 2.1035(2)(e). The site may not be otherwise be used by the public either directly, indirectly, or through an outside service.

(c) Any materials which must be removed from the site shall be collected and disposed of in accordance with the provisions of LCC 2.1060 through 2.1075.

(d) As used in this subsection:

(A) "Land clearing debris" means stumps and other vegetative materials, but does not include the composting of materials or debris, or the storage of materials or debris for more than six months.

(B) "Clean fill" means soil, rock, concrete, brick, building block, tile or asphalt paving, or other similar non-decomposable material, which do not contain contaminants which could adversely impact the waters of the State or public health. This term does not include putrescible wastes, construction and demolition wastes and industrial solid wastes.

(C) "Construction demolition debris" means solid waste resulting from the construction, repair or demolition of buildings, roads or other structures. Such waste typically consists of materials including untreated or chemically treated wood, glass, masonry, roofing, siding, plaster, pipes and similar material. This term does not include industrial solid waste and municipal solid waste, as defined under state law, generated in residential or commercial activities associated with construction and demolition activities. [1983 o.199 §1; 1983 o.202 §1; 1998 o.375 §1]

#### **2.1040 Requirements for Disposal Site Franchise**

(1) Applicants for a disposal site franchise shall submit:

(a) A duplicate of the site information submitted to the Oregon Department of Environmental Quality under ORS chapter 459.

(b) A plan for rehabilitation and use of the site after disposal has been terminated. The plan shall have a scale of 1"=400' with topographical contours at intervals of not less than 25 feet. In the discretion of the Board, the applicant may be required to furnish a plan showing greater detail to ensure compliance with applicable standards. Amended plans may be submitted for approval in the same manner as the initial plan.

(c) An agreement signed by the applicant and the land site owner containing the following, if the land upon which a disposal site would be located is privately owned:

(A) A right of entry upon the subject premises for inspection by the administrator;

(B) A promise to properly establish, maintain, and operate the disposal site as required by this title and any other applicable statutes or rules; and

(C) A promise to rehabilitate or restore the site upon termination of disposal under the land use plan submitted pursuant to subsection (b) hereof.

(D) Permission for the county to rehabilitate or restore the site if the landowner or franchisee does not comply with the agreement or franchise terms. County reserves the right to seek reasonable reimbursement from franchisee if rehabilitation by county is necessary.

(d) The Board may, by order, cause any agreements, executed pursuant to this section, to be entered in the deed records of the county.

(2) Applicants shall specify the type of disposal site and the transfer, disposal, processing, or resource recovery method or combination thereof to be employed, together with any proposed special regulations dealing with hazardous wastes or what waste will be accepted or rejected at the disposal site.

(3) The applicant must show to the satisfaction of the Board that applicant:

(a) Has available land, equipment, management, facilities, and personnel to meet the standards established by this title, ORS chapter 459, and the rules and regulations thereof; and has insurance equal to that required for a solid waste franchise.

(b) Has sufficient experience to ensure compliance with this title and any regulations hereunder. If the applicant does not have sufficient experience, the Board may either deny the

application or require the applicant to submit a corporate surety bond in the amount of up to \$300,000 guaranteeing full and faithful performance by the applicant of the duties and obligations of a franchise holder under the provisions of this title and compliance with all applicable laws.

(c) In determining whether or not a bond, insurance, or other financial assurance is required during construction, operation, closure, or post-closure of a disposal site and the amount thereof, the Board shall give due consideration to the size and type of the site, the solid waste handling methods proposed, the population or type of customers to be served, alternative sites, availability of the bond, cost to the rate payer, adjacent or nearby land uses, the potential danger of failure of service and such other factors as the Board deems relevant.

(d) When requesting a transfer of franchise, the applicant must submit, as part of the application, a letter from the current franchisee requesting said transfer. (e) notwithstanding other provisions of this subsection, those requirements specifically relating to a landfill shall not be applicable to a transfer station, incinerator, resource recovery facility, compost plant, or similar disposal facility.

(4) Before issuance of a disposal site franchise, applications shall be reviewed by the administrator. The administrator shall make such investigation as he deems appropriate. Written notice of the application shall be given by the administrator to any person who holds a disposal site franchise for service to all or part of the area that reasonably would be served under the application. Upon the basis of the application, evidence submitted, and results of any investigation, the administrator shall issue findings on the qualifications of the applicant and whether or not additional service, land, equipment, or facilities should be provided and what conditions of service should be imposed, including without limitation, whether the site should be opened to the public and under what conditions; whether or not certain types of wastes, solid wastes, or hazardous wastes should be excluded from the site or types of wastes which should be required to be accepted at the site, and shall make a finding as to whether or not the site is economically feasible, whether or not the site may be integrated with existing private or county-owned or operated sites; and, further, whether the site complies with all rules and regulations adopted pursuant to this title or ORS chapter 459. The Board may impose any conditions deemed necessary to carry out the purposes and policy of this title. On the basis of these findings, the administrator shall recommend to the Board whether or not the application should be granted, denied, or modified. The Board shall conduct a public hearing to consider the application as provided for in LCC 2.1070.

(5) A disposal site franchise applicant shall submit a proposed rate structure for charges associated with disposal of solid waste in the applicant's disposal site. The rate structure shall be subject to review in the same manner as provided in LCC 2.1120.

(6) Upon receipt of said order granting a franchise, the applicant shall enter into a written franchise agreement with county.

(7) These provisions are in addition to, and not in lieu of, any provisions of the county zoning ordinance and comprehensive plan.

(8) Disposal site franchisees shall supply disposal services covered by their franchises to those persons who contract for disposal, handling, or recovery of solid wastes collected under a franchise; those local government units and public agencies located within the county for wastes generated by activities of such units or agencies; and, subject to limitation by the Board, members of the general public hauling wastes generated by such person and not collected from other persons.

(9) All service under a franchise shall be subject to applicable laws, rules, regulations, and ordinances; and decisions of administrative, legislative, and judicial agencies having jurisdiction.

(10) Franchisee may discontinue service to any customer in the following cases:

- (a) Where weather or safety conditions prevent said service;
- (b) Where access is blocked;
- (c) Where the user does not pay any rate schedule or authorized payment;
- (d) Where prevented by Act of God, public enemy, or vandal; and
- (e) Where user violates any reasonable regulation imposed by franchisee or any governmentally imposed regulation. [1983 o.199 §1]

#### **2.1045 Disposal Franchise Fees**

An annual fee to be established by order of the Board shall be assessed on a disposal site franchise based on the cost of monitoring the franchised site. The annual disposal site franchise fee, if any, shall be payable to the Board on December 31 of each year. Where reasonably required by the Board, a disposal site franchisee shall maintain books and records disclosing gross receipts at the disposal site, which books and records shall be available at reasonable times and places for audit by authorized personnel of the county. [1983 o.199 §1]

#### **2.1050 Length of Term**

The term of a disposal site franchise shall be determined by the Board following a recommendation from the administrator. The recommendation shall be based upon site longevity, population to be served, and probable use, but not to exceed 25 years. The term of the disposal site franchise shall be provided for in the written franchise agreement between franchisee and county referred to in LCC 2.1040(6). [1983 o.199 §1]

#### **2.1055 Renewal of a Disposal Site Franchise**

(1) The Board and the franchisee may, by mutual agreement, renew the franchise pursuant to this title.

(2) Renewal of a franchise shall be based upon application filed with the administrator. The application and procedure for review and renewal shall be the same provided in LCC 2.1040. The grounds for denial shall be those specified in LCC 2.1040 or inability of the applicant to demonstrate continuing compliance with criteria set forth in this title. [1983 o.199 §1]

#### **2.1060 Applications for Solid Waste Franchises**

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

(2) In the event a franchise is to be terminated for any reason, the administrator shall advertise for franchise applications to replace the franchise to be terminated. Said advertisement and subsequent franchise award shall be conducted pursuant to the provisions of subsection (1) above and shall be coordinated in such a manner as to prevent a lapse or interruption of service. In the event it is not possible to prevent a lapse or interruption of service through solicitation of

franchise applications, the Board may take appropriate measures pursuant to LCC 2.1085. Upon receipt of the franchise applications, the administrator shall review the applications and require such additional information as necessary to determine compliance with the provisions of this chapter, ORS chapter 459, and other applicable laws and regulations.

(3) The administrator shall, upon the basis of the application and evidence submitted, make recommendation to the Board as to the qualifications of the applicants and shall determine which applicants shall be awarded franchises and the service territory to be served by each franchisee. The recommendation shall include findings of fact supporting the recommendation, and a statement of the reasoning supporting the recommendation.

(4) Applications shall include:

(a) Proof that the applicant has sufficient collection vehicles, equipment, land, facilities, and personnel;

(b) Proof the applicant has in force public liability insurance in an amount of not less than \$100,000 per person and \$300,000 per accident for bodily injury, and not less than \$25,000 for property damage, which shall be evidenced by a certificate of insurance;

(c) Evidence of good moral character, or, if the applicant is a business entity, that the principal partners or officers are of good moral character;

(d) Evidence that the applicant has sufficient experience in providing service of a comparable quality and quantity to ensure compliance with this title. If the applicant does not prove to the satisfaction of the Board that he has sufficient and successful experience, the Board may require the applicant to submit a corporate surety bond in the amount of up to \$20,000 guaranteeing full and faithful performance by the applicant of the duties and obligations of a franchisee naming county as additional insured;

(e) Evidence that the applicant has contracted with a disposal site for the right to dispose of wastes collected under and during the term of the franchise. Applicant shall sign a statement which provides that as a franchisee the franchisee shall use disposal sites authorized by the Board and that Board approval is required prior to applicant's disposing of solid wastes in alternate locations, and that the Board may, upon six-months' notice to any affected franchisee, by order, direct franchisee to dispose of solid wastes in a specific disposal site; provided, however, that in the event the Board by order selects a disposal alternative in its long-range solid waste disposal plan and makes a finding by language in that order that it is necessary for a franchisee to enter into a contract for a period exceeding six-months' duration in order to render disposal of solid waste economically feasible, the language contained herein granting the Board authority to direct, upon six-months' notice to any affected franchisee, that solid wastes be disposed of in a specific disposal site shall automatically by said order be repealed and of no further effect. Nothing contained herein shall affect the authority of the Board to determine authorized disposal sites or affect the requirement that a franchisee obtain Board approval prior to changing the site at which solid wastes are disposed; and

(f) If the applicant is not already serving the territory proposed to be served, applicant shall show that:

(A) The service territory has not been franchised to another person;

(B) The service territory is not being served presently by a franchisee pursuant to any schedule established as a part of the franchise in accordance with this title;

(C) The service territory is not being adequately served by the franchisee as evidenced by substantial history of recorded complaints from customers within the territory for a change of service to that area.

(5) Applicants shall specify the:

(a) Nature, type, and extent of service to be provided;

(b) Service territory for which application is made;

(c) Wastes that will not be accepted for collection or disposal; and

(d) Any special requirements for the handling of hazardous solid wastes.

(6) Applicants shall furnish a statement identifying familiarity with, and knowledge of, the service territory for which application is made. This statement may include information on geographic, demographic, and other characteristics germane to collection of solid wastes in the service territory. Applicants shall also supply a statement describing the proposed routes within the service area, including frequency of collection, hours of service, and other relevant information.

[1983 o.199 §1]

### **2.1065 Service Territories**

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

[1983 o.199 §1]

### **2.1070 Issuance of Collection Franchises**

The Board shall conduct a public hearing to consider the application within 30 days of receipt of the administrator's recommendation. Notice shall be served by certified mail on the applicant and any affected franchisee and shall be published once in a newspaper of general circulation within the franchise area not less than seven days prior to the hearing. The Board's decision shall be supported by written findings. The determination of the Board after conclusion of said public hearing shall be final. If the Board makes a final order rejecting all, or part of, the application for a franchise, the applicant may not submit another application for the same service territory, or a portion thereof, or the same disposal site, for a period of six months unless the Board finds that the public interest requires reconsideration within a shorter period of time. If the Board finds that an applicant is able to provide adequate service of all types within the service territory, it shall issue an exclusive franchise for that area to applicant. Upon receipt of said order granting a franchise, the applicant shall enter into a written franchise agreement with county. If the Board finds that two or more applicants for a service territory who are otherwise equally qualified, the Board may give preference to the applicant having a record of prior experience and service and who presently serves a majority of the customer and service accounts in the service territory. [1983 o.199 §1]

### **2.1075 Solid Waste Franchise Subcontracts**

(1) If a franchise applicant is unable to provide service for a particular type or unusually large quantities of solid waste, the administrator, subject to Board approval, may permit the franchisee to subcontract for such service if it is found that the quality and extent of service would not be jeopardized. The administrator may require the filing of such information as is necessary and

may request the recommendation of the committee on the subcontract. The administrator shall submit a written recommendation on the subcontract to the Board.

(2) Upon recommendation of the administrator and a finding by the Board that the need for service and final determination can be made, the Board may order the administrator to issue a temporary certificate, valid for a stated period not to exceed six months, requiring the person to serve a service territory or customers. [1983 o.199 §1]

### **2.1080 Responsibilities of Franchisees**

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

(1) When a change, restriction, or termination of service is required by any public agency;

(2) When a customer fails to pay for services in accordance with an established rate system.

Holders of solid waste franchises shall not discontinue service under this subsection without 10-days' written notice to the customer. If service has been refused to a customer for failing to pay for service, the franchisee may require a reasonable deposit to guarantee payment for future service before reinstating such service;

(3) If service at the particular location would be contrary to public safety; the customer has not provided reasonable access, or, weather conditions prevent service to the particular customer; or the customer has violated a rule or regulation adopted by the Board pursuant to this title;

(4) If a subcontract is signed pursuant to LCC 2.1075 and the Board has approved the subcontract after finding that the quality or extent of service would not be jeopardized. In making its determination, the Board or the administrator may request a recommendation from the committee and information deemed necessary to ensure compliance. [1983 o.199 §1]

### **2.1085 Enforcement of Franchises**

(1) If the franchisee shall at any time fail to promptly and fully conform and comply with any duty or obligation herein imposed after written notice to the franchisee and a reasonable opportunity to comply, the Board may authorize county personnel, or others, to perform the same at the sole cost and expense of the franchisee, and, the franchisee shall immediately become and remain liable to county for any and all loss, expense, and cost or damage incurred by county in that connection. Whenever the Board finds that the failure of service or threatened failure of service would result in creation of health hazards or public or private nuisances, the Board shall, after reasonable, but not less than 24-hours' written notice to the franchisee and a public hearing, if the franchisee requests such hearing, have the right to authorize another franchisee or other person to provide service or to use and operate the land, facilities, or equipment of the franchisee to provide service or to use and operate the land, facilities, or equipment, through leasing, to provide emergency service in the event of a serious interruption of service to all or to a class or group of customers for so long as such interruption continues.

(2) The Board reserves the right to make such further regulations as may be deemed necessary to protect the interests, safety, welfare, and property of the public and carry out policy, purposes, and findings stated herein.

(3) A franchisee shall at all times be subject to reasonable rules and regulations and any ordinance passed by the Board. A franchisee shall at all times be subject to applicable laws, rules, and regulations of the State of Oregon. A violation of such law, rules, regulations, or ordinance, if found by the Board to be substantial and material to the policy, purposes, and findings stated herein, may be deemed by the Board as a breach going to the essence of the franchise or permit.

(4) A franchisee shall be further bound as follows:

(a) It shall make the payments as herein provided promptly as they become due;

(b) Time is of the essence of a franchise;

(c) A waiver by county of any breach of any term, covenant, or condition of a franchise of this title shall not operate as a waiver of a subsequent breach of the same or any other term, covenant, or condition of a franchise or of this title;

(d) If a franchisee shall default in any of the terms, covenants, or conditions required to be performed, or in the payment of any sum required to be paid under the terms of this title, and said default shall continue for a period of 15 days after receipt of written notification sent by certified mail by the administrator, then and in that event, the franchise may, at the option of the county, be and become null and void and a franchisee shall thereafter be entitled to none of the privileges or rights herein extended and said franchisee shall thereupon cease and desist from any solid waste service under said franchise within the county; provided, however, that county may, at its option, pursue any other and different or additional remedy provided to it at law or in equity;

(e) This subsection applies to conditions within the control of a franchisee. Where the default or breach occurs by reason of lack of specialized equipment, availability of equipment or personnel, or similar reasons, a franchisee shall be given a reasonable opportunity to comply. Nothing in this subsection shall limit the rights and remedies of county under other provisions of this title; and

(f) In the event a franchisee becomes insolvent, then county may, at its option, terminate the franchise and all leases and other agreements, if any, entered into in connection therewith. [1983 o.199 §1]

### **2.1090 Enforcement of Ordinance**

County has authority to enforce the provisions of this title by administrative, civil, or criminal proceedings, or a combination thereof as necessary to achieve compliance with this chapter. [1983 o.199 §1]

### **2.1095 Parties Bound**

The terms of a franchise shall be binding upon a franchisee, its heirs, executors, administrators, successors, and assigns. [1983 o.199 §1]

### **2.1100 Franchise Term**

(1) The rights, privileges and franchise granted a franchisee pursuant to this ordinance shall begin on the date a franchise is granted and shall be considered as a continuing ten-year franchise. On January 1st of each year, the franchise is without further action renewed for an additional ten-year term unless at least thirty 30 days prior to January 1st of that year, one party notifies the other in writing of intent to terminate the franchise. Upon the giving of such notice of termination, the franchisee shall have a franchise terminating on December 31 of the eleventh year following the date of notice of termination. The parties may later extend the term of, or reinstate the franchise, conditioning renewal upon mutual agreement. Nothing in this section restricts the Board from suspending, modifying, or revoking the franchise for cause, pursuant to LCC 2.1085 of this ordinance.

(2) LCC 2.1100, as amended this date, shall be effective with respect to franchises existing as of the date of passage of this ordinance only when the franchisee and the Board of Commissioners agree in writing. Otherwise, unless the Board finds that in the public interest a

longer or shorter term is required, the term for a solid waste franchise shall be ten years. [1983 o.199 §1; 1988 c.269 §1]

### **2.1105 Franchise Fees**

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

(1) Any solid waste franchisee shall pay a fee of three percent of the gross cash receipts from franchised collection service provided to the service territory included in the franchise.

(2) The collection franchise fee shall be computed and be payable to county annually within 30 days from the anniversary of the franchise agreement. The fee shall be accompanied by a sworn statement of such cash gross receipts. Each collection franchise holder shall maintain sufficient books and records to disclose the gross receipts from the service territory and shall make such books and records available at franchisee's premises at reasonable times and places for audit by authorized county personnel. The Board may specify reasonable requirements for keeping such books and records. [1983 o.199 §1]

### **2.1110 Renewal of Solid Waste Franchise**

(1) Renewal of a franchise shall be based on an application filed with the administrator. The procedure for review and renewal shall be the same as provided in sections 2.1060 and 2.1070.

(2) Based upon timely application of a franchisee, the Board may provide for renewal of the 10-year franchise term or such other term as the Board deems to be in the public interest prior to the expiration of the 10-year franchise term if the following conditions exist:

(a) Franchisee demonstrates a substantial need to purchase additional capital equipment to effectively discharge his obligations under the franchise agreement;

(b) Franchisee, through satisfactory documentation, demonstrates an inability to procure reasonable financing for such additional equipment without a franchise extension or renewal; and

(c) Based upon franchisee's record of performance in his service territory, the administrator finds that franchisee has complied with all provisions of this chapter, the franchise agreement, other applicable laws, rules, and regulations, and has adequately and competently rendered solid waste service. [1983 o.199 §1]

### **2.1115 Franchise Termination**

In the event a franchise is terminated prior to the expiration of the normal franchise term for any reason, the Board may prevent interruption of service as provided in LCC 2.1085. [1983 o.199 §1]

### **2.1120 Rate Structure**

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

(1) A franchisee shall have the right to charge and collect reasonable compensation from persons to whom it shall furnish franchised services. "Reasonable compensation" shall be determined in light of the factors enumerated in LCC 2.1220(5).

(2) To facilitate considerations as in this section provided, a franchisee shall furnish and provide to the Board a certified copy of the published rate schedule, which rate schedule shall

contain the rates and charges made for all its operations. Said rate schedule, after having been filed as herein provided, shall be kept current and a franchisee shall file with the Board, at least 90 days prior to any contemplated change, a new and revised rate schedule which shall be examined by the Board in an appropriate public proceeding affording due process. Notification of the decision of the Board shall be made to the franchisee by certified mail. In the event of disapproval, franchisee shall not put the new rate schedule into effect, but may file with the Board, either on its own motion or in compliance with the Board's request, further information to justify the rate schedule changes. Negotiations shall be had in good faith between the parties. The existing approved rate schedule, as of the effective date of this title, shall be deemed to be in effect. The Board may require annual statements and other records to be furnished to the Board to carry out the intentions of this section.

(3) In the event of approval of a new and revised rate schedule, the new and revised rate schedule shall not apply to persons and groups who have an advance payment agreement with the franchisee until the normal expiration of said advance payment agreement.

(4) The rates in effect at the time this title takes effect and thereafter shall be subject to review and change only one time in a calendar year beginning January 1 and ending December 31 of the same year; provided, however, that:

(a) Upon application and without prior notice, the Board may, by order, grant an interim or emergency rate for new, special, or different service. The Board may specify the duration of said rate or continue it until final determination by the Board on the next overall rate adjustment.

(b) In addition to an annual rate adjustment, a supplemental rate adjustment may be requested when the cost of service is increased by governmental regulations and compliance therewith; or when there is substantial increase in a single expense that was not anticipated at the time of the last rate adjustment; or, when the total cost of service exceeds projected costs by five percent, or more.

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

(6)(a) Notwithstanding any other provision of LCC 2.1000 through 2.1180, the Board may establish a fee on waste generated within those franchises which have utilized the Agate Beach Landfill/Balefill. The fee shall be set from time to time by resolution of the Board at a level which will cover all expected costs including but not limited to financing closure and post-closure debt instruments. The fee shall be collected by the respective franchisees based on waste generated within the franchise area and remitted by franchisees monthly to Lincoln County. Lincoln County shall receive all fee proceeds to be held in trust exclusively for Lincoln County's proportional share of on-going closure and post-closure costs of the Agate Beach Landfill. Upon full funding of the costs of such closure and post-closure activities, Lincoln County shall end the Agate Beach closure fee.

(b) The institution of this fee is accepted by franchisees as an amendment to the provisions of LCC 2.1000 through 2.1180 and shall be binding upon them, their successors, heirs, or assigns. A separate executed instrument signifying the franchisees acceptance shall be placed in the records

of the County. This subsection constitutes an amendment of the original franchise agreement. [1983 o.199 §1; 1993 o.318 § 1]

### **2.1122 Definitions for LCC 2.1122 through 2.1126**

Unless the context requires otherwise, as used in LCC 2.1122 through 2.1126:

(1) “Affiliated company” means the parent company of a franchisee or any subsidiary of such parent company, or any company of which 30 percent or more of the common stock of control is owned or controlled by the franchisee or a shareholder or shareholders of the franchisee who own or control 30 percent or more of the common stock of the franchisee which shares costs with the franchisee with respect to the services provided under this agreement. Examples of such shared costs include, but are not limited to, labor, equipment or administrative costs.

(2) “Allowable expenses” means those expenses incurred by a franchisee in the performance of this agreement that are acceptable as reimbursable by the ratepayer as enumerated below. Allowable expenses are allowable only to the extent that such expenses are known and measurable, calculated according to Generally Accepted Accounting Principles (GAAP) on an accrual basis, do not exceed the fair market value of comparable goods or services, and are commercially reasonable and prudently incurred by the franchisee solely in the course of performing its obligations under the franchise. Allowable expenses, as qualified above, shall include, but not be limited to, the following:

(a) The costs of complying with all laws, regulations or orders applicable to the obligations of franchisee.

(b) Disposal costs, as defined below, including increased disposal costs and surcharges to the extent that such increase does not exceed 85 percent of the Consumer Price Index (CPI) for the current year, as provided in LCC 2.1124(7). If such increased disposal costs and surcharges exceed 85 percent of the CPI for the current year, then such costs and surcharges shall be allowed as pass through expenses as provided in LCC 2.1124(9).

(c) Labor costs, including supervisory labor, associated with provision of services under the franchise, including workers compensation and benefits and third party transportation costs for recyclable materials.

(d) Vehicle and equipment expenses, including vehicle registration fees, motor fuel, oil, tires, and repairs and maintenance of equipment.

(e) All expenses of maintaining and replacing capital equipment and assets, including depreciation and repair and maintenance.

(f) Performance bonds and insurance, at a minimum, in the amounts and coverage required by the county.

(g) Administrative expenses related to data processing, billing and supplies, finance and accounting, officer salaries, franchise administration, human resource and labor management, rate analysis, and regulatory compliance.

(h) Utilities.

(i) Training and worker safety.

(j) Advertising, promotion, and public education costs.

(k) Property or facility depreciation, rental or lease costs necessary to the provision of services required by the franchise agreement.

(L) Depreciation and amortization of capital assets, including any necessary stand-by or back-up equipment used on a regular and ongoing basis in the provision of services under this

franchise over standardized economic useful lives of the various assets. The county shall set the standard economic lives based upon industry input and prevailing practices.

(m) Outside professional fees and costs.

(n) Debt service expenses other than any debt service expenses associated with purchases of routes or business purchases, that are not in excess of market rates ordinarily charted for the various types of financing required for purchases or leases.

(o) Franchise fees.

(p) 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).

(q) 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.

(r) Any other expense determined in advance by the county and franchisee to be reasonable and necessary to the provision of the services required under the franchise agreement.

(s) Bad debts.

(3) "Collection" or "collection service" means all or any part of the activities involved in the collection of solid waste and its transportation to an appropriate solid waste management facility.

(4) "Customer" means generators of solid waste in the county to whom the franchisee provides collection services pursuant to a franchise granted by the county, and who have not been refused service pursuant to this chapter.

(5) "Disposal" means the disposition of solid waste collected by a franchisee at a permitted solid waste handling facility selected by the franchisee.

(6) "Disposal costs" means the total paid by a franchisee for the disposal of solid waste collected pursuant to a franchise granted by the county at the solid waste handling facility or transfer station.

(7) "Gross revenue" for any period means gross accrual-based billings by the franchisee to customers for services provided under this agreement and the accrual-based proceeds from the sales of recycled material collected within the franchise.

(8) "Operating margin" for a period means gross revenues minus allowable expenses.

(9) "Operating ratio" is the allowable expense divided into the gross revenues. Expressed as a percentage, the return on gross revenues shall be approximately 88 percent of gross revenues, which is consistent with industry averages for solid waste collection companies.

(10) "Revenue requirement" means the sum of the quotient of allowable expenses divided by the operating ratio, expressed as a decimal, and pass through expenses.

(11) "Unallowable expense" means any of the following, which under no circumstances will be counted as an allowable expense:

(a) Political and charitable contributions.

(b) Federal, state, and local income taxes.

(c) Loss on sale of assets.

(d) Officers' life insurance premiums.

(e) Director fees.

(f) 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.

- (g) Penalties and fines.
- (h) Costs, whether allocated or direct, associated with collection or unrelated operations that are not governed by this ordinance.
- (i) Accruals for future unknown regulatory changes.
- (j) Principal or interest payments on the acquisition of solid waste, recyclable materials and yard debris collection routes; the purchase of equipment and facilities at a price that would be construed to include goodwill or a premium in excess of fair market value at the time of acquisition.
- (k) Attorney's fees and related expenses resulting from:
  - (A) Any judicial proceeding in which the county and a franchisee are adverse parties, unless the franchisee is the prevailing party.
  - (B) Any judicial proceeding in which a franchisee is ruled to be liable due to willful misconduct or gross negligence, or in violation of law or regulation. [2003 o.425 §2]

### **2.1124 Determination of Rates**

(1) Franchisee shall charge and collect those rates adopted each year in accordance with this section. The rates set shall be fixed at a level sufficient to produce a revenue requirement for the franchisee that is equal to the quotient of allowable expenses divided by the operating ratio, expressed as a decimal. The operating ratio for this agreement shall be calculated at 88 percent. For purposes of this section, the rates shall include all monies collected by the franchisee for the services provided pursuant to a franchise granted by the county, 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 the franchisee from any other entity as compensation for services allocated fairly and reasonably to the jurisdiction and customers receiving said services.

(2) The franchisee and its affiliates may use common resources, such as equipment, fuel, labor, management, and administration, to service the county and other nearby jurisdictions. In such cases, 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 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 the franchise.

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

(a) 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.

(b) Weight: Average vessel weights used to allocate disposal.

(c) Customer base: Weighted customer counts used to allocate general, administrative, and management expenses.

(4) The methods for collecting the data for the factors described in subsection (3) of this section are:

(a) 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.

(b) 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.

(c) Customer base: This data is readily available from computer reports generated in conjunction with billing and route list preparation.

(5) The factors described in subsection (3) of this section will be captured and applied to the costs on a periodic basis. The county and the franchisee agree that test periods shall be utilized, at least quarterly, to collect this data.

(6) Commencing on April 1, 2003, but in no event after April 1, 2004, the franchisee will submit to the county an annual report of operations prepared by the hauler's certified public accountant, showing the actual allowable expenses incurred by the franchisee in the preceding fiscal year, all additional allowable expenses the franchisee reasonably anticipates will be incurred or imposed in the current fiscal year, the allocation formulas used to determine expenses, the actual operating ratio for the preceding fiscal year, and the expected operating ratio for the current fiscal year.

(7) Except as provided in subsection (8) of this section, a cost of living rate adjustment shall be made every other year commencing with the completion of the report described in subsection (6) of this section, and according to the following procedure:

(a) Commencing on June 1, 2004, and on June 1 of each even numbered year thereafter (the adjustment date) throughout the term of the franchise, the rates shall be adjusted in an amount equal to 85 percent of the two-year percentage 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) that occurred between the months of May and April of the previous and the current years. The adjustment shall not exceed six percent in any two-year period. In addition, no cost of living adjustment shall be allowed if the adjustment would cause the franchisee to project operations in excess of the operating ratio range. The adjusted rates shall become effective on each July 1, thirty days following the adjustment date.

(b) On each adjustment date, the then current rates shall be multiplied by the calculated percentage change in the index for the year.

(c) On or before each adjustment date, the 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.

(d) If a rate adjustment occurred in the previous year due to an upward adjustment of the rates due to a formal rate review, then the franchisee is only eligible for 85 percent on the one year change in the Consumer Price Index.

(e) In the event that the Index for Urban Consumers of West B/C is no longer published by the Bureau of Labor Statistics, the franchisee and the county shall negotiate in good faith and agree upon a suitable replacement index reflective of the cost of living in the franchise area.

(8) If the report described in subsection (6) of this section indicates that the operating ratio for the next succeeding 12-month period will be less than 85 percent or greater than 91 percent, then a rate review will automatically be implemented in accordance with this section. No more than five consecutive years shall pass during the term of this franchise without a formal

rate review as set forth in this section. In the event a rate review is requested or required as provided in this section, the following procedures shall bind the county and the franchisee:

(a) 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 85 percent or less than 91 percent, the county shall adopt rates for the next year, either as proposed by the franchisee in the report, or as modified by the county, no later than June 15. The adopted rates shall then become effective no later than July 1, and shall supersede the rates that were previously in effect. The adopted rates shall provide the franchisee an operating ratio of 88 percent.

(b) In the event the report shows that the operating ratio for the current fiscal year is not likely to be greater than 85 percent or less than 91 percent, the existing rates shall not be adjusted, and the current rates shall continue in effect until next adjusted in accordance with subsection (7) of this section. The county shall set all policies and procedures respecting the implementation of rates and shall direct the 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 the franchisee that pertain to revenue and allowable expenses. However, in reviewing such records, the county and its agents and employees shall maintain the confidentiality of the records, and not disclose, divulge or transmit the records, or copies of the records, to any third party, except as may be compelled under law or by a court of competent jurisdiction.

(c) Upon review by the county, if it is found that deliberate or malicious material misrepresentation of books, records, accounts or data relating to collection service operations has occurred, the franchisee shall pay all review costs incurred by the county.

(9) In the event the 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 or long-haul transportation costs or fees, and these costs represent in excess of three percent of gross revenue, then all such costs and fees shall be immediately passed through and added to the existing rate structure upon the county's receipt and verification of the franchisee's documentation of, and liability to pay, those new costs or fees. In the event the franchisee, at any time, experiences a reduction in these costs, in excess of three percent of gross revenue, then all such savings shall be immediately passed through and subtracted from the existing rate structure upon the county's receipt and verification of the franchisee's documentation of those reduced costs or fees. The franchisee shall include all such costs, cost savings, and fees in the next succeeding year's report as actual allowable expenses of the franchisee. [2003 o.425 §3]

**2.1125** [1983 o.199 §1; repealed 2003 o.425 §7]

### **2.1126 Reports and Records**

(1) The following reports and information shall be submitted by the franchisee to the county in accordance with the following schedule: Commencing with the first rate adjustment request by the franchisee, and on each April 1<sup>st</sup> thereafter, the franchisee shall submit the annual report in the format approved and distributed by the county, consisting of the following:

(a) Financial statements for the franchisee for the preceding year, with schedules prepared by the franchisee's certified public accountant to provide backup for any allocated expenses. The

franchisee shall also identify any expense incurred with an affiliated company. At the county's request, the franchisee shall provide backup as is reasonable to verify expenses;

(b) Equipment and depreciation schedules and equipment replacement projections for the current year;

(c) Projected allowable expense and pass-through expense for the current year;

(d) Projected gross revenue for the current year, based on current levels of service and the current rate schedule before any cost of living adjustment; and

(e) Subject to the conditions of LCC 2.1124, a proposed rate schedule to be effective July 1, with rationale as to how the rates were developed.

(2) Records and information requirements: The franchisee shall maintain accounting, statistical, operational, and other records related to its performance under the franchise agreement. Also, the franchisee agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with applicable laws and regulation and to meet the reporting and solid waste program management needs of the county. To this extent, requirements set out in this agreement shall not be considered limiting or necessarily complete. In particular, this section is intended to only highlight the general nature of records and reports, and is not meant to define exactly what the records and reports are to be, and their content. Further, with the written direction or approval of the county, the records and reports to be maintained and provided by the franchisee in accordance with this agreement shall be adjusted in number, format, or frequency. This is not intended to require significant additional administrative labor, or the modification of the franchisee's computer software.

(3) All records shall be maintained for at least five years after the expiration of this agreement, with the exception of accounts payable records, which shall be maintained for at least three years after payment. The records addressed in this agreement shall be provided or made available to the county and its official representatives during normal business hours.

(4) Solid waste records: Records shall be maintained by the franchisee for the county relating to:

(a) Customer service and billing;

(b) Weight and volume of solid waste and recyclable materials;

(c) Routes;

(d) Facilities, equipment and personnel used;

(e) Facilities and equipment operations, maintenance and repair;

(f) Disposal of solid waste;

(g) Complaints; and

(h) Missed pick-ups.

(5) CERCLA defense records: The county views the ability to defend against litigation brought under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 USC § 9601, *et seq.*), and other related litigation, as a matter of great importance. For this reason, the county regards the ability to prove where solid waste collected in the county was taken for disposal, as well as where it was not taken, to be matters for concern. Franchisee shall maintain data retention and preservation systems which can establish where solid waste collected in the county was land filled, and therefore establish where it was not land filled, and provide a copy or summary of the reports required for at least five years after the term during which collection services are to be provided pursuant to this agreement, or to provide copies of such records to the county.

(6) Disposal records: The franchisee shall maintain records of disposal of all solid waste collected in the county for the period of this agreement, and all extensions to this agreement or successor agreements. In the event the franchisee discontinues providing solid waste services to the county, the franchisee shall provide all records of disposals or processing of all solid waste collected in the county within 30 days of discontinuing service. Records shall be in chronological order, and organized in a form and manner that is capable of easily and readily being understood and interpreted.

(7) Reporting responsibilities:

(a) At the time of payment of the annual franchise fees, the franchisee shall file with the county a sworn and verified statement of annual gross revenues for the period covered by the tendered fee. Such statements shall be public records. Each franchisee shall maintain books and records disclosing the gross receipts derived from business conducted within the county, which shall be open at reasonable times for audit by county personnel or assigned agents. The county may require a uniform system of bookkeeping and record keeping to be used by all franchisees.

(b) Deliberate or malicious misrepresentation of gross revenues by a franchisee constitutes a major contract violation, and may be cause to initiate the process to terminate the franchise.

(c) The Board may change the amount and computation of franchise fees from time to time.

(8) Confidentiality of annual rate review reports: Franchisees may identify information submitted to the county as confidential. The county shall treat any information marked confidential as being confidential, and shall not subject the confidential information to public disclosure except as required by law or by order of a court of competent jurisdiction. If the county receives a request for disclosure of confidential information, the county shall notify the franchisee within five business days of receiving the request, in order to allow the franchisee a reasonable opportunity to defend against the requested disclosure through appropriate legal process.

(9) Reportable incidents and events: The franchisee shall provide the county with two copies, one to the Board and one to County Counsel, of all reports, pleadings, applications, notifications, notices of violation, and all other formal actions relating specifically to the franchisee's performance of services pursuant to this agreement, submitted by franchisee to, or received by franchisee from, the United States Environmental Protection Agency, the Oregon Department of Environmental Quality, or any other federal, state, or local agency, including federal or state court actions brought by any of the these agencies, with regard to franchisee operations within the State of Oregon. Copies shall be submitted to the county simultaneously with franchisee's filing or submission of such matters with the agency or court. A franchisee's routine correspondence to the agency or court need not be submitted to the county, but shall be made available to the county upon written request.

(10) The refusal or willful failure of a franchisee to file any required report, or to provide required information to the county, or the inclusion of any materially false or misleading statement or representation by the franchisee in a report, shall be deemed a material breach of this agreement, and shall subject the franchisee to all remedies which are available to the county under this agreement.

(11) Vehicle inventory: The franchisee, in conjunction with the annual report, shall provide the county with an inventory of vehicles used by the franchisee within the county. The

list shall include vehicle make, year of manufacture, model name, vehicle identification number (VIN), and PUC numbers.

(12) Access for inspections and delivery of notices:

(a) Franchisees shall make all company premises, facilities and records related to their solid waste, recyclable materials and yard debris collection services, including, but not limited to, offices, storage areas, financial records, non-financial records, records pertaining to the origin of any solid waste collected by the franchisee, receipts for sale or delivery of collected recyclable materials, customer lists, and all records related to vehicle maintenance and safety which are required under Oregon Department of Transportation motor carrier requirements and regulations and ORS chapter 767, available for inspection by the county, the Lincoln County Solid Waste District, and their employees or assigned agent, within 24 hours of notice by registered mail. Inspections are only for purposes of enforcing this agreement, and are restricted to normal business hours.

(b) During normal business hours, the franchisee shall make all company premises and facilities accessible to county employees or assigned agents for delivery of any written notices.

(c) Franchisee collection vehicles must be accessible for inspection during the normal operating hours for collection, in addition to normal business hours. Where receptacles are stored in the public right-of-way, or when the county is conducting an inspection in a situation where the franchisee is allegedly disposing recyclable or yard debris with solid waste, the need for 24-hour notice does not apply to inspection of receptacles or vehicles. [2003 o.425 §4]

#### **2.1128 Solid Waste District User Fee**

(1) The Lincoln County Solid Waste Disposal Service District hereby establishes a user fee on waste generated within Lincoln County that shall be collected by the franchised solid waste haulers within the county, or through other agreements as may be entered into by the District, beginning July 1, 2003, at an initial rate of \$4 per ton of waste. The fee may be adjusted from time to time by resolution of the Board of Commissioners, acting as the governing body of the District, at a rate that will cover projected costs of the District. Fee changes shall be timed to correspond to the schedule for the annual review authorized by LCC 2.1122 to 2.1126 (Uniform Rate Reporting Format) and shall be reviewed by the District's Solid Waste Advisory Committee and Budget Committee. The fees shall be based on the waste generated within the solid waste franchised areas and disposed at sanitary landfills. Lincoln County shall place all fee proceeds in a fund to be used exclusively for the Lincoln County Solid Waste Disposal Service District.

(2) Pursuant to a separate executed instrument signifying each franchisee's acceptance, the fees shall be collected and remitted on a monthly basis to Lincoln County by the franchised solid waste haulers within the county. If the agreements are not accepted or are terminated by any franchisee, the District shall collect a fee through other agreements or methods, as it may deem appropriate. [2003 o.428 §2]

#### **2.1130 Service to be Rendered**

(1) In addition to serving regular customers, the franchisee shall pick up and haul away all solid waste at the request of any resident of the county in franchisee's area where service is provided. The Board may specify when remote, sparsely populated areas will be served and the frequency of service. A franchisee shall not, without good cause proved by franchisee to the administrator, refuse to provide service to any person living or conducting business within its

service territory in the county; provided, however, a franchisee may refuse to provide service upon one or more of the following conditions:

(a) Upon nonpayment of a billing or portion thereof for service within the time provided therein and after 10-days' further written notice, from the date of mailing to the customer that service will be terminated unless full payment is made.

(b) Upon refusal to pay any required advance payment for service, or, if provided in the rate schedule, a charge for reinstating service after discontinuance for nonpayment, or a charge for starting a new service.

(c) Street or road access is blocked.

(d) Excessive weather conditions, as determined by a franchisee, render the providing of service hazardous to the persons actually providing the service or to the public.

(e) Where prevented by an act of God, public enemy, or vandal.

(f) Customer violation of service standards in LCC 2.1140.

(2) Any franchisee shall, where applicable, provide, maintain, and use adequate equipment to handle and dispose of or resource-recover solid waste; will handle collected solid wastes in a good and workmanlike manner; will transport all liquids in a watertight, drip-proof container; and, will provide equipment that meets all applicable laws, ordinances, regulations, and standards, including, without limitation, amendments to this title.

(3) Equipment and work supplied by any franchisee shall be to the reasonable satisfaction of the administrator.

(4) No franchisee is required to store, collect, transport, transfer, dispose of, or resource-recover any hazardous waste; provided, however, that such franchisee may engage in one or more of those activities separate and apart from this title, but in compliance with all applicable local, state, and federal laws. [1983 o.199 §1]

### **2.1135 Hold Harmless**

The privileges granted to a franchisee are upon the express condition that said franchisee shall be liable for all damages or injuries to persons or property caused by the negligence or mismanagement of the franchisee or any employees or agents of franchisee while engaged in the business under the terms of the franchise. Should county, or any of its officers, agents, or employees in the scope of their employment be sued for damages caused in whole or in part by the operations of a franchisee under the terms of the franchise, the franchisee shall be notified in writing of such suit and thereupon it shall be the duty of the franchisee to defend or settle the suit and should judgment go against county, its officers, agents, or employees, the amount thereof shall be recovered with costs and attorneys' fees from franchisee. The record of judgment against county, or any of its officers, agents, or employees, in any such case, shall be conclusive evidence to entitle county, its officers, agents, or employees to recover against the franchisee. This section shall not require a franchisee to defend, indemnify, or settle any suit or action against county, its officers, agents, or employees brought under, nor indemnify county, its officers, agents, or employees for damages awarded pursuant to ORS 646.705, et seq., or Title 15 of the United States Code, unless such suit or action arises out of activities of the franchisee, or any agents or employees of franchisee, not authorized by this title. [1983 o.199 §1]

### **2.1140 Public Responsibilities**

(1) No person shall place hazardous wastes out for collection or disposal by the franchisee nor place it into any solid waste container or box supplied by the franchisee without prior notice to and prior written approval from the franchisee. A person placing such wastes for collection shall, prior to the notice to the franchisee, obtain the approval of the disposal site to be used for the disposal of such wastes. Where required, an additional approval shall be obtained from the local government unit having jurisdiction over the disposal site. This disposal approval shall be in writing, signed by the person designated by the disposal site or local government unit affected. Either the franchisee or the disposal site or the local government unit having jurisdiction of the disposal site may require written authorization from the Oregon Department of Environmental Quality for the handling of such hazardous wastes. This subsection does not apply to household waste generated at and by a single family residential dwelling unit.

(2) A franchisee is not required to service an underground container unless the person responsible for it places the can above ground prior to collection.

(3) No can for residential service shall be located behind any locked or latched gate or inside any building or structure nor exceed 60 pounds gross loaded weight.

(4) Each customer shall provide safe access to the solid waste or solid waste container without hazard or risk to a franchisee's employees or a franchisee. [1983 o.199 §1]

### **2.1145 Rate Preferences Prohibited**

(1) No franchisee subject to rate review by this title shall give any rate preference to any person, locality, or type of solid waste stored, collected, transported, or disposed.

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

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

(b) Any person from volunteering service at reduced cost for a charitable, community, civic, or benevolent purpose. [1983 o.199 §1]

### **2.1150 Payment**

Any person who receives service shall be responsible for payment for such service. Landlords shall be responsible for service provided if the tenant does not pay. [1983 o.199 §1]

### **2.1155 Agreements for Joint or Regional Franchising**

The Board may enter into agreements with any city or county for joint or regional franchising or collection or disposal service or planning for regional solid waste management. [1983 o.199 §1]

**2.1160** [1983 o.199 §1; repealed 1994 o.333 § 8]

### **2.1165 Severability**

If any section, subsection, sentence, clause, or portion of this title is for any reason held invalid or declared unconstitutional by any court of competent jurisdiction, such portion shall be

deemed a separate, distinct, and independent provision and such holding shall not affect the validity or constitutionality of the remaining portion hereof. The Board hereby declares that it would have passed this title and each section, subsection, sentence, clause, and phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid, or unconstitutional. [1983 o.199 §1]

### **2.1170 Penalties**

Violation of this title, or any rules or regulations adopted by the Board pursuant to this title, shall be deemed to be a violation of county laws and is punishable upon conviction by a fine of not more than \$500; provided, however, that each day of continued violation is a separate offense and is separately punishable, but may be joined in a single prosecution. In addition, county shall have the right to pursue any additional remedy provided to it under law. [1983 o.199 §1]

### **2.1175 Appeals from the Decisions of the Administrator**

(1) The Board may, upon its own motion or upon the request of an interested person or affected public agency or body, review any decision of the administrator or committee and may affirm, modify, reverse, or rescind the decision of the administrator.

(2) In reviewing appealed actions, the Board may request the recommendation of the committee, and hold public hearings after notice to affected persons.

(3) This section applies only to decisions of the administrator relating to enforcement of provisions in existing solid waste disposal franchises granted pursuant to this chapter. [1983 o.199 §1; 1993 o.323 §2]

**2.1180** [1983 o.199 §1; 1983 o.202 §2; repealed 1994 o.333 § 8]

## **LITTERING AND DUMPING**

### **2.1500 Definitions**

As used in LCC 2.1500 through 2.1510:

- (1) "Person" has the meaning given that term in LCC 2.1005.
- (2) "Public transportation facility" has the meaning given that term in ORS 164.365.
- (3) "Public way" includes, but is not limited to, roads, streets, alleys, lanes, trails, beaches, parks and all recreational facilities operated by the state, a county or a local municipality for use by the general public.
- (4) "Sewage" has the meaning given that term in LCC 2.110.
- (5) "Solid waste" has the meaning given that term in LCC 2.1005.
- (6) "Waste" has the meaning given that term in LCC 2.1005. [1994 o.333 § 2]

### **2.1505 Littering and Dumping of Sewage, Waste and Solid Waste Prohibited**

No person shall:

- (1) Discard any glass, cans or other trash, rubbish, debris or litter on land within 100 yards of any of the waters of the state, as defined in ORS 468.700, other than in receptacles provided for the purpose of holding such trash, rubbish, debris or litter;
- (2) Discard any glass, cans or other similar refuse in any waters of the state, as defined in ORS 468.700;
- (3) Discard any dead animal carcass or part thereof, excrement, putrid, nauseous, noisome, decaying, deleterious or offensive substance into or in any other manner befool, pollute or impair the quality of any spring, river, brook, creek, branch, well, irrigation drainage ditch, irrigation ditch, cistern or pond of water;
- (4) Place or cause to be placed any polluting substance listed in subsection (3) of this section into any road, street, alley, lane, railroad right-of-way, lot, field, meadow or common;
- (5) Being an owner of property described in subsection (4) of this section, knowingly permit any polluting substance listed in subsection (3) of this section to remain on the property to the injury of the health or to the annoyance of any citizen of the State of this state;
- (6) Create an objectionable stench or degrade the beauty or appearance of property or detract from the natural cleanliness or safety of property by intentionally:
  - (a) Discarding or depositing any rubbish, trash, garbage, debris or other refuse upon the land of another without permission of the owner, or upon any public way or in or upon any public transportation facility;
  - (b) Draining, or causing or permitting to be drained, sewage or the drainage from a cesspool, septic tank, recreational or camping vehicle waste holding tank or other contaminated source, upon the land of another without permission of the owner, or upon any public way; or
  - (c) Permitting any rubbish, trash, garbage, debris or other refuse to be thrown from a vehicle which the person is operating; except that this paragraph shall not apply to a person operating a vehicle transporting passengers for hire subject to regulation by the Interstate Commerce Commission or the Public Utility Commission of Oregon or a person operating a school bus described under ORS 801.460; or
- (7) Store, collect, maintain, or display waste, solid waste or sewage in a manner that is offensive or hazardous to the health and safety of the public or which creates offensive odors or a condition of unsightliness. [1994 o.333 § 3]

**2.1510 Exceptions to the Prohibitions of LCC 2.1505**

(1) Nothing in subsections (1) through (5) of LCC 2.1505 prohibits the operation of a disposal site, as defined in ORS 459.005, for which a permit is required by the Department of Environmental Quality, for which such a permit has been issued and which is being operated and maintained in accordance with the terms and conditions of such permit.

(2) Nothing in subsections (3) through (5) of LCC 2.1505 prohibits the storage or spreading of manure or like substance for agricultural, silvicultural or horticultural purposes, except that no sewage sludge, septic tank or cesspool pumpings shall be used for these purposes unless treated and applied in a manner approved by the Department of Environmental Quality.

(3) Nothing in LCC 2.1505 prohibits the collection, maintenance or display of waste, solid waste or sewage by a person authorized to engage in collection, maintenance or display of waste, solid waste or sewage pursuant to LCC chapter 2, ORS chapter 459, and rules of the Department of Environmental Quality.

(4) Nothing in LCC 2.1505 prohibits the temporary storage of waste, solid waste or sewage in receptacles designed for that purpose and in compliance with LCC chapter 2, ORS chapter 459, and rules of the Department of Environmental Quality. [1994 o.333 § 4]

## **NOISE CONTROL**

### **2.2000 Title; Area of Application**

LCC 2.2000 through 2.2045 shall be known as the Lincoln County Noise Control Ordinance and shall apply within the unincorporated areas of Lincoln County, Oregon. [1989 o.280 §1]

### **2.2005 Definitions**

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

(1) "Idling speed" means a speed at which an engine will run when no pressure is applied to the accelerator or accelerator linkage.

(2) "Noise sensitive unit" means any building or portion thereof, vehicle, boat or other structure adapted or used for the overnight accommodation of persons, including, but not limited to, individual residential units, individual apartments, trailers, hospitals, and nursing homes.

(3) "Person" means any individual, any public or private corporation, association, partnership, or other legally recognized public or private entity.

(4) "Plainly audible" means unambiguously communicated to the listener. Plainly audible sounds include, but are not limited to, understandable musical rhythms, understandable spoken words, and vocal sounds other than speech which are distinguishable as raised or normal.

(5) "Sound producing device" means:

(a) Loudspeakers, public address systems;

(b) Radios, tape recorders or tape players, phonographs, television sets, stereo systems, including those installed in a vehicle;

(c) Musical instruments, amplified or unamplified;

(d) Sirens, bells;

(e) Vehicle engines or exhausts, when vehicle is not on a public right-of-way, particularly when the engine is operating above idling speed;

(f) Vehicle tires, when caused to squeal by excessive speed or acceleration;

(g) Domestic tools; including electric drills, chain saws, lawn mowers, electric saws, hammers, and similar tools, but only between 10 p.m. and 7 a.m. of the following day; and

(h) Heat pumps, air conditioning units, and refrigeration units, including those mounted on vehicles.

(6) "Vehicle" means automobiles, motorcycles, motorbikes, trucks, buses, and snowmobiles.

(7) "Firearms" means devices, by whatever name known, which are designed to expel a projectile or projectiles by the combustion of black powder or smokeless powder. [1989 o.280 §1]

### **2.2010 Findings and Policy**

(1) The Board of Commissioners for Lincoln County has found that excessive sound can and does constitute a hazard to the health, safety, welfare, and quality of life of residents of the county.

(2) The Board has further determined that while certain activities essential to the economic, social, political, educational and technical advancements of the citizens of the county necessarily require the production of sounds which may offend, disrupt, intrude and otherwise create hardship

among the citizenry, the Board is obliged to impose some limitations and regulation upon the production of excessive sound as will reduce the deleterious effects thereof.

(3) It is, therefore, the policy of this Board to prevent and regulate excessive sound wherever it is deemed harmful to the health, safety, welfare and quality of life of the citizens of Lincoln County. This chapter shall be liberally construed to effectuate that purpose. [1989 o.280 §1]

### **2.2015 Administration and Enforcement**

(1) The Sheriff of Lincoln County shall administer, supervise and perform all acts necessary to enforce this chapter.

(2) Persons appointed or assigned by the Sheriff, as he deems necessary to accomplish effective enforcement of this chapter, may be peace officers or not, but if unsworn persons are selected and empowered to issue citations for violation of this chapter, the Sheriff shall exercise powers under ORS 204.635.

(3) Upon citation of a person for a violation of this chapter, the person issuing the citation may seize as evidence the sound producing device which was the source of the sound. The sound producing device, if seized, shall be impounded subject to disposition of the issued citation and determination by the court whether the sound producing device shall be returned to the cited person or deemed contraband, subject to LCC 2.2045(2). It is the intent of this chapter to void such seizures, except where the person being cited has received two previous citations within the previous six months for the use of the same or similar sound producing device. The previous citations may, but need not, occur on the same date as the citation which prompts the seizure.

(4) Citation forms authorized pursuant to LCC chapter 10 may be used for any violation of this ordinance.

(5) In addition to any other enforcement procedures, the Board of County Commissioners may, upon its own motion or upon receipt of a petition requesting a hearing by the Board, signed by no fewer than five persons residing in the vicinity of a property upon which is located an alleged violation of this chapter, issue its order to the person producing or permitting to be produced the sound which allegedly violates this chapter to appear before the Board and show cause why the Board should not declare the sound a violation of this chapter and order the violation abated. Noncompliance with the order may result in the Board referring the order to the county counsel for injunctive enforcement or, alternatively, to the district attorney for appropriate action. [1989 o.280 §1]

### **2.2020 Sound Measurement**

(1) If measurements are made, they shall be made with a sound level meter. The sound level meter shall be an instrument in good operating condition, meeting the requirements of a Type I or Type II meter, as specified in ANSI Standard 1.4-1971. For purposes of this chapter, a sound level meter shall contain at least an A weighed scale and both fast and slow meter response capability.

(2) If measurements are made, personnel making those measurements shall have completed training in the use of the sound level meter, and measurement procedures consistent with that training shall be followed.

(3) Measurements may be made at or within 25 feet of the exterior boundary of a noise sensitive unit which is not the source of the sound, or within a noise sensitive unit which is not the source of the sound.

(4) All measurements made pursuant to this chapter shall comply with the provisions of this section. [1989 o.280 §1]

## **2.2025 Prohibitions**

(1) It shall be unlawful for any person to:

(a) Make, continue or cause to be made or continued, any noise which unreasonably annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of any person of normal sensitivity in a noise sensitive unit. The standard which shall be utilized in determining whether a violation of the provisions of this paragraph exists shall include, but not be limited to, the following:

- (A) The volume of the noise;
- (B) The intensity of the noise;
- (C) Whether the nature of the noise is usual or unusual;
- (D) Whether the origin of the noise is natural or unnatural;
- (E) The volume and intensity of the background noise, if any;
- (F) Whether the noise is plainly audible within a noise sensitive unit;
- (G) The nature and zoning of the area within which the noise emanates;
- (H) The density of the inhabitation of the area within which the noise emanates;
- (I) The time of day or night the noise occurs;
- (J) The duration of the noise; and
- (K) Whether the noise is recurrent, intermittent, or constant; or

(b) Produce or permit to be produced, with a sound producing device, sound which, when measured at or within 25 feet of the exterior perimeter of a noise sensitive unit which is not the source of the sound, or within a noise sensitive unit which is not the source of the sound, exceeds:

(A) 50 dBA at any time between 10 p.m. and 7 a.m. the following day, or

(B) 60 dBA at any time between 7 a.m. and 10 p.m. the same day, and the sound exceeds the levels identified in paragraphs (A) and (B) of this subsection for five consecutive minutes or ten minutes in any one-half hour period, or when intermittent sounds exceed the identified levels ten or more times in any one-half hour period.

(2) Notwithstanding any other provision of subsection (1)(b) above, prohibited sounds shall not exceed 15 dBA above the levels identified in paragraphs (A) and (B) of subsection (1)(b) of this section for any duration.

(3) If the noise source is an idling vehicle licensed to travel upon public roads of the state, the noise source shall not be allowed to exceed the levels identified in paragraphs (A) and (B) of subsection (1)(b) of this section for more than 15 consecutive minutes between 10:00 p.m. and 7:00 a.m. the following day and 20 minutes between 7:00 a.m. and 10:00 p.m. the same day. At no time may the sound from an idling vehicle, when measured in accordance with subsection (1)(b) of this section, exceed 15 dBA more than the levels established therein.

(4) If a measurement of the sound is made, subsection (1)(b) of this section shall supersede subsection (2) of this section and shall be used to determine if a violation exists.

(5) When the sound is emitted from motorboat, it shall not be subject to the standards above but a violation shall be established where the sound exceeds 75 dBA as measured on shore, provided that the measurement be taken no closer than 150 feet from the boat. Where a measurement is taken from a distance closer than 150 feet, a violation shall be established where the sound exceeds 84 dBA measured no closer than 50 feet from the boat. Motorboats shall not be operated on public waterways within the county unless equipped with a functioning underwater

exhaust, muffler, or system which continuously pipes water into the exhaust line. [1989 o.280 §1; 2006 o.445 §2]

### **2.2030 Exceptions**

Notwithstanding LCC 2.2025, the following exceptions from this chapter are permitted:

(1) Sounds caused by organized athletic or other group activities, when those activities are conducted on property generally used for those purposes, including: stadiums, parks, schools, churches, athletic fields, race tracks, airports, and waterways; provided, however, that this exception shall not impair the Sheriff's power to declare the event or activities otherwise to violate other laws, ordinances, or regulations.

(2) Sound caused by emergency work, or by the ordinary and accepted use of emergency equipment, vehicles and apparatus, whether or not the work is performed by a public or private agency upon public or private property.

(3) Sounds caused by sources regulated as to sound production by federal law, including, but not limited to, sounds caused by railroad, aircraft, or commercially licensed water craft operations.

(4) Sounds caused by bona fide use of emergency warning devices and alarm systems.

(5) Sound caused by blasting activities when performed under a permit issued by appropriate governmental authorities and only between the hours of 9 a.m. and 4 p.m., excluding weekends, unless the permit expressly authorizes otherwise.

(6) Sounds caused by industrial, agricultural or construction organizations or workers during their normal operations. However, this exception shall not apply to any forest practice, as defined in ORS 527.620, that is conducted within any urban growth boundary between the hours of 10:00 p.m. and 5:30 a.m., unless a variance has been obtained pursuant to LCC 2.2035.

(7) Sounds made by activities by or on direction of Lincoln County or any other public or private utility in maintenance, construction, or repair of public or utility improvements in public rights-of-way, easements, or property.

(8) Sounds caused by motor vehicles operated on public roads, which are regulated by state law, ORS 815.025.

(9) Sounds created by firearms. Firearms are not regulated by this ordinance. [1989 o. 280 § 1; 1993 o.326 § 1]

### **2.2035 Variances**

Any person who is planning the use of a sound producing device which may violate any provision of this chapter may apply to the Sheriff for a variance from the provision:

(1) The application shall state the provision from which a variance is being sought, the period of time the variance is to apply, the reason for which the variance is sought, and other supporting information which the Sheriff may reasonably require.

(2) The Sheriff shall consider:

(a) The nature and duration of the sound emitted.

(b) Whether the public health, safety or welfare is endangered.

(c) Whether compliance with the provision would produce no benefit to the public.

(d) Whether previous permits have been issued and the applicant's record of compliance.

(3) A variance may be granted for a specific time interval only.

(4) The sheriff shall, within ten days, deny the application, approve it, or approve it subject to conditions.

(5) The Sheriff's decision may be appealed to the Board of County Commissioners. Notice of appeal should be delivered to the executive assistant of the Board. The Board shall review the application *de novo* and within 15 days deny the application, approve it, or approve it subject to conditions.

(6) The Sheriff may at any time before or during the operation of a variance granted by the Sheriff revoke the variance for good cause. The Board may at any time before or during the operation of any variance revoke the variance for good cause. [1989 o.280 §1]

#### **2.2040 Additional Remedies**

The provisions of this chapter shall be cumulative and non-exclusive and shall not affect any other claim, cause of action, or remedy; nor, unless specifically provided, shall it be deemed to repeal, amend, or modify any law, ordinance, or regulation relating to noise or sound but be deemed additional to existing legislation and common law on such subject. [1989 o.280 §1]

#### **2.2045 Penalties**

(1) Violation of any provision of LCC 2.2000 to 2.2045 shall be punished in accordance with LCC chapter 10.

(2) In addition to the penalties here prescribed, the court may order any sound producing device, found to have been used to violate this chapter, seized, confiscated, and destroyed as contraband, or sold with the proceeds of sale to be deposited in the county general fund. [1989 o.280 §1]

## **INTERGOVERNMENTAL HEALTH CARE SERVICES**

### **2.2300 Findings for Intergovernmental Agreement**

Lincoln County hereby finds and determines that it has the authority and shall take such steps as it sees fit to provide medical care and services and facilities for the care of sick and injured persons within Lincoln County, Oregon, by agreement with other governmental entities already having such facilities, or otherwise, as the Board of Commissioners shall determine. This shall not be construed, however, to require the provision of any particular services or facilities. [1990 o.296 §1]

### **2.2305 Intergovernmental Agreement for Health Care Services and Facilities**

In implementation of LCC 2.2300, the Board of Commissioners is hereby authorized to enter into an intergovernmental cooperation agreement with the Pacific Communities Hospital District and any other municipal entity as the Commissioners may see fit, upon such terms and conditions as they shall determine, for the provision of such services and facilities. [1990 o.296 §2]

### **2.2310 Form of Intergovernmental Agreement**

The form of intergovernmental cooperation agreement between Lincoln County and the Pacific Communities Hospital District which was attached to Ordinance # 296 is expressly approved, and the Board of Commissioners is authorized and directed to enter into that agreement, but this express approval of the form of such agreement shall not preclude the exercise of the authority and discretion of the Board of Commissioners in entering into any other agreements of a similar or related nature, nor in the subsequent modification of the agreement which was attached to Ordinance # 296. [1990 o.296 §3]

## **DECEASED INDIGENTS**

### **2.2500 Disposal of Deceased Indigents**

(1) In the event of death of any person receiving Adult and Family Services support in Lincoln County at the time of their death and for which no other funds are available for disposal of the remains of the deceased, the Lincoln County Human Services Department shall cause the remains to be disposed of by cremation at county expense, except that disposal shall be by burial when there is substantial evidence that cremation would violate the deceased's religious tenets.

(2) The department shall contract as necessary to dispose of the remains of the deceased as required in this section.

(3) The department shall recover the cost of disposal from any person, estate, or agency responsible therefor.

(4) In the event the state provides funding for the disposal of the remains of deceased Adult and Family Services recipients in any county in Oregon, the department shall not dispose of those remains at county expense. [1986 o.240 §§ 1, 2, 3 and 4]

## **FORFEITURE**

### **2.3000 Forfeiture of Motor Vehicle Being Driven by Person Who is Under the Influence of Intoxicants**

(1) A motor vehicle is a nuisance and is subject to civil *in rem* forfeiture if the motor vehicle is being driven by a person who is under the influence of intoxicants in violation of ORS 813.010 and the person:

(a) Has previously been convicted of, or forfeited bail or security for, driving while under the influence of intoxicants, or its statutory counterpart in any jurisdiction, within ten years before the date of the commission of the present offense;

(b) Has a charge of driving while under the influence of intoxicants, or its statutory counterpart in any jurisdiction, pending on the date of commission of the present offense;

(c) Has previously participated in a driving while under the influence of intoxicants diversion program, or any similar alcohol or drug rehabilitation program in this state or in any other jurisdiction, within ten years before the date of commission of the present offense;

(d) Is participating in a driving while under the influence of intoxicants diversion program, or any similar alcohol or drug rehabilitation program in this state or in any other jurisdiction, on the date of commission of the present offense;

(e) Has previously been convicted of, or forfeited bail or security for, murder, manslaughter, criminally negligent homicide or assault that resulted from the operation of a motor vehicle in this state, or in any other jurisdiction, within ten years before the date of the commission of the present offense; or

(f) Has a charge of murder, manslaughter, criminally negligent homicide or assault that resulted from the operation of a motor vehicle in this state, or in any other jurisdiction, pending on the date of commission of the present offense. [1994 o.335 § 2]

### **2.3005 Procedures and Limitations Applicable to Forfeiture Proceedings Brought Under LCC 2.3000**

Notwithstanding LCC chapter 10, forfeiture proceedings under LCC 2.3000 shall be subject to the procedures and limitations set forth in ORS Chapter 475A and the Oregon Constitution, Article XV, Section 10. [1994 o.335 § 3; 2008 o.454 § 1]

**2.3010** [2001 o.418 §2; repealed 2008 o.454 §2]

**2.3015** [2001 o.418 §3; repealed 2008 o.454 §2]

## **FIBER OPTICS**

### **2.4000 CoastNet Fiber Optic Communications Network**

(1) The Lincoln County Board of Commissioners declares that the development of a high-speed fiber optic communications network in Lincoln County is vital to economic development in Lincoln County, and therefore hereby specifically exercises its authority to pursue the development of such a network.

(2) Lincoln County, Lincoln County Economic Development Corporation DBA the Economic Development Alliance of Lincoln County, the Central Lincoln People's Utility District, and 36 other public and non-profit organizations have proposed to encourage economic development in Lincoln County by way of providing a high-speed fiber optic communications network along the Central Coast commonly known as CoastNet. CoastNet would combine, by contract between the County and the Alliance, an unswitched fiber optic cable system (dark fiber), owned by the Central Lincoln People's Utility District and shared with the County through an ORS chapter 190 intergovernmental agreement, with fiber optic data transmission switches owned by the Alliance and purchased with grant money for that purpose by the Oregon Economic and Community Development Department. Under the proposed CoastNet contract between the County and the Alliance, the Alliance would then offer CoastNet services to certain resellers of CoastNet services in an effort to encourage economic development in Lincoln County.

(3) In order to facilitate the development of the proposed CoastNet system described in subsection (2) of this section, the Office of Lincoln County Legal Counsel is hereby authorized to engage in all legal proceedings and processes necessary to facilitate that development, including, but not limited to, application for any required or appropriate licenses and certificates, and negotiation of any necessary or appropriate interconnection agreements. [1997 o.373 § 2; 1999 o.393 § 1; 2008 o.450 § 1]

## OCEAN WAVE ENERGY AND MARINE RESERVES

### **2.4100 Sustainable Energy; Wave Energy Power Project**

(1) The Lincoln County Board of Commissioners declares that the development of sustainable energy in Lincoln County is vital to economic development and public health and safety in Lincoln County, and therefore hereby specifically exercises its authority to pursue the development of sustainable energy resources, including, but not limited to, wave energy generation.

(2) In order to facilitate the development of sustainable energy resources in Lincoln County, the Office of Lincoln County Legal Counsel is hereby authorized to engage in all proceedings and processes necessary to facilitate that development, including, but not limited to, application for any required or appropriate permits, licenses, and certificates, and negotiation of any necessary or appropriate contracts, intergovernmental agreements, and interconnection agreements. [2006 o.441 § 2]

### **2.4105 Establishment of FINE Committee**

(1) There is hereby established a Fishermen Involved in Natural Energy (FINE) Committee, consisting of between 7 and 19 members appointed by order of the Lincoln County Board of Commissioners.

(2) Committee members shall be appointed to represent the spectrum of fisheries potentially impacted by the siting of ocean wave energy facilities or marine reserves.

(3) Committee members serve at the discretion of the Board, or until a member resigns, or until the Committee is disbanded by the Board as having completed its purposes.

(4) In addition to the duties set forth in LCC 2.4110 to 2.4115, the FINE Committee shall carry out other duties as identified by order of the Board. [2007 o.446 § 2; 2008 o.455 § 1]

### **2.4110 Duties of FINE Committee Relating to Review of Ocean Wave Energy Facility Permit Applications and Marine Reserve Nominations**

(1) The FINE Committee shall review all applications for a permit or preliminary permit or similar applications, licenses or other approvals for the siting of ocean wave energy facilities in the territorial sea or outer continental shelf adjacent to Lincoln County. Permits or preliminary permits include, but are not limited, any similar actions before federal or state agencies claiming jurisdiction over siting of ocean wave energy facilities.

(2) The Committee shall make recommendations to the Board of Commissioners relating to whether the Board should support, support with modifications, oppose, or take other action relating to each ocean wave energy facility application reviewed by the Committee.

(3) The FINE Committee shall review all suggested or nominated marine reserves in the territorial sea or outer continental shelf adjacent to Lincoln County.

(4) The Committee shall make recommendations to the Board of Commissioners relating to whether the Board should support, support with modifications, oppose, or take other action relating to each suggested or nominated marine reserve reviewed by the Committee. [2007 o.446 § 3; 2008 o.455 § 2]