

SOLID WASTES**70.0101 SHORT TITLE.**

Chapter 70 of the Polk County Code may be cited as the Polk County Solid Waste Ordinance.

70.0201 PURPOSE AND POLICY.

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

- (1) Provide for safe and sanitary accumulation, storage, collection, transportation, and disposal of solid wastes.
- (2) Prohibit accumulation of wastes on private or public property in such manner as to create a public nuisance, a hazard to health, or a condition of unsightliness and to provide for the abatement of such conditions where found.
- (3) Provide for the coordinated Countywide solid waste management plan in cooperation with Federal, State, and local agencies responsible for the prevention, control, or abatement of air, water, and ground pollution and prevention of litter.
- (4) Provide for and encourage research, studies, surveys, and demonstration projects on developing more sanitary, efficient, and economical solid waste management systems.
- (5) Provide for the coordinated solid waste management plan with cities within Polk County and with other counties or cities where appropriate.
- (6) Provide for cooperation and agreements between Polk County and other counties involving joint or regional franchising of solid waste collection and disposal.
- (7) Utilize minimum standards for location and operation of disposal sites to protect adjacent or nearby residents.
- (8) Encourage utilization of the capabilities and expertise of private industry in accomplishing the purposes of this Ordinance.

70.0301 GENERAL DEFINITIONS.

For the purpose of this Ordinance, words used in the present tense include the future, the singular number includes the plural, the word "shall" is mandatory and not directory, and the term "this Ordinance" shall be deemed to include all amendments hereafter made to this Ordinance. The definitions applicable to this Ordinance are:

- (1) **ADMINISTRATOR.** The County Engineer, County Health Officer, County Sanitarian, or other person designated by resolution of the Board to administer this Ordinance and

the duly authorized deputy or assistant of such person.

(2) BOARD. The Polk County Board of Commissioners.

(3) COLLECTION VEHICLE. Any vehicle used to collect or transport solid waste or recyclables.

(4) COMMITTEE. The Solid Waste Advisory Committee created under Section 70.0506.

(5) COMPENSATION. Includes any type of consideration paid for service, including but not limited to rent, the sale of recyclable materials, and any other direct or indirect provision for payment of money, goods, or benefits by tenants, licensees, or similar persons. It shall also include any exchange of service, including the hauling of solid waste. Compensation includes the flow of consideration from the person owning or possessing the solid waste or waste to the person collecting, storing, transporting, or disposing of solid waste.

(6) DEPARTMENT. The Department of Environmental Quality (DEQ).

(7) DISPOSE OR DISPOSAL. Includes accumulation, storage, collection, transportation, and disposal of solid wastes or recyclable materials.

(8) DISPOSAL SITE. Any land or facilities used for the disposal, handling, or transfer of, or resource recovery from, solid waste and waste 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 through a service and which is used by the owner or tenant thereof to dispose of soil, rock, or non-putrescible industrial waste products resulting from the process of manufacturing.

(9) FAIR MARKET VALUE. The cash price (or its equivalent in terms of savings on collection and disposal fees) that is at least equal to the cost of collection and disposal of a recyclable material or group of recyclable materials that would be purchased or exchanged between the collector of said recyclable material or group of recyclable materials and the generator of said recyclable material or group of recyclable materials. Collection includes type, frequency, condition, and extent of collection service (including education and promotion for recycling).

(10) FAIR MARKET VALUE EXEMPTION. The exemption set forth under ORS 459.192 wherein a source-separated recyclable material must be purchased from the generator or exchanged between the generator and the franchisee or permittee with a measurable savings in solid waste collection or disposal cost to the generator resulting, in order to qualify for the exemption.

(11) FRANCHISE. A general privilege to provide specified solid waste management services issued by the Board. A "Franchisee" is the holder of a franchise.

(a) FRANCHISE, COLLECTION. A franchise to store, collect, or transport solid waste.

(b) FRANCHISE, DISPOSAL. A franchise to create or maintain a disposal site.

- (c) **FRANCHISE, TRANSFER.** A franchise to create or maintain a transfer site or facility.
- (12) **HAZARDOUS SOLID WASTE.** Solid waste that:
 - (a) Is defined as hazardous by ORS Chapter 466.005, as implemented by rules of the Oregon Environmental Quality Commission, or
 - (b) May, by itself or in combination with other solid wastes, be infectious, explosive, poisonous, caustic, or toxic or otherwise dangerous to human, plant, or animal life or public or private property, as determined by the Administrator or franchisee.
- (13) **HEARINGS OFFICER.** The person designated by the Board to conduct hearings provided by this Ordinance.
- (14) **INCINERATOR.** A combustion device specifically designed for the reduction, by burning, of solid, semi-solid, or liquid combustible wastes.
- (15) **INOPERABLE VEHICLE.**
 - (a) A dismantled, unserviceable, inoperable, junked, or abandoned vehicle or any vehicle legally or physically incapable of being operated for a period exceeding 30 days unless such vehicle, or parts thereof, is completely enclosed within a building, or stored on property lawfully designated under the Zoning Ordinances of Polk County as a place where such vehicles may be stored.
 - (b) An inoperable vehicle shall not mean a licensed or unlicensed camper trailer, utility trailer, or unlicensed operable vehicle or vehicles which are used on private property for the production, propagation, or harvesting of agricultural products grown or raised on such lands.
- (16) **LANDFILL.** A disposal site operated by means of compacting and covering solid waste at specific designated intervals, but not each day.
- (17) **MOTOR VEHICLE TIRE.** Any motor vehicle tire made wholly or in part of rubber or of any other synthetic material, including tire bodies, carcasses, casings, or parts of tires in whatever form, originally designed for use by any vehicle propelled by a motor, including any vehicle pushed or pulled by a motorized vehicle.
- (18) **NON-PROFIT CORPORATION OR ORGANIZATION.** A corporation or organization in which no part of its income is distributed to its members, directors, or officers and which is not organized for purposes of profit. This may include, but is not limited to, churches, private or public schools, Boy Scouts, service clubs, or similar non-profit corporations or organizations.
- (19) **ON-ROUTE RECYCLING COLLECTION.** The pick-up of source-separated recyclable materials from the generator at the place of generation.

- (20) **PERMIT.** A limited license to provide only specified recycling or reuse services. "Permittee" is the holder of a permit.
- (21) **PERSON.** Includes individuals, corporations, associations, firms, partnerships, and joint stock companies.
- (22) **PUTRESCIBLE MATERIAL.** Organic materials that can decompose and may give rise to foul smelling offensive products.
- (23) **RECYCLING DEPOT.** A center, depot, drop box, or other place for receiving source-separated recyclable materials with or without compensation. This shall not include a salvage, junk, or auto-wrecking yard.
- (24) **RECYCLABLE MATERIAL.** Any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same materials.
- (25) **REGULATIONS.** Rules or regulations promulgated by the Board pursuant to this Ordinance.
- (26) **RESOURCE RECOVERY.** The process of obtaining useful material or energy resources from solid waste and includes:
- (a) **ENERGY RECOVERY.** A process in which all or a part of the solid waste materials are processed to utilize the heat content or other forms of energy of or from the material.
 - (b) **MATERIAL RECOVERY.** Any process of obtaining from solid waste, by pre-segregation or otherwise, materials which still have useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled for the same or other purpose.
 - (c) **RECYCLING.** Any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity.
 - (d) **REUSE.** The return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.
- (27) **RULES.** Rules promulgated by State agencies pursuant to Oregon Revised Statutes Chapter 459.
- (28) **SANITARY LANDFILL.** A disposal site operated by means of compacting and covering solid waste at least once each operating day.
- (29) **SERVICE.** The accumulation, storage, collection, transportation, or disposal of solid wastes by private persons for compensation, and the resource recovery of recoverable materials by franchisees.

(30) SERVICE AREA. The geographical area in which service, other than operation of a disposal site or transfer facility, is provided by any person.

(31) **SOLID WASTE.** Solid waste shall include all putrescible and non-putrescible waste, including but not limited to, garbage, rubbish, refuse, ashes, waste paper, and cardboard; grass clippings; composts; sewer sludge; residential, commercial and industrial appliances, equipment, and furniture; discarded, inoperable, or abandoned vehicles or vehicle parts and waste motor vehicle tires; manure, vegetable, or animal solid and semi-solid waste, and dead animals. Waste shall mean 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 terms solid waste or waste do not include:

- (a) Environmentally hazardous wastes as defined in ORS 466.005.
- (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 that has been zoned for residential non-agricultural purposes.
- (c) Septic tank and cesspool pumping or chemical toilet waste.
- (d) Reusable beverage containers as defined in ORS 459.860.
- (e) Source-separated principal recyclable materials as defined in ORS 459 and the rules promulgated thereunder and under this Ordinance which have been purchased or exchanged for fair market value.

(32) **SOLID WASTE MANAGEMENT.** Prevention or reduction of solid waste; management of the storage, collection, transportation, treatment, utilization, processing, and final disposal of solid waste; or resource recovery from solid waste; and facilities necessary or convenient to such activities.

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

(34) **TRANSFER SITE OR TRANSFER FACILITY.** A fixed or mobile facility, used as an adjunct to collection vehicle(s), resource recovery facility, disposal site between the collection of the waste/solid waste and disposal site, including but not limited to, another vehicle, a concrete slab, pit, building, hopper, railroad gondola, or barge.

(35) **UTILIZATION.** The term utilize, utilization, or utilization of solid waste or waste shall mean productive use through recycling, reuse, salvage, resource recovery, energy recovery, or landfilling for reclamation, habitation, or rehabilitation of land.

(36) **WASTE.** Useless, unwanted or discarded materials.

(37) **WASTE REDUCTION.** Reduction of the volume of waste that would otherwise be disposed of in a landfill through techniques such as source reduction, recycling, reuse, and other resource recovery techniques.

(38) **WASTE TIRE.** A tire that is no longer suitable for its original intended purpose

because of wear, damage, or defect and is fit only for:

- (a) Remanufacture into something else, including a recapped tire; or
- (b) Some other use which differs substantially from its original use.

(39) WASTESHED. An area of the State having a common solid waste disposal system or a common reporting requirement as designated by the Environmental Quality Commission as an appropriate area of the State within which to develop a common recycling program.

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

70.0401 ADMINISTRATION.

The Administrator, under the supervision of the Board and with the assistance of the Committee, shall be responsible for the enforcement of this Ordinance. In order to carry out the duties imposed by this Ordinance, the Administrator shall be allowed to enter or authorize personnel to enter on the premises of any person regulated by this Ordinance at reasonable times and in a reasonable manner to determine compliance with this Ordinance and regulations promulgated pursuant thereto. The Administrator shall serve as staff to the Committee.

70.0402 PERSONS AND AGENCIES EXEMPTED.

(1) Nothing in this ordinance requires a franchise or permit of the following persons or for the following businesses or practices:

- (a) The collection, transportation, and reuse of repairable or cleanable discards by a non-profit corporation or organization regularly engaged in such business or activity including, without limitation, Salvation Army, St. Vincent DePaul, Goodwill, 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 non-profit corporation or organization, which organization was not organized or operated for any solid waste management purpose, and which organization is using the activity for fund raising for charitable purposes 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 waste created as an incidental part of regularly carrying on the business of building demolition or auto wrecking, to the extent licensed by the State of Oregon; gardening or landscaping services; or septic tank pumping or sludge collection and/or disposal service. However, disposal or storage of gardening or landscaping waste is not exempt from the disposal franchise requirements of this

Ordinance.

- (e) The transportation by a person of solid waste produced by such person to a disposal site or market. In the case of non-owner occupied property, the waste is produced and owned by the occupant and not by the landlord or property owner or agent of such landlord or property owner. This subsection does not apply to solid waste left by a former occupant.
- (f) The transportation by a disposal site franchisee of material collected at a transfer site or transfer facility.
- (g) The collection by the County or other subordinate jurisdiction of leaves, street sweepings, or similar wastes, and transportation to a disposal site, resource recovery site or market.
- (h) Any other practice, business, or activity that is exempted by the Board.

(2) The Board may authorize exemptions pursuant to Subsection "H" above, provided that such exemptions do not conflict with Section 70.0707 of this Ordinance, and provided that the following requirements are met:

- (a) Applicant shall obtain an application for exemption from the Administrator. A completed application shall be filed with the Administrator.
- (b) Upon twenty (20) days written notice to the applicant and affected franchisees or permittees, a public hearing shall be held before the Board.
- (c) The Administrator shall review the application and provide information and recommendations to the Board to assist it in reaching a determination.
- (d) Not later than 10 days after the conclusion of the hearing to consider the application, the Board shall make a decision, including written findings, based upon the following factors, among others:
 - (i) The purposes, policies, and findings stated in Section 70.0201 of this Ordinance.
 - (ii) The ability of the existing franchise holders or exemption holders to provide the required service.
 - (iii) Any unnecessary or unreasonable hardships or practical difficulties which can be relieved only by granting an exemption.
 - (iv) That the granting of an exemption will not be materially detrimental or have a substantial impact on service, consumer rates, or the franchisee or permittee of the service area or service.
 - (v) The ability of the applicant to secure the necessary equipment and personnel to provide the service.

- (e) The Board's decision shall be served on the applicant and affected franchisees or permittees. The Board may attach any conditions or limitations to the granting or exercising of an exemption deemed necessary to carry out the purposes and policies of this Ordinance. The Board may impose additional conditions on an existing franchisee/permittee in this regard.

(3) Nothing in this Ordinance 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 or by Oregon Revised Statutes, nothing in this Ordinance shall apply within the boundaries of any incorporated city.

(5) Nothing in this Ordinance 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) 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 468.740 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 fowls or animals.

(6) Nothing in this Ordinance requires a franchise for the operation of a recycling depot for totally source-separated materials by a non-profit organization which was organized or operated for one or more solid waste management purposes in addition to other purposes of the organization; provided that the operation be continuous from the effective date of this Ordinance; and that upon termination of the recycling depot operations after the effective date, this exemption terminates. The non-profit corporate operator of such existing recycling depot shall apply for a permit from the County within thirty (30) days after the effective date of this Ordinance.

(7) Unless exempted pursuant to this Section, or franchised or permitted pursuant to Section 70.0701 to 70.0716, no person shall solicit for service customers, advertise the providing of service, or provide service in Polk County.

70.0501 SOLID WASTE ADVISORY COMMITTEE.

(1) The Solid Waste Advisory Committee shall consist of five members. All members shall be appointed by the Board from a list of candidates submitted by the Administrator. Members shall serve for the term set by the order and at the pleasure of the Board. The Chairperson shall be designated as provided in Polk County Code Section 10.510.

(2) The following persons may be appointed by the Board as ex officio members entitled to participate in the proceedings of the Committee, but not to vote; the Planning Director or their designee; a collection or disposal franchise holder; the County Engineer or their designee. The Board may appoint additional ex officio members to assist in decision-making upon the request of the Administrator.

(3) The function of the Committee is to assist the Board in critical planning and implementation in solid waste management. First priority shall be given to those areas assigned by the Board and otherwise to recycling and reuse and matters related to those fields.

70.0502 REGIONAL SOLID WASTE COMMITTEE.

The Board may appoint one or more members to serve on any Regional Solid Waste Committee to advise the Board.

70.0601 REGULATION OF SOLID WASTE MANAGEMENT.

Upon its own motion or upon recommendation of the Committee, the Board may adopt reasonable and necessary regulations governing disposal sites or implementing this Ordinance. Such regulations shall conform to ORS Chapter 459 and rules promulgated pursuant thereto.

70.0701 PERSONS, ACTIVITIES, AND PRACTICES REGULATED.

Except as provided in Section 70.0402, no private person shall provide service for compensation except as authorized by a franchise issued pursuant to Sections 70.0701 to 70.0716.

70.0702 APPLICATIONS FOR FRANCHISES.

(1) Application for a franchise shall be made on forms provided by the Administrator. The Administrator may require filing of additional information necessary to determine compliance with this Ordinance, ORS Chapter 459, and regulations and rules promulgated thereunder, together with any other applicable laws or County ordinances.

(2) The applicant shall prove to the Board that:

- (a) Applicant has sufficient collection vehicles, equipment, land, facilities, or personnel to meet the standards established by this Ordinance and ORS Chapter 459 and regulations or rules promulgated thereunder.
- (b) Applicant has in force public liability insurance in the amount of not less than the amounts specified in ORS 30.270, which shall be evidenced by a certificate of insurance.
- (c) Applicant has good moral character or, if the applicant is a business entity, the principal partners or officers are of good moral character.
- (d) Applicant has sufficient experience in properly providing service of a comparable quality and quantity to ensure compliance with this Ordinance, any regulations promulgated thereunder, and any franchise issued to them. If

the applicant does not prove to the satisfaction of the Board that they have sufficient and successful experience, the Board may require the applicant to submit a Corporate Surety Bond in the amount of \$5,000, or 1/12 the estimated gross revenue to be derived from service annually, whichever is greater, guaranteeing full and faithful performance by the applicant of the duties and obligations of a franchisee under this Ordinance. If the applicant is applying for both a disposal franchise and a collection franchise or collection franchises, the Board may permit the applicant to provide a single bond covering all such liabilities.

(3) Applicants shall specify the nature, type, and extent of service to be provided; any solid wastes that will not be accepted for collections or disposal; and special requirements for the handling of hazardous wastes.

70.0703 EXISTING COLLECTION OPERATIONS.

Franchisees who were providing service on the effective date of this Ordinance shall be considered the awarded collection franchisee for the area they were serving on the effective date of this Ordinance and as designated in the last franchise order.

70.0704 SPECIFIC COLLECTION FRANCHISE REQUIREMENTS.

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

(1) Will provide on-route collection of source-separated recyclable materials, if required by the Board, or in accordance with ORS 459.165 through 459.200 and 459.250, together with the rules and regulations promulgated thereunder.

(2) Will use disposal sites designated by the Board.

(3) Will be:

(a) Providing service in the service area for which they apply on the effective date of this Ordinance and has a majority of service accounts in such service area, which shall be evidenced by a list of customers served and a map of the service area; or

(b) Applying for a service area that has not been franchised to another person, is not being served by the franchisee after notice and a reasonable opportunity to do so, or is not being adequately served by a franchisee, and that there is a substantial demand from customers for a change in service to the area.

(4) Will, if applying for all or a part of a service area franchised to another person pursuant to subsection (2) of this section, have available on the first day of such proposed service, collection vehicles, containers, or other equipment equal to that presently used in providing such service and that service would be equal to existing service.

70.0705 SPECIFIC DISPOSAL FRANCHISE REQUIREMENTS.

(1) An applicant for a disposal franchise shall submit a duplicate of the information submitted to the Department of Environmental Quality on such site under ORS Chapter 459 and rules promulgated thereunder.

(2) Each applicant shall supply a plan for rehabilitation and use of the site after disposal has been terminated and such use shall be a use permitted within the zone in which such land is located. Such plan shall be prepared at a scale of not less than one inch equals 400 feet with topographical contours, an interval of which shall be not less than 25 feet. At the discretion of the Administrator or Board, the applicant may be required to furnish a map showing greater detail to determine compliance with this Ordinance and standards established by the Board. Amended plans may be submitted for approval in the same manner as initial plans.

(3) Where the land upon which a disposal site would be located is privately owned, the owner of the land and the franchise applicant shall, on forms furnished by the Administrator, jointly and severally agree to accept, to be responsible for, or to be liable for:

- (a) The entry upon the subject premises by persons designated to administer this Ordinance to determine compliance with this Ordinance and performance of the obligation of the franchisee and the landowner.
- (b) Proper establishment, maintenance, and operation of the disposal site as required by this Ordinance and applicable provisions of ORS Chapter 459, rules promulgated thereunder, and other laws or County ordinances.
- (c) Rehabilitation or restoration of the site upon termination of disposal under the land use plan submitted pursuant to subsection (2) of this section or any amendment thereto.
- (d) The entry upon the subject premises by persons designated by the Board to properly establish, maintain, operate, rehabilitate, or restore the site where the landowner or franchisee do not comply with their agreement executed pursuant to this subsection after written notice and a reasonable opportunity to comply as provided in Section 70.0711 (2).

(4) The Board may order the recording with the County Clerk records of the agreements executed pursuant to this section as a recorded encumbrance on the real property to assure compliance with the conditions and agreements.

70.0706 REVIEW OF APPLICATIONS FOR FRANCHISES.

(1) Applications shall be reviewed by the Administrator who shall make such investigation as deemed appropriate and who may request assistance of other persons as necessary.

(2) The Administrator shall notify the holder of, or an applicant for, another franchise for any part of the service area under consideration or whose existing or proposed disposal site would reasonably be affected by the disposal site under consideration.

(3) Upon the basis of the application, evidence submitted, and results of said investigation, the Administrator shall make a finding on, (1) the need for a transfer or disposal franchise if the application is for these kinds of franchises, (2) the qualifications of the applicant, and (3) whether additional areas should be included or additional service or equipment should be provided. On the basis of said findings, the Administrator shall recommend to the Board whether the application should be granted, denied, or modified.

(4) Unless the time is extended by the Board for a good cause, the Administrator shall make a recommendation to the Board within 60 days after the application and any required supplemental information has been filed.

(5) The Board:

- (a) Shall consider the application and the recommendation of the Administrator at the next regular meeting of the Board or at a special meeting called for that purpose.
- (b) May require additional investigation to be made or information to be filed.
- (c) May, after written notice to interested persons, call an informational hearing to permit interested persons to testify orally or in writing. The Board shall designate a Hearings Officer to receive the Administrator's recommendation, hear testimony, and review evidence.

(6) Upon the basis of the application, any evidence or testimony submitted, and the Administrator's recommendation, the Hearings Officer shall make findings on the need for a transfer or disposal franchise, the qualifications of the applicant and whether additional area should be included; additional services be provided; additional equipment, facilities, land or personnel be provided; whether conditions should be imposed on disposal; and, with respect to disposal sites, whether or not the site may be integrated with existing private or public sites and whether or not the site is economically feasible.

(7) The Hearings Officer shall, upon the basis of the findings, grant, deny, or modify, or attach appropriate conditions, and shall transmit the results of such action to the applicant.

(8) The decision of the Hearings Officer under Subsection (7) of this section becomes final upon review and ratification by the Board, unless the decision of the Hearings Officer is appealed to the Board or if the Board calls it up for review under Section 70.0708 of this ordinance.

70.0707 EXCLUSIVE OR JOINT SERVICE UNDER A FRANCHISE.

(1) If upon recommendation of the Administrator the Board finds that an applicant for a collection franchise cannot provide service to a single customer, a group or type of customers, or for a particular type or unusually large quantity of solid waste, it may issue a franchise for joint service with another person who can provide such service. Where the Board finds that the applicant is able to provide adequate service of all types within the defined service area, it shall issue an exclusive franchise for that area to the applicant.

(2) If a franchisee is unable to provide service for particular types or unusually large quantities of solid wastes:

- (a) The Administrator may permit the franchisee to subcontract such service to another person if it is found that the quality and extent of service would not be jeopardized. The Administrator may require the filing of such information as deemed necessary. The Administrator may request a recommendation from the Committee on the subcontract.
- (b) The Board may issue a temporary or permanent franchise to another person for the limited purpose of providing service to the customer or customers having such solid wastes.

(3) Upon recommendation of the Administrator and a finding by the Board that the need for service justifies action before a complete investigation and final determination can be made, the Board may order the Administrator to issue a temporary certificate, valid for a stated period not to exceed six months, entitling a person to serve a defined service area or customers.

70.0708 APPEAL FROM DETERMINATION OF BOARD ON FRANCHISE.

(1) Any interested party, applicant for a franchise, other affected franchise holders or franchise applicants may appeal an adverse decision of the Hearings Officer by filing written notice of appeal with the Board within the time prescribed by Section 70.0706(8) of this Ordinance. Within the same period of time, the Board on its own motion may call up a decision of the Hearings Officer for review.

(2) Unless an emergency finding has been entered, the filing of notice of appeal shall suspend operation of the decision until a final determination by the Board on the appeal.

(3) The Board shall provide an adequate opportunity for the appellant and affected public agencies or governmental jurisdictions to submit written briefs and make oral presentations. However, the Board shall not receive new evidence or hear new testimony, unless a majority of members so move.

(4) Upon the basis of submissions entered pursuant to this section, the Board may affirm, modify, or rescind the Hearings Officer's decision, or may remand the matter to the Hearings Officer for the taking of additional testimony and receipt of additional evidence, with appropriate reconsideration of the findings and decision. In rate determinations, the decision of the Board shall be final.

(5) If the Board makes a final determination rejecting all or part of the application for franchise, the applicant may not submit another application containing all or a portion of the same service area or same disposal site for a period of six months, unless this provision is waived by the Board upon a finding that the public interest requires reconsideration within a shorter period of time.

70.0709 RESPONSIBILITIES OF FRANCHISEES.

(1) Except as provided in Subsection (3) of this section, no franchisee shall voluntarily discontinue service to all, or a substantial portion, of their service area or at their disposal site until they have:

- (a) Given 90 days written notice to affected customers in their service area.
- (b) Posted 90 days notice at their disposal site.
- (c) Given 90 days written notice to the Administrator.
- (d) Obtained approval of the Board.

(2) Where a franchisee is not serving a service area, or portion thereof, at the time of granting the franchise, the Board may order that service be provided at such time as it finds the service to be necessary and reasonable.

(3) Subsection (1) of this section shall not apply to:

- (a) Change, restriction, or termination of service when required by any public agency, public body, or court having jurisdiction.
- (b) Refusal to provide service to customers refusing to pay for service in accordance with rates established pursuant to this Ordinance. Where service has been refused to a customer for refusal to pay for service, the franchisee may require a reasonable deposit to guarantee payment for future services before reinstating such service.
- (c) Transfer of franchises pursuant to Section 70.0716.
- (d) Refusal of service to a customer upon reasonable ground and with the approval of the Administrator upon a finding that service at the particular location would jeopardize the safety of the driver of a collection vehicle or the motoring public, that the customer has not provided reasonable access to the pickup point for the containers storing solid wastes without hazard or risk to the person providing service, or that weather conditions prevent service to the particular customer.
- (e) Subcontracts under collection franchises pursuant to Section 70.0707 or to a subcontract to operate a disposal site where the Administrator has approved the subcontract after finding that the quality or extent of service would not be jeopardized. In making a determination, the Administrator may request a recommendation from the Committee, information deemed necessary to insure compliance, and written approval of the owner of the land on which the site is located.

(4) A franchisee may be required to provide recycling services. If the Board determines

that a recycling service is technically and economically feasible, a franchisee shall provide such service directly or by subcontract and may include any net cost in rates charged to service customers.

(5) The privileges granted to a franchisee or permittee are upon the express condition that said franchisee or permittee shall be liable for all damages or injuries to persons or property caused by the negligence or mismanagement of the franchisee or permittee or any of their employees while engaged in the business under the terms of the franchise or permit. Should Polk 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 or permittee, under the terms of the franchise or permit, the franchisee or permittee shall be notified in writing of such suit and it thereupon shall be their duty to defend or settle the suit; and should judgment go against Polk County, its officers, agents, or employees shall recover the amount thereof with costs and attorney fees from the franchisee or permittee. The record of judgment against Polk County, or any of its officers, agents, or employees in any such case, shall be conclusive evidence to entitle Polk County, its officers, agents, or employees to recover against the franchisee or permittee.

70.0710 ENFORCEMENT OF FRANCHISE PROVISIONS.

In addition to the remedy provided in Section 70.0712, and penalties provided elsewhere in this ordinance:

(1) The Administrator shall, upon reasonable cause, make an investigation to determine if there is sufficient reason and cause to suspend, modify, revoke, or refuse to renew a franchise as provided in this subsection. If in the judgment of the Administrator, there is sufficient evidence to constitute a violation of this Ordinance, ORS Chapter 459, or the rules or regulations promulgated thereunder, the Administrator shall notify the franchisee in writing of the alleged violation and what steps must be taken to cure the violation and follow the requirements set forth in the notice. The Administrator shall send a copy of the notice to the Board. Upon finding that a violation exists and that the franchisee is unable to or refuses to cure the violation, the Administrator shall make a recommendation to the Board that the franchise be suspended, modified, or revoked or that it not be renewed together with any conditions the Administrator deems appropriate.

(2) In the event that the landowner or franchisee under a disposal franchise does not comply with agreements executed pursuant to Section 70.0705 within a reasonable time after written notice to comply, the Board may institute proceedings under Subsection (3) of this section to enforce compliance. "Reasonable time" within this subsection shall be determined by the Board upon the basis of the health, safety, and welfare of the people of Polk County and of the area. In determining what is a "reasonable time," the Board shall give due consideration to, but shall not be limited to the following:

- (a) The nature of the deficiency.
- (b) Conditions created by the deficiency.
- (c) Hazards to health or safety.
- (d) Creation of a condition of unsightliness.
- (e) Creation of a public or private nuisance.

- (f) Whether there is a satisfactory alternative practice, procedure, or operation.

(3) Upon failure of the landowner or franchisee to comply with the Board's order within the time specified therein, the Board shall give 30 days written notice to the landowner or franchisee or both at their last known addresses. The Board may shorten this notice to a period of not less than 24 hours notice made to the landowner or franchisee if the Board finds that there is an immediate and serious danger to the public through creation of a health hazard or a public or private nuisance. After required notice, the Board shall hold a public hearing at which all interested persons shall have the right to be heard. After the Public Hearing and on the basis thereof, the Board shall have the power to order appropriate County agencies to correct the deficiencies in the establishment, maintenance, or operation of the site, or to make required rehabilitation or restoration.

(4) The cost incurred by the County in carrying out Subsection (3) of this section shall be paid by the landowner or franchisee or both. If not paid, the Board may order appropriate action to be taken to impose a lien upon the subject premises.

70.0711 SUSPENSION, MODIFICATION, REVOCATION OR REFUSAL TO RENEW A FRANCHISE.

(1) Upon recommendation by the Administrator or upon its own motion, the Board may suspend, modify, revoke, or refuse to renew a franchise upon finding that the franchisee has:

- (a) Willfully violated this Ordinance or ORS Chapter 459 or rules or regulations promulgated thereunder;
- (b) Materially misrepresented facts or information given in the application for the franchise;
- (c) Willfully refused to provide adequate service in a defined service area or at the franchised disposal site after written notification and a reasonable opportunity to do so; or
- (d) Misrepresented the gross receipts from the franchised service area or disposal site if such reports are required by this Ordinance or by order of the Board.

(2) In lieu of immediate suspension, modification, revocation, or refusal to renew a franchise, the Board may order compliance and make the suspension, modification, revocation, or refusal to renew a franchise contingent upon compliance with the order of the Board within the period of time stated therein.

(3) If the Board suspends, modifies, revokes, or refuses to renew the franchise, the action shall not become effective until 30 days after the date of the order, unless the Board finds that there is a serious and immediate danger to the public health or that a public nuisance would be created. The holder of a franchise may request a public hearing before the Board on the order by filing a written request for such hearing with the Board within 30 days after the date of the order. Upon filing of request for hearing, the Board shall set a time and place for a public hearing within 30 days of the request. The franchisee and other interested persons or affected public agencies or public bodies may submit oral or written evidence to the Board relevant to the Board's order. The Board

may, following the public hearing, affirm, amend, or rescind its prior order and shall do so within 30 days of the public hearing. Subject to court appeal as provided in this Ordinance, the determination of the Board shall be final.

70.0712 PREVENTING INTERRUPTION OF SERVICE.

Any applicant for a franchise or franchise renewal agrees, and it is a condition of their obtaining and holding the franchise, that whenever the Board finds that the failure of service or threatened failure of service would result in creation of health hazards or public or private nuisances, the Board shall, after reasonable notice but not less than 24 hours 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 franchise holder to provide service or to use and operate the land, facilities, or equipment of the franchise holder through leasing to provide emergency service in the event of a serious interruption of service to all or to a class or group of customers for so long as such interruption continues.

70.0713 FRANCHISE TERM AND RENEWALS.

(1) Unless the Board finds that a longer or shorter term is required in the public interest, the term for collection franchises shall be ten years.

(2) The term for disposal franchises shall be determined by the Board upon the basis of a recommendation by the Administrator based upon site longevity, population to be served, and probable use.

(3) Unless grounds exist for refusal to renew a franchise under Section 70.0711 and 70.0712 of this Ordinance, franchises shall be renewable. Applications for renewal shall be made on forms provided by the Administrator.

70.0714 FRANCHISE OR PERMIT FEES.

The Administrator shall collect, in the manner and at the time provided in this section, from the holder of:

(1) Any collection franchise, an annual fee of 3 percent of the gross receipts from providing service to the franchised service area.

(2) Any disposal or transfer franchise shall pay an amount equal to not less than 8 percent nor more than 15 percent of the gross income from the disposal service provided by the franchisee. Amount to be established by resolution of the Board.

(3) The collection and disposal franchise fee shall be computed and be payable to Polk County quarterly within thirty (30) days from the end of the calendar quarter. The fee shall be accompanied by a sworn statement of such cash gross receipts.

(4) Within 105 days after the end of each franchisee's fiscal year, collection and disposal franchise holders shall file with the Administrator a sworn and verified financial report for the previous year and shall pay any and all additional fees which have not previously been paid upon monthly gross income.

(5) The Administrator will provide forms to the franchise holders for filing the financial report. The content and form shall be established by order or resolution of the Board.

(6) Every collection and disposal franchise holder shall maintain books and records disclosing the gross income receipts for the collection service area or disposal site, which books and records shall be opened at reasonable times and places for audit by the authorized personnel of Polk County.

(7) Any applicant for an exemption pursuant to Section 70.402 (2), a processing fee of \$150, and an annual permit fee of \$30, each year thereafter.

(8) Any applicant for a supplemental rate adjustment pursuant to Section 70.0801 (2) (B), a processing fee of \$150.

(9) Any recycling depot exemption granted under Section 70.0402 (5), an annual fee of \$30.

(10) Any transfer of franchise granted pursuant to Section 70.0716, a processing fee of \$150.

(11) A late payment penalty of 1.5 percent per month but not less than \$100 shall be assessed for failure to submit the quarterly payment and the annual financial report within the time frame prescribed by paragraphs (3) and (4) of this section.

70.0715 USE OF FRANCHISE FEES.

Fees collected pursuant to Section 70.0714 of this Ordinance shall be paid into the General Fund and shall be used to offset the cost of solid waste management and includes roadside litter cleanup and expenses incurred for abating solid waste nuisances.

70.0716 TRANSFER OF FRANCHISES.

(1) A franchisee may transfer their franchise, or a portion thereof, to other persons only upon written notice to and approval by the Board.

(2) Upon a recommendation and finding by the Administrator, the Board shall approve the transfer if it finds that the transferee meets all applicable requirements met by the original franchise holder. The Board shall approve or disapprove any application for transfer of a franchise within 30 days of receipt of notice by the Board. The Board may extend this time if it finds that there is substantial question of public health or safety involved which requires additional time for investigation and decision.

(3) Upon recommendation of the Administrator, the Board may permit a franchise to be pledged as security for purchase of land, equipment, or facilities needed to provide service or to finance purchase of a business providing service under this Ordinance. The Board may attach whatever conditions it deems appropriate to guarantee maintenance of service.

70.0801 DETERMINATION OF RATES.

(1) The existing approved rate schedule, as of the effective date of this Ordinance, shall be deemed to be in effect.

(2) The maximum rates in effect at the time this Ordinance 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 the same year. However:

(a) Upon application, the Administrator may, in writing, grant an interim or emergency rate for new, special, or different service. The Administrator shall submit a report of the decision to the Board for review. The effective date of the service and rate shall not precede Board review. The Administrator shall set the duration of said rate or continue it until 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 5 percent or more.

(3) Applicants for an annual rate adjustment must submit the request on approved forms 90 days prior to the effective date of the proposed rate change.

(4) No franchise holder shall charge a rate greater than that established by the Board. All collection rates within any classification shall be applied uniformly. Any franchised collector who wishes to charge a preferential collection rate, including a reduced rate for charitable non-profit or benevolent organizations, shall give written notice to the Administrator 10 days prior to the implementation of a preferential collection rate. The preferential rate shall be deemed approved unless the Administrator, in writing, disapproves the preferential rate prior to implementation. If the Administrator disapproves the preferential rate, the franchise collector may appeal the decision to the Board of Commissioners within 10 days after the denial. The appeal must be filed with the Board of Commissioners with a duplicate being forwarded to the Administrator. The appeal shall state wherein the Administrator failed to conform to the provisions of this Ordinance and why the preferential collection rate should be granted. The Board shall review the action of the Administrator and may refer the matter back to the Administrator for further consideration and investigation if it is deemed advisable. The Board may similarly, after considering the appeal, affirm the action of the Administrator and deny the appeal. If the Board is of the opinion that additional facts warrant further action, the Board may set the matter for a public hearing and shall give notice of the time and place of such hearing to the franchised collector, the Administrator and Polk County Legal Counsel, as well as having notice of the public hearing published in a newspaper of public record located in the area in which the collector is franchised. After the hearing, the Board may reverse or affirm or may impose such conditions as the facts warrant, and its decision or determination shall be final. Any hearing may be continued from time to time.

(5) Upon recommendation by the Administrator, the Board may:

- (a) Approve and establish rates filed by applicants for franchises if it finds that such rates are not demonstratively unreasonable and are not substantially higher than those charged generally in the County under similar service requirements and for the same or similar quality of service, or it may establish a different rate schedule.
- (b) Establish uniform rates throughout the County or establish rates that are uniform within zones based upon the length of haul to disposal sites, concentration of customers, and other factors which may, in the opinion of the Board, justify establishment of rate differentials.
- (c) Establish rates for disposal sites that are uniform throughout the County or different rates for each site or class of sites.
- (d) Increase or decrease rates based on the cost of doing business.
- (e) Establish an interim rate until the Board makes a final determination on the rate for that type of service.

(6) In determining rates, the Administrator and the Board shall make a finding that the rates will be just, fair, reasonable, and sufficient to provide proper service to the public. The Administrator and the Board may consider rates charged by other persons performing the same or similar service in the same or other areas. The Administrator and the Board shall give due consideration to:

- (a) The investment in facilities and equipment.
- (b) The services of management.
- (c) Local wage scales.
- (d) The concentration of customers in the area served.
- (e) Methods of storage, collection, transportation and disposal, salvage, recycling, or reuse.
- (f) A reasonable return to the franchisee.
- (g) The length of haul to disposal facilities.
- (h) The cost of disposal.
- (i) The use of transfer stations or transfer systems and the added costs.
- (j) The cost of alternate methods of disposal.

- (k) The future service demands of the service area or disposal site which must be anticipated in equipment, facilities, personnel, or land.
- (l) Extra charges for special pickups or pickups on days where service is not normally provided on a collection route.
- (m) Extra charges where the type or character of waste or solid waste, including but not limited to wastes with peculiarly offensive odors, requires special handling or service.
- (n) Extra charges for providing janitorial services on the premises where service is provided.
- (o) In addition, with respect to disposal sites, the type of site, whether the site is open to the public, and hours, type of waste disposed of, and method of disposal.
- (p) Cost of compliance with laws, ordinances or regulations and rules of public agencies or bodies having jurisdiction.
- (q) Other factors that may, in the opinion of the Administrator and the Board, necessarily affect the rates to be charged.

(7) The Board may require an investigation by the Administrator of any proposed rates. For the purpose of making this investigation, the Administrator is authorized to hold public hearings and to take and receive testimony. Upon completion of such an investigation, the Administrator shall report the results of any public hearing, make findings, and submit a recommendation to the Board.

(8) The Administrator shall provide a Collection and Disposal Rate Application that shall incorporate the considerations set forth in this Ordinance for providing an adequate review of any rate application. The form and content of the application shall be established by order or resolution of the Board.

(9) Polk County reserves the right, at any time during the period of a franchise/permit, to examine the rate structure of a franchisee or permittee and to modify rate charges that, in the discretion of the Board, are reasonably required.

70.0802 RESPONSIBILITY FOR PAYMENT FOR CHARGES FOR SERVICE.

Any person who receives service shall be responsible for payment for such service. The landlord of any premises shall be responsible for payment for service provided to that premises if the tenant does not pay for the service.

70.0901 PUBLIC RESPONSIBILITIES.

(1) No person shall place hazardous wastes out for collection or disposal by the franchisee or place it into any solid waste container or box supplied by the franchisee without prior written notice to and 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 waste. 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.

(2) No person shall accumulate or store wastes in violation of any County ordinance on nuisance abatement or in violation of regulation of the Oregon Department of Environmental Quality.

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

(4) No person shall, unless permitted by a franchisee, install or use any container of one yard or greater capacity for pickup by a franchisee other than those supplied by a franchisee. Rates for use of a franchisee's containers and drop boxes shall be included in the adopted rate schedule. The customer shall be responsible for cleaning, maintenance, and protection of the container or box and cleaning of the area around it.

(5) No can for residential service shall be located behind any locked or latched gate or inside any building or structure, unless specifically permitted by the franchisee.

(6) Each customer shall provide adequate ingress and egress and shall provide safe access to the solid waste or solid waste container without hazard or risk to a franchisee's employees, the public, or a franchisee. Unless specifically permitted otherwise, the can shall be visible from the street.

(7) No container designed for mechanical pickup shall exceed safe loading weights or volumes as established by a franchisee to protect service workers, the customer, the public, and collection equipment. The franchisee may require a maintenance and damage agreement of customers to whom boxes, containers, or special waste handling equipment or recycling reuse or resource recovery equipment are supplied.

(8) No unauthorized person shall place material in or remove material from a solid waste collection container or box without permission of the owner. For purposes of this section, a franchisee is the "owner" of containers or boxes supplied by such franchisee.

(9) Where a customer requires an unusual volume of service or a special type requiring substantial investment in equipment, a franchisee or permittee may require a contract with a customer as necessary to finance and assure amortization of such equipment.

(10) A franchisee or permittee may establish additional regulations on service under this Ordinance, and a customer shall comply with such regulations, or the collector may discontinue the service. Such regulations shall have prior approval of the Administrator.

(11) The customer shall restrain pets by whatever means are necessary to provide safe access for franchisee or permittee.

(12) The customers shall pay the entire cost of bad debt collection, including but not limited to, costs incurred by a franchisee or permittee; costs incurred for collection or attempted collection by a collection agency, attorney, or other bill collector; service charge at 1.5 percent per month, or fraction thereof, on the unpaid balance of payment for services rendered; a restart charge for service as provided in the rate schedule; and such other costs as may be approved by the Board or in the rate schedule.

(13) All stationary compacting equipment shall comply with all applicable Federal and State regulations on safety, use, and installation and shall further be compatible with the collection equipment furnished by the franchisee on the route that serves the customer.

(14) In cooperation with franchisees, permittees, and the County, persons erecting buildings or structures requiring a Building Permit, or persons utilizing land for a purpose requiring a permit or Conditional Use Permit under the Zoning Ordinance, shall provide a location and system for safe and efficient removal of wastes, solid wastes, or recyclable material. Due consideration shall be given to location, access, services available, whether the person, firm, corporation, or legal entity or successor takes service from the franchisee or permittee, public safety and safety to service workers, and applicable laws and regulations and special service requirements. This subsection shall not be the basis for a penalty, but the County may withhold any such permit until compliance is achieved and the franchisee or permittee may withhold or restrict service.

(15) No garbage can set out for manual pickup shall exceed 33 gallons in size or 60 pounds in gross loaded weight including the weight of the can. Such can shall be tapered from top to bottom to facilitate unloading. Such can shall be rigid and shall have proper handholds or bales together with a rim handhold at the base of the container. The container shall be rodent proof and fire proof. The container shall not be subject to splitting or cracking. The lid shall be tight fitting, and lids shall be kept on the cans except during cleaning and unloading.

(16) No person shall block access to any container or drop box or roll-off box supplied by the franchisee. The franchisee may charge extra for return service to such blocked container or drop box or roll-off box.

70.1001 OPPORTUNITY TO RECYCLE.

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

(1) Landfills and Transfer Stations. All landfills and transfer stations open to the public for the disposal of solid waste shall provide a place for the deposit of recyclable material, unless an alternative depot or site is approved by resolution of the Board.

(2) Depots. In addition to recycling sites at landfills and transfer stations, the Board may approve the location and use of temporary or permanent depots for the deposit of recyclable material.

(3) Recycling Collection. All persons providing service, including non-commercial haulers, shall provide all of their service customers in the wasteshed within the urban growth boundaries of the Cities of Dallas, Independence, Monmouth, and Salem with on-route collection of recyclable materials on at least a monthly basis.

70.1002 PROHIBITED ACTIVITIES.

No person shall:

- (1) Without permission of the owner or generator of recyclable material, take recyclable material set out to be collected by a collection franchisee or other person providing service.
- (2) Remove recyclable material from a container, box, collection vehicle, depot, or other receptacle for recyclable material without permission of the owner or person in control of the receptacle.
- (3) Mix source-separated recyclable material with solid waste in any vehicle, box, container, or receptacle used in solid waste collection or disposal.
- (4) Place solid waste in any vehicle, box, container, depot, or receptacle used for recyclable material.

70.1101 AGREEMENTS FOR JOINT FRANCHISING OR PLANNING.

The Board may enter into agreements with any city or county for joint or regional franchising or collection or disposal service or planning for regional solid waste management.

70.1102 AGREEMENTS FOR ALLOCATION OF FRANCHISE FEES.

The Board may enter into agreements with any city or county providing for the allocation of franchise fees where franchise service areas cross city or county boundaries.

70.1202 APPEALS FROM DECISIONS OF THE ADMINISTRATOR.

The Board may, upon its own motion or upon the request of an interested person or affected public agency or public body, review the decisions of the Administrator made pursuant to this Ordinance and may uphold, modify, rescind, or leave standing, the decision of the Administrator. For this purpose, the Board may hold a public hearing with notice to interested persons, public agencies, or public bodies.

70.1203 DESIGNATION OF HEARINGS OFFICER.

(1) The Board may designate a Hearings Officer to receive recommendations from the Administrator and conduct any hearings described in Sections 70.0710, 70.0711, 70.0712, 70.0716, 70.0801, and 70.1202 in lieu of a hearing before the Board. After hearing testimony and reviewing evidence, the Hearings Officer shall make findings and conclusions and submit a decision to the Board.

(2) A decision of the Hearings Officer under this section does not become final until it is reviewed and ratified by the Board.

(3) A decision of the Hearings Officer may be appealed to the Board in the manner and within the time prescribed for appeals from decisions on franchises under Section 70.0708 of this Ordinance. Within the same period of time, the Board may call up a decision of the Hearings

Officer for its own review.

70.1204 ENFORCEMENT.

It shall be the duty of the Administrator for Polk County to enforce this Ordinance.

70.1205 PENALTIES.

Violation of this Ordinance shall be punishable upon conviction by a fine of not more than \$500 for a non-continuing violation and a fine of not more than \$1,000 for a continuing offense. These penalties shall be in addition to any other remedies provided by law to Polk County.

70.1301 CONSTRUCTION.

Any finding by any court of competent jurisdiction that any portion of this Ordinance is unconstitutional or invalid shall not invalidate any other portion of this Ordinance.

70.1302 CAPTIONS.

The headings and section captions in this Ordinance are for the convenience of the reader and do not have legal effect.

70.1303 REPEAL OF CONFLICTING ORDINANCES.

Ordinance 87-2 is repealed. However, such ordinance shall remain in effect as to proceedings pending on the effective date of this Ordinance.

70.1304 PENDING ACTIONS.

This Ordinance does not apply to any proceeding pending on its effective date.