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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

RIDWELL, INC.

PLAINTIFF,

v.

WASHINGTON COUNTY, OREGON.

DEFENDANT.

Case No. _____

COMPLAINT

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Ridwell, Inc. (“Ridwell”) collects materials for reuse and recycling. These materials are otherwise collected by municipal waste haulers only as part of waste to be sent to a landfill. For three years, Ridwell has helped its members to successfully save over four million pounds of waste from going to the landfill, instead ensuring re-use or recycling of those materials.
2. Defendant Washington County, Oregon (“Washington County” or the “County”) provides municipal waste services throughout the unincorporated portions of the County through exclusive franchise agreements with nine waste hauling companies (the “Waste Haulers”).
3. This case arises because Washington County improperly barred Ridwell from collecting recyclable materials.
4. As a result, Ridwell, which had approximately 1,600 members in Washington County at the beginning of 2022, was forced to cease collecting hard-to-recycle materials even though those materials are not accepted in the County’s existing municipal curbside recycling bins. Washington County barred Ridwell from operating solely because Ridwell charges a fee for its service and would thus pose a challenge to the Waste Haulers’ perceived economic interests; had Ridwell been performing its services for free, it would still be permitted to operate there.
5. Oregon statutes authorize cities and counties to displace competition and grant franchise agreements—local monopolies—to waste hauling companies. But the ability to grant such monopolies is limited. Franchise regulations for waste hauling must further the state’s policy objective of prioritizing the recycling and reuse of materials to the maximum extent feasible before disposal.

6. Oregon law does not authorize cities and counties to wield such franchise regulations in a manner that restricts public access to recycling or other services that are *not* offered by franchisees. Such restrictions contradict and undermine the policy purpose of granting the franchise, particularly where, as here, the restrictions result in more waste going to the landfill instead of being recycled.

7. Defendant's actions in the exercise and use of its franchise authority run directly afoul of Oregon law, which requires that municipal waste management and recycling programs "extend the useful life of solid waste disposal sites by encouraging waste prevention and the recycling and reuse of materials...to the maximum extent feasible before disposal." ORS 459.015(1)(d).

8. In forcing Ridwell to cease operations, the County acted to impermissibly expand and protect the monopoly power of the Waste Haulers. This is an improper purpose; as such, the County has acted in contravention of the state law that grants the County a limited power to provide such monopolies, and its actions are accordingly preempted.

9. Defendant's actions violate not only state law, but also the United States Constitution. Under the Constitution's Due Process Clause, government actors may not deprive individuals or companies of property rights unless they have been provided adequate process. Here, Washington County has enacted, interpreted, and enforced its municipal code in a manner which seeks to impermissibly protect the Waste Haulers' economic interests and arbitrarily denies Ridwell the right to provide its services to consumers without due process of law. The purpose and effect of Washington County's actions is to illegally protect the Waste Haulers' monopoly rights while unnecessarily dumping otherwise reusable or recyclable materials in landfills.

10. Ridwell has been forced to suspend its services in the County to avoid facing a fine or potential criminal liability. As a result, materials that would have been collected

for recycling and reuse will now be bound for the landfill, and Ridwell is facing irreparable financial harm if it continues to be prevented from operating.

THE PARTIES

11. Plaintiff Ridwell, Inc., is and at all times mentioned in this complaint was, a Delaware Public Benefit Corporation. Ridwell's principal place of business is in Seattle, Washington.

12. Defendant Washington County is, and at all times mentioned in this complaint was, an Oregon municipal corporation.

JURISDICTION AND VENUE

13. Jurisdiction in this Court is proper under 28 U.S.C. § 1332. The parties are citizens of different states. Likewise, the amount in controversy at issue in this case exceeds \$75,000. Ridwell has approximately 1,600 members in Washington County, and the lost membership fees for these customers alone totals over \$200,000 for a one-year period.

14. Jurisdiction in this Court is also proper under 28 U.S.C. § 1331, as Ridwell brings the second and third causes of action in this suit under 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the United States Constitution.

15. This Court has authority to grant declaratory and other relief under 28 U.S.C. §§ 2201 and 2202.

16. Venue is appropriate in the District of Oregon under 28 U.S.C. § 1981 because defendant Washington County is located in that district. In addition, a substantial part of the events or omissions giving rise to the claim occurred in the District of Oregon.

FACTUAL ALLEGATIONS

A. Oregon's Strong Policy in Favor of Recycling

17. The State of Oregon, through its Legislature, has repeatedly expressed a strong public policy in favor of recycling. The Legislative Assembly has found that providing for waste collection service, including providing for the collection of recyclable material, is a matter of statewide concern, ORS 459A.085(1), and that it is in the best interests of the people of Oregon to “extend the useful life of solid waste disposal sites by encouraging waste prevention and the recycling and reuse of materials,” and to “conserve resources and energy by developing an economy that encourages waste prevention and recycling.” ORS 459.015(1).

18. Oregon's base recycling law, the Opportunity to Recycle Act, provides that in order to conserve energy and natural resources, materials management should follow a hierarchy preferring reuse and recycling of waste materials over putting those materials in a landfill.

19. In 1991, the Oregon Recycling Act (SB 66) strengthened and broadened recycling requirements and added activities to develop markets for recyclable materials.

20. Since 1991, Oregon has passed several other pieces of legislation making clear its prioritization of reuse and recycling over sending materials to landfill. In 2021, it passed the Plastic Pollution and Recycling Modernization Act, which found that Oregon was “not on track to meet the statewide waste recovery and generation goals” established in 2015, and acknowledged that the state's recycling polices “were not designed” to address the changes in the way Oregon's residents use and consume materials and products in the 35 years since the first recycling programs were established. 2021 Or. Laws Ch. 681, § 1. The Legislature acknowledged that this inadequacy in the system

had “created unintended consequences, such as the deterioration of natural systems regionally and worldwide.” *Id* at § 2.

21. To further Oregon’s public policy in favor of recycling, state law grants cities and counties the power to “displace competition with a system of regulated collection service by issuing franchises which may be exclusive if service areas are allocated.” ORS 459A.085(3). This franchise monopoly power must be construed narrowly by municipalities and the courts and cannot be extended beyond its statutory purpose, particularly in ways that undermine the public interest.

22. The power to grant franchises is also limited in that municipalities must “act[] for and on behalf of the State of Oregon to carry out” the purposes of ORS 459.015, ORS 459A.085(4), which includes:

- 1) Prioritizing methods of waste management that seek to first reuse or recycle materials, before resorting to disposal in a landfill. ORS 459.015(2).
- 2) Extending the useful life of solid waste disposal sites by encouraging waste prevention and the recycling and reuse of materials, and by requiring solid waste to undergo volume reduction through recycling and reuse measures to the maximum extent feasible before disposal. ORS 459.015(1)(d).

B. Ridwell’s Operations

23. Ridwell was founded in 2018 by Ryan Metzger, a father looking for an easier way to recycle materials that his neighborhood trash pickup would not accept in the curbside recycling bin.

24. After Metzger realized that many of his neighbors had the same problem finding places to recycle batteries and other materials, he began to collect those items for them, taking them to appropriate facilities for recycling—gradually building Ridwell into the service that exists today.

25. Ridwell members pay a monthly fee and have a small bin (pictured below) placed on their private property into which the members place materials for recycling and re-use that are picked up by Ridwell on request.



26. Such materials include batteries, lightbulbs, plastic film (including plastic shopping bags, bubble wrap, and Amazon shipping envelopes), plastic clamshells, clothing and shoes, Styrofoam and a rotating category of reusable items.

27. Ridwell's members in Washington, Oregon and Colorado view the service as a valuable one, both because it avoids such materials going to the landfill and because it is impractical or impossible for many households to take materials such as batteries and lightbulbs to drop-off locations that accept them for recycling.

28. Ridwell's membership fees cover the cost to Ridwell of picking up the hard-to-recycle materials, bringing them to a Ridwell facility for consolidation with other members' recyclables, and conveying those materials to recyclers or other users. Ridwell also earns a small profit from the fees, allowing Ridwell to continue expanding into new materials and locations.

29. For many municipal recycling collectors, up to 25% of materials collected in the recycling bin end up in landfills because the recycling is commingled and not source

separated from other recyclable materials, and is often contaminated with non-recyclable or hard-to-recycle materials.

30. Unlike recyclables designated for collection by Waste Haulers, the materials picked up by Ridwell frequently cannot be reused or recycled if they are commingled with other recyclable materials.

31. For example, in Portland, Ridwell was able to divert 94.9% of the plastic film it collected from members away from the landfill and convey it to partners like Trex for conversion into products such as composite decking. For non-Ridwell members, this plastic film cannot be recycled in the curbside bin and 100% of plastic film collected by the Waste Haulers goes to the landfill. In fact, the Washington County website says that the “best option” for disposal of plastic film is to “[p]ut [it] in the garbage.”

32. There is no overlap or competition between the collection service provided by the Waste Haulers and Ridwell’s waste reduction service. Ridwell only collects materials that are not accepted in curbside recycling bins provided by Waste Haulers with franchise licenses. All materials that Ridwell members place in their bins would otherwise go to the landfill or would need to be driven to designated drop-off location for potential reclamation.

33. None of the Waste Haulers in the County recycle or reuse the materials that Ridwell collects from its members.

34. Ridwell began operating in Washington County approximately a year ago.

35. As of January 1, 2022, Ridwell had approximately 1,600 members located in Washington County.

C. The Dispute

(1) Washington County Certificate Requirement

36. According to Washington County Code, “it is unlawful for any person to collect, store, transport or dispose of any waste or solid waste in the unincorporated areas of the County for compensation” without a franchise certificate. WCC § 8.04.120.

37. On March 31, 2021, Washington County Solid Waste & Recycling Manager Thomas Egleston sent a letter to Ridwell, stating that Solid Waste & Recycling staff had concluded that Ridwell was collecting “solid waste” or “waste” for compensation in violation of WCC 8.04.120, and therefore required a franchise certificate. Washington County has stated that Ridwell could collect “solid waste” or “waste,” without a franchise certificate if it did not receive compensation for doing so. Unlike some other cities and counties in Oregon, Washington County code treats all recyclable material as “waste” regardless of whether that material is collected by the Waste Haulers.

38. Washington County’s ordinances only allow a limited number of “certificate holders” to pick up solid waste or recyclables from its residents. Ridwell cannot obtain a franchise certificate under Washington County’s existing municipal code because the limited number of certificates are already allocated, and even if Ridwell were awarded a certificate, having one would require it to pick up all of the putrescible solid waste and the designated recyclable materials currently collected by the Waste Haulers, which it is not equipped to do. It would also be required to charge Washington County’s set rate for the collection of the materials, even if it chose to incur the additional expense of picking up hard-to-recycle materials that are not contemplated by that rate.

(2) The GRAC Arbitrarily Denies Ridwell an Exemption.

39. The municipal code contains a process for exempting certain activities from this certificate requirement if recommended by the Garbage and Recycling Advisory Committee (GRAC). The GRAC may recommend an exemption “on the basis of findings made after public hearing that the same is not necessary to the implementation of the County or a regional solid waste management plan.” WCC § 8.04.130(c).

40. Ridwell requested an exemption under WCC § 8.04.130(c) on May 4, 2021.

41. Although the County staff recommended that Ridwell be granted an exemption and be allowed to continue operating without fear of fine or prosecution, the GRAC rejected the factual findings and recommendation of the County staff and denied the exemption, thus terminating Ridwell’s ability to operate under the exemption.

42. The GRAC’s action was fatally flawed for three reasons.

1. The GRAC violated local law by including three voting representatives of the self-interested Waste Haulers (a cartel hostile to Ridwell) on the committee rather than the one representative allowed by local law.
2. Second, one voting industry member’s term on the GRAC had expired months before she voted against allowing Ridwell to operate.
3. Finally, this same member’s counsel, as well as the County Counsel, had noted that she also had potential conflict of interest. However, she failed to disclose that conflict, despite promises by her counsel that she would disclose her conflict before any public hearings on Ridwell. After failing to disclose her potential conflict, the termed-out member instead actively led the opposition to Ridwell’s request in multiple Committee

meetings and eventually voted in opposition to granting the exemption.

43. Under Washington County's current municipal code, the GRAC is supposed to be composed of ten members.

44. Eight of the GRAC's voting members should represent the public. One voting member of the solid waste collection and disposal industry with not less than five years of relevant industry experience should also sit on the GRAC. Finally, one nonvoting member who is an employee of the County department of health and human services sits on the GRAC. WCC § 8.04.065.

45. This code was amended in March 2021. Before that date, the GRAC had consisted of six public members, three members of the solid waste collection and disposal industry, and one nonvoting County employee.

i. The County Staff Recommends Ridwell Be Granted an Exemption

46. Ridwell requested an exemption under WCC § 8.04.130(c) on May 4, 2021.

47. The GRAC held a public hearing to "gather information and make findings" about the exemption on June 10, 2021, and requested that the item be brought back for further discussion.

48. The County's staff prepared a report for the June 30, 2021 meeting ("County Report"), in which it found, based on 16 distinct factual findings, that Ridwell's practice was "not necessary to the implementation of the Regional Waste Plan and may be exempted from the requirement of obtaining a certificate." In other words, it found that Ridwell met the requirements for an exemption under WCC § 8.04.130(c).

49. The County Report contained factual findings including that granting an exemption would "provide community members with the opportunity to reuse and recycle materials with unstable end-markets that are not currently accepted in the

curbside recycling program,” which would “avoid[] upward pressure on garbage and recycling collection rates,” and “create[] opportunities for small businesses,” and that the exemption was not expected to “affect the collection service levels provided by certificate holders.”

50. Ultimately, the County’s staff recommended that the GRAC “favorably recommend to the Board of Commissioners that the practice of collecting certain materials for recycling or reuse for a fee may be granted an exemption from the requirement to obtain a certificate.”

ii. The GRAC Rejects the County Staff’s Recommendation
Without Analysis

51. A GRAC subcommittee consisting of three members (public members Sandra Smith and Kenneth Foote and industry member Vinod Singh) met three times to discuss the issue. The issue was then brought back to the full committee on September 23, 2021, at which time the GRAC rejected the exemption.

52. Despite the code’s requirement that the GRAC’s finding be based on a conclusion that Ridwell’s service was “not necessary to the implementation of the county or a regional solid waste management plan,” WCC § 8.04.130(c), the GRAC did not directly address why Ridwell’s practices were or were not necessary to the implementation of the Regional Waste Plan. The GRAC did not make any findings related to Ridwell’s practices and how they relate to the Regional Waste Plan. Instead, GRAC members repeatedly steered the conversation to issues not relevant to the exemption analysis, such as purported concerns about the employment practices or insurance held by Ridwell. Some members of the GRAC expressed a view that there should not be any exemptions to certificate requirements, despite the existence of such an exemption in the County municipal code.

53. Because it did not make a favorable recommendation, the GRAC did not make any findings, and the County, through its Board of Commissioners, was not given an opportunity to decide on the exemption or overrule the GRAC.

iii. The GRAC Was Unlawfully Constituted When It Voted to Deny Ridwell the Ability to Operate

54. In violation of the County ordinance, at least two industry members attended, and voted at, each of the full GRAC meetings regarding the Ridwell exemption on June 10, June 30, September 9, or September 21, 2021: Vinod Singh and Beth Vargas Duncan. In addition to being an unauthorized extra industry representative, Ms. Vargas Duncan's term had also expired on March 31, 2021.

55. Ms. Vargas Duncan also had a conflict of interest in the decision about Ridwell's exemption due to both her professional role and a direct role in lobbying the County about the exact exemption at issue. Ms. Vargas Duncan is Regional Director of the Oregon Refuse & Recycling Association (ORRA), a lobbying group for the solid waste management industry. The ORRA represents members that, collectively, make hundreds of millions of dollars per year from operating franchises that depend on sending a high volume of materials to landfills. In her capacity as ORRA Regional Director, Ms. Vargas Duncan sent a letter complaining that Ridwell is operating outside the franchise system to the City of Portland, advocating against Ridwell and in favor of the Waste Haulers.

56. On April 16, 2021, Ms. Vargas Duncan sent a letter to the Washington County Solid Waste & Recycling Division Manager on behalf of the Waste Haulers of Washington County advocating that, instead of granting an exemption for hard-to-recycle materials, the County should grant an exclusive right to the haulers to pick up those materials (for an additional fee). She then corresponded with staff about

submitting materials and making a presentation to the GRAC as an *industry member*, not as a member of the committee.

57. At the June 30, 2021 GRAC meeting, Ms. Vargas Duncan introduced a presentation by the Waste Haulers about their desire for an exclusive right to haul hard-to-recycle materials.

58. Despite her direct involvement and advocacy on one side of the issue to be decided, Ms. Vargas Duncan neither publicly disclosed the nature of her conflict nor recused herself from the decision on the exemption, as she was required to do under Oregon Law (ORS 244.120).

59. Ridwell raised the issue of Ms. Vargas Duncan's apparent conflict with Washington County's Office of the County Counsel on May 28, 2021.

60. The County Counsel's office acknowledged that they believed Ms. Vargas Duncan had a "potential conflict of interest that has to be declared," but said it was "ultimately up to" her whether to make such a declaration.

61. Ms. Vargas Duncan's attorney stated that Ms. Vargas Duncan would disclose the potential conflict of interest at the relevant meetings, but she failed to do so in the GRAC meetings of June 10, June 30, September 9, or September 21, 2021, when the Ridwell exemption was discussed.

62. At those meetings, Ms. Vargas Duncan repeatedly referenced the opinions and concerns of the Washington County Haulers Association using the first person and expressed dissatisfaction with the fact that the County staff had issued a recommendation to approve the exemption. Ms. Vargas Duncan also emphasized to other GRAC members that she had "expertise" and knowledge about the industry that other members lacked, suggesting her opinion was entitled to greater deference.

63. The GRAC's denial of the exemption was irreparably tainted by these procedural defects, and was also not rationally supported by actual evidence or findings related to

the criteria described in Washington County Code. Instead, the decision was based on a desire to protect the entrenched interests of the haulers who hold existing Washington County franchise certificates despite the fact that, under the current code, they do not collect the hard-to-recycle materials at issue.

(3) Washington County Forces Ridwell to Cease Operations.

64. On October 5, 2021, Mr. Egleston notified Ridwell that its exemption had been denied, and instructed it to cease operating in unincorporated Washington County by October 31, 2021.

65. Ridwell responded by explaining its view that Washington County's application of its code was contrary to state law. On December 6, 2021, Washington County Counsel Brad Anderson rejected Ridwell's arguments and threatened it with enforcement action. The same day, Ridwell received a Notice of Non-Compliance from Washington County, which stated that Ridwell would be subject to prosecution if it did not cease operating by December 20, 2021. After further discussions, Anderson agreed to not proceed with prosecution before further discussions could be held on January 3, 2022, but made clear that a citation would be issued after that point if Ridwell were still operating.

66. Washington County has threatened prosecution under Washington County Code § 8.04.670. If convicted, Ridwell would be fined \$500 per day for each day it continued to operate.

67. On January 3, 2022, counsel for Ridwell had additional discussions with County counsel. County counsel agreed that Ridwell could make final collections until January 15, 2022, but stated that Ridwell would be prosecuted for operating beyond that date. Ridwell subsequently made its final Washington County collections and then ceased operations on January 15, 2022 to avoid an enforcement action against it.

(4) Defendant Indicates That Ridwell Could Lawfully Operate if it Provided the Exact Same Services Without Charge.

68. Undermining any argument that Ridwell's operation was unsafe or otherwise contrary to legitimate police power concerns, Washington County repeatedly informed Ridwell that it could continue to provide its exact same service to consumers without the threat of fines if it provided the service for free.

69. In so doing, Washington County concedes that the only rationale driving the denial of an exemption and the threat of fines was to protect the perceived economic interests of the Waste Haulers—the same Waste Haulers whose representatives were over-represented at the GRAC and controlled that body's vote.

70. Washington County also knowingly allows companies other than Ridwell, including multiple "junk hauling" services, to collect solid waste for compensation without a certificate or exemption from the certificate requirement, because the Waste Haulers do not perceive those companies as a threat to their business.

71. In short, Washington County's municipal code, as well as its interpretation and enforcement of the same, is contrary to state law, and is inconsistent with the required purposes for which the state has granted the County the authority to create a monopoly franchise for waste collection. It is therefore preempted.

72. In denying Ridwell's exemption request, the County has also unlawfully and unconstitutionally relied on a flawed, unlawful, and biased process in achieving this result. Further, prohibiting Ridwell's business based solely on the fact that Ridwell charges for its services is arbitrary and capricious and advances no legitimate government objective.

FIRST CLAIM FOR RELIEF
(Preemption)

73. Plaintiff incorporates by reference all preceding paragraphs of this complaint as though set out herein.

74. Oregon law permits counties to issue franchises for the collection of solid waste and recyclable materials provided that the counties carry out the purposes of the state's solid waste management law, including extending the useful life of landfill sites and the prioritization of reuse and recycling over disposal to the landfill. ORS 459A.085.

75. Ridwell collects materials for reuse and recycling. When Washington County's franchised Waste Haulers collects these same materials, they divert them to the landfill.

76. Washington County Code prohibits anyone from collecting, storing, transporting, or disposing of any "waste" or "solid waste," which includes recyclable materials, for compensation without a franchise certificate, even if Waste Haulers are not required to, and in practice do not, collect those recyclable materials.

WCC § 8.04.120. The breadth of this provision of the code requires that recyclable materials not collected by the Waste Haulers be diverted to the landfill, an outcome that directly undermines the State of Oregon's basis for granting cities and counties the power to issue franchise certificates that grant monopoly powers.

77. Washington County, however, allows the collecting, storing, transporting, or disposing of any recyclable materials without a franchise certificate if those activities are not done for compensation, i.e. services that pick up recycling for free. This distinction demonstrates that the certificate requirement serves only to protect the Waste Haulers' monopoly.

78. The effect of this statutory scheme is to divert to landfills materials which companies like Ridwell are willing to collect for reuse and recycling, a service which Washington County residents are willing to pay for. State law does not permit this use

of the franchise power to prohibit activities that are not included in the franchisees' services.

79. This diversion to landfill of recyclable materials violates and is incompatible with ORS 459A.085, which requires that counties issuing collection services franchises prioritize reuse and recycling over waste disposal and extend the useful life of landfills as described in ORS 459.015. To the extent that Washington County interprets its municipal code to prohibit what the state law not only permits, but requires— the collection and reuse and recycling of as many materials as possible—that interpretation renders the municipal code invalid as preempted by state law.

80. Washington County's purported exemptions to its certificate requirement are not sufficient to comply with state law when, as happened here, they are applied to prohibit rather than encourage the reuse or recycling of materials over diversion to a landfill.

SECOND CLAIM FOR RELIEF
(42 U.S.C. § 1983—Procedural Due Process)

81. Plaintiff incorporates by reference all preceding paragraphs of this complaint as though set out herein.

82. Section 1983 of Title 42 of the United States Code, provides that "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

83. Under color of the Washington County Municipal Code, Defendants have wrongfully interfered with Ridwell's property rights by depriving it of an exemption to operate within Washington County without the process it was due.

84. Ridwell had a reasonable expectation of entitlement in the ability to receive an exemption from the certificate entitlement and in its business goodwill.

85. Ridwell was entitled to due process in the GRAC's proceedings because the proceedings affected a relatively small number of persons, including Ridwell, who were exceptionally affected by the GRAC's decision.

86. Ridwell was deprived of this due process when the County failed to perform its responsibilities in the normal matter prescribed by law. Specifically, the unlawful composition of the GRAC, the failure of one of the GRAC members (whose term had expired) to disclose her potential conflict of interest at multiple public meetings where she played a leading role in Committee deliberations, and the failure of the GRAC to consider Ridwell's exemption request using the criteria described in the relevant ordinance, were contrary to the County's own ordinances, and deprived Ridwell of due process.

87. As a result, Plaintiff has sustained damages including loss of business, reputational harm including loss of business goodwill, attorneys' fees, and litigation costs, in an amount to be proven at trial.

THIRD CLAIM FOR RELIEF

(42 U.S.C. § 1983—Substantive Due Process)

88. Plaintiff incorporates by reference all preceding paragraphs of this complaint as though set out herein.

89. Under color of the Washington County Municipal Code, Defendants have wrongfully interfered with Ridwell's property rights by denying it an exemption to the certificate requirement and otherwise preventing it from operating.

90. The County denied Ridwell the ability to operate for compensation while acknowledging it could operate identically to how it had been operating without being compensated, demonstrating its decision was unrelated to any legitimate purpose

described in state law. Indeed, the decision was made to advance interests—protection of the franchise—that directly conflict with the required purposes of ORS 459A.085(4)(1)(a).

91. Instead, the County acted to protect the perceived economic interests of the Waste Haulers, despite the fact that the Waste Haulers do not offer to reuse or recycle the materials Ridwell collects. That is an impermissible purpose.

92. In threatening an enforcement action and denying Ridwell an exemption to operate, Washington County and the GRAC ignored the standard stated in Washington County's code and the findings of its own staff, made no findings of its own, and otherwise acted arbitrarily and capriciously in favor of the interests represented on the committee rather than for a legitimate government purpose.

93. Washington County is aware of and acknowledges that other businesses collect waste without a certificate, for compensation, and take no action to prosecute those businesses because they do not threaten the Waste Haulers' business.

94. The County's actions in threatening to prosecute Ridwell for operating in Washington County were arbitrary and unreasonable and had no reasonable justification in the service of a legitimate governmental objective.

95. As a result, Plaintiff has sustained damages including loss of business, reputational harm including loss of business goodwill, attorneys' fees, and litigation costs, in an amount to be proven at trial.

FOURTH CLAIM FOR RELIEF
(Declaratory Relief)

96. Plaintiff repeats and incorporates by reference each allegation of the prior paragraphs as if fully set forth herein.

97. Defendant Washington County contends that WCC 8.04.120 allows it to bar companies from contracting with consumers to pick up for recycling materials that its franchisee recyclers do not recycle.

98. If so, WCC 8.04.120 is facially preempted by state law. Further, to the extent interpretation and application of the County's franchise certificate regulations exceeds the limited authority granted in ORS 459A.085 and conflicts with state law, that interpretation and application is also preempted by state law.

99. An actual controversy presently exists between Ridwell and Washington County about whether Washington County complies with state law.

100. A judicial determination resolving this controversy is necessary and appropriate at this time.

PRAYER FOR RELIEF

Wherefore, Ridwell prays that the Court grant the following relief:

1. Declare that Ridwell is allowed to resume its operations in Washington County so long as it only collects materials that are not collected for recycling by franchise haulers throughout the County;
2. Enjoin Defendant from citing Ridwell for continuing to operate in the County;
3. Declare that local laws like those in Washington County are invalid to the extent that a city or county interprets those laws to prevent companies like Ridwell from collecting for reuse and recycling materials that are not being collected for reuse or recycling by municipal franchisees;
4. Award Ridwell monetary damages in an amount to be determined at trial;
5. Award Ridwell reasonable costs and attorney's fees; and
6. Grant any other further relief that the Court deems fit and proper.

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EXHIBIT A

Title 8 - HEALTH AND SAFETY
Chapter 8.04 - SOLID WASTE CONTROL
ARTICLE II. GARBAGE AND RECYCLING ADVISORY COMMITTEE

ARTICLE II. GARBAGE AND RECYCLING ADVISORY COMMITTEE¹

8.04.060 Purpose.

The purpose of the advisory committee is to provide the board with recommendations on solid waste related decisions from community members and businesses that are consumers or participants in the county's garbage and recycling system. Committee membership will ensure diverse representation of lived and learned experiences that will help produce equitable outcomes from decisions that impact all users of the garbage and recycling system.

(Ord. No. 871 , § 3(Exh. A), 3-2-2021)

8.04.065 Membership

The garbage and recycling advisory committee shall be composed of:

- A. Eight members representing the public who shall be voting members;
- B. One member or employee of the department of health and human services who shall be a nonvoting member; and
- C. One member of the solid waste collection and disposal industry with not less than five years of relevant industry experience, who shall be a voting member.

(Ord. No. 871 , § 3(Exh. A), 3-2-2021)

8.04.070 Membership—Appointment.

Members of the advisory committee shall be appointed by the board. The board shall ensure that the recruitment and selection process for appointments to vacant positions is open to all segments of the community and ensures a broad representation and diversity of membership.

- A. The term of office of a member is four years.
- B. Garbage and recycling advisory committee members shall be appointed to no more than two successive terms of membership unless otherwise approved by the board.
- C. Members of the advisory committee shall serve until their successors are appointed and qualified. Any vacancy shall be filled by the board for the balance of the unexpired term.

(Ord. No. 871 , § 3(Exh. A), 3-2-2021)

¹Editor's note(s)—Ord. No. 871 , § 3(Exh. A), adopted March 2, 2021, repealed the former Art. II, §§ 8.04.060—8.04.110, and enacted a new Art. II as set out herein. The former Art. II pertained to solid waste advisory committee and derived from Ord. 59 §§ 5(A)—(C), 6, 1969; Ord. 64 (part), 1970, 1999; Ord. 98 § 2(4), 1971; Ord. 331 § 2(Exhibit A(1)), 1988; Ord. 260 § 2(A)—(E), 1982, 1999; Ord. 527 (Exhibit A(part)), 1999; Ord. No. 710, § 3, March 24, 2009; Ord. No. 727, Exh. A, Oct. 20, 2009.

8.04.075 Bylaws

The department of health and human services and the advisory committee shall develop bylaws governing the administration and duties of the garbage and recycling advisory committee. The board shall review the proposed bylaws and approve or revise and adopt them.

(Ord. No. 871 , § 3(Exh. A), 3-2-2021)

8.04.080 Meetings—Generally.

The advisory committee shall select one of its members as chair and another as vice-chair. The advisory committee shall meet at times deemed necessary or as called by the department of health and human services or the board. The chair or any three members of the advisory committee may call a special meeting by giving ten days' notice to other members of the advisory committee; provided, however, a majority of the advisory committee members may waive such notice.

(Ord. No. 871 , § 3(Exh. A), 3-2-2021)

8.04.090 Quorum.

Any five members of the committee shall constitute a quorum.

(Ord. No. 871 , § 3(Exh. A), 3-2-2021)

8.04.110 Duties—Generally.

The advisory committee shall:

- A. Carry out the following duties as prescribed by this chapter and by Washington County Code Chapter 8.08:
 - 1. Review and advise on matters pertaining to collection, storage, transport or disposal of waste and the customer experience of the garbage and recycling system;
 - 2. Review and advise on proposed increases or decreases in garbage and recycling collection rates;
 - 3. Review and advise on proposed changes to the rules and regulations that affect the service provided by the garbage and recycling system; and
 - 4. Review and advise on waste reduction and recycling education programs and campaigns.
- B. Assess and report on the impact of decisions that affect all users of the garbage and recycling system including community members, businesses, and other affected groups.
- C. Perform such other and further acts as may be necessary, proper or desirable to carry out effectively the functions of the advisory committee as prescribed in the advisory committee bylaws or by this chapter.

(Ord. No. 871 , § 3(Exh. A), 3-2-2021)

ARTICLE III. SPECIFIC REGULATIONS

8.04.120 Certificate—Issuance.

Except as otherwise provided in this chapter, it is unlawful for any person to collect, store, transport or dispose of any waste or solid waste in the unincorporated areas of the county for compensation unless he first obtains a certificate issued by the board; or after issuance of a certificate, to collect, store, transport or dispose of waste or solid waste in a service area not covered by his certificate, except as otherwise provided by this chapter.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 59 § 7(A), 1969)

8.04.130 Exemptions.

Certificates shall not be required of:

- A. Cities that collect, store, transport or dispose of waste or solid waste;
- B. Federal or state agencies that collect, store, transport or dispose of waste or solid wastes or those who contract with such agencies to perform the service, but only insofar as the service is performed by or for the federal or state agency;
- C. Other persons, practices, processes, businesses or wastes exempted by the board after receipt of a recommendation of the advisory committee on the basis of findings made after public hearing that the same is not necessary to the implementation of the county or a regional solid waste management plan.
- D. Persons transporting waste or solid waste collected outside the unincorporated areas of the county.
- E. Any nonprofit or charitable individual or organization engaged in collection of recyclable materials for profit from customers within an urban growth boundary. The health and human services department may require proof of nonprofit or charitable status in determining whether this exemption applies.
- F. Persons collecting and transporting sewage sludge, septic tank and cesspool pumping or other sludge.
- G. Persons collecting and transporting discarded or abandoned vehicles or parts thereof.
- H. Persons collecting or transporting dead animals.
- I. Persons collecting, storing, transporting, or disposing of waste or solid waste resulting from a disaster event pursuant to a contract with federal, state or local agencies issued during a state of emergency declared pursuant to Washington County Code Chapter 8.36.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 161 § 2(8), 1974; Ord. 59 § 7(B), 1969)

(Ord. No. 727, Exh. A, 10-20-2009; Ord. No. 818, § 3(Exh. A), 12-6-2016)

8.04.140 Compensation defined.

As used in Sections 8.04.120 and 8.04.130, "compensation" includes the flow of consideration from the person owning or possessing the waste or solid waste to the person collecting, storing, transporting or disposing of the same or the flow of consideration from the person collecting, storing, transporting or disposing of waste or solid waste to the person owning or possessing the same.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 161 § 2(9), 1974)

8.04.150 Certificate—Application form.

Applications for certificates shall be on forms provided by the health and human services department. The applications shall be filed with the health and human services department which shall consult with the advisory committee to determine whether the applicant meets the requirements specified in Section 8.04.170 of this chapter.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 59 § 8(A), 1969)

(Ord. No. 727, Exh. A, 10-20-2009)

8.04.160 Certificate—Information required.

Applicants for certificates shall state:

- A. The types of service to be provided within a specified service area;
- B. The rates to be charged for this service;
- C. When the applicant already provides service to all or part of the area, a sworn and verified statement of all customers served within the area and a map showing service routes and boundaries.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 59 § 8(B), 1969)

8.04.170 Certificate—Requirements.

- A. The applicant must show to the satisfaction of the board the following:
 1. Has available equipment, facilities and personnel sufficient to meet the standards of equipment and service established by this chapter and ORS Chapter 459, and regulations promulgated thereunder;
 2. Is registered with the State of Oregon Corporation Division Business Registry.
 3. Has comprehensive general liability insurance, including but not limited to auto liability and workers compensation insurance, in the amounts of, and as established in the Solid Waste and Recycling Administrative Rules.
- B. In addition to the foregoing requirements, the applicant must:
 1. Submit with his application for a certificate a sworn and verified statement of all disposal sites used, operated or otherwise patronized by the applicant, and a sworn declaration that during the term of any certificate issued to said applicant he will dispose of all solid wastes at disposal sites approved by the board;
 2. Submit with his application a corporate surety bond, in an amount established by the board, guaranteeing full and faithful performance by the applicant of the duties and obligations of a certificate holder under the provisions of this chapter.
 3. Defend and indemnify the County, its officers, commissioners, employees and agents and hold them harmless for any claim in any venue, including appeals, resulting from the actions or inactions of the certificate holder regulated by this chapter; provided however, that such obligation shall not apply to the extent such claim results from actions of the County.

- C. An applicant for a certificate who is not already serving the area defined in said certificate must show to the satisfaction of the board that he meets all of the requirements of Sections 8.04.150 through 8.04.170, and that:
1. The defined service area has not been certified to another; or
 2. The defined service area is not presently being served by the holder of a certificate; or
 3. The defined service area is not being adequately served by the holder of a certificate and there is a substantial demand from customers within the area for a change of service to the area.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 59 § 9, 1969)

(Ord. No. 727, Exh. A, 10-20-2009; Ord. No. 818, § 3(Exh. A), 12-6-2016)

8.04.180 Certificate—Application review.

Applications for certificates shall be reviewed by the health and human services department and garbage and recycling advisory committee which shall make such investigation as it deems necessary and appropriate. Written notice shall be given by the health and human services department to any person who holds a certificate which includes any part of the area contained in the application of another.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 59 § 10(A), 1969)

(Ord. No. 727, Exh. A, 10-20-2009; Ord. No. 871 , § 3(Exh. A), 3-2-2021)

8.04.190 Certificate—Investigation.

Upon the basis of the application, evidence submitted and results of any investigation by the health and human services department and garbage and recycling advisory committee, the health and human services department shall make a finding on the qualifications of the applicant under Section 8.04.170 of this chapter, and whether additional areas should be included or additional service and equipment be provided.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 59 § 10(B), 1969)

(Ord. No. 727, Exh. A, 10-20-2009; Ord. No. 871 , § 3(Exh. A), 3-2-2021)

8.04.200 Certificate—Recommendation.

On the basis of its findings, the health and human services department and garbage and recycling advisory committee shall recommend to the board whether or not the application should be granted, denied, or modified, and the board shall issue an order granting, denying or amending the application. If the order of the board is adverse to the applicant or the holder of a certificate, it shall not become effective until thirty days after the date of said order. The certificate holder or applicant may request a public hearing before the board upon the board's order by filing a written request for hearing with the board within thirty days after the date of said order. Upon the filing of said request of hearing, the board shall set a time and place for a public hearing upon its order, which hearing shall be not more than thirty days from the date of filing of said request for hearing. The certificate holder or applicant may submit evidence to the board relevant to the board's order. The board may, following the hearing, affirm or amend its prior order.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 59 § 10(C), 1969)

(Ord. No. 727, Exh. A, 10-20-2009; Ord. No. 871 , § 3(Exh. A), 3-2-2021)

8.04.210 Certificate—Final order.

Subject to the provisions of Section 8.04.410, 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 an application for a certificate, the applicant may not submit another application for the same or a portion of the same service area for a period of six months unless the board finds that the public interest requires reconsideration within a shorter period of time.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 59 § 10(D), 1969)

8.04.212 Certificate—Term.

- A. Certificate Groups. All certificates are assigned a group designation using a random selection method. The certificate holder list shall be divided into four equal or near equal groups, and the groups shall be designated as Group A, Group B, Group C and Group D.
- B. Renewal Schedule.
 - 1. All Group A certificates shall continue in full force and effect until December 31, 1998. Each December 31st commencing with December 31, 1988, the certificates in Group A shall be renewed for a term of ten years from the date of renewal, provided the certificate holder is in substantial compliance with the requirements of state law, this chapter and any rules adopted under this chapter, and provided the conditions described in Section 8.04.170(C)(3) are not found to exist.
 - 2. All Group B certificates shall continue in full force and effect until December 31, 1999. Each December 31st commencing with December 31, 1989, the certificates in Group B shall be renewed for a term of ten years from the date of renewal, provided the certificate holder is in substantial compliance with the requirements of state law, this chapter and any rules adopted under this chapter, and provided the conditions described in Section 8.04.170(C)(3) are not found to exist.
 - 3. All Group C certificates shall continue in full force and effect until December 31, 2000. Each December 31st commencing with December 31, 1990, the certificates in Group C shall be renewed for a term of ten years from the date of renewal, provided the certificate holder is in substantial compliance with the requirements of state law, this chapter and any rules adopted under this chapter, and provided that the conditions described in Section 8.04.170(C)(3) are not found to exist.
 - 4. All Group D certificates shall continue in full force and effect until December 31, 2001. Each December 31st commencing with December 31, 1991, the certificates in Group D shall be renewed for a term of ten years from the date of renewal, provided the certificate holder is in substantial compliance with the requirements of state law, this chapter and any rules adopted under this chapter, and provided that the conditions in Section 8.04.170(C)(3) are not found to exist.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 331 § 2(Exhibit A(2)), 1988)

8.04.214 Certificate—Periodic review.

- A. Periodic Review Schedule.
 - 1. The health department and advisory committee shall conduct the initial periodic review of all certificates in each group commencing on the dates set forth below, and shall conduct similar periodic reviews of all such certificates commencing September 1st of each fourth year following the date of initial periodic review:

(Supp. No. 21)

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Group A September 1, 1988

Group B September 1, 1989

Group C September 1, 1990

Group D September 1, 1991

2. The periodic reviews shall be completed not later than December 31st of the year in which the review is commenced.
- B. Purpose of Periodic Review. Periodic review shall be conducted for the purpose of determining whether the certificates and the holders of such certificates are in compliance with the provisions of this chapter and all applicable rules, regulations and laws. Each certificate holder shall demonstrate compliance with all such requirements.
 - C. Information Submittals. The health department shall prepare a summary of information required to be submitted by each certificate holder, and may specify the forms for such submittals to assure that information necessary to determine compliance is available to the health department and advisory committee.
 - D. Periodic Review Process. Each periodic review shall be placed on the agenda for a regular advisory committee meeting. The committee may review information submittals, take public testimony and take other action as appropriate to determine whether the certificates and holder of such certificates are in compliance.
 - E. Effect of Noncompliance. If in the course of its review of certificates, the health department and advisory committee determine that the certificate or certificate holder being reviewed is not in compliance with the provisions of this chapter or applicable rules, regulations and laws then the health department shall advise the certificate holder in writing of such violation in the manner set forth in Section 8.04.290 and direct that the compliance be achieved within a date certain determined by the advisory committee. If the certificate holder fails to achieve compliance within the date specified the health department and advisory committee shall report to the board with a recommendation on whether the certificate should be suspended, modified or revoked.
 - F. Suspension, Modification and Revocation. The health department, advisory committee and board may initiate proceedings for suspension, modification or revocation under Sections 8.04.290 through 8.04.310, inclusive, at any time, whether or not a periodic review is being conducted.

(Ord. 527 (Exhibit A(part)), 1999; Ord. 331 § 2(Exhibit A(3)), 1988)

8.04.220 Reserved.

Editor's note(s)—Ord. No. 727, Exh. A, adopted Oct. 20, 2009, deleted § 8.04.220. Former § 8.04.220 pertained to certificate—continuing existing service without and derived from Ord. 59, § 12(A), adopted 1969; and Ord. 527, (Exhibit A (part)), adopted 1999.

8.04.230 Certificate for joint service.

If the board finds that the applicant for a certificate cannot provide service to a single customer, group or type of customer or for a particular type of waste, or solid waste, it may issue a certificate for joint service with another person who can provide that service; provided, however, in all cases where the board finds that the applicant is able to provide adequate service within the service area, it shall issue an exclusive certificate for that area to the applicant.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 59 § 12(A), 1969)

8.04.240 Limited purpose certificate.

If the holder of a certificate is unable to provide service for particular types or unusually large quantities of waste or solid waste, the board may issue a temporary or permanent certificate to another person for the limited purpose of providing service to the customers having such particular types or unusually large quantities of waste or solid waste.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 59 § 12(B), 1969)

8.04.250 Temporary certificate.

If the health and human services department finds that the need for service justifies action before a complete investigation and filed determination can be made, it may issue a temporary certificate, valid for a stated, period, not to exceed six months.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 59 § 12(C), 1969)

(Ord. No. 727, Exh. A, 10-20-2009)

8.04.260 Reserved.

Editor's note(s)—Ord. No. 727, Exh. A, adopted Oct. 20, 2009, deleted § 8.04.260. Former § 8.04.260 pertained to special certificate and derived from Ord. 59, § 12(D), adopted 1969; and Ord. 527, (Exhibit A (part)), adopted 1999.

8.04.270 Responsibility of certificate holder.

A. The holder of a certificate:

1. Shall provide required service and facilities consistent with the standards established by the county in the Solid Waste and Recycling Administrative Rules;
2. Shall not discontinue service to the service area or any substantial portion thereof without giving not less than ninety days' written notice of the proposed discontinuance of service to the health and human services department and to his customers and receiving the approval of the health and human services department prior to discontinuing said service;
3. May contract with another person to provide service within his service area after giving thirty days' written notice to and obtaining the approval of the health and human services department. The health and human services department shall approve the contract unless it finds that the quality or extent of service would be jeopardized;
4. May refuse collection service to any customer as provided for within the county's Solid Waste and Recycling Administrative Rules, or for other reasons as may be established by the board; provided, however, in no event shall the holder of any certificate terminate said service without first notifying the customer in writing of the holder's intention to terminate service not less than seven calendar days prior to the date of termination of service.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 98 § 2(5), 1971; Ord. 59 § 13(A), 1969)

(Ord. No. 727, Exh. A, 10-20-2009)

8.04.275 Service Area Modifications.

The board may, upon recommendation of the advisory committee, amend service certificates to increase or decrease a service area or to add or delete service accounts in the following circumstances:

- A. Upon request of the service certificate holder; or
- B. Upon a finding, after the procedures set forth in Sections 8.04.290 through 8.04.310 have been fulfilled, that such an amendment is consistent with the policy of this chapter.

(Ord. No. 727, Exh. A, 10-20-2009)

8.04.280 Certificate—Transfer.

A certificate holder may transfer a certificate or a portion of the service area only after written notice to and approval by the board.

- A. The board shall approve the transfer if it finds that the transferee meets all applicable requirements of this chapter.
- B. The board shall approve or disapprove any application for transfer of certificate within sixty days after receipt of notice by the board unless the board finds that there is a substantial question of public health or safety involved and requires additional time for investigation and decision.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 59 § 14, 1969)

8.04.290 Certificate suspension, modification or revocation—Notice.

The health and human services department shall, upon reasonable cause, make investigations to determine if there is sufficient reason and cause to suspend, modify or revoke a certificate as provided in Section 8.04.300. If, in the opinion of the health and human services department, there is sufficient evidence to constitute a violation of this chapter or ORS Chapter 459 or the rules and regulations promulgated thereunder, the health and human services department shall notify the holder of the certificate in writing of the alleged violation and what steps must be taken to cure the violation. If the holder of the certificate is unable to or refuses to cure the violation and follow the requirements of the health and human services department set forth in said notice, the health and human services department shall consult with the advisory committee and forthwith recommend to the board that the service certificate be suspended, modified or revoked.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 59 § 14(A), 1969)

(Ord. No. 727, Exh. A, 10-20-2009)

8.04.300 Certificate suspension, modification or revocation—Findings.

The board may suspend, modify or revoke a certificate upon finding that the holder thereof has:

- A. Wilfully violated this chapter or ORS Chapter 459 or the rules and regulations promulgated thereunder;
or
- B. Materially misrepresented statements in the application for a certificate; or

(Supp. No. 21)

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- C. Wilfully refused to provide adequate service in the defined service area after written notification and a reasonable opportunity to do so.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 59 § 15(B), 1969)

8.04.310 Certificate suspension, modification or revocation—Compliance order.

In lieu of immediate suspension, modification, or revocation of a certificate, the board may order compliance and make suspension, modification or revocation contingent upon compliance with the order within a time stated in said order.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 59 § 15(C), 1969)

8.04.320 Rates—Determination.

The board shall approve and establish existing rates filed by all applicants under Sections 8.04.150 and 8.04.160 who meet the requirements of Section 8.04.170 of this chapter unless it finds that such rates are demonstrably unreasonable and are substantially higher than those charged generally in the county under similar service requirements and for the same or similar quality of service. In determining whether such rates are unreasonable under this section and Section 8.04.330, the board shall consider the length of haul, type of waste or solid waste collected, stored, or transported, the number, type and location of customers served, or such other factors as may, in the opinion of the board, justifiably affect the rates charged.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 59 § 16(A), 1969)

8.04.330 Rates—Consideration.

Increases or decreases in the rates approved under Section 8.04.320 shall not be made by the board unless the board finds that the increase or decrease is based upon an increase or decrease in the cost of doing business or an increased cost of additional, better or more comprehensive service. In determination of a proposed rate change, the board shall give due consideration to:

- A. The investment in facilities and equipment, the services of management, local wage scales, the concentration of customers in the area served, methods of collection and transportation, the length of haul to disposal facilities, and the cost of disposal, reasonable return of the owners of the business and the future service demands of the area which must be anticipated in equipment facilities and personnel;
- B. The board may require an investigation by the health department of any proposed rate increase or decrease. For purposes of making its investigation, the health department in cooperation with the advisory committee is authorized to hold public hearings and to take and receive testimony relevant to the considerations to be made by the board in allowing or denying rate increases or decreases under this chapter. Upon completion of its investigation, the health department shall make report of the hearing and recommendation to the board regarding the proposed rate increases or decreases;
- C. In considering rate increases or decreases, the board must find that the rates will be just, fair, reasonable and sufficient to provide proper service to the public. The board may consider the rates charged by other persons performing the same or similar service in the same or other areas and shall give due consideration to the applicable items specified in Section 8.00.330.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 59 § 16(B), 1969)

8.04.340 Rates—Preferences prohibited.

- A. No certificate holder subject to rate regulation under this chapter shall give any rate preference to any person, locality or type of waste or solid waste, collected, stored, transported or disposed.
- B. Nothing in this section is intended to prevent:
 - 1. The reasonable establishment of uniform classes of rates based upon length of haul, type of waste or solid waste collected, stored, transported or disposed of or the number, type and location of customers served, or upon other factors so long as such rates are reasonably based upon costs of the particular service and are approved by the board in the same manner as other rates;
 - 2. Any person from volunteering service at reduced costs for a charitable, community, civic or benevolent purpose.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 59 § 17, 1969)

8.04.342 Responsibility for payment of charges.

The provisions of solid waste collection service to residential tenants is declared to be a benefit and service to the owners of such property, as well as the tenants. 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.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 331 § 2(Exhibit A(4)), 1988)

8.04.344 Recycling.

- A. All holders of certificates shall provide on-route collection of source separated recyclable material from all customers consistent with the service standards established within the county's Solid Waste and Recycling Administrative Rules. This service shall include, but not be limited to, each of the materials listed in the applicable Oregon Administrative Rules, together with any other materials which may be designated by the Department of Environmental Quality.
- B. Each holder of a certificate shall provide notices to its customers that comply with all applicable requirements of the county's Solid Waste and Recycling Administrative Rules as well as all applicable Oregon Administrative Rules.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 331 § 2(Exhibit A(5)), 1988)

(Ord. No. 727, Exh. A, 10-20-2009)

8.04.350 Certificate fees—Amount.

The board shall collect, in the manner and at times hereinafter provided, from the holder of any certificate, an annual fee equal to three percent of the gross receipts from the area defined in said certificate.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 59 § 18(A)(part), 1969)

8.04.360 Certificate fees—Collection.

The annual fee shall be computed and collected on a quarterly basis, the quarterly periods to consist of the periods ending March 31st, June 30th, September 30th and December 31st. The fee shall be paid by the certificate holder not later than the last day of the month immediately following the end of the quarter.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 64 (part), 1970: Ord. 59 § 18(A)(1), 1969)

8.04.370 Certificate fees—Records maintenance.

Every certificate holder shall maintain complete and accurate records as defined within the county's Solid Waste and Recycling Administrative Rules disclosing the gross receipts for services rendered for compensation pursuant to this chapter. All applicable books and records shall be open at reasonable times and places for audit by authorized personnel of the county.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 98 § 2(6), 1971)

(Ord. No. 727, Exh. A, 10-20-2009)

8.04.380 Certificate fees—Receipts misrepresentation unlawful.

Misrepresentation of gross receipts by an applicant or certificate holder as disclosed by audit, shall constitute cause for denial or revocation of certificate, pursuant to Sections 8.04.290 through 8.04.310 of this chapter.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 59 § 18(A)(3), 1969)

8.04.390 Agreement for joint franchising or licensing.

The board may enter into agreements with any city, county or other public agency for joint or regional franchising or licensing of service.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 98 § 2(7), 1971)

8.04.400 Conformity with law.

This chapter, all amendments made thereto, and all rules and regulations adopted by the board pursuant thereto shall be in no way a substitute for, nor in any way eliminate the necessity of conforming with all valid federal and state statutes or laws or any rules or regulations adopted pursuant thereto, nor any ordinance enacted by the county or rule or regulation adopted pursuant to such ordinance. The provisions of this shall be construed to be an addition to the requirements imposed by all such statutes, laws, ordinances, rules or regulations.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 239 § 2(1)(a), 1980; Ord. 229 § 2(4)(a), 1980; Ord. 98 § 2(9), 1970)

8.04.410 Review of board action.

All decisions of the board under this chapter shall be reviewable by the Circuit Court of the state of Oregon for the county under the provisions of ORS 34.010—34.100 which shall be the sole and exclusive remedy for reviewing any and all actions of the board under this chapter.

(Ord. 527 (Exhibit A(part)), 1999: Ord. 239 § 2(1)(b), 1980; Ord. 229 § 2(4)(b), 1980; Ord. 59 § 23, 1969)

