

ORDINANCE NO. 772

AN ORDINANCE RELATING TO PUBLIC HEALTH;  
UPDATING THE PROVISIONS OF THE MUNICIPAL  
CODE RELATING TO THE PROGRAM OF MANDATORY  
SOLID WASTE COLLECTION; SETTING FORTH  
GUIDELINES FOR THE COLLECTION AND RECYCLING  
OF SOLID WASTE MATERIALS; DEFINING  
VIOLATIONS; ADDING A NEW CHAPTER TO TITLE 8  
OF THE McCLEARY MUNICIPAL CODE, &  
ESTABLISHING PENALTIES FOR VIOLATION OF ITS  
PROVISIONS.

R E C I T A L S:

1. Since 1948, through the adoption of Ordinance 57 the City has had in place a program requiring mandatory solid waste collection. The necessity was and is based upon fundamental protection of the health and safety of the public. Previously, the City has adopted the Grays Harbor County Comprehensive Solid Waste Management Plan and is responsible for implementing solid waste programs meeting that Plan's requirements.

2. The Grays Harbor County Comprehensive Solid Waste Management Plan and RCW Chapter 70.95 have established waste reduction and source separating recycling as fundamental strategies of solid waste management.

3. RCW 70.95.090 and the Recycling Program adopted by the Grays Harbor County Solid Waste Advisory Committee establish source separation strategies that include the collection of

source separated recyclables from residential dwellings; source separated yard waste collection programs where local markets exist; and programs that educate and promote the concepts of waste reduction and recycling.

4. The City wishes to encourage rate structures that provide incentives for waste reduction and recycling, and supports reduced garbage and recycling collection rates for those who produce less garbage.

5. As has been recognized, state law authorizes the City to enter into a franchise agreement with a qualified hauler to provide the solid waste collection, recycling, and education services anticipated by this Ordinance. It has done so and through the adoption of this updating of its solid waste collection provisions, does not intend to in any way affect the existing contract.

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS BY THE CITY COUNCIL OF THE CITY OF McCleary:

SECTION I: Purpose of Chapter: The Council reaffirms its finding in 1948 that the requirement of mandatory solid waste collection is necessary for protection of the public health and safety. In light of that finding, the Council intends to take the following steps:

A. Encourage the management of solid waste according to the priorities defined in RCW 70.95.010 and the Grays Harbor County Comprehensive Solid Waste Management Plan.

B. Set minimum solid waste and recycling collection service levels for solid waste haulers.

C. Define solid waste collection rate objectives that provide incentive for waste reduction and recycling.

D. Set standards for the provisions of recycling opportunities to the citizens of the City.

E. Establish mandatory solid waste provisions for all locations within the corporate limits.

SECTION II: Definitions: The following definitions shall apply to this chapter:

2.1: General Principals of Interpretation -

A. Words in this chapter used in the present tense shall include the future tense, and in the singular shall include the plural and in the plural shall include the singular, and the masculine shall include the feminine gender.

B. To the extent a specific definition is not provided, the generally accepted meaning of a word or term shall be applicable.

2.2: Specific Definitions -

A. City - shall mean the City of McCleary.

B. Contamination - shall mean non-recyclable solid waste mixed with recyclable solid waste.

C. Generator - shall mean the person responsible for collecting, separating, and/or depositing solid waste in approved containers.

D. Hauler - shall mean any certified solid waste hauler authorized to collect solid waste within the corporate limits of the City.

E. Multi-Family Residence - shall mean a building designed exclusively for residential purposes for occupancy by two or more families living separately from each other.

F. Person - shall mean every natural person, firm, copartnership, limited liability company, association or corporation.

G. Premises - shall mean any dwelling, flat, apartment, rooming house, hotel, restaurant, boardinghouse, eating place, shop, place of business, or any other building or structure.

H. Recyclable Plastic Containers - shall mean all plastic containers that can be collected and recycled without undue expense as determined by the City. These plastics may include, but are not limited to, polyethylene terephthalate (PET) and high-density polyethylene (HDPE) containers.

I. Recyclable Materials - shall mean those solid wastes that are separated for recycling or reuse, such as papers, metals, and glass, that are identified as recyclable material pursuant to a local comprehensive solid waste plan, under RCW 70.95.030.

J. Recycling - shall mean transforming or remanufacturing waste materials into useable or marketable

materials for use other than landfill disposal or incineration.

K. Single-Family Residence - shall mean a detached building designed exclusively for occupancy by one family and containing one dwelling unit.

L. Solid Waste or Solid Wastes - shall mean all putrescible and non-putrescible solid and semi-solid waste including, but not limited to, garbage, rubbish, ashes, industrial waste, swill, demolition and construction waste, abandoned vehicles or parts thereof, and recyclable materials.

M. Solid Waste Management - shall mean the management of storage, collection, transportation, treatment, utilization, processing, and final disposal of solid wastes, including the recovery and recycling of materials from solid wastes, the recovery of energy resources from solid wastes, or the conversion of the energy in solid wastes to more useful forms or combinations thereof.

SECTION III: Mandatory Solid Waste Collection & Contracting Authority:

3.1. A. Every owner or occupant of real property, whether improved or unimproved, including specifically all premises within the City boundaries, which generates solid waste on a regular or irregular basis, must provide for the disposal of that solid waste by subscribing with a hauler for collection service.

B. The duty set forth in sub-paragraph A shall be a non-delegable duty for which the owner of the real property shall be directly responsible in terms of compliance, whether as to obtaining and maintaining such service or for payment of any obligations incurred for such service. These non-delegable duties shall exist even in the event that the owner allows an occupant the authority to contract and pay for such services.

3.2. Pursuant to applicable law, the City of McCleary reaffirms its exercise of the authority to gather and collect solid waste and to regulate and manage the disposal of solid waste within the city. Therefore, as has been true since 1948, it is unlawful for any person to collect or gather solid waste, except the contents of any septic tanks within the city, or to deposit or dump the same or cause the same to be dumped or deposited upon any lot of land or in any water or waterways within the corporate limits of the City, except as provided in this chapter.

3.3. The City Council may enter into a contract with a qualified hauler conveying the exclusive rights to collect, remove, and dispose of all solid waste consistent with the provisions of this Chapter. No contract for such services shall be for a term greater than five years, but may provide for mutually agreed upon extensions. However, the City may, at its option, handle the collection and disposal of solid waste under municipal ownership by creation of a garbage utility.

3.4. A. All charges for service to be rendered in accordance with this chapter shall be billed upon such schedule and be payable upon such terms and conditions as may be provided by the terms of any applicable resolution of the City.

B. Upon failure to pay such charges and upon delinquency, to the extent allowed by law,

1. the amount thereof shall become a lien against the premises from which the solid waste collection service shall have been rendered. Such liens shall be made effective by filing a notice thereof specifying the charges, the period covered by the charges, and giving the legal description of the premises to which the service was rendered. Such liens shall be filed in the manner required by law, specifically RCW 35.21.120 through 35.21.150, as now existing or hereafter amended or succeeded.

2. To the extent allowed by applicable law and ordinance, upon such failure, other utilities provided by the City may be terminated to the premises.

C. Service to any premises may be suspended for nonpayment of moneys owing for services rendered. Such suspension shall not relieve the person owing such account of the duty of complying with the provisions of this chapter. Such suspension shall render the premises where such service is suspended subject to enforcement action for sanitary reasons.

SECTION IV: Solid Waste Management Standards: The following provisions shall apply to the application of this Chapter.

4.1. Recycling:

A. To the extent that such services are a part of the mandatory solid waste collection program established by the City, generators of solid waste within the City of McCleary shall comply with recycling programs. Upon request collection containers shall be provided for each premises from which recyclable materials are generated to facilitate the collection of newspapers, mixed wastepaper, cardboard, tin and aluminum cans, recyclable plastic containers, and other recyclable materials. The recycling of glass shall be pursuant to standards and procedures authorized by the City in recognition of the impact of the inclusion of glass in a unified container.

B. The owner or manager of a premises may choose to either self-haul such recyclables or utilize the provided recycling collection services: PROVIDED THAT, the decision to not utilize the provided service shall not constitute a justification for not paying any charge or fee necessary to provide that service within the corporate limits.

C. The owner or manager of each multi-family residence shall be responsible for providing City supplied waste reduction/recycling promotional materials to each existing or incoming resident.



4.2. Accessibility of Containers: On the day of collection, it shall be the duty of each garbage customer to place all garbage cans, excess garbage containers, recycling bins, and yard waste collection containers in an accessible place abutting the street or alley used by the garbage hauler to serve the subject property. The approved cans, containers, or bins shall be situated at the edge of the public right-of-way or at the curb line if such exists. Arrangements may be made for special collection sites for handicapped persons and multi-family complexes. Customers not complying with the collection site requirements shall be charged an additional fee or passed over without collection at the option of the hauler. Failure to comply with this provision shall not relieve the customer of the obligation to pay the collection fee for that day.

4.3. Litter Around Cans: It is the duty of each customer to keep the area around its garbage and refuse receptacles free from litter. The hauler shall not be obligated to clean up litter around receptacles and shall only be required to dump such garbage and refuse as may be in the container at the time of collection.

SECTION V: General Collection Service Levels Established:

5.1 The following service levels shall be complied with by any hauler engaged in the business of hauling or

transporting solid waste or recyclables for compensation picked up from sites within the city limits:

A. No person, partnership, or corporation shall engage in the business of hauling or transporting residential garbage, refuse, or recyclables for compensation within the City without complying with the requirements of this Ordinance and possessing proper operating authority as determined by the City.

B. The authorized hauler will provide adequate office facilities and phone operators to conveniently handle customer sign-ups, service charges, billings, and complaints. Customer service will be the sole responsibility of the hauler. Hauler will also assist the City with the development of a program of promotion and public education activities.

C. Prior to initiating collection services, the hauler must enter into a binding contractual agreement with the City.

D. The following service levels are established for garbage and recyclables.

1. Garbage collection shall be offered upon such schedule as may be approved by the City.

2. Recyclable collection shall be offered upon such conditions and schedule as are approved by the City. Collected recyclables may include newspaper, glass containers, tin and aluminum cans, and such other materials as may be authorized by the City. They shall be separated in the manner required by such program as may then be authorized by the City.

3. Garbage and recyclables shall be separated and deposited in such manner as is approved by the City.

4. So long as a recycling program is approved by the City, a Hauler must recycle collected materials unless prior approval is obtained from City.

5. So long as a recycling program is approved by the City, a Hauler shall deliver recycling containers to households that request the recycling collection service. Containers must be of sufficient number and design to be capable of holding all approved recyclable materials.

6. Containers that have obvious contamination of recyclables with garbage may be tagged by the hauler with instructions for proper separation and may not be collected. If the uncollected materials are not properly separated on the following collection cycle, they will be collected as garbage and the customer will be billed for the additional volume.

7. Non-resident lot owners shall secure services in one of two manners:

a. Dwelling units shall be serviced and billed as regular residential service.

b. To the extent that they are made available by the hauler, non-dwelling units (recreational vehicles, etc.) shall pay a per-season rate (60 days) to purchase bags from the City to be collected by the hauler. These bags will be issued when the owner secures the 60-day occupancy permit.

8. All collection services shall be offered to each account on a consistent day of the week in a coordinated manner whenever economically feasible.

9. Materials will be collected within such time periods as may be established by the contract entered into with a private contractor: PROVIDED THAT, in the absence of any contractual provisions materials will be collected between 6:30 a.m. and 5 p.m., Monday through Friday.

10. Materials may be collected on legal holidays or, at the hauler's discretion, alternate arrangements may be temporarily made as long as materials are collected within two days of each account's regular collection day.

11. If collections are missed due to hazardous weather conditions, materials may be collected, at no additional charge, during that customer's next regular collection cycle unless the contract for service between the Hauler and the City provides differently.

12. Special arrangements on an individual account basis shall be made to allow disabled single-family residential customers full access to all collection services.

E. The rate structure adopted by written resolution of the City or as later amended pursuant to action of the City Council shall be the rate structure imposed for the services rendered by hauler. Among other things, the rate structure shall

take into consideration the request of the hauler and such other information as is deemed appropriate.

F. Upon written request from the City, a written report shall be delivered by hauler to the City containing such data as may be requested for both residential and commercial accounts. The request may include the following items and shall be made no more frequently than one time per twelve month period.

1. Total garbage and recycling collection accounts.
2. Total sign-ups for recycling and yard waste collection.
3. Average number of pick-ups made for each service.
4. Separate totals for quarterly tonnage collected for garbage and recycling.
5. A log of customer compliments and complaints, whether oral or written, including date, time, subject, and resolution.

5.2. Any provision set forth in Sub-section 5.1 shall be subject to modification by the terms of any written contract entered into between the City and its designated Hauler.

#### SECTION VI: Violations & Penalties

##### 6.1 Specific Violations:

A. Unlawful Accumulations: It is unlawful for any occupant or owner of any building, lot, or premises in the City to allow or permit any refuse to collect or remain upon such premises in such a manner or quantity as to constitute a fire or

health hazard. Any such accumulation is deemed a nuisance and as such may be abated by the City pursuant to the applicable provisions of the Municipal Code. Further, any person found to have committed a violation of this section shall be subject to punishment as provided in §6.2.

B. Theft of Service: Utilization of garbage or recycling collection services without the establishment of an active account with the appropriate hauler shall be a misdemeanor offense as that crime is described by the McCleary Municipal Code.

C. Unlawful Dumping: It is unlawful to dump or deposit any garbage or refuse upon any street or alley or on any public or private property except in a receptacle intended for that purpose and with the implied or expressed consent of the owner of said receptacle. Any person found to have committed a violation of this section shall be subject to punishment as provided in §6.2.

D. Anti-scavenging: Materials placed in recycling containers shall remain the property of the generator until such materials are delivered by the hauler to a recycling facility. No person shall remove any such materials from these containers without the permission of the generator using the container. Any person found to have committed a violation of this section shall be subject to punishment as provided in §6.2.

E. Failure to Utilize Service: It is unlawful for any occupant or owner of any building, lot, or premises in the City to fail to comply with the provisions of Section 3.1. Such failure shall be deemed a nuisance and as such may be abated by the City pursuant to the applicable provisions of the Municipal Code. Further, any person found to have committed a violation of this section shall be subject to punishment as provided in §6.2.

6.2. Penalty:

Any person found to have violated §6.1 A, C, or D of this ordinance or any other provision of this ordinance for which no specific penalty is established shall, upon a finding of committed or guilty, be subject to punishment as follows:

A. The first two violations found to have been committed by a person within any twenty-four month consecutive period shall constitute infractions and be so cited and heard. Upon finding a violation has been committed, the violator shall be subject to a fiscal penalty of up to \$250.00 and such further order of the Court as will correct the violation.

B. A third violation found to have been committed by a party within any twenty-four consecutive month period shall constitute a criminal offense. Upon conviction, the person shall be subject to punishment as follows: a fine up to \$1,000.00 and incarceration up to ninety (90) days for each offense. Each day that a violation is knowingly permitted to exist shall constitute a separate offense.

SECTION VII: Severability:

If any section, sentence, clause, or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Ordinance.

SECTION VIII: Codification:

Sections I through VII of this ordinance shall constitute a new chapter in Title 8 of the Municipal Code.

SECTION IX: Repeal & Savings Clause:

9.1: Any provision of the existing ordinances or sections of the municipal code of the City in conflict with the provisions of Sections I through VII of this ordinance shall be deemed repealed to the extent that such conflict exists. This shall include the provisions of Ordinance 57, said ordinance not having been codified.

9.2: The repeal of the existing provisions shall be interpreted as prospective. Thus, provisions relating to repeal set forth in Subsection 9.1 shall not abate nor affect any prosecution under any such ordinance which was commenced prior to the effective date of this ordinance nor prevent the issuance of process and the liability of and prosecution of individuals under these repealed sections as to acts committed prior to the date of repeal.



SECTION X: This Ordinance shall take effect upon the fifth day following date of publication.

PASSED THIS 22<sup>ND</sup> DAY OF JUNE, 2011, by the City Council of the City of McCleary, and signed in approval therewith this 22nd day of June, 2011.

CITY OF McCLEARY:

  
D. GARY DENT, Mayor

ATTEST:

  
WENDY COLLINS, Clerk-Treasurer



APPROVED AS TO FORM:

\_\_\_\_\_  
DANIEL O. GLENN, City Attorney

STATE OF WASHINGTON     )  
  : ss.  
GRAYS HARBOR COUNTY    )

I, WENDY COLLINS, being the duly appointed Clerk-Treasurer of the City of McCleary, do certify that I caused to have published in a newspaper of general circulation in the City of McCleary a true and correct summary of Ordinance Number 772 and that said publication was done in the manner required by law. I further certify that a true and correct copy of the summary of Ordinance Number 772, as it was published, is on file in the appropriate records of the City of McCleary.

  
WENDY COLLINS

July SIGNED AND SWORN to before me this 12<sup>th</sup> day of \_\_\_\_\_, 2011, by WENDY COLLINS.



Danette Joane Brannin  
NOTARY PUBLIC IN AND FOR THE STATE OF  
WASHINGTON, Residing at: Grays Harbor County  
My appointment expires: 3/17/2015