

ORDINANCE NO. 11 - 2012

ORDINANCE MODIFYING THE BOUNDARIES OF THE EXISTING SAN JUAN COUNTY SOLID WASTE DISPOSAL DISTRICT, ESTABLISHING THE LOPEZ SOLID WASTE DISPOSAL DISTRICT AND AMENDING CHAPTER 8.12 OF THE SAN JUAN COUNTY CODE

BACKGROUND

- A. In 1996 the legislative body of San Juan County established a solid waste disposal district for the entire county.
- B. The County Council has determined that it is in the best interest of the County to divide the existing disposal district into two separate districts, one for Lopez Island and one for the rest of the county.
- C. Pursuant to RCW 36.58.100, the County Council is authorized to establish a disposal district for a portion of the county.
- D. A duly advertised public hearing was held on June 26, 2012 to consider public testimony on this Ordinance.
- E. Now, therefore, the County Council desires to modify the boundaries of the existing solid waste disposal district to remove Lopez Island and establish a disposal district for Lopez Island with full powers to handle solid waste disposal.

NOW, THEREFORE, BE IT ORDAINED by the County Council of San Juan County, Washington, as follows:

PART I: AMENDMENTS TO SOLID WASTE DISPOSAL PROVISIONS

Section 1. SJCC 8.12.010 and Ordinance 17-1996 are each amended to read as follows:

Established.

A. Definitions. For the purpose of this chapter, the following definitions shall apply in the interpretation and enforcement of this chapter:

- 1. "Agricultural waste" means wastes on farms resulting from the production of agricultural products including but not limited to manures, and carcasses of dead animals weighing each or collectively in excess of 15 pounds.
- 2. "Bulky waste" means large items of refuse, such as appliances, furniture, and other oversize wastes which would typically not fit into disposal containers.
- 3. "Waste hauler" means any person, firm or corporation collecting solid waste for hire or other consideration.

4. "Controlled solid waste" means all solid waste generated and/or collected within the unincorporated areas of San Juan County.

5. "Dangerous waste" means any solid waste designated as dangerous waste under Chapter 173-303 WAC.

6. "Disposal" means the discharge, deposit, injection, dumping, leaking or placing of any solid waste into or on any land or water.

7. "Disposal site" means a site or sites approved by the San Juan County ~~board of commissioners~~ Council where any final treatment, utilization, processing or deposition of solid waste occurs. This includes, but is not limited to, transfer stations included as part of the County disposal system, sanitary landfills, incinerators, and composting plants.

8. "Division" means the solid waste division of San Juan County.

9. "Hazardous waste" means and includes, but is not limited to, explosives, medical wastes, radioactive wastes, pesticides and chemicals which are potentially harmful to the public health or the environment. Unless otherwise defined by the San Juan County board of health, such waste shall have the meaning as defined by the Washington State Department of Ecology and the Washington Administrative Code.

10. "Health department" means the San Juan County environmental health division of the health and community services department.

11. "Inert waste" means noncombustible, nondangerous solid wastes that are likely to retain their physical and chemical structure under expected conditions of disposal including resistance to biological attack and chemical attack from acidic rainwater.

12. "Manager" means the manager of the solid waste division of San Juan County.

"Moderate-risk waste" mean a class of solid waste that covers Household Hazardous Waste and Conditionally Exempt Small Quantity Generator Waste. "Moderate Risk" does not mean that the material is moderately hazardous; rather it is generated in small volumes and is therefore not regulated in the same way as larger volume hazardous waste from businesses.

13. "Person" means any individual, association, firm, corporation, partnership, political subdivision, municipality or any other entity.

14. "Plan" means the Comprehensive Solid Waste Management Plan adopted pursuant to and consistent with Chapter 70.95 RCW by San Juan County.

15. "Problem wastes" means soils removed during the cleanup of a remedial action site, or a dangerous waste site closure or other cleanup efforts and actions and which contain harmful substances but are not designated dangerous wastes.

16. "Recycling" means the process of segregating solid waste for sale, processing, and beneficial use. Materials which can be removed through recycling include but are not limited to newsprint, cardboard, aluminum, glass, plastics, and ferrous metal. Recycling does not include combustion of solid waste or preparation of a fuel from solid waste.

17. "Reclamation site" means a location used for the processing or the storage of recycled waste.

18. "Solid waste" means all putrescible and nonputrescible solid and semisolid wastes, except wastes identified in WAC 173-304-015, including but not limited to garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, and discarded commodities. This includes all liquid, solid and semisolid materials which are not the primary products of public, private, industrial, commercial, mining and agricultural operations. Solid waste includes but is not limited to sludge from waste water treatment plants and septage from septic tanks, wood waste, dangerous waste, and problem wastes. Unrecovered residues from recycling operations shall be considered solid waste.

19. "Transfer station" means a fixed, supplemental collection and transportation facility, used by persons and route collection vehicles to deposit collected solid waste from off-site into a larger transfer vehicle for transport to a permanent disposal site.

20. "Wood waste" means a by-product resulting from the handling and processing of wood, including but not limited to hog fuel, sawdust, shavings, chips, bark, small pieces of wood, stumps, limbs, and any other material composed largely of wood which has no significant commercial value at the time in question, but shall not include slash developed from logging operations unless disposed of on a different site, and does not include wood pieces or particles containing chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenate. Specifically excluded from this definition are products containing wood waste which are intended for home or agricultural use.

B. System of Disposal.

1. Under the authority provided by RCW 36.58.040, a system is hereby established for disposal of all solid waste generated and/or disposed in unincorporated San Juan County.

2. Disposal in San Juan County. It is unlawful for any person to dispose of controlled solid waste in San Juan County except at County-authorized disposal sites and in a manner authorized by San Juan County; except that nothing herein shall prohibit a person from dumping or depositing solid waste resulting from his or her own activities onto or under the

surface of ground owned or leased by him or her when such action does not violate any statute, ordinance or regulation, or create a nuisance.

3. Establishment of County Solid Waste Facilities.

a. The Lopez Solid Waste Facility is established on the following described real estate owned by San Juan County: the north 300 feet of the south 500 feet of the west 400 feet of the NW 1/4 of the NW 1/4 of Section 23, T35N, R2W, W.M.

b. The Orcas Solid Waste Facility is established on the following described real estate owned by San Juan County: Lot 5 of Johnstone's Home Tracts, Long Plat #1-46; and the west 1/2 of the SE 1/4 of the SW 1/4 of Section 27, T37N, R2W, W.M., except that portion of said west 1/2 described in Exhibit A to deed from Daniel R. Smith and Berenese R. Smith to San Juan County recorded in Volume 73, page 21.

c. The San Juan Island Solid Waste Facility is established on the following described real estate owned by the Town of Friday Harbor: SW 1/4 of Section 2, T35N, R3W, W.M. described in Friday Harbor Ordinance No. 422 dated April 11, 1976 together with the adjacent real property owned by San Juan County commonly known as the Sutton Road Parcel, which property is more fully described as a portion of the Northwest Quarter of the Southwest Quarter and the Southwest Quarter of the Southwest Quarter of Section 2, Township 35 North, Range 3 West, W.M., San Juan County of San Juan, State of Washington consisting of 6.84 acres, more or less and legally described in San Juan County Council Resolution No. 47-2003.

C. Acquisition of Solid Waste Disposal Sites/Transfer Stations. The County may acquire by purchase, lease, contract with private parties or other necessary means, disposal sites which are needed for disposal of solid waste generated and collected in San Juan County. Selection of such disposal sites shall be consistent with the San Juan County Comprehensive Solid Waste Plan and all federal, state, and local requirements, including, but not limited to, comprehensive land use plan and regulations, fire protection, water quality, and air quality. The County may acquire disposal sites on a continuing basis, as is required by the volume of solid waste generated and collected within the County.

Section 2. SJCC 8.12.020 and Ordinance Ord. 17-1996 are each amended to read as follows:

Regulations and procedures.

A. Use of County Disposal Sites/Transfer Stations.

1. Interlocal Operations. Solid waste disposal sites/transfer stations owned or operated by the County or a solid waste disposal district established by the County shall accept solid wastes and recyclable materials generated and collected within ~~incorporated areas of the~~ County.

2. Individuals and Businesses. Any individual or business may use San Juan County disposal facilities or facilities of a solid waste disposal district designated for individual use or self-hauling, in compliance with any applicable rules and regulations, provided, however, that waste generated or collected outside the County will not be accepted.

3. Dangerous and Hazardous Waste. Under no circumstances shall any person deliver to disposal facilities in San Juan County for disposal any waste that is defined as "hazardous waste" per the Federal Resource Conservation and Recovery Act or rules or regulations thereunder, or defined as "extremely hazardous waste" or "dangerous waste" per Chapter 70.105 RCW or regulations thereunder. Moderate-risk wastes will be accepted at designated County facilities.

B. Operation of Solid Waste Disposal Sites. The following provisions shall apply to solid waste disposal sites operated in San Juan County. Pursuant to Chapter 70.95 RCW, no disposal site in San Juan County shall be established, altered, expanded, improved, operated or maintained without prior compliance with the following:

1. The disposal site, facilities and proposed method of operations shall be consistent with the San Juan County Solid Waste Management Plan.

2. The disposal site shall be constructed, operated, and maintained in accordance with terms of a permit issued by the health department and such other permits as are required by law.

3. Except for the operation of a Lopez Island Solid Waste Disposal District which, after a transition to the Managing Board of the Lopez District shall serve as the operator of solid waste disposal sites located on Lopez Island, ~~t~~The division shall be the oversight or operating authority for all solid waste disposal sites owned or and operated by San Juan County. Nothing herein shall prohibit the County by ordinance from contracting with another entity, public or private, to own, construct and/or operate a disposal site, transfer station or facility. The manager shall prepare operating regulations for solid waste disposal sites on Orcas Island and San Juan Island which operating regulations shall govern all other matters necessary to assure compliance with federal, state, and local regulations applicable to such sites. Said regulations shall be approved by the ~~board of County commissioners~~ County Council. The County reserves the right to provide in said operating rules that certain solid wastes, such as bulky wastes, problem wastes, and wood waste, based on source, type or volume, shall not be accepted, or only conditionally accepted, at sites owned or operated by the County.

4. ~~a~~. Every vehicle delivering solid waste to a solid waste handling site or disposal facility shall have its load tied, covered, or confined in a manner that will prevent any part of the load from leaving the vehicle while the vehicle is in motion. In addition to any other penalty that may be applicable under state law, ~~i-f~~, in the opinion of solid waste facility staff, the load is not secured in such manner and the vehicle is not exempt pursuant to

subsection (C) below, the operator of the vehicle delivering the load shall pay a surcharge at the solid waste handling site or disposal site according to the following scale, effective January 1, 1997:

Cars (vehicles with passenger license plates) \$3.00

Trucks (vehicles with truck license plates) \$5.00

b. Surcharges collected under this section shall be deposited into the Solid Waste Fund, together with daily solid waste facility receipts.

c. A vehicle transporting sand, dirt, or gravel in compliance with the provisions of RCW 46.61.655 as now existing or hereafter amended, shall not be required to secure or cover a load or pay a fee pursuant to this section.

5. The facilities shall be operated in accordance with the rules and regulations promulgated by the San Juan County health department and in accordance with the rules and regulations promulgated by the Department of Ecology as set forth in Chapter 173-304 WAC.

6. Hours of operation of the facilities operated by the division shall be set by the solid waste manager and, as approved by the County Council. ~~board of County commissioners.~~

7. Disposal rates shall be established by the public works director for the General District and the Managing Board of the Lopez District and shall be reviewed and approved by the ~~annually by the San Juan County board of County commissioners~~ County Council as the governing body of the solid waste disposal districts in the county during the County's annual budget process or more frequently if necessary. Disposal rates together with other revenues shall generate sufficient revenue to cover costs of operation, capital expenses, long term debt expenses, and reserves.

8. All other federal, state, and local laws, ordinances and regulations regarding solid waste handling shall be met.

C. Exempt Operations.

1. Any solid waste operation herein exempt from obtaining an operating permit from the San Juan County health department under this chapter must be established, maintained, managed, and/or operated in compliance with all other requirements of federal, state and local rules. Any exemption allowed in this ordinance shall have no effect on requirements of other laws, ordinances, or regulations.

2. The following solid waste disposal operations or facilities are hereby exempted from obtaining a permit under this chapter to be established, maintained, managed, or operated:

- a. Dumping or depositing solid waste generated by a single family or household produced incidental to routine household activities onto or under the surface of the ground owned or leased by the family or household.
- b. Wrecking automobiles and parts thereof, including storage and handling facilities.
- c. Depositing less than 2,000 cubic yards of soil, rock, gravel, broken concrete, and similar inert wastes onto the surface of the ground whereby such depositing is to be temporary in nature, graded and otherwise worked to fill an existing depression or low area of ground.
- d. Depositing agricultural solid waste onto or under the surface of the ground when said waste is being utilized primarily for fertilizer or a soil conditioner or is being deposited on ground owned or leased by the person responsible for the production of said waste, as long as depositing such waste does not create a nuisance.
- e. Depositing sewage and/or sewage sludge onto or under the surface of the ground at a disposal site which has otherwise been issued a permit by a federal, state or local agency to be operated, maintained, or managed for that purpose.

D. Recycling. Reclamation sites for recycling operations shall be designated as part of the County's disposal system and shall be subject to permit requirements of the San Juan County health department.

E. Solid Waste Disposal Site Permit Regulations. The Board of Health shall adopt regulations governing the establishment, alteration, expansion, improvement, operation, and maintenance of all solid waste disposal sites. Such regulations shall set procedures, standards, and conditions for the issuance of solid waste disposal site permits designed to assure that disposal sites and facilities are located, maintained, and operated in a manner so as to properly protect the public health, prevent air and water pollution, and avoid the creation of nuisances. Such regulations shall be consistent with, but may be more stringent than, the minimum functional standards adopted by the Washington State Department of Ecology (Chapter 173-304 WAC).

F. Enforcement. The health department shall be responsible for enforcement, and for seeking enforcement through the prosecutor's office, of subsections (B) through (E) of this section and the regulations promulgated thereunder. The division shall be responsible for enforcement, or for seeking enforcement through the prosecutor's office, of SJCC 8.12.010(B) and 8.12.020(A) and the regulations promulgated thereunder.

G. Penalties. Any person who violates or fails to comply with any of the provisions of this chapter or regulations promulgated hereunder and orders issued pursuant hereto or who files or supplies any false, incomplete or inaccurate information in conjunction with any permit application or permit renewal or in supplying any other information requested by this chapter shall be deemed guilty of a misdemeanor and shall be punished by imprisonment in the County jail for a maximum term fixed

by the court of not more than 90 days or by fine in the amount fixed by the court of not more than \$1,000 or both such imprisonment and fine. Each day that a violator does not comply with the requirements of this act following the initial warning of infraction shall constitute a separate offense. Nothing contained herein shall be construed to exempt an offender from any other suit, prosecution, or penalty provided in the San Juan County Code or by other laws.

H. Severability. If any section, subsection, clause, or phrase of this chapter is, for any reason, found to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portion.

PART II -- AMENDMENTS TO EXISTING SOLID WASTE DISPOSAL DISTRICT

Article II. San Juan County General Solid Waste Disposal District ("General District")

Section 3. SJCC 8.12.040 and Ordinance 19-1996 Section 1 shall be amended to read as follows:

Definitions.

As used in this chapter, the following terms shall be defined as follows:

A. "Business or institution" means all properties in the County other than residential dwellings which are served by a certificated hauler. ~~The tax shall apply whether the business or institution is for-profit or nonprofit, public or private.~~

B. "Capital improvement" means the acquisition or improvement of land or the acquisition, construction, or renovation of solid waste disposal facilities, including but not limited to landfills and transfer stations including all professional services incidental to such capital improvement including planning and engineering.

C. "Certificated hauler" means a solid waste collection company that has obtained a certificate of convenience and necessity from the WUTC pursuant to Chapter 81.77 RCW to provide solid waste collection service in unincorporated areas of the County.

D. "County" means San Juan County.

E. "General District" means the solid waste disposal district established by this chapter for all of San Juan County except for Lopez Island.

F. "Lopez District" means the solid waste disposal district established by this chapter for all of Lopez Island.

G. "Plan" means the County's Solid Waste Management Plan, as it has been adopted in 1996 and may be revised or amended thereafter.;

HG. "Residential dwelling" means each single-family house, apartment, houseboat, or other dwelling unit which is separately billed for waste collection service by a certificated hauler. Forest areas, farms or ranches that elect to use collection service shall be considered as residential dwellings for purposes of this chapter. Residents of apartments, hotels, dormitories, boarding houses, maritime vessels, or other housing units shall not be separately taxed if the landlord or some other party arranges for solid waste collection and pays for solid waste collection and the solid waste excise tax on behalf of tenants or residents.

HH. "WUTC" means the Washington Utilities and Transportation Commission or any agency which succeeds to its powers.

Section 4. San Juan County Code Section 8.12.050 and Ordinance 19-1996 Section 2 are hereby amended to read as follows:

Determination.

The ~~board of County commissioners~~ County Council hereby determines that it is in the public interest to form the district as set forth in this chapter with the boundaries set forth in SJCC Section 8.12.060.

Section 5. San Juan County Code Section 8.12.060 and Ordinance 19-1996 Section 3 are hereby amended to read as follows:

General District Established.

The San Juan County General Solid Waste Disposal District ("General District") is hereby formed to provide a sound financial basis for the funding of solid waste planning, operations, and capital improvements for the General District. The General District shall include all unincorporated areas in San Juan County, except that all of Lopez Island shall be excluded.

Section 6. San Juan County Code Section 8.12.070 and Ordinance 19-1996 Section 4 are hereby amended to read as follows:

Findings.

The ~~board of County commissioners~~ County Council in forming the ~~district~~ General District determines and finds that:

- A. State and federal law and regulation have placed increased responsibility on local governments to manage solid waste disposal systems in a manner that protects public health and safety;
- B. Properly designed, operated, and maintained solid waste disposal facilities are essential public utilities serving broad public interests, by protecting public health and safety;
- C. State and federal standards for solid waste disposal, including requirements for recycling and waste reduction, have greatly increased the cost of solid waste disposal systems;

D. The transfer, disposal, and other handling of solid wastes generated by residents of the district, whether generated at their homes or elsewhere in the district, imposes cost burdens on the County and the district;

E. All residences and businesses within the ~~district~~ General District are beneficiaries of County solid waste disposal systems and facilities and receive substantial and essential public service by having the operational availability on a continuing basis of healthful, safe, and reliable solid waste disposal facilities and systems;

F. A stable funding program made up of both service fees and a tax is required to provide a broad and sound financial basis to provide a viable solid waste management program and safe, effective, disposal facilities; and

G. Imposition of the tax provided for by this chapter will promote the County's ability to fund solid waste capital improvements.

Section 7. San Juan County Code Section 8.12.080 and Ordinance 19-1996 Section 5 are hereby amended to read as follows:

General District ~~taxing~~ authority – Certificated haulers.

The ~~district~~ General District is authorized to levy the excise tax upon the charges paid to certificated haulers for the collection of solid waste, but not on the charges paid to certificated haulers for the collection of recyclable materials ~~collection~~ by each residential dwelling and by each business or institution in the district. This excise tax shall equal a percentage of the collection charges billed by certificated haulers. The solid waste excise tax shall apply whether the business or institution is for-profit or nonprofit, public or private. This tax shall be equal throughout the district. ~~The board of County commissioners~~ County Council, acting as the governing body of the district, shall set the level of the tax from time to time by ordinance.

Section 8. San Juan County Code Section 8.12.090 and Ordinance 19-1996 Section 6 are hereby amended to read as follows:

Responsibility General District taxing authority – Self-haulers.

The ~~district~~ General District is authorized to levy the tax upon the fees paid by any person for the delivery of solid waste or recyclable materials to any solid waste handling or disposal facility located within the General District that is owned or operated by the County; provided, however, that the tax shall not be imposed upon such fees paid by certificated haulers for the delivery of waste collected from a residential dwelling, business or institution that is subject to the tax pursuant to SJCC 8.12.080. The tax upon tipping fees for self-haul delivery of waste to a County facility shall equal a percentage of such fees and shall be established at the same rate as the tax upon charges paid to certificated haulers.

Section 9. San Juan County Code Section 8.12.100 and Ordinance 19-1996 Section 7 are hereby amended to read as follows:

Customers – Billing.

To simplify collection of the tax established by SJCC 8.12.080, each certificated hauler shall include the tax in its regular billing cycle for all customers within the ~~district~~ General District and remit the proceeds collected to the County treasurer clearly indicating that such proceeds pertain to collections in the General District by the tenth working day following the end of each month. The tax provided for pursuant to SJCC 8.12.090 shall, for administrative purposes, be billed and collected as nearly as possible in a manner compatible with the state solid waste tax, Chapter 82.18 RCW.

Section 10. San Juan County Code Section 8.12.110 and Ordinance 19-1996 Section 8 are hereby amended to read as follows:

Customers – List.

To assist in the enforcement of the taxes levied pursuant to this chapter, each certificated hauler shall provide to the County treasurer a listing of its customers and information identifying customers delinquent in payment of the tax. Such listings shall be used by the County treasurer for purposes of bringing collection actions against parties failing to pay the taxes required herein. The County treasurer may request the assistance of the County prosecuting attorney to enforce collection of past due taxes and is authorized to seek the assistance of the State Department of Revenue in coordinating the collection of these taxes with the state tax required by Chapter 82.18 RCW.

Section 11. San Juan County Code Section 8.12.120 and Ordinance 19-1996 Section 9 are hereby amended to read as follows:

8.12.120 Appeals.

Any party aggrieved in the application of the tax provided for herein may appeal the same to the County board of equalization. The decision of such board shall be binding on the County.

Section 12. San Juan County Code Section 8.12.130 and Ordinance 19-1996 Section 10 are hereby amended to read as follows:

Excluded portions of charges.

Any certificated hauler that wishes to exclude any portion of its gross charges for solid waste collection from the tax shall bear the obligation to segregate and justify that a portion of the waste should not be subject to the tax, and shall be subject to the appeal provisions of SJCC 8.12.120.

Section 13. San Juan County Code Section 8.12.140 and Ordinance 19-1996 Section 11 are hereby amended to read as follows:

Lien provisions.

If the tax is not paid when billed by a certificated hauler, the County may seek payment of the tax and secure liens and execute against the property served for the unpaid tax, penalties and interest, all as provided in RCW 36.58.140. All taxes unpaid for 90 days may be assessed a penalty of

\$25.00, plus interest compounded at the rate of one percent per month for each month said tax remains unpaid.

Section 14. San Juan County Code Section 8.12.150 and Ordinance 19-1996 Section 12 are hereby amended to read as follows:

District-General District operations.

The County Council is ex-officio the governing body of the General District. The governing body shall by ordinance or resolution: (1) approve an annual budget; (2) authorize submission to the voters of a measure to levy an excess regular property tax; (3) authorize any adjustment to the tipping fees charged for the disposal of solid waste and recyclable materials; (4) authorize and set the rate of any excise tax; (5) approve the location where solid waste and recyclable materials are disposed; (6) authorize the terms of any borrowing or bonds of the General District. The operations of the General District shall be managed by the solid waste division of San Juan County.

Section 15. San Juan County Code Section 8.12.160 and Ordinance 19-1996 Section 13 are hereby amended to read as follows:

General District Solid waste utility-account fund.

All taxes or other fees collected pursuant to this chapter shall be deposited to the General District solid waste utility fund account, or such other fund or accounts as may be designated pursuant to district-ordinance or regulation of the General District, and shall be used solely for purposes related to solid waste capital improvements deemed necessary by the board of commissioners operations, capital improvements and related debt service thereon of the district and the legacy costs incurred before the formation of the General District. Such legacy costs and related capital improvements include but are not limited to the closure of the Orcas Island Landfill, and the expenses incurred in the selection, study, planning for facilities for handling solid waste and recyclable materials and construction of any County-owned facilities for handling solid waste and recyclable materials; transfer stations; provided, however, the board of commissioners County Council may authorize up to five percent of solid waste excise tax funds collected to be used to support tax billing and collection activities by the County treasurer, bill payment and record keeping activities of the county auditor, and other solid waste related work of the prosecuting attorney for the General District.

Section 16. San Juan County Code Section 8.12.170 and Ordinance 19-1996 Section 14 are hereby amended to read as follows:

Governing Body Review.

This ordinance codified in this chapter shall take effect on November 1, 1996. The County board of commissioners, convened as the governing body of the district, shall review the need for the solid waste excise tax, the level of the tax, and the operation of the solid waste system as frequently as may be needed. Such review shall be performed no less frequently than the review of solid waste

management plans as required under Chapter 70.95 RCW and as such law may be amended from time to time.

PART III. ESTABLISHMENT OF THE LOPEZ SOLID WASTE DISPOSAL DISTRICT ("Lopez District")

NEW SECTION: Section 17. Lopez District Established.

The Lopez Solid Waste Disposal District ("Lopez District") is hereby formed to provide a locally-directed way to manage solid waste and recyclable materials and a sound financial basis for the funding of solid waste planning, operations, capital improvements and legacy expenses. The Lopez District shall include all of Lopez Island.

NEW SECTION: Section 18 Findings.

The County Council in forming the Lopez District determines and finds that:

- A. State and federal law and regulation have placed increased responsibility on local governments to manage solid waste disposal systems in a manner that protects public health and safety;
- B. The community of Lopez Island has expressed a desire to direct the management of the solid waste disposal and handling of recyclable materials generated on Lopez Island;
- C. Properly designed, operated, and maintained solid waste disposal facilities are essential public utilities serving broad public interests, by protecting public health and safety;
- D. State and federal standards for solid waste disposal, including requirements for recycling and waste reduction, have greatly increased the cost of solid waste disposal systems;
- E. The transfer, disposal, and other handling of solid wastes generated by residents of the Lopez District, whether generated at their homes or elsewhere in the district, has imposed and will continue to impose cost burdens on the County and the Lopez District;
- F. All residences and businesses within the Lopez District are beneficiaries of County solid waste disposal systems and facilities and receive substantial and essential public service by having the operational availability on a continuing basis of healthful, safe, and reliable solid waste disposal facilities and systems;
- G. A stable funding program made up of tipping fees and an excise tax are part of a sound program to provide a viable solid waste handling system and safe, effective, disposal facilities; and
- H. Imposition of the excise tax provided for by this chapter will promote the County's ability to fund solid waste capital improvements and pay for legacy costs of solid waste handling activities within the Lopez District.

NEW SECTION: Section 19. Lopez District Taxing authority.

The Lopez District is authorized to levy the excise tax upon the charges paid to certificated haulers for the collection of solid waste but not on the charges paid to certificated haulers for the collection of recyclable materials by each residential dwelling and by each business or institution in the district. The solid waste excise tax shall apply whether the business or institution is for-profit or nonprofit, public or private. This tax shall equal a percentage of the collection charges billed by certificated haulers. This tax shall be equal throughout the district. The County Council, acting as the governing body of the district, shall set the level of the tax from time to time by ordinance.

NEW SECTION: Section 20. Lopez District Taxing Authority – Self Haulers.

The Lopez District is authorized to levy the tax upon the fees paid by any person for the delivery of solid waste but not upon fees paid for disposal of recyclable materials to any solid waste handling or disposal facility located within the Lopez District that is owned or operated by the County or the Lopez District; provided, however, that the tax shall not be imposed upon such fees paid by certificated haulers for the delivery of waste collected from a residential dwelling, business or institution that is subject to the tax pursuant to Section 19 of this Ordinance. The tax upon tipping fees for self-haul delivery of waste to a County facility shall equal a percentage of such fees and shall be established at the same rate as the tax upon charges paid to certificated haulers.

NEW SECTION: Section 21. Customers – Billing.

To simplify collection of the tax established by Section 19 of this Ordinance, each certificated hauler shall include the tax in its regular billing cycle for all customers within the Lopez District and remit the proceeds collected to the County treasurer clearly indicating that such proceeds pertain to collections in the Lopez District by the tenth working day following the end of each month. The tax provided for pursuant to Section 20 of this Ordinance shall, for administrative purposes, be billed and collected as nearly as possible in a manner compatible with the state solid waste tax, Chapter 82.18 RCW.

NEW SECTION: Section 22. Customers – List.

To assist in the enforcement of the taxes levied pursuant to this chapter, each certificated hauler shall provide to the County treasurer a listing of its customers and information identifying customers delinquent in payment of the tax. Such listings shall be used by the County treasurer for purposes of bringing collection actions against parties failing to pay the taxes required herein. The County treasurer may request the assistance of the County prosecuting attorney to enforce collection of past due taxes and is authorized to seek the assistance of the State Department of Revenue in coordinating the collection of these taxes with the state tax required by Chapter 82.18 RCW.

NEW SECTION: Section 23. Appeals.

Any party aggrieved in the application of the tax provided for herein may appeal the same to the County board of equalization. The decision of such board shall be binding on the County.

NEW SECTION: Section 24. Excluded portions of charges.

Any certificated hauler that wishes to exclude any portion of its gross charges for solid waste collection from the tax shall bear the obligation to segregate and justify that a portion of the waste should not be subject to the tax, and shall be subject to the appeal provisions of Section 19 of this Ordinance.

NEW SECTION: Section 25. Lien provisions.

If the tax is not paid when billed by a certificated hauler, the County may seek payment of the tax and secure liens and execute against the property served for the unpaid tax, penalties and interest, all as provided in RCW 36.58.140. All taxes unpaid for 90 days may be assessed a penalty of \$25.00, plus interest compounded at the rate of one percent per month for each month said tax remains unpaid.

NEW SECTION: Section 26. Lopez District Governing Body.

The County Council is *ex-officio* the governing body of the Lopez District. The intention of the County Council is that the governing body will delegate the responsibility for the management of the operation of the Lopez District to the Lopez District Managing Board reserving to the governing body the authority and power to take the following actions by resolution or ordinance after first giving notice to the Lopez District Managing Board and others when required by law: (1) approve an annual budget of the Lopez District; (2) authorize submission to the voters of any measure to levy an excess regular property tax; (3) authorize any adjustment to the tipping fees charged for the disposal of solid waste and recyclable materials; (4) authorize and set the rate of any excise tax; (5) approve the location where solid waste and recyclable materials are disposed; (6) authorize the terms of any borrowing or bonds of the Lopez District; (7) appoint and remove members of the Lopez District Managing Board; and (8) approve any contract or lease that exceeds the authority as set forth in the approved budget or exceeds the duration of a revenue stream that is earmarked to pay the contract or lease.

NEW SECTION: Section 27. Lopez District Managing Board.

The operations of the Lopez District shall be managed by the Lopez District Managing Board ("Managing Board"). The Managing Board shall consist of at least 3 and not more than 5 persons appointed by governing board. The Managing Board shall adopt appropriate by-laws and rules of operation and select a chair and vice chair, and each duly selected chair or vice chair is granted signing authority to bind the Lopez District to any contract or loan that is within the budget authority approved by the governing body. The by-laws of the Managing Board shall establish the duration and term of office for each position. The Managing Board shall have all the powers necessary to carry out an operation of solid waste handling on Lopez Island, except as such powers have been reserved by the governing body in Section 26 , and shall: (1) prepare and submit an

estimate of revenue and expenses to the governing body for the ensuing year in the form used by other County Departments by the Second Friday in August of each year or such other time as is specified by the ; (2) develop such bylaws, rules regulations and procedures for personnel, contracting, financial operation, and the operation maintenance and improvement of the solid waste handling facilities as may be appropriate for the size of the Lopez District; (3) set pay and benefit levels, recruit, hire, train, discipline and discharge employees and/or independent contractors and/or volunteers as appropriate; (4) enter into contracts, leases and agreements with private entities or other governmental entities to assure all solid wastes are handled in a manner consistent with state law, county ordinance and the San Juan County Solid Waste Management Plan; (5) obtain and maintain general liability insurance and such other insurance as appropriate for all operations which names the governing body and the County, its officers, employees and agents as additional named insureds; (6) recommend an amount for tariffs and fees, taxes and charges; (7) participate in the revision and amendment of the San Juan County Solid Waste Management Plan. All meetings of the Managing Board shall be subject to the Open Public Meetings Act and its exceptions for executive session or closed meetings.

NEW SECTION: Section 28. Solid waste utility fund.

All taxes or other fees collected pursuant to this chapter shall be deposited to the Lopez District solid waste utility fund or such other funds or accounts as may be designated pursuant to ordinance or regulation of the Lopez District, and shall be used solely for purposes related to solid waste operations, capital improvements and debt service thereon of the district and legacy costs incurred before the formation of the Lopez District as deemed necessary by the governing body. Such legacy costs and capital improvements include but are not limited to the closure of the Orcas Island Landfill, and the expenses incurred in the selection, study, planning for facilities for handling solid waste and recyclable materials and construction of County-owned facilities for handling solid waste and recyclable materials; provided, however, where allowed by law, the governing body may authorize up to five percent of the solid waste excise tax funds collected to be used to support tax billing and collection activities by the County treasurer, bill payment and record keeping of the County Auditor and other solid waste related work of the prosecuting attorney for the Lopez District.

NEW SECTION: Section 29. Review.

The governing body of the district shall review the need for the solid waste excise tax, the level of the tax, and the operation of the solid waste system as frequently as may be needed. Such review shall be performed no less frequently than the review of solid waste management plans as required under Chapter 70.95 RCW and as such law may be amended from time to time.

Section 30. Transition

The County Council desires to implement the modifications from the existing solid waste disposal district to the General District and the startup of the Lopez District in such a way that the electors residing in the Lopez District will first have an opportunity to vote on and approve an excess property tax to provide a diverse funding stream for the Lopez District. To that end, transition of

operations shall occur after December 1, 2012 and before March 31, 2013. Until the necessary documents and arrangements are made for the transition of the operations from the San Juan County solid waste division to the Lopez District and the Managing Board, the San Juan County solid waste division will operate the Lopez Solid Waste Facility and all fees, taxes and revenue of the Lopez District shall be paid to San Juan County.

Section 31. Effective Date

This ordinance shall take effect on the tenth business day after adoption.

Section 32. Codification

Sections 1 through 29 of this ordinance shall be codified.

ADOPTED this 26TH day of JUNE 2012.

**COUNTY COUNCIL
SAN JUAN COUNTY, WASHINGTON**

Patty Miller
Patty Miller, Chair
District 5, Orcas East

Jamie Stephens
Jamie Stephens, Vice Chair
District 6, Lopez/Shaw

Lovel Pratt
Lovel Pratt, Member
District 1, San Juan South

Richard Peterson
Richard Peterson, Member
District 2, San Juan North

Howard Rosenfeld
Howard Rosenfeld, Member
District 3, Friday Harbor

Richard Fralick
Richard Fralick, Member
District 4, Orcas West/Waldron

ATTEST: Clerk of the Council

Ingrid Gabriel
Ingrid Gabriel, Clerk
Date: 6.26.2012

REVIEWED BY COUNTY
ADMINISTRATOR PRO TEMPORE

Robert W. Jean 6/26/12
Robert W. Jean Date

RANDALL K. GAYLORD
APPROVED AS TO FORM ONLY

By: Randall K. Gaylord 6/26/2012
Date