



Whatcom County

COUNTY COURTHOUSE
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Agenda Bill Master Report

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TITLE FOR AGENDA ITEM:

Ordinance amending WCC 8.13, Solid Waste Disposal District, regarding the Solid Waste Excise Privilege Tax

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Amend WCC 8.13, Solid Waste Disposal District, regarding the existing solid waste excise privilege tax, as per RCW 36.58, Solid Waste Disposal, to implement a revenue neutral conversion of the current \$8.50 per ton solid waste excise privilege tax, as levied against solid waste collection companies, to 3.3% of customer invoice, to ensure that the amount of tax collected equals the amount of tax remitted.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
09/10/2019	Council	SUBSTITUTE INTRODUCED FOR PUBLIC HEARING	Council
09/24/2019	Council	ADOPTED	

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PROPOSED BY: Health
INTRODUCTION DATE: 9/10/2019

ORDINANCE NO. 2019-066

AMENDMENT TO WHATCOM COUNTY CODE (WCC) 8.13, SOLID WASTE DISPOSAL DISTRICT REGARDING THE SOLID WASTE EXCISE PRIVILEGE TAX

WHEREAS, solid waste management statutory obligations and programmatic requirements such as closed landfill monitoring and maintenance, Disposal of Toxics facility operations, waste reduction and recycling education, illegal dumping and litter control, compliance enforcement and comprehensive planning require adequate funding mechanisms; and,

WHEREAS, in 1997, to fund solid waste management statutory obligations and programmatic requirements, Ordinance 97-41 amended WCC 8.13.030, *Excise privilege tax levied*, and implemented a solid waste excise tax, currently established at \$8.50 per ton, excluding recyclable materials, to be levied against solid waste collection companies; and,

WHEREAS, because solid waste cannot be weighed curbside during pickup each time for each customer, the solid waste collection companies worked with the County to establish a percent of invoice fee, as a 'reasonable estimate (Exhibit A),' to charge each customer; and,

WHEREAS, because of differences in rate structures and customer base, each collection company charges a different percent, and it is not apparent that taxes collected exactly equal taxes remitted; and,

WHEREAS, since the solid waste excise tax is included on each collection companies approved Washington Utilities and Transportation Commission (WUTC) tariff, as a housekeeping issue, WUTC has requested that the excise tax be reviewed to address this issue; and,

WHEREAS, as unanimously approved by both the *Whatcom County Solid Waste Advisory Committee* and the *Whatcom County Solid Waste Executive Committee*, a percent of invoice rather than per ton tax ensures that taxes collected equal taxes remitted; and,

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WHEREAS, a revenue neutral conversion of the \$8.50 per ton solid waste excise tax to 3.3% of invoice allows program funding at the current rate.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that WCC 8.13, *Solid Waste Disposal District* is hereby amended as shown in Exhibit B attached hereto.

ADOPTED this 24th day of September, 2019.


ATTEST:


WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON


Dana Brown-Davis, Clerk of the Council

WHATCOM COUNTY, WASHINGTON

APPROVED AS TO FORM:


Civil Deputy Prosecutor


Rud Browne, Chair


Jack Louws, County Executive

Approved () Denied

Date Signed: 9.26.19

PUBLIC WORKS DEPARTMENT
WHATCOM COUNTY COURTHOUSE
311 Grand Avenue
Bellingham, WA 98225-4038
JEFFREY M. MONSEN, P.E.
Director



EXHIBIT A

October 23, 1998

Mr. Ed Nikula
Sanitary Service Co
1001 Roeder Avenue
Bellingham, WA 98225

Dear Mr. Nikula,

We have reviewed your County Excise Tax Rate changes proposed for 1999, as per attached "1999 Projected Revenues and 1998 Catch-up" worksheet:

County Residential and Commercial	4.8 %
City of Bellingham Commercial	5.2 %
City of Bellingham Residential	3.7 %
City of Ferndale Residential/Commercial	4.4 %

The adjusted rates look like a reasonable estimate for meeting the goals of the County Ordinance, to bill your customers \$8.50 per ton of solid waste collected.

This has been a good time to review the past twelve months' activities, and to establish an annual review and adjustment process. We will continue to do such an annual review, in October of each year. This will help ensure that rates are as current as possible for the next year. It is okay, however, to adjust these rates more frequently than once a year, if you think it is needed.

Sincerely,

Cheryl Wolf, Accountant
Whatcom County Public Works

cc: Nasser Mansour
Penni Lempres

EXHIBIT B

Chapter 8.13 SOLID WASTE DISPOSAL DISTRICT

Sections:

- 8.13.010 District formed – Findings and determinations.
- 8.13.020 Definitions.
- 8.13.030 Excise privilege tax levied.
- 8.13.040 Tax collection.
- 8.13.050 Administration by county treasurer.
- 8.13.060 Failure to make timely payment.
- 8.13.065 Records required.
- 8.13.070 Application of tax – Appeal.
- 8.13.080 Tax exemptions and special conditions.
- 8.13.090 Penalties for nonpayment of tax.
- 8.13.100 Management of operations.
- 8.13.110 Use of revenues.
- 8.13.120 Effective date.
- 8.13.130 Severability.
- 8.13.140 Annual review of tax requirements.

8.13.010 District formed – Findings and determinations.

The Whatcom County solid waste disposal district ("district") is hereby formed to provide a sound financial basis for support of the objectives of the county's updated comprehensive solid waste management plan, including a high level of waste reduction and recycling; to construct transfer stations; to maintain closed solid waste landfills in Whatcom County; to provide such other solid waste disposal systems and services as are in the public interest; and to secure a healthful environment for all citizens of Whatcom County. The district shall include all unincorporated and incorporated areas of Whatcom County. Incorporated areas are included within the district pursuant to interlocal agreements executed with Whatcom County, copies of which are attached to the ordinance codified in this chapter and incorporated herein as Appendix A. The county council in forming the district determines and finds:

- 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 landfills and other solid waste disposal facilities are essential public utilities serving broad public interests, by protecting public health and safety;
- C. Federal and state 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 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 district;
- E. All residences and businesses within the district receive substantial and essential public service by having the operational availability on a continuing basis healthful, safe and reliable solid waste disposal facilities and systems;

F. In order to safely maintain closed landfills, the county must expend substantial sums of money including the cost of ongoing monitoring, to protect the public health and welfare and to meet regulatory standards;

G. The cost of acquiring, developing, operating, maintaining and closing facilities and providing for long-term compliance with regulatory standards cannot be financed solely on a "fee for service" basis;

H. *Repealed by Ord. 97-041;*

I. Pursuant to Chapter 8.11 WCC, the county concurrently created a solid waste collection district pursuant to Chapter 36.58A RCW for the purpose of imposing mandatory collection in unincorporated areas which will match ordinances in incorporated areas, which enforce mandatory collection;

J. A stable funding program consisting of a district excise tax is required to provide a broad and sound financial basis to provide safe disposal facilities and systems, to meet the objectives of the plan, and to support the management of solid waste programs in compliance with applicable state and federal laws;

K. Waste reduction and recycling measures contemplated by the plan promote the health, safety and welfare of county residents, by reducing the degradation created by incineration and landfill facilities used to dispose of solid wastes;

L. Recycling and waste reduction do not generate sufficient revenues to become self supporting;

M. Imposition of the solid waste excise tax (the "tax") provided for by this chapter will promote the county's ability to meet all the plan's solid waste management objectives.

N. *Repealed by Ord. 97-041. (Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A; Ord. 90-1 § 1).*

8.13.020 Definitions.

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

A. "Business or institution" shall include all properties in Whatcom County other than residential dwellings which are served by a certificated or franchised hauler of solid wastes. The tax shall apply whether the business or institution is for profit or nonprofit, public or private.

B. A "certificated hauler" is a garbage and refuse collection company that has obtained a certificate of convenience and necessity from the WUTC pursuant to Chapter 81.77 RCW for a franchise area that includes unincorporated areas of the county.

C. The "executive committee" means the executive committee formed pursuant to the interlocal agreements incorporated in Appendix A of the ordinance codified in this chapter.

D. A "franchised hauler" is a garbage and refuse collection company that has been granted a franchise to provide service within one or more of the cities that have entered interlocal agreements with the county, as shown in Appendix A of the ordinance codified in this chapter.

E. *Repealed by Ord. 97-041.*

F. *Repealed by Ord. 97-041.*

G. The "plan" is the county's comprehensive solid waste management plan, as approved by the Department of Ecology in 1990 and as may be amended thereafter.

H. A "residential dwelling" shall include each single-family house, apartment, houseboat, or other dwelling unit which is separately billed for waste collection service by a franchised or 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 tax on behalf of tenants or residents.

I. A "solid waste disposal facility" is a landfill, transfer station, incinerator, convenience center, drop box or other solid waste disposal facility which is available for use by persons other than the owner of the facility.

J. The "WUTC" is the Washington Utilities and Transportation Commission or any agency which succeeds to its powers. (Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A; Ord. 90-1 § 2).

8.13.030 Excise privilege tax levied.

An excise privilege tax shall be levied upon the charges paid for solid waste collection by each residential dwelling and by each business or institution in the district. This excise privilege tax shall be levied on a percent-of-invoice basis for certificated or franchised haulers of solid waste, and on a per-ton basis for solid waste disposal facilities, excluding moderate risk wastes and recyclable materials, and be billed by certificated or franchised haulers of solid waste, and solid waste disposal facilities, all as authorized by RCW 36.58.140.

Effective January 1, 2020, tThis tax shall be equal throughout the district, and shall be 3.3% of collection charges paid to certificated and franchised haulers of solid waste, not exceed and \$8.50 per ton for solid waste otherwise received at solid waste disposal facilities.~~without the approval of all cities and towns in the district.~~ The county council shall set the level of the tax from time to time by ordinance. (Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A; Ord. 90-1 § 3).

8.13.040 Tax collection.

To simplify collection of the tax, each certified or franchised hauler shall include the tax in its regular billing cycle for all customers within the district and remit the proceeds collected to the county treasurer by the due date as established by the treasurer. Each solid waste disposal facility shall include the tax in its regular billing cycle for all customers, excepting certificated and franchised haulers collecting and remitting the tax, within the district and remit the proceeds collected to the county treasurer by the due date as established by the treasurer. The excise tax provided for pursuant to this chapter 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, and the surcharge, Section 15, Chapter 431, Laws of 1989. (Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A; Ord. 90-1 § 4).

8.13.050 Administration by county treasurer.

The administration and collection of the tax imposed by this chapter, as collected by the certificated and franchised haulers, and solid waste disposal facilities, shall be by the county treasurer pursuant to the terms of this chapter and such rules, regulations and further

enactments as may be adopted by the county council or provided by state law. (Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A).

8.13.060 Failure to make timely payment.

If full payment of any tax or fee owing under this chapter is not received by the Whatcom County treasurer on or before the date due, there shall be added to the collected amount due a penalty fee as follows:

- A. One to 10 days late: Five percent of tax collected.
- B. Eleven to 20 days late: 10 percent of tax collected.
- C. Twenty-one to 30 days late: 15 percent of tax collected.
- D. Thirty-one to 60 days late: 20 percent of tax collected.

Failure to make payment in full of all tax amounts collected, and penalties, within 60 days following the day the tax initially became due shall be deemed a violation of this section and may be collected in accordance with the provisions of this chapter.

Any tax owing and unpaid under this chapter, and all penalties, shall constitute a debt between the certificated or franchised hauler, or solid waste disposal facility, and Whatcom County and may be collected by court proceedings the same as any other debt in like amount. This provision shall be in addition to, and not in lieu of, all other existing remedies. (Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A).

8.13.065 Records required.

Each certificated and franchised hauler, and solid waste disposal facility, collecting the tax imposed by this chapter shall maintain books and/or records respecting that activity which truly, completely and accurately disclose all information necessary to determine the taxpayer's tax liability hereunder during each base tax period. Such records shall be kept and maintained for a period of not less than three years.

All books, records, or other items which may hereafter be required to be kept and maintained under this section shall be subject to, and immediately available for, inspection and audit at any time, with or without notice, at the place where such records are kept upon demand by the county treasurer or his/her designee, for the purpose of enforcing the provisions of this chapter.

Where a certificated or franchised hauler, or solid waste disposal facility, does not keep such books, records, or other items so that the county treasurer or an authorized designee may examine them conveniently, the certificated or franchised hauler, or solid waste disposal facility, shall produce all of the required books, records, or items for such inspection within 10 working days following a written request by the treasurer. (Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A).

8.13.070 Application of tax – Appeal.

Any party aggrieved in the application of the excise tax provided for herein may appeal the same to the Whatcom County board of equalization. The decision of such board shall be binding on the county. (Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A; Ord. 90-1 § 7).

8.13.080 Tax exemptions and special conditions.

Solid waste generated within the district but disposed of outside of Whatcom County pursuant to authorization by the county in compliance with the plan shall be subject to the tax, unless specifically waived by ordinance. Solid waste from the Diablo area disposed of in Skagit County shall not be subject to the tax. (Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A; Ord. 90-1 § 8).

8.13.090 Penalties for nonpayment of tax.

If said excise tax is not paid when billed by the certificated or franchised hauler, or solid waste disposal facility, 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 shall be assessed a penalty of \$25.00 plus interest at the rate of one percent per month for each month said tax remains unpaid. (Ord. 2014-050 Exh. A; Ord. 97-067; Ord. 97-041 Exh. A; Ord. 90-1 § 9).

8.13.100 Management of operations.

The operations of the district shall be managed by the Whatcom County health department. (Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A; Ord. 90-1 § 10).

8.13.110 Use of revenues.

All taxes or other fees collected pursuant to this chapter shall be deposited to the solid waste utility account, or such other accounts as may be designated pursuant to county ordinance or regulation, and shall be solely for purposes related to solid waste management and disposal, and, as to the excise tax, for those purposes set forth in Section 3 of the interlocal agreements, e.g., construction, operation, maintenance, and closure of any landfill that may be developed in the future; funding of approved recycling programs when recommended by the executive committee; public educational programs related to the management of solid waste; construction, maintenance, and operation of transfer stations, and such other programs as the executive committee may recommend pursuant to the plan; provided, however, that the county treasurer and prosecutor shall be authorized to recover their costs for tax billing and collection activities related to the solid waste excise tax up to a maximum of five percent of the funds collected. (Ord. 2014-050 Exh. A; Ord. 98-008; Ord. 97-041 Exh. A; Ord. 90-1 § 11).

8.13.120 Effective date.

This chapter shall take effect on May 1, 1990. The county council 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. (Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A; Ord. 90-1 § 12).

8.13.130 Severability.

The invalidity or unenforceability of any provision of this chapter shall not affect the other provisions hereof, and this chapter shall be construed in all respects as if such invalid or unenforceable provision were omitted. (Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A; Ord. 90-1 § 13).

8.13.140 Annual review of tax requirements.

The executive committee shall annually review the tax requirements to fund the solid waste disposal programs and advise the county council of their findings. (Ord. 2014-050 Exh. A; Ord. 97-041 Exh. A; Ord. 90-1 § 14).