

VARANCES	Initial	Date	Date Received in Council Office:	Agenda date	Assigned to:
Originator: Jeffrey M. Monsen	JM	6/2/97		June 17	Introduction
Division Head:					
Dept. Head:	JM	6/12			
Prosecutor:	Row	6/12			
Purchasing/Budget:					
Executive:	PIP	7-31-97			

**SUBJECT:**

Provide an Excise Tax through the Whatcom County Disposal District to replace surcharge fees for the recycling and educational programs as well as other solid waste related activities.

**ATTACHMENTS:**

- Cover memo
- Ordinance

**SUMMARY STATEMENT:**

*Please complete sections of box as appropriate & explain the item below.*

Related County contract #:	Should Clerk schedule a hearing? NO / <input type="checkbox"/> / YES / <input checked="" type="checkbox"/> / Requested date: July 1
Amount budgeted for this item/project:	Is it (or will it be) within budget? YES / <input type="checkbox"/> / NO / <input type="checkbox"/> (Please explain below)
Budget line item number(s):	

Due to the result of the solid waste arbitration, surcharge fees previously collected to finance various solid waste programs are no longer a viable source of funding. In order to continue these programs and to adequately finance ongoing County landfill liabilities, consideration must be given to implementation of an alternate funding source.

**ORIGINATOR'S RECOMMENDED ACTION:**

Adoption of the Ordinance

**COMMITTEE ACTION TAKEN:**

**COUNCIL ACTION TAKEN:**

1997 - 228 6/17/97: Introduced  
 7/1/97: Withdrawn from Public Hearing  
 7/29/97: Amended & Adopted 6 - 0, Sutter absent. Ord. #97-041

*Ordinance or Resolution Number (this item only):*

Ord. # 97-041

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SPONSORED BY: Consent  
PROPOSED BY: Public Works  
INTRODUCTION DATE: 6/17/97

ORDINANCE NO. 97-041

IN THE MATTER OF AMENDING WCC 8.13,  
SOLID WASTE DISPOSAL DISTRICT,  
ALLOWING FOR COLLECTION OF AN  
EXCISE TAX ON SOLID WASTE DISPOSAL SERVICES,  
AND AMENDING WCC 8.15, SOLID WASTE DISPOSAL SITES,  
REMOVING PROVISIONS TO COLLECT SURCHARGE FEES

WHEREAS, due to the result of the solid waste arbitration, surcharge fees previously collected to finance various solid waste programs are no longer a viable source of funding; and,

WHEREAS, in order to continue these programs and to adequately finance ongoing County landfill liabilities, consideration must be given to implementation of an alternate funding source; and,

WHEREAS, on July 1, 1997, a public hearing was held to consider amendments to Whatcom County Code 8.13, Solid Waste Disposal District, to allow collection of an excise tax on solid waste disposal services, and to consider amendments to Whatcom County Code 8.15, Solid Waste Disposal Sites, to eliminate the provisions to collect surcharge fees at disposal sites.

NOW, THEREFORE, BE IT ORDAINED that Whatcom County Code 8.13, Solid Waste Disposal District, be hereby amended as shown in Exhibit "A" attached hereto.

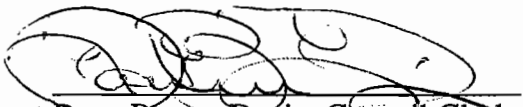
BE IT FURTHER ORDAINED that Whatcom County Code 8.15, Solid Waste Disposal Sites, be hereby amended as shown in Exhibit "B" attached hereto.

BE IT FURTHER ORDAINED that per Whatcom County Code 8.13.030, the Whatcom County Council hereby sets the current excise tax rate at \$6.50 per ton on solid waste collection and hauling services provided by certificated or franchised haulers.

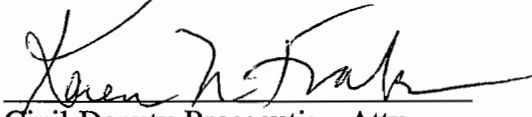
ADOPTED this 29 day of July, 1997.

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ATTEST:

  
Dana Brown-Davis, Council Clerk

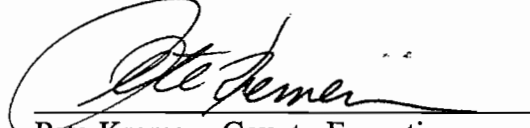
APPROVED AS TO FORM:

  
Civil Deputy Prosecuting Atty.

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

  
Ward Nelson, Council Chair

Approved     Denied

  
Pete Kremen, County Executive  
Date: 7-31-97

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 Surcharge rate.~~
- 8.13.040 Tax billing cycle collection.
- 8.13.050 ~~Administration by County Treasurer.~~
- ~~8.13.060 Tax enforcement - List of customers.~~
- 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 acquire, develop, maintain, operate, and closed solid waste landfills in Whatcom

1 County; to provide such other solid waste disposal systems and services as are in the public  
2 interest; and to secure a healthful environment for all citizens of Whatcom County. The district  
3 shall include all unincorporated and incorporated areas of Whatcom County. Incorporated areas are  
4 included within the district pursuant to interlocal agreements executed with Whatcom County,  
5 copies of which are attached to the ordinance codified in this chapter and incorporated herein as  
6 Appendix A. The county council in forming the district determines and finds:

7 A. State and federal law and regulation have placed increased responsibility on local  
8 governments to manage solid waste disposal systems in a manner that protects public health  
9 and safety;

10 B. Properly designed, operated, and maintained landfills and other solid waste disposal  
11 facilities are essential public utilities serving broad public interests, by protecting public health and  
12 safety;

13 C. New federal and state standards for solid waste disposal, including requirements for  
14 recycling and waste reduction, have greatly increased the cost of solid waste disposal systems;

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

17 E. All residences and businesses within the district ~~are beneficiaries of county landfills and~~  
18 ~~other systems and facilities and~~ receive substantial and essential public service by having the  
19 operational availability on a continuing basis healthful, safe and reliable solid waste disposal  
20 facilities and systems;

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

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

27 H. ~~Fees for use of the county landfills or other county solid waste facilities and systems~~  
28 ~~should be set at levels sufficient to encourage waste reduction and recycling, but not so high as to~~

1 ~~encourage littering or "midnight dumping";~~

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

6 J. A stable funding program ~~made up of both service fees and a~~ ~~consisting of a District~~  
7 ~~excise~~ tax is required to provide a broad and sound financial basis to provide safe disposal facilities  
8 and systems, to meet the objectives of the plan, and to support the management of solid waste  
9 programs in compliance with applicable state and federal laws;

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

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

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

17 ~~N. Those who pay the tax should pay lower rates for use of county solid waste facilities~~  
18 ~~than those who do not pay the tax.~~

19 (Ord. 90-1 § 1).

20  
21 8.13.020 Definitions.

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

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

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

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

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

6 E. A "nonparticipant" is a residential, business or institutional customer that has not paid  
7 taxes levied under this chapter because: (1) the county resident, business or institution is not served  
8 by any certificated or franchised hauler providing mandatory collection service; (2) is another  
9 person or a nonresident who, without paying the tax, brings solid waste generated outside the  
10 county into the county for disposal within the county; or (3) is a resident, business or institution  
11 who does not pay the tax for any reason.

12 F. A "participant" is (a) a residential, business or institutional customer of a certificated or  
13 franchised hauler within the county, who has paid all taxes due under this chapter; or (b) a  
14 certificated or franchised hauler or other person who pays the equivalent of the tax for the privilege  
15 of disposing of waste in the county.

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

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

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

1 F. J. The "WUTC" is the Washington Utilities and Transportation Commission or any  
2 agency which succeeds to its powers. (Ord. 90-1 § 2).

3  
4 8.13.030 Excise privilege tax levied.

5 An excise privilege tax shall be levied upon the charges paid for solid waste collection by each  
6 residential dwelling and by each business or institution in the district. This excise  
7 privilege tax shall equal a percentage of the collection charges ~~be levied on a per-ton basis and be~~  
8 billed by certificated or franchised haulers of solid waste, all as authorized by RCW 36.58.140.

9  
10 This tax shall be equal throughout the district, and shall not exceed ~~10 percent~~ \$8.50 per ton  
11 without the approval of all cities and towns in the district. The county council shall set the level of  
12 the tax from time to time by ordinance. ~~If the county elects to impose the surcharge as provided in~~  
13 ~~Section 15, Chapter 431, Laws of 1989, it shall coordinate such surcharge with the solid waste~~  
14 ~~excise privilege tax so that the combined charge on all residents, businesses and institutions in the~~  
15 ~~county shall be an equal percentage of the charges billed by the handler. (Ord. 90-1 § 3).~~

16  
17 ~~8.13.040 Surcharge rate.~~

18 ~~Any person not paying the tax shall pay a surcharge rate equal to 125 percent of the usual rate~~  
19 ~~charged for use of county disposal facilities. The county shall, in cooperation with haulers, develop~~  
20 ~~an administrative system identifying those residents having mandatory collection service and~~  
21 ~~thereby entitled to the lesser rate for use of county disposal facilities. (Ord. 90-1 § 4).~~

22  
23 8.13.040 Tax ~~billing cycle~~ collection.

24 To simplify collection of the tax, each certificated or franchised hauler shall include the tax in its  
25 regular billing cycle for all customers within the district, and remit the proceeds owing to the  
26 County Treasurer by the ~~tenth working day following the end of each month~~ due date as  
27 established by the Treasurer. The excise tax provided for pursuant to this chapter shall, for  
28 administrative purposes, be billed and collected as nearly as possible in a manner compatible with

1 the state solid waste tax, RCW Chapter 82.18, and the surcharge, Section 15, Chapter 431, Laws of  
2 1989. (Ord. 90-1 § 5).

3  
4 ~~8.13.050 Administration by County Treasurer.~~

5 ~~The administration and collection of the tax imposed by this Ordinance, as collected by the~~  
6 ~~Certificated and Franchised Haulers, shall be by the County Treasurer pursuant to the terms of this~~  
7 ~~Ordinance and such rules, regulations and further enactments as may be adopted by the County~~  
8 ~~Council or provided by state law.~~

9  
10 ~~8.13.060 Tax enforcement - List of customers:~~

11 ~~To assist in the enforcement of the taxes levied pursuant to this chapter, each certificated or~~  
12 ~~franchised hauler disposing of solid waste at Whatcom County disposal facilities in providing~~  
13 ~~the county treasurer with a listing of its customers and information identifying customers~~  
14 ~~delinquent in payment of the tax. Such listings shall be used by the county treasurer for~~  
15 ~~purposes of bringing collection action against parties failing to pay the taxes required herein.~~  
16 ~~The county treasurer may request the assistance of the county prosecuting attorney to enforce~~  
17 ~~collection of past due taxes and is authorized to seek the assistance of the State Department of~~  
18 ~~Revenue in coordinating the collection of these taxes with the state tax required by RCW Chapter~~  
19 ~~82.18. (Ord. 90-1 § 6).~~

20  
21 ~~8.13.060 Failure to make timely payment:~~

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

- 25 a) ~~1 - 10 days late: Five percent (5%) of tax collected;~~
- 26 b) ~~11 - 20 days late: Ten percent (10%) of tax collected;~~
- 27 c) ~~21 - 30 days late: Fifteen percent (15%) of tax collected;~~
- 28 d) ~~31 - 60 days late: Twenty percent (20%) of tax collected.~~

1 Failure to make payment in full of all tax amounts collected, and penalties, within sixty (60) days  
2 following the day the tax amount initially became due shall be deemed a violation of this section  
3 and may be collected in accordance with the provisions of this ordinance.

4  
5 Any tax owing and unpaid under this Ordinance, and all penalties, shall constitute a debt between  
6 the Certificated or Franchised Hauler and Whatcom County and may be collected by court  
7 proceedings the same as any other debt in like amount. This provision shall be in addition to, and  
8 not in lieu of, all other existing remedies.

9  
10 **8.13.065 Records Required.**

11 Each Certificated and Franchised Hauler collecting the tax imposed by this ordinance shall  
12 maintain books and/or records respecting that activity which truly, completely and accurately  
13 disclose all information necessary to determine the taxpayer's tax liability hereunder during each  
14 base tax period. Such records shall be kept and maintained for a period of not less than three (3)  
15 years.

16  
17 All books, records or other items which may hereafter be required to be kept and maintained under  
18 this section shall be subject to, and immediately made available for, inspection and audit at any  
19 time, with or without notice, at the place where such records are kept upon demand by the county  
20 Treasurer or his /her designee, for the purpose of enforcing the provisions of this ordinance.

21  
22 Where a Certificated or Franchised Hauler does not keep such books, records, or other items so  
23 that the County Treasurer or an authorized designee may examine them conveniently, the  
24 Certificated or Franchised Hauler shall produce all of the required books, records or items for such  
25 inspection within ten (10) working days following a written request by the Treasurer.

1 8.13.070 Application of tax - Appeal.

2 Any party aggrieved in the application of the excise tax provided for herein may appeal the same to  
3 the Whatcom County board of equalization. The decision of such board shall be binding on the  
4 county. (Ord. 90-1 § 7).

5

6 8.13.080 Tax exemptions and special conditions.

7 Solid waste generated within the district but disposed of outside of Whatcom County pursuant to  
8 authorization by the county in compliance with the plan shall be subject to the tax, unless  
9 specifically waived by ordinance. Solid waste from the Diablo area disposed of in Skagit County  
10 shall not be subject to the tax.

11

12 ~~Any hauler that wishes to exclude any portion of his gross charges for solid waste collection from~~  
13 ~~the tax shall bear the obligation to segregate and justify that a portion of the waste should not be~~  
14 ~~subject to the tax, and shall be subject to the appeal provisions of Section 8.13.070. (Ord. 90-1 § 8).~~

15

16 8.13.090 Penalties for nonpayment of tax.

17 If said excise tax is not paid when billed by the hauler, the county may seek payment of the tax and  
18 secure liens and execute against the property served for the unpaid tax, penalties and interest, all as  
19 provided in RCW 36.58.140. All taxes unpaid for 90 days shall be assessed a penalty of \$25.00  
20 plus interest compounded at the rate of one percent per month for each month said tax remains  
21 unpaid. (Ord. 90-1 § 9).

22

23 8.13.100 Management of operations.

24 The operations of the district shall be managed by the Whatcom County department of public  
25 works. (Ord. 90-1 § 10).

26

27

28

1 8.13.110 Use of revenues.

2 All taxes or other fees collected pursuant to this chapter shall be deposited to the solid waste utility  
3 account, or such other accounts as may be designated pursuant to county ordinance or regulation,  
4 and shall be solely for purposes related to solid waste management and disposal, and, as to the  
5 excise tax, for those purposes set forth in Section 3 of the interlocal agreements, e.g., construction,  
6 operation, maintenance, and closure of any landfill that may be developed in the future; funding of  
7 approved recycling programs when recommended by the executive committee; public educational  
8 programs related to the management of solid waste; construction, maintenance, and operation of  
9 transfer stations, and such other programs as the executive committee may recommend pursuant to  
10 the plan; provided, however, the county council may authorize up to five percent of tax funds  
11 collected to be used to support tax billing and collection activities by the county treasurer and  
12 prosecutor. (Ord. 90-1 § 11).

13  
14 8.13.120 Effective date.

15 This chapter shall take effect on May 1, 1990. The county council shall review the need for the  
16 solid waste excise tax, the level of the tax, and the operation of the solid waste system as  
17 frequently as may be needed. Such review shall be performed no less frequently than the review of  
18 solid waste management plans as required under RCW Chapter 70.95 and as such law may be  
19 amended from time to time. (Ord. 90-1 § 12).

20  
21 8.13.130 Severability.

22 The invalidity or unenforceability of any provision of this chapter shall not affect the other  
23 provisions hereof, and this chapter shall be construed in all respects as if such invalid or  
24 unenforceable provision were omitted. (Ord. 90-1 § 13).

25  
26 8.13.140 Annual review of tax requirements.

27 The executive committee shall annually review the tax requirements to fund the solid waste  
28 disposal programs and advise the county council of their findings. (Ord. 90-1 § 14).

## EXHIBIT "B"

### Excerpt from Whatcom County Code 8.15, Solid Waste Disposal Sites

#### **8.15.060 Establishment and operation of Disposal Sites - Agreements regarding operation of Disposal Sites and rates charged - Fee for County Solid Waste management activities.**

A. Except for those Disposal Sites that are exempt under Section 8.15.070, it is unlawful for any Person to establish, alter, expand, improve, or hereafter operate or maintain a Disposal Site in the County for the Processing or disposal of County Solid Waste, or for any Person to accept for Processing or disposal such County Solid Waste, unless:

1. The Disposal Site and the means of Processing or disposal, comply with this Chapter, as amended from time to time, with the Plan and with any regulations promulgated by the Health Department;

2. The Disposal Site, and the means of Processing or disposal, have been designated pursuant to subsection E or F of Section 8.15.030;

3. The operator of the Disposal Site shall have obtained all permits required by applicable federal, state and local law and said operator shall comply with applicable requirements of all federal, state, and local law;

4. A private owner or operator of the Disposal Site shall have entered into an agreement with the County specifying the rates to be charged by such owner or operator for Processing or disposal of County Solid Waste at such Disposal Site. ~~The rates shall include payment to the County of \$9.00 per ton of all Solid Waste Processed or disposed of at such sites; except in the case of those Disposal Sites authorized to receive Solid Waste for a disposal rate based on the volume of Waste received for which the fee shall be 10 percent of the gross fees charged by the operator of such sites for Processing or disposal of such Solid Waste.~~ The agreements shall include such other terms as the Manager deems necessary to protect the public health, safety, welfare, and for other regulatory purposes.

B. The Manager is hereby authorized and directed to negotiate an agreement with the operator of each private Disposal Site designated pursuant to this Chapter, as amended from time to time, relating, among other things...