Let’s Talk Trash: Oregon’s Solid Waste Franchise System

What franchising is, how cities and counties are empowered to use it, why Oregon uses solid waste franchises, why city and county authority is worth defending, and how franchising can help you in your role as an elected official, staff member, or legal counsel.

OREGON REFUSE & RECYCLING ASSOCIATION

Lets start at the beginning…

What is solid waste?
ORS 459.005(25)“Solid waste” means **all useless or discarded putrescible and nonputrescible materials**, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386 (Definitions for ORS 459.386 to 459.405). ”

What is a solid waste franchise agreement?

- Provides locally regulated essential solid waste services
- May establish exclusive service territories and displace competition
- Provides local oversight of rates and service standards
- Supports recycling, waste reduction, and statewide solid waste policy
- Exchanges exclusive service rights for public-service obligations and accountability

Note: different jurisdictions may and do use different terms to describe their franchise agreements. They may be referred to as service agreements, collection agreements, operating licenses, collection permits, etc.

Setting the record straight

- A city or county can make use of a rolling franchise (83%).
- A city or county can have a franchise that lasts longer than 20 years.
- It is expressly legal for cities and counties to have exclusive franchises.
- There are no limits on the amount or use of a city or county franchise fee.
- A franchise is not a utility.

Constitutional and Legal Framework

Where do local governments get the authority to enter into franchise agreements?

Chain of Authority for City and County “Home Rule”

What is the chain of authority that allows cities in Oregon to regulate themselves?

Chain of “Home Rule” Authority

U.S. Constitution →

Tenth Amendment of the U.S. Constitution →

Oregon Constitution →

State law →

“Home Rule” authority granted or recognized for local governments →

Local ordinances and franchise agreements

Chain of Authority for Establishment of a Solid Waste Franchise

What is the chain of authority that allows cities in Oregon to regulate solid waste and more specifically, exclusive franchise agreements for the collection of solid waste?

Chain of Solid Waste Franchise Authority

U.S. Constitution →

Sherman Act

Parker v Brown

Community Communications v Boulder

Oregon Constitution

State law →

Authority granted or recognized for local governments →

Local ordinances and franchise agreements

The Sherman Act

Ordinarily, agreements allocating markets, suppressing competition, or creating private monopolies can run afoul of federal anti-trust laws, i.e., The Sherman Act, later strengthened by the Clayton Act and the Federal Trade Commission Act. Those federal regulations seek to preserve competitive markets by prohibiting monopolization, price-fixing, market allocation, bid-rigging, and other business practices that unreasonably restrain trade.

Parker "State Action Doctrine"

In *Parker v. Brown*, 317 U.S. 341 (1943), the U.S. Supreme Court established the "State Action Doctrine", which, as it relates to **the Sherman Act, does not prohibit anticompetitive restraints imposed by a state acting in its sovereign capacity.**

Community Communications v. Boulder

In *Community Communications Co. v. City of Boulder, 455 U.S. 40 (**1982**)* the court ruled an ordinance or action by a "home rule" municipality is not exempt from a Sherman Act violation, "**unless it constitutes either the action of the State itself in its sovereign capacity or municipal action in furtherance or implementation of clearly articulated and affirmatively expressed state policy."**

Oregon's "clearly articulated and affirmatively expressed state policy" on Solid Waste and Recycling

The Oregon Legislature has made clear the goals of the Opportunity to Recycle Act, and the authority of cities and counties to carry out those goals on its behalf in **ORS 459.015; ORS 459.015(2)(d); ORS 459.017(1)(b); and ORS 459.065.**

One More Step - Meeting the State Action Doctrine and meeting the constraints placed by Community Communications v. Boulder

ORS 459A.085(3)"It is the intent of the Legislative Assembly that a city or county may displace competition with a system of regulated collection service by issuing franchises which may be exclusive if service areas are allocated. The city or county may recognize an existing collection service. A city or county may award or renew a franchise for collection service with or without bids or requests for proposals."

The Opportunity to Recycle Act was enacted in 1983.

Conclusion

- A city or county has the authority to use a franchise agreement with a solid waste service provider.
- They can make that franchise exclusive.
- They can enter into that agreement without a public procurement process.
- They have the flexibility to determine what terms to place in that franchise agreement provided they meet the goals set forth by the legislature in ORS 459A.085(3).

The Oregon Solid Waste System

What does all this mean for how solid waste services are provided in Oregon?

A “system of regulated collection service.”

Why did the Oregon Legislature authorize cities in Oregon to regulate solid waste through exclusive franchise agreements for the collection of solid waste?

Direction to local governments ORS 459A.085

The1983 statute, known as the Opportunity to Recycle Act, requires local governments, when establishing service areas, to

Establish **minimum requirements to guarantee maintenance of service,**

Require rates to be **“just and reasonable, and adequate to provide necessary collection service,”** and

Consider **“the need to conserve energy [and] increase efficiency.”**

Guarantee Continuation of Service

Oregon's franchise model operates as a **regulated essential service** rather than an ordinary competitive marketplace. The legislature wanted that to continue.

ORS Chapter 459A.085 expressly authorized **cities and counties to act as regulators**:

- establish service areas, which may be exclusive *ORS 459A.085(3)*;
- select who provides collection service *ORS 459A.085(3)*;
- establish rates and review rate increases *ORS 459A.085(7)*;
- prescribe service quality and minimum service requirements *ORS 459A.085(7)*;
- ensure maintenance/continuity of service; and
- grant franchises within designated territories *ORS 459A.085(7)(b)*.

Just and Reasonable Rates

To ensure that customers are being charged a just and reasonable rate, as **part of their regulatory authority**, a local government reviews a franchise hauler's costs, revenues, and reasonable operating margin to determine whether existing rates are sufficient to provide the required solid waste services. They then change or keep the current rate depending upon their findings.

Conserve Energy/Increase Efficiency

Franchises make solid waste collection far more efficient. It avoids the problems of an open market where multiple haulers competing house-by-house can have overlapping truck routes, repeated trips through the same neighborhoods, and potentially less predictable revenue for each provider. It charges cities and counties to consider such inefficiencies - *ORS 459A.085(10)(e)*.

This also avoids “cherry picking” of customers which is critically important for rural areas and customers in remote locations.

Carry out new recycling obligations

In addition to affirming the right of cities and counties to franchise solid waste collection service, the 1983 Opportunity to Recycle Act also created a mechanism through which cities and counties could ensure that the companies providing collection could also be required to provide programs to support the state's new recycling obligations as well as services desired by the city or county.

The system already in place

Cities and counties were directed to give **due consideration to persons already lawfully providing recycling or collection service on June 1, 1983**, subject to conditions concerning continuity of service - ORS 459A.085 (5) and (6)(c).

That is very strong evidence that the Legislature **was not trying to force local governments periodically to put their existing collection systems out to competitive bid**. Quite the opposite. It expressly created mechanisms for local governments to preserve existing service arrangements while bringing those systems into the state's new recycling framework.

What about Competition?

Oregon expressly allows cities and counties not to use a competitive system. The statute says the franchise may be awarded or renewed **without bids or RFPs**. The Legislature delegated authority to cities and counties to decide how best to regulate collection.

Franchises v. Utilities

Oregon Regulatory Models: A Side-by-Side Comparison

Same goal — essential services for Oregonians. Different systems. Different reasons.

Issue	Solid Waste Franchise (Collection Service)	Investor-Owned Utility (Electric, Natural Gas, Water)
Primary regulator	City/county	Oregon Public Utility Commission (PUC)
Exclusivity	Local government may create exclusive franchise territory	Exclusive/allocated territories governed through utility law
Competition	Legislature expressly permits local government to displace competition	Monopoly/exclusive territory largely reflects network economics and territorial regulation
Competitive bidding	Not required by ORS 459A.085	Not the fundamental regulatory mechanism
Primary infrastructure	Mobile fleet + facilities + people + routes	Fixed, long-lived network infrastructure (poles, wires, pipes, plants, etc.)
Core economic model	Operating-intensive service business	Capital-intensive network business
Rate regulation	Locally established franchise/rate methodology	PUC regulatory proceedings and tariffs
Return concept	Often operating margin/revenue-requirement based, depending on locality	Tied to costs, capital investment and reasonable return
Policy purpose	Collection + recycling + waste reduction + integrated solid waste management	Safe, reliable utility service at reasonable rates
Government concern	Performance of an integrated local collection system	Performance and economics of essential network infrastructure

Preserving local control

State establishes the environmental and solid-waste policy

but

Local government determines how collection is provided to implement that policy.

Thus, one city can choose municipal collection, another can use franchises, and another may structure regulated service differently, subject to applicable law. Most cities and counties in Oregon have chosen franchises.

Summary

- Most cities and counties in Oregon use franchise-based solid waste collection.
- Franchises allow cities and counties to promote efficient collection, conserve energy, establish reliable service requirements, regulate rates, support the cost of recycling programs, and preserve continuity in existing collection systems.
- Cities and counties are specifically authorized by Oregon statute to displace competition, establish exclusive service territories, and award or renew franchises without competitive bidding.
- Oregon's system is required to operate under public regulation and in furtherance of statewide solid-waste and recycling policy.

Meet the Panel

Jennifer Purcell
Moderator
Deputy Executive Director
Oregon Refuse and Recycling Association



Craig Campbell
Executive Director and CEO
Oregon Refuse and Recycling Association



Tim Rosener
Mayor
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Abigail Elder
City Manager
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Jim Winterbottom
District Manager
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The Dalles Disposal Service/WCI



Extended Producer Responsibility (EPR) Programs in Oregon

- Electronics (Oregon E-Cycles launched in 2009)
- Paint (PaintCare launched in 2010)
- Pharmaceuticals (Drug Take-Back Program launched in 2021)
- Mattresses (Bye Bye Mattress launched in 2021)
- Packaging, printed paper, and food serviceware (RMA launched in 2025)

- and soon… batteries (legislation passed in 2025; statewide collection will begin in 2029)

Plastic Pollution and Recycling Modernization Act (RMA)

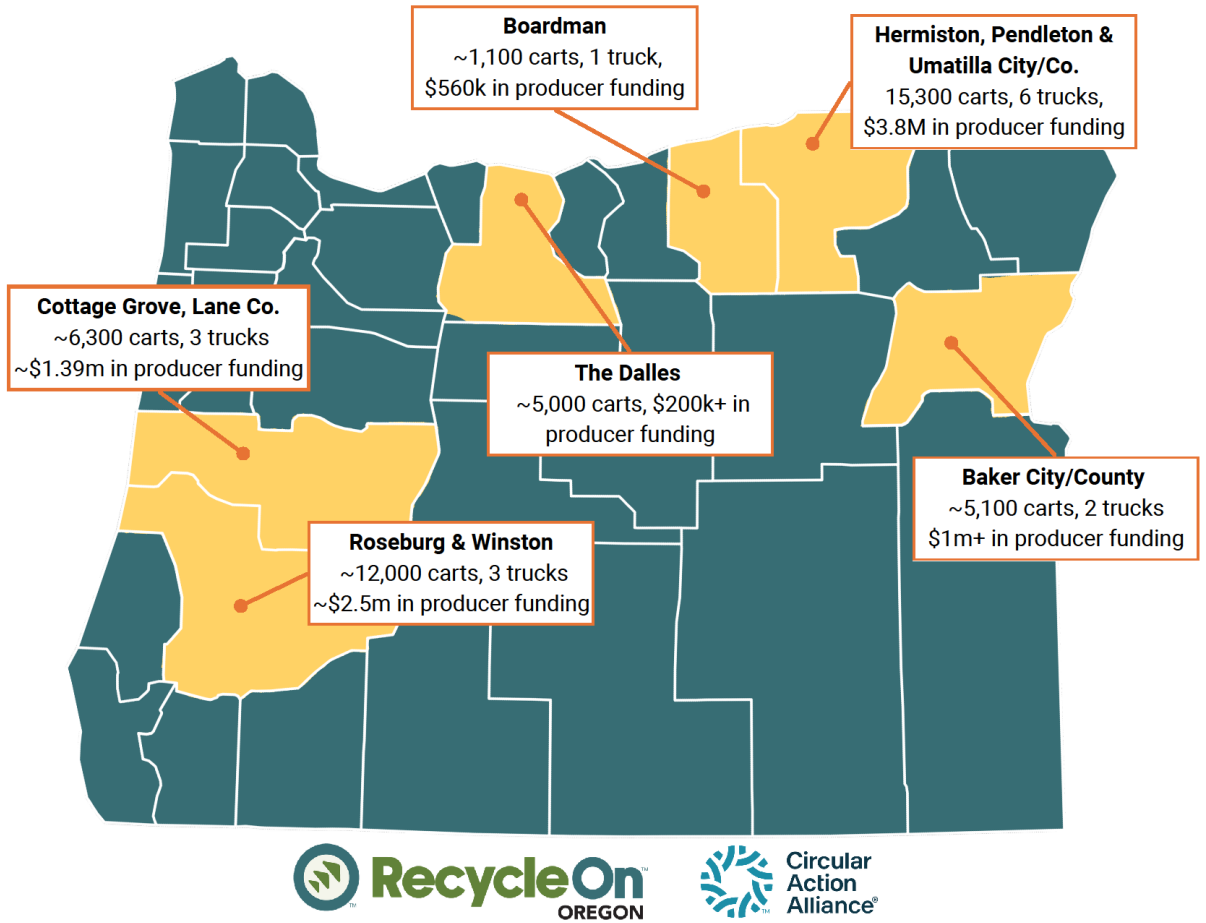
The RMA expands recycling in Oregon

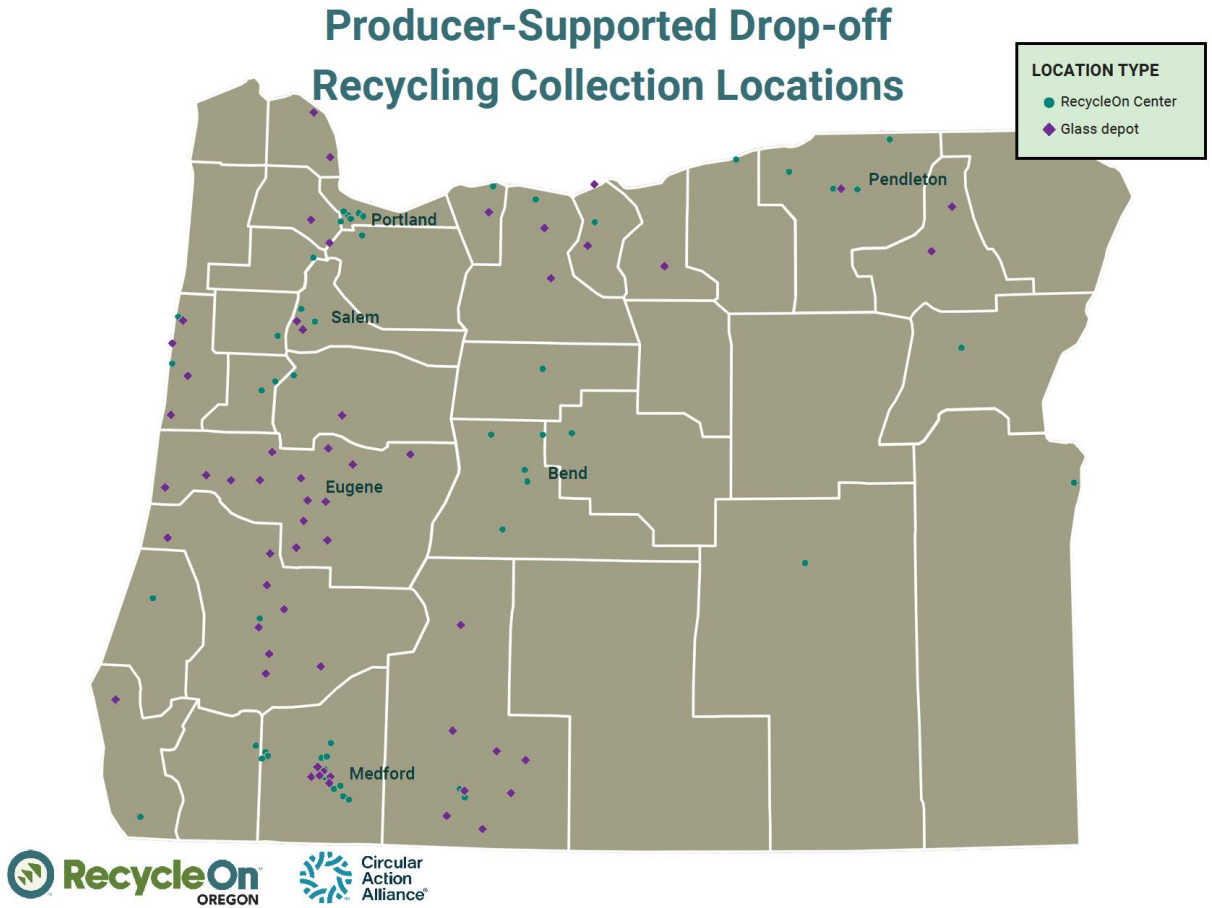
increasing the amount and types of materials Oregonians can recycle, ensuring communities have convenient access to recycling and materials are delivered to responsible end markets.

Key Features:

- Producer Responsibility Organizations (PROs)
- Uniform Statewide Collection List (USCL)
- Funding for local governments and their solid waste service providers
- Responsible end markets
- System oversight and advisory role

Expanded Recycling Opportunities across Oregon





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