

ORDINANCE # \_\_\_\_\_

**RESOLUTION ESTABLISHING METHOD OF INTRA-FUND BORROWING FOR  
SOLID WASTE CAPITAL EXPENDITURES**

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- WHEREAS, by authority granted per NCGS §153A-136 and Article 9, Solid Waste Management, of Chapter 130A of the North Carolina General Statutes, Buncombe County owns and operates a landfill facility in compliance with the Resource Conservation and Recovery Act (Subtitle D, RCRA - 1976 and amended 1984), which required that landfills be lined and maintained to contain contaminants ("Subtitle D landfill");
- WHEREAS, this landfill, located at 85 Panther Branch Road, Alexander, is filled to 33.1% of capacity as of June 30, 2016, and at this fill rate the landfill should be adequate for a remaining 40 years;
- WHEREAS, there is a separate landfill, also at 85 Panther Branch Road along with the Subtitle D landfill, for construction and demolition activities ("C&D landfill"), and this C&D landfill sits at 83.0% of capacity as of June 30, 2016;
- WHEREAS, pursuant to NCGS §130A-294 and the requisite Financial Assurance Rule codified in 15A North Carolina Administrative Code 13B .1628 (the "Financial Assurance Rule"), the County is required, as an owner and operator of a municipal solid waste landfill to demonstrate that it will have the funds necessary to properly close, provide 30 years of post-closure maintenance, and fund any corrective action costs for the permitted landfill ("post-closure costs");
- WHEREAS, for the Subtitle D landfill, the total calculated liability as of June 30, 2016 was \$33.8 million for post-closure costs and the County has set aside \$11.2 million, representing 33.1% of the total post-closure liability; likewise, the total post-closure costs for the C&D landfill was calculated to be \$4.5 million and the County has set aside \$3.7 million, or 83.0% of the total liability; and, it should be noted that these total liability calculations are provided by an independent third party;
- WHEREAS, the County sets aside sufficient funds to pay all anticipated post-closure costs and holds it in a dedicated funded capital reserve account; and while the County is required to report this liability to the State, it is not required to have all post-closure funds on hand until the landfills close, provided other measures of financial assurance are met through the Financial Assurance Rule;
- WHEREAS, the Financial Assurance Rule requires that the County, on an annual basis, use one of seven criteria to demonstrate its ability to pay for such post-closure costs, and because the County satisfies the "Local Government Financial Test" criteria, management has flexibility to consider alternate uses of its funded capital reserve by making intra-fund loans on terms requiring that the capital reserve fund is paid back in full;

WHEREAS, because the Financial Assurance Rule criteria demonstrates the County's ability to pay for the post-closure costs of these landfills, the \$14,900,000 in current liability is available for intra-fund loans within County solid waste facilities and needs; Finance and Planning staff believe that such intra-fund loans should be capped based on a percentage of the total anticipated landfill lifespan remaining as follows:

- Over 50% landfill life remaining – maximum 80% fund availability
- 25-50% landfill life remaining – maximum 60% fund availability
- 15-25% landfill life remaining – maximum 40% fund availability
- Less than 15% landfill life remaining – maximum 20% fund availability

Using this structure, there is \$8,960,000 available for intra-fund loans attributable to post-closure liability currently held in the capital reserve fund for the Subtitle D landfill.

- Subtitle D landfill at 33.1% capacity = 66.9% remaining landfill life
- the total post-closure liability for Subtitle D landfill is currently \$11,200,000
- 80% of \$11,200,000 = \$8,960,000

WHEREAS, using the same structure, the maximum amount available for intra-fund loans from the C&D landfill fund is \$1,480,000;

WHEREAS, the terms of any loans made from the capital reserve fund would be as follows:

- Funds may be used only for Solid Waste capital expenditures and requires approval from County Manager
- Amortization period may not exceed the useful life of the acquired asset(s)
- Interest will be repaid to the capital reserve due to the loss of earnings that will occur by withdrawal of those funds from reserves
- Interest rate will be an approximate average of the County's borrowing rate and the yield on invested funds at the time of the loan request

WHEREAS, this Board is of the opinion that it is in the best interests of the citizens and residents of the County to approve this intra-fund loan policy.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners for the County of Buncombe as follows:

1. The foregoing factual information and background, along with the definitions of certain terms, are incorporated herein by reference as if fully restated.
2. That the County Manager is hereby authorized to approve intra-fund loans only for Solid Waste capital expenditures upon the terms and conditions set forth above.
3. The County Manager is hereby authorized, empowered and directed to do any and all other acts and to execute any and all other documents, which the County

Manager deems necessary and appropriate in order to consummate any transactions contemplated by this Resolution.

4. All acts and doings of officers, employees and agents of the County, whether taken prior to, on, or after the date of this Resolution, that are in conformity with and in the furtherance of the purposes and intents of this Resolution as described above shall be, and the same hereby are, in all respects ratified, approved and confirmed.
5. This Resolution is effective upon its adoption.

This the 6<sup>th</sup> day of June, 2017.

ATTEST:

BOARD OF COMMISSIONERS FOR THE  
COUNTY OF BUNCOMBE

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Kathy Hughes, Clerk to the Board

BY: \_\_\_\_\_  
Brownie Newman, Chairman

APPROVED AS TO FORM:

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County Attorney