

**ORDINANCE AMENDING THE BUNCOMBE COUNTY SOLID WASTE MANAGEMENT
ORDINANCE CHAPTER 62 OF THE BUNCOMBE COUNTY CODE OF ORDINANCES**

WHEREAS, this Board has heretofore enacted the "Solid Waste Management Ordinance of Buncombe County, North Carolina," which is codified in Chapter 62 of the Buncombe County Code of Ordinances; and

WHEREAS, the Buncombe County Commissioners have not amended this ordinances since 1996 and it needs to be updated to correct state and local departments, definitions and clarifications throughout; and

WHEREAS, this Board has determined that it is in the best interest of the citizens of Buncombe County to amend the Solid Waste Management Ordinance as hereinafter set forth.

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

1. That Chapter 62 "Solid Waste Management" of the Buncombe County Code of Ordinances is hereby amended as outlined in Exhibit A attached to this Ordinance.
2. That this Ordinance shall be effective upon its adoption..

Read and approved on first reading by a vote of 5 for and 0 against this the 1st day of ___September, 2009.

Read and approved on second reading by a vote of ___ for and _____ against this the ___ day of _____, 2009.

Adopted this the 1st day of September, 2009.

ATTEST

BOARD OF COMMISSIONERS FOR THE
COUNTY OF BUNCOMBE

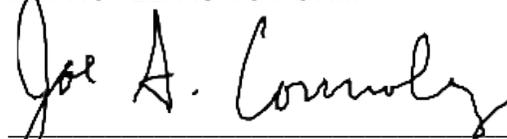


KATHY HUGHES, CLERK

BY: 

DAVID GANTT, CHAIRMAN

APPROVED AS TO FORM



JOE CONNOLLY, COUNTY ATTORNEY

Proposed Amendment to
Chapter 62, Code of Ordinances, Buncombe County

Solid Waste Ordinance of Buncombe County, North Carolina



July 31, 2009

ARTICLE II. COLLECTION, TRANSPORTATION AND DISPOSAL

DIVISION 1. GENERALLY

Sec. 62-26. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bulk container means a receptacle of not less than two cubic yards capacity nor larger than eight cubic yards capacity, constructed so as to be watertight but with drain plugs at the lowest point of the container to facilitate the drainage of any liquids that might accumulate in the container.

Business trash means waste accumulations of paper, sweepings, dust, rags, bottles, cans or other waste materials.

Collector means any franchised collector, hand collector, or detachable container collector.

Commercial establishment means any retail, wholesale, institutional, religious, governmental or other nonresidential establishment which may generate garbage, litter, or other solid waste.

Construction and Demolition (C&D) building materials means any material accumulated as a result of repairs or additions to existing buildings or structures, construction of new buildings or structures, or the demolition of existing buildings or structures. This definition shall include, but not be limited to, lumber, brick, block, stone, plaster, concrete, asphalt, roofing materials, and any metal, paper, cardboard or plastic containers of such materials.

County means all the unincorporated areas within the County of Buncombe.

Detachable or roll-off container means a container unit that may vary in capacity between one cubic yard and 42 cubic yards, and which is used for collecting, storing and transporting waste building materials, business trash, industrial waste, hazardous refuse, refuse or other solid wastes. The unit may or may not use an auxiliary packing mechanism for the compaction of the materials into the container and may be of the open or the enclosed type. The distinguishing feature of the detachable container is that it is lifted by a specially designed and equipped truck and becomes an integral part of that truck for transporting waste materials to the disposal site.

Detachable container collectors means any person who collects or transports solid wastes from residential, commercial, small business or industrial establishments by use of detachable containers with a capacity of at least one cubic yard.

Director of solid waste means the director or manager of the Buncombe County Solid Waste Department or an authorized representative, as designated by the county manager or board of commissioners.

Dwelling means any residential unit housed in a building used for residential purposes, or mobile home, or a structure used for residential purposes on any property.

Franchised collector means any hand collector or detachable container collector authorized by the board of commissioners to transport refuse and other solid waste for hire or compensation.

Garbage means the byproduct of animal or vegetable food waste resulting from the handling, preparation, cooking, and/or consumption of food or other matter that is subject to decomposition, decay, putrefaction or the generation of noxious or offensive gases or odors, or which before, during, or after decay, may serve as feeding or breeding material for animals, flies, or other insects.

Hand collector means any person who collects or transports solid wastes from households, commercial establishments or small industries by hand pickup.

Hand pickup means all forms of collection of refuse and other solid wastes other than detachable container collection.

Hauler means any person, franchised or not, who hauls refuse or other solid wastes on public or private streets in the county.

Hazardous waste means a solid waste or combinations of solid waste which, because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

- (1) Cause or significantly contribute to an increase in mortality or increase in serious irreversible or incapacitating reversible illness; or
- (2) Possess a substantial problem or potential hazard to human health or the environment if improperly treated, stored, transported or disposed of or otherwise managed.

Household trash means a waste accumulation of paper, sweepings, dust, rags, bottles, cans or other waste materials of any kind, other than garbage which is attendant in housekeeping.

Industrial waste means all waste, including garbage, solids, semisolids, sludges and liquids, created or generated by factories, processing plants or other manufacturing enterprises.

Litter means garbage, refuse, waste materials or any other discarded, used or unconsumed substance which is not otherwise specifically defined in this section.

Loading and unloading area means any space or area used by any moving vehicle for the purpose of receiving, shipping, and transporting goods, wares, commodities, and persons.

Open dump means the consolidation or collection of solid waste from one or more sources at a disposal site which has unsanitary conditions, insignificant or no cover, or insignificant or no management. This term shall include any disposal area which has not been approved by local health regulations or as regulated by the N.C. Department of Environment and Natural Resources.

Refuse means solid waste accumulations consisting of household trash, business trash, building materials, and any other rubbish not specifically defined in this section.

Refuse receptacle or *receptacle* means a metal or plastic container which meets the sanitation standards of the director of solid waste .

Road or street shall be mutually inclusive and shall likewise include any alley, land, court or other thoroughfare, however described or designated.

Small business, for purposes of this ordinance, shall mean those commercial establishments whose weekly refuse disposal needs do not exceed five (5) 32-gallon size bags or cans of refuse per week, and which bags or cans weigh fifty pounds or less.

Solid waste means garbage, hazardous or other refuse, rubbish, litter, trash, and other discarded solid materials, including building materials, and solid or semisolid waste materials resulting from industrial, commercial, and agricultural operations, and from community activities, but does not include solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents, dissolved materials in irrigation return flows or other common water pollutants. Solid waste shall refer collectively to any or all of the waste materials mentioned in this definition, unless otherwise specified.

Subscriber means the occupant, owner, tenant, lessee, or proprietor of a residence or place of small business who is willing to subscribe to and pay for the franchised collection services in the County.

Unsanitary accumulation means any amount of solid waste which is odiferous, pestiferous, or otherwise threatening to human health as determined by the local health regulations or the N.C. Department of Environmental and Natural Resources.

Unightly accumulation means any amount of solid waste which is not properly containerized in any approved refuse receptacle.

Vacant lot means any portion, piece, division, or parcel of land and its appurtenances which is free from activity work, or occupancy, business, industry, or other commercial enterprise or residential use. For purposes of this article, uncultivated portions of farmland and unused areas of pastureland shall be considered to be vacant lots.

White goods means any rusted, jagged appliances or machinery, including iceboxes and refrigerators or metals whose doors have not been properly dismantled, or which has been determined by the health director or N.C. Department of Environment and Natural Resources to constitute a health or safety hazard.

(Ord. No. 18975, § 1(VI), 3-15-88)

Cross references: Definitions generally, § 1-2.

Sec. 62-27. Incorporated areas excluded.

Any portion of any incorporated town or city and any areas hereafter annexed by any city or town in the county are expressly excluded from the provisions of this article.

(Ord. No. 18975, § 1(I), 3-15-88)

Sec. 62-28. Duties and responsibilities of property owners and occupants.

(a) *Residential and other noncommercial property.* The duties and responsibilities for residential and other noncommercial property are as follows:

(1) Each owner, occupant, tenant or lessee of any property within the unincorporated areas of the county shall maintain such property in a clean, sanitary and orderly appearance and shall not permit any solid waste to accumulate upon such property that is not stored as provided in section 62-30. Further, it shall be the duty of each owner, occupant, tenant, or lessee to provide approved receptacles as specified in section 62-30(a).

(2) No person shall permit on any land owned, occupied, or leased by him, any open dump, any unsanitary or unsightly accumulation of solid wastes, or any hazardous accumulation of solid waste whatsoever.

(3) It shall be the duty of any owner, occupant, tenant or lessee of any property to remove or properly dispose of any of the conditions described in subsection (a)(2) of this section. This section shall also apply to refuse and other solid waste deposited on any property through the action of streams, creeks, rivers, lakes or other waterways or through the flooding of any such waterways. In removing such conditions, persons may seek the guidance of the director of solid waste and shall follow the procedures set forth in subsection (d) of this section.

(b) *Vacant lots and premises.* No owner, tenant, agent or other person in control of any vacant lot shall permit to remain thereon any empty bottles, cans, abandoned automobile bodies or parts, trash, garbage or other refuse of any kind whatsoever, and it shall be the duty of such person in control of the vacant lot or premises to keep the same in a clean, safe, and sanitary condition at all times.

(c) Commercial, small business, industrial, and institutional property. Duties and responsibilities for commercial, small business, industrial and institutional property are as follows:

(1) The owner, proprietor, or person in charge of any commercial, small business, industrial, or institutional building, parking lot or other site, shall be obligated, both jointly and severally, to keep driveways, yards, parking lots, and areas adjacent thereto and under his control clean at all times; and to place sweepings, litter, refuse, and other debris in an approved receptacle to prevent dispersal by wind, rain, animals and other causes. Further, no crate, box, or similar container, liable to deterioration by sun, wind, rain, animals or other causes, shall be kept on any street or sidewalk, parking lot or other area, except that such containers may be placed out for collection on the day of such collection.

(2) The owner, proprietor, or person in charge of any commercial, small business, industrial, or institutional building, parking lot, or other site shall be obligated, jointly and severally, to provide solid waste receptacles of sufficient size and quantity as specified in section 62-30(a). Specifically, but not exclusively, the requirement for such containers shall apply to shopping centers, supermarkets, convenience stores, fast food and other restaurants, service stations, and other similar establishments; and shall likewise apply to industries, commercial establishments, schools, churches and other institutions. Spillage and overflow from such containers shall be cleaned up by the establishment immediately and as it occurs.

(d) *Construction and demolition sites.* All property owners and construction and demolition contractors, both jointly and severally, shall be required to provide onsite refuse receptacles, bulk containers or detachable containers for loose debris, paper, waste building materials, scrap building materials and other solid waste produced by those working on the site. All such sites shall be kept in a reasonably clean and litter-free condition. Dirt, mud, construction materials or other debris deposited upon any property outside the construction or demolition site shall be removed by the contractor as soon as practically possible, but no later than the end of the workday.

(Ord. No. 18975, § 1(II), 3-15-88)

Sec. 62-29. Penalties; remedies for violations of article.

(a) Report; notice; warrant. Except as otherwise provided in this section, violations of this article shall be reported to the director of solid waste who shall thereupon investigate the matter and attempt an informal resolution of such violation. If no solution is reached, the director of solid waste shall cause notice to issue by personal service or registered or certified mail to the owner, occupier, tenant, lessee, or person in control of the property on which a violation exists. Such notice shall state the particulars of the violation, the date on which the violation was confirmed by the Solid Waste Department, and shall state that such person has 15 days from receipt of the notice in which to remedy the violation. This section shall not prevent the director of solid waste from issuing a notice on discovery of a violation without having first had a report of a violation. After the expiration of the 15-day period, if the violation has not been corrected, the director of solid waste shall cause a warrant to issue. The owner, occupier, tenant, lessee, or person in control of the property on which the violation exists shall be guilty of a misdemeanor. The penalty for violation of this article shall be in accordance with Section 62-33.

(b) Remedy; request of help from department. On receipt of a notice, a person may request the aid of the Solid Waste Department in correcting the violation, and shall pay to the Solid Waste Department, the costs incurred by the department in removing or otherwise correcting the violation.

(c) Failure to remedy; correction by department; charges; prosecution. If the owner, occupant, tenant, lessee, or person in control of property is deemed to be in violation of this article, and if such person fails to remedy the violation, after the expiration of 15 days from receipt of notice, the

director of solid waste may direct that the Solid Waste Department correct the violation and may charge such person with the cost thereof. This section shall not prevent prosecution of such person for a misdemeanor as in subsection (a) of this section, but shall be in addition thereto.

(Ord. No. 18975, § 1(V), 3-15-88)

Sec. 62-30. Storage; collection; transportation; disposal.

(a) Storage. Storage of solid waste shall be as follows:

(1) Solid waste shall be stored in a sanitary manner approved by the director of solid waste. Garbage shall be stored in a container of a type approved by the director of solid waste. Every such container shall be constructed of a durable material in such manner as to be strong, watertight, not easily corrodible, fly proof and rodent proof; shall have a capacity of not more than 32 gallons, if hand collected, or as specified by the detachable container collector, if collected by detachable container equipment; shall have handles designed for lifting; and shall have tight-fitting covers which shall be kept in place at all times, except when garbage or solid wastes are being deposited in or removed from such containers. A sufficient number of containers shall be provided to hold at least one week's accumulation of garbage. Containers shall be kept clean so that no insect breeding, odor, or other nuisance will exist.

(2) Other refuse may be stored as described in subsection (a)(1) of this section, but shall be stored in such manner that it will not provide harborage to rats, cause a fire or safety hazard, or become windblown.

(3) No person shall damage, deface, or remove any receptacle provided for garbage or other solid waste, nor shall any person scatter, throw, or otherwise distribute the contents thereof. Collectors shall exercise every reasonable care in the handling of garbage and refuse receptacles.

(4) Cardboard boxes, cartons, and crates may be used as refuse receptacles only when used to contain other refuse, and when properly secured by tying or taping. Cardboard boxes, crates or cartons used as refuse receptacles shall have a one-time use only and shall be collected along with the refuse contained in them.

(b) Collection. All solid wastes should be removed from any property upon which it is stored at least once a week. The owner, occupant, tenant, or lessee may remove such solid wastes in accordance with subsections (c) and (d) of this section, or may contract with the franchised collector serving the relevant area. These franchised collectors shall be responsible for removing any solid waste spilled during the collection process; shall leave the premises in a clean condition; and shall conform to the provisions of any county ordinance in effect regulating the collection and disposal of solid waste by private collectors in the county.

(c) Transportation. Transportation of solid waste shall be as follows:

(1) No solid waste shall be transported except in conformance with this section. The vehicles or containers used for the collection and transportation of solid wastes shall be loaded and moved in such a manner that the contents will not fall, leak or spill there from, and shall be covered when necessary to prevent the blowing of materials from out of the vehicle. These vehicles shall be cleaned when necessary to prevent insect breeding, odor, or other nuisance, and shall be maintained in good repair. Materials spilled by the hauler shall be picked up immediately by the hauler and returned to the vehicle or container, and the area properly cleaned. A violation of this provision shall subject the violator to imposition of a civil penalty by the director of solid waste in an amount not to exceed \$50.00.

(2) This section shall not prevent the use of a private car or truck in transporting properly contained wastes to a landfill, provided the hauler ensures that the solid wastes will be covered during transportation and that no spillage or leakage occurs.

(d) Disposal. Disposal of solid waste shall be as follows:

(1) Methods. No solid waste collector, or other person, shall dispose of solid waste except by one of the following methods:

a. Sanitary landfill that has been approved by the division of health services as meeting all the requirements of the division of health services "Rules and Regulations Providing Standards for Solid Waste Disposal."

b. By an incinerator that meets all requirements of the local, state and federal air pollution standards.

c. By any other method including reclaiming or recycling processes that has been approved by the director of solid waste.

This section shall not be construed to prevent any person from properly disposing of solid waste from his own residence on his property in a safe and sanitary manner approved by the director of solid waste.

(2) Compliance with state law. Hazardous waste shall be disposed of in compliance with applicable state laws, rules and regulations.

(3) Prohibited disposal. Any other disposal of solid waste is expressly prohibited. If any object of refuse is discovered upon any lands or waters in any of the unincorporated areas of the county, other than an approved sanitary landfill or other proper receptacle, and such refuse bears the name, address or other means of identification of a person, the person so identified shall be presumed to have disposed of the refuse in violation of this article. Reasonable attempts shall be made by the director of solid waste to contact such person. The director of solid waste shall, upon contact with such person, request him to remove the refuse, and such additional refuse as the director of solid waste may specify, to an approved sanitary landfill, and to return to the director of solid waste within ten days of the contact date with a receipt from the landfill indicating deposit of the refuse in the landfill. If the director of solid waste is unable, after reasonable attempts, to contact said person, or if the person does not comply with the terms of this subsection, then the director of solid waste may proceed under subsection (d)(6) of this section. The director of solid waste shall inform such person by a written statement sent by certified mail or hand delivered, of the maximum penalty which may be imposed for a violation of this article pursuant to subsection (d)(6) of this section if such person chooses not to comply with the aforementioned request. Bags, boxes, bins, cartons, and other containers used to carry food, clothing, and other goods and printed matter purchased, rented or otherwise obtained from a restaurant, supermarket, store, or other place of business or organization, which containers or printed matter bear the logo, name and address or other means of identification of the place from which the goods were obtained, shall not be considered as a means of identification for purposes of this section.

(4) Streets and sidewalks. No person shall place, throw, or otherwise deposit upon any street or sidewalk in the county any glass bottle, can, or fragments thereof, or any broken glass or crockery of any kind, or nails, tacks, brickbats, or any article or object likely to injure barefoot persons using such streets or sidewalks, or to injure or puncture the tires of vehicles traveling upon same.

(5) Containers with airtight snap locks. No person shall leave outside of any building or dwelling, or in any place accessible to children, any abandoned, unattended, or discarded icebox, refrigerator, or other container of any kind which has an airtight snap

lock or other similar device thereon without first removing the snap lock from such icebox, refrigerator, or other container which is crated, strapped or locked to such an extent that it is impossible for a child to gain access to any of its airtight compartments.

(6) Penalty for violation of subsection. A violation of subsection (d)(3), (d)(4) or (d)(5) of this section shall constitute a misdemeanor for which the penalty shall be in accordance with Section 62-33.

(7) Enforcement. The director of of solid waste shall administer and enforce the provisions of this article. In the alternative, the board of commissioners may designate an individual or department to be charged with the administration and enforcement of this article.

(Ord. No. 18975, § 1(III), 3-15-88; Ord. No. 99-3-6, § 1, 3-2-99)

Sec. 62-31. User and tipping fees.

The schedule of user and tipping fees for disposing solid waste at the county landfill and transfer station is not printed in this Code but is on file and available in the county offices.

(Ord. No. 17621, § 1, 6-21-83; Ord. No. 18458, § 1, 6-24-86; Ord. No. 18759, § 1, 6-16-87; Ord. No. 18838, § 1, 8-18-87; Ord. No. 19301, § 1, 4-18-89; Ord. No. 19333, § 1, 5-23-89; Ord. No. 19634, § 1, 6-26-90; Ord. No. 19729, § 1, 12-4-90; Ord. No. 19749, § 1, 1-22-91; Ord. No. 19835, § 1, 6-18-91; Ord. No. 95-1-2, §§ I, II, 1-3-92)

Sec. 62-32. Prohibited dumping.

No yard waste, white goods, used oils, lead acid batteries, antifreeze or aluminum cans shall be disposed of at the county landfill. Those items, and any other items banned from North Carolina landfills in the future, shall be separated from the solid waste and disposed of in a manner consistent with all federal, state, and local regulations.

Sec. 62-33. Penalties.

Any person, including an individual, owner, occupant, tenant, lessee, firm or business entity, and including any hauler, franchised collector, or other collector or provider, who violates the provisions of this article or any local or state health or solid waste rules or regulations adopted pursuant to this article shall be guilty of a misdemeanor and shall be subject to a civil penalty in the amount of \$50.00 for the first violation, and a civil penalty of \$100.00 for a second or subsequent violation.

(Ord. No. 95-1-2, § IV, 1-3-95)

Secs. 62-34--62-40. Reserved.

DIVISION 2. FRANCHISED COLLECTORS AND HAULERS*

***Cross references:** Ordinances relating to franchises granted by the county saved from repeal, § 1-10(5); businesses, ch. 14.

Sec. 62-41. Purpose and intent of division.

(a) This division is not intended to supersede or controvert the regulations of the county department of health and the North Carolina Department of Environmental and Natural Resources. It is the purpose and intent of this division to protect public health and private property by granting one or more exclusive franchises for the collection and disposal of residential and household solid wastes to responsible persons or businesses equipped to render adequate and continuing service throughout the county, and under supervision and regulation by local government agencies, both as to the means and method of collection, and also as to the sanitary disposition of solid waste.

(b) The board of commissioners, pursuant to the authority vested in it under G.S. 153A-45 and 153A-46, reserves the right to amend this division from time to time when such amendment would be in the best interest of the citizens and residents of this county. Furthermore, the board of commissioners may, upon a determination that a franchise operation or any or all franchise operations are not serving the needs and best interest of the public, repeal this division in its entirety or that portion of the division it deems necessary and make provisions for governmental or free enterprise operation of the solid waste collection business.

(c) The board of commissioners reserves the express right in this section to suspend, revoke, terminate, or otherwise alter, for cause, any franchise granted under the provisions of this division.

(Ord. No. 20372, § III, 1-18-94; Ord. No. 96-4-12, § 1, 4-16-96)

Sec. 62-42. Enforcement and administration of division.

(a) Enforcement and administration. The director of solid waste shall administer and enforce the provisions of this division. In the alternative, the board of commissioners may designate an individual or department to administer and enforce this division as may be necessary to carry out the provisions of this ordinance.

(b) Additional enforcement procedure. In addition to provisions of subsection (a) of this section, and pursuant to G.S. 153A-123(d) and (e), the provisions of this division may be enforced by a franchised collector or the board of commissioners in the following manner: A franchised collector, or the board of commissioners may, after notice to any person or business in violation of this division, apply to the superior court for injunctive relief to restrain such person or business from continuing the violation. If, upon application, it shall appear to the court that such person or business has violated, or is violating, the provisions of this division, the court may issue appropriate orders and/or injunctions restraining any further violations. Such injunctive relief may be granted regardless of whether criminal prosecution has been or may be instituted under any other provisions of this division.

(Ord. No. 20372, § X, 1-18-94)

Sec. 62-43. Penalty for violation of division.

Any person who violates the provisions of this division or any local or state health or solid waste rules or regulations adopted pursuant to this division shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with Section 62-33.

(Ord. No. 20372, § IX, 1-18-94)

Sec. 62-44. Franchises--Generally.

(a) In order to ensure adequate solid waste collection service in all of the unincorporated areas of the county, the board of commissioners may grant one or more exclusive solid waste collection rights to a person or qualified firm in the designated franchise areas of the county.

(b) The designated franchise areas of the county to be served by franchised collectors include areas that lie outside of the corporate limits of the municipalities within Buncombe County. Should any portion of any unincorporated area, town, or city be annexed or incorporated during the term of a franchise, that area shall then be expressly excluded from the designated franchise area. A map showing the current franchised areas is available upon request from the director of solid waste.

(c) A franchise may be granted to the same person or qualified firm in more than one designated franchise area, or may be an exclusive franchise covering all unincorporated areas.

(d) Except as provided in sections 62-45 and 62-46, no person or business shall collect by hand, pick up, remove, transport, or dispose of household, residential, and small business solid wastes within the county outside the incorporated municipalities, without a franchise issued by the board of commissioners.

(Ord. No. 20372, § IV, 1-18-94; Ord. No. 96-4-12, §§ 1, 2, 4-16-96)

Sec. 62-45. Franchise Grants and conditions.

(a) Franchise Grants. Franchise Grants shall be made as follows:

(1) Period of validity. Each franchise granted under the provisions of this division shall not exceed a period of ten years.

(2) Notice of solicitation for franchise proposals. Six months prior to the expiration of a franchise, or at any time the board of commissioners desires to fill a vacant franchise, the board of commissioners shall direct the county purchasing agent and/or county attorney to solicit proposals for the collection and disposal of solid waste and collection of recyclables, if applicable. Prior to the due date for proposals, the purchasing agent or county attorney shall cause a notice of the solicitation for proposals to be published once a week for two successive calendar weeks in a newspaper of general circulation throughout the county, which notice shall state that proposals for a franchise for the collection and disposal of solid waste and collection of recyclables, if applicable, are being accepted, to whom the proposal should be directed, the date the board of commissioners will consider the proposals and awarding a franchise, and a general description of the area to be franchised.

(3) Consideration of proposals; basis of franchise grant. After the receipt of franchise proposals, the county attorney shall provide relevant information on the proposals received to the board of commissioners for consideration. Following the consideration of the proposals, the board of commissioners shall grant franchises to the person or business that, in the judgment of the board of commissioners, will provide the best and most efficient service in the area for which the franchise is granted. Pursuant to G.S. 153A-46, the ordinance granting, renewing, extending, or amending any franchise shall

be made by ordinance which has been passed at two regular meetings of the board of commissioners. The board of commissioners shall grant the franchise at least 30 days prior to the expiration of the existing franchise.

(4) Proposal; contents; submission. The proposal shall include, but not be limited to, the following information:

a. The proposal shall contain the name, address, and telephone number of the proposer, and if the proposer is a business, the names and addresses of its officers, directors, owners, and partners. In addition, if the proposer is a corporation, a certified copy of its articles of incorporation shall be filed with the proposal. The proposer will provide financial statements, history of ownership, or other evidence as necessary to substantiate the proposer's financial condition, experience, and capacity to successfully deliver the services to be performed under the franchise.

b. If applicable and permitted under the guidelines of the solicitation, the proposal shall set forth with particularity a description of the area the proposer offers to serve, along with a map delineating the area, if different from the designated franchise areas.

c. The proposal shall set forth the manner and means by which the proposer offers to serve the area, including how the proposer will provide for the collection and disposal of solid waste and collection of recyclables and how rejects of recycling materials will be minimized; potential service improvements; qualifications and availability of sufficient personnel and equipment to provide satisfactory service; list of vehicles and equipment to be used; and a description of how the bidder will ensure that quality services will be provided to citizens in the franchise area.

d. The proposal shall be submitted in accordance with guidelines issued in the solicitation.

e. Any portion of the county which is not covered by a franchise may be designated as a franchise area by the board of commissioners and a franchise granted according to the provisions of this division. Further, the board of commissioners reserves the right to negotiate within or outside the scope of a solicitation in any manner deemed appropriate to serve the best interests of the citizens in the franchise area and for the development or management of the county's solid waste and recycling programs.

(b) Conditions and terms. All franchises are and shall be granted upon the following terms and conditions:

(1) Certificates of acceptance. Each franchised collector shall execute a certificate of acceptance of franchise within two weeks following the grant of a franchise. The certificate of acceptance shall contain a statement to the effect that the provisions of this section are incorporated by reference therein and that the collector has read and understands the section and will comply with its provisions, and that failure to comply with this section shall be grounds for termination of the franchise. The certificate of acceptance also shall incorporate by reference the solicitation for proposals and addenda thereto, advertisement, instructions, terms and conditions, specifications, insurance certificates, and all other documents related to the granting of the franchise including Sections 62-26 through Section 62-47 of this Article, and any amendments thereto. Such certificate shall be executed in triplicate, one copy to be retained by the franchised collector, one copy to be returned to the office of the county attorney, and the original to be on file with the director of solid waste. Unless the certificate is returned to the county attorney within two weeks of the grant of the franchise, such franchise may be terminated by the board of commissioners unless such time is extended for cause.

(2) Continuous service; recycling. Each franchised collector shall render continuous, weekly, curbside pickup service on a regular schedule, as approved by the director of solid waste, to every residence or place of business in the area in which the franchised collector is franchised to do business, provided that the occupant, owner, or proprietor of such residence or place of business is willing to contract for and to pay for the services. In addition, each franchised collector, as a condition of the franchise, is required to offer recycling services for the collection of recyclables such as bundled corrugated cardboard, newspaper, mixed paper, plastic bottles or jugs with tapered necks, aluminum or steel cans, and brown, green or clear glass bottles and jars. The franchised collector shall accommodate additional recyclable materials if required by the county. If additional recyclable materials are added for collection, the County shall notify the franchised collector at least sixty (6) days in advance of the proposed change. On an annual basis, the franchised collector also shall deliver to each subscriber literature explaining the recycling program and materials to be recycled, which materials will be provided by the county.

(3) Collection, schedules and routes. The director of solid waste shall work with the franchised collectors and shall determine and establish the weekly schedules and routes within each franchised area based on need and economic factors. Each customer shall receive a minimum of one pickup per week on a regularly scheduled basis, unless otherwise approved by the director of solid waste. Collection will be done Monday through Friday, and collection of refuse and recyclable items shall be scheduled on the same day. An objective of this provision is the establishment of schedules which will afford customers maximum service.

(4) Disposal.

a. The franchised collector is required to transport all solid waste collected under this franchise to a county-owned landfill or a county-owned transfer station. In the event of an emergency or disaster that renders county-owned disposal facilities inoperable, the franchised collector shall transport solid waste to a disposal area designated by the director of solid waste. No solid waste may be transported to, transferred, or disposed of at any other location within the county or outside of the county without the written, advance approval of the director of solid waste.

b. The county reserves the right to change the disposal site and assign a new disposal site at any given time but shall notify the franchised collector at least sixty (60) days in advance of the proposed change. Franchised collectors are responsible for paying all tipping fees associated with the disposal of solid waste.

c. It is the franchised collector's sole responsibility to market, transport and deliver all recyclable items collected. The franchised collector shall be solely responsible for compliance with federal, state, and local laws, including but not limited to equipment and permitting requirements applicable to the transport, delivery, and/or processing of recycling and resource recovery equipment and facilities. Recyclables that the franchised collector is required to collect shall not be transported or delivered to or accepted at the county landfill or transfer station. Recyclables must be placed in a separate collection vehicle or placed in a bin on the vehicle that is separate from other waste collected.

d. By the tenth of each month, the franchised collector shall report to the director of solid waste the amount of recyclable items collected and marketed the previous month. The report will contain the quantity of materials received and the percentage of recyclables disposed of because of unacceptable quality. **Actual weights of recyclables collected, obtained by using scales certified by the N.C. Department of Agricultural and Consumer Services, shall be**

reported to the director of solid waste, who shall then report recyclable weights to the N.C. Department of Environment and Natural Resources.

e. Disposal of yard waste (e.g., brush, leaves, grass clippings, pallets), white goods, and other large items are not covered under the franchise grant. Those items, and any other items banned from North Carolina landfills in the future, shall be separated from the solid waste and disposed of in a manner consistent with all federal, state, and local regulations.

(5) Protection of environment. The franchised collector shall comply with all federal, state, and local laws including, but not limited to, health and safety regulations related to the protection of the environment. Vehicles and containers used for the collection and transportation of solid waste and recyclables shall be loaded and moved in such a manner that the contents will not fall, leak, or spill, and shall be covered when necessary to keep contents dry and to prevent blowing of material. If spillage should occur, the material shall be picked up immediately by the franchised collector and returned to the vehicle or container and the area shall be properly cleaned.

(6) Vehicles, equipment, and personnel.

a. The franchised collector shall provide all of the vehicles, equipment, personnel, and other items necessary to perform the work granted under the franchise.

b. The franchised collector shall maintain an office within Buncombe County which shall be equipped with a local telephone number and adequately staffed with qualified personnel as may be necessary to receive and process subscriber service requests, inquiries, or complaints. The offices of the franchised collector shall be staffed during the hours of 8 a.m. to 5 p.m., Monday through Friday, during the term of the franchise.

c. The franchised collector shall ensure by all necessary means that sufficient vehicles, equipment, personnel, and other necessary items are available to meet service requirements throughout the term of the franchise. In the event of equipment breakdown, the franchised collector must have an alternate method of pickup arranged in order that service will not be seriously interrupted.

d. The franchised collector shall keep all vehicles fully licensed and inspected as required by the State of North Carolina. The franchised collector shall comply with any state and local vehicle registration, permitting or regulatory requirements.

e. All vehicles must be uniformly identified including company name, vehicle number, and phone number. All vehicles should be painted the same color.

f. Vehicles or containers used for the collection and transportation of solid waste and/or recyclables shall be **leak-proof**, durable, and of easily cleanable construction. All vehicles, equipment, and/or containers used for collection and transportation shall be maintained in good repair and cleaned as often as necessary to maintain sanitary conditions and prevent a nuisance or insect breeding. There shall be no garbage or recyclable items on the outside of the vehicle in any manner.

g. A list of all vehicles and equipment to be used with year of manufacture, along with the condition of each, shall be submitted to the director of solid waste on an annual basis during the term of the franchise.

h. The County may inspect vehicles and equipment or require other documentation as necessary to ensure all vehicles and equipment meet the specifications outlined herein.

(7) Property Rights, Records, and Transition of Services.

a. The franchised collector shall maintain a list of all subscribers in unincorporated areas of Buncombe County, including each customer's street and mailing address and phone number, and a description of service(s) provided to each customer. The list of current subscribers associated with this franchise is deemed to be the property of Buncombe County and shall be provided to the County in its correct form upon request by the County.

b. Each franchised collector shall furnish to the director of solid waste such business records, related to the operation of his franchise, with accurate and current information as is requested.

c. The franchised collector shall cooperate with the County and any new franchised collector(s) that may be assuming the provision of services after the end of a franchise period or upon termination of the franchise. This includes, but is not limited to, supplying a list of subscribers and other such actions as necessary to effect a smooth transition of services.

(8) Required annual statement. Within 30 days of acceptance of a franchise and no later than July 1 of each year during the life of such franchise, the franchised collector shall furnish to the county manager a written statement in which the director of solid waste verifies that:

a. The director of solid waste has inspected the storage facilities and all vehicles to be used by the franchised collector, his associates and employees.

b. The storage facilities, vehicles, and the franchised collector's method of operation meet the requirements of this division.

c. Each vehicle to be used for the collection, pickup, removal, transportation, and disposal of solid wastes by or for the franchised collector complies with the provisions in (5) and (6) above.

(9) Inspection; conducting; statement and permit required; display. The director of solid waste shall conduct an annual inspection to be completed by July 1 of each year, of all vehicles, facilities, and equipment of each franchised collector as to the matters specified in subsections (b)(8)a, (b)(8)b and (b)(8)c of this section. Upon satisfactory inspection, the director of solid waste shall furnish the franchised collector with such statement for the county manager and an annual permit, which permit shall be displayed on the windshield, door, or bumper of each vehicle. Failure to obtain such statement from the director of solid waste and to submit it to the county manager without good cause shall constitute just cause for termination of a franchise. Failure to obtain and display the permit described in this subsection without good cause shall constitute just cause for termination of a franchise.

(10) Failure to comply with conditions of franchise; appeal by collector to board. Failure to comply with the terms and conditions of this division shall result in the following:

a. Recommendation by director of solid waste. If the director of solid waste finds that any franchised collector has failed to comply with the terms and

conditions of this division, the director of solid waste may attempt an informal resolution of the problem with the franchised collector. If the problem is not resolved, the director of solid waste shall advise the franchised collector and the board in writing as to his findings. The director of solid waste may make recommendations as to what action should be taken by the board.

b. Hearing by committee. If the franchised collector is aggrieved by the findings or recommendations of the director of solid waste, the franchised collector, upon request, shall be given a hearing by a committee of three members having the following composition: one county commissioner, as appointed by the board; one representative of the department of solid waste, as appointed by the county manager; and one member appointed by the franchised collector. At the hearing, the franchised collector shall have the opportunity to show cause as to why the findings of the director of solid waste are incorrect, or why the action recommended by the director of solid waste should not be taken by the board of commissioners. Upon determination by the committee that a franchised collector has failed to carry out the duties, obligations, terms, and conditions imposed by the acceptance of a franchise under this division, it may recommend to the board of commissioners the following:

1. That the franchised collector be placed on probation;
2. That the franchise of the franchised collector be suspended pending completion of recommended corrective action;
3. That such changes be made in the franchise territory or area served by the franchised collector as will protect the public interest; or
4. That the franchise of the franchised collector be revoked.

If the committee finds that a franchised collector has substantially complied with the duties, obligations, terms, and conditions imposed by this division, the committee may recommend that the board of commissioners take no action. The board of commissioners must give consideration to the recommendation of the committee, but is not bound by it.

c. Presence of court reporter. The franchised collector shall be entitled, at his expense, at any point in the proceedings, to have a court reporter present for the purpose of transcribing the proceedings.

d. Procedures not exclusive. The procedures provided for in subsection (b)(10)a, b, and c of this section are not exclusive, and shall not prevent the board of commissioners from instituting an investigation or taking any other action independently of the director of solid waste.

(11) Transferral of franchise. No franchised collector may sublease, subcontract, convey, or otherwise transfer his franchise or any portion thereof without the written approval and consent of the board of commissioners, which consent may be given upon motion duly made and passed at any regular meeting of the board of commissioners, without the necessity of amending this division.

(12) Right of property owner to collect, transport and dispose. Except for and subject to the provisions of section 62-46, no other provisions of this division shall be construed to prohibit any person from collecting, picking up, removing, transporting, or disposing of solid wastes from property owned or leased by him, or which is under his proprietorship, management, or control; provided, however, that such person complies with local, state, or federal rules and regulations and the provisions of division 1 of this article. The owner or operator of any apartment house or complex or mobile home park may collect and remove solid wastes from the tenants within his park or complex, in the same manner as

the proprietor of any commercial establishment, and the payment of a rental which includes compensation for this service shall not be construed to be in violation of this division.

(13) Insurance. At its sole cost and expense, each franchised collector shall be required to procure and maintain insurance from reputable insurers authorized to do business in North Carolina. Insurance coverage shall include workers compensation, employer's liability, comprehensive general liability, automobile liability, contractual liability, and any other insurance coverages deemed necessary by the county with amounts stipulated by the county. On an annual basis during the term of the franchise, the franchised collector shall furnish certificates of insurance evidencing the required amounts. All liability certificates shall name the county as a additional insured.

(14) Performance bond. At its sole cost and expense, each franchised collector shall be required to procure and maintain a performance bond in the minimum amount of One Million Dollars (\$1,000,000), which shall remain in effect for the first two (2) years of the franchise term. All bonds shall be in the forms prescribed by law or regulation and be executed by such sureties legally authorized to do business in the state of North Carolina.

(15) Each franchised collector shall be required to perform franchised work in accordance with all other terms of contracts as may be necessary to ensure observance and compliance with all federal, state and local laws, ordinances, and regulations.

(16) Forfeiture. A franchised collector may forfeit his franchise through express written waiver, nonuse, or abandonment, as found by the board of commissioners.

(Ord. No. 20372, § V, 1-18-94; Ord. No. 96-4-12, §§ 3, 4, 4-16-96)

Sec. 62-46. Prohibitions and limitations.

In order to protect the public health and general welfare of all citizens in the county; to ensure that franchised collectors are properly supervised; to ensure that the county has the ability to supervise a reasonable number of franchised collectors in a safe and consistent manner, especially as to the condition and safety of vehicles and equipment used; to ensure and supervise the safe, orderly, and adequate provision of solid waste collection, pickup, removal, transport, and disposal services, equipment, and personnel consistent with the terms of this division; and to ensure and supervise the proper management of county landfills, the following shall apply:

(1) Definitions. Notwithstanding any other definitions included in this division by reference or otherwise, the following definitions shall be applicable to this section and to any other provisions of this division or of any other ordinance which incorporates section 62-45 or any portion thereof:

a. Provider shall mean any person or business that is not a franchised collector in the business of providing or desiring to provide to any user solid waste collection, pickup, removal, transport, or disposal services, personnel, and/or equipment.

b. User shall mean a person or business desiring or needing, or required to have solid wastes collected, picked up, removed, transported, or disposed of from premises owned, leased, controlled, or supervised by such person or business.

(2) Contract with provider. No user may enter into a contract, lease, or any other agreement with any provider other than a franchised collector, which agreement in any manner or in any combination provides for collection, pickup, removal, transportation, or

disposal of solid waste, or provides to a user equipment and personnel for the collection, pickup, removal, transportation, or disposal of solid wastes.

(3) Provider not to offer contract. No provider may contract, lease, or otherwise enter into any agreement with any user to provide to or for the user equipment and personnel for the collection, pickup, removal, transportation, or disposal of solid wastes.

(4) Exception; temporary hauling due to emergency. The board of commissioners or its duly authorized designee may authorize by permit the temporary hauling of solid wastes and refuse by a person or entity which is not a franchised collector or which is not a franchised collector for the area involved upon a finding by the board of commissioners or its designee that an emergency exists which constitutes or could constitute a threat to the public health, safety or general welfare of citizens of the county. Such permit issued under this section shall be for a period of no more than seven days and may, for good cause shown, be renewed for no more than three consecutive seven-day periods in any one year.

(Ord. No. 20372, § VI, 1-18-94)

Sec. 62-47. Fees.

(a) Fees of franchised collectors shall be set by the board of commissioners by ordinance duly adopted, and the schedule of such fees is on file and available from the director of solid waste.

(b) Prior to a fee change becoming effective, it shall be approved by the board of commissioners, by ordinance duly adopted; provided, however, that for every \$1.00 that the county may increase its tipping fees, a franchised collector may increase the monthly customer charge by ten percent of the amount of the tipping fee increase without applying to the board of commissioners for such an increase, as provided in subsection (c) of this section.

(c) Except as noted in (b) above:

- i. The County will not entertain increases in the per month subscriber fee for the first two (2) years of the franchise term. The franchised collector may thereafter submit a non-binding request to the County Commissioners for an increase if the percent change in the annual consumer price index for all urban consumers goes above five percent (5%) since the start of the contract or the last increase, whichever is later. The index to be used is the Consumer Price Index, Urban Wage Earners and Clerical Workers, U.S. City Average.
- ii. Further, should legislative actions (other than those affecting fuel costs) cause hauling or disposal costs to increase, then the franchised collector may apply at any time to the board of commissioners and appear and show cause, to the satisfaction of the board, of the necessity for a fee increase, and which application for fee increase may be accepted or denied in the discretion of the board.

(d) Subject to the provisions set forth above, on petition to the board of commissioners, the board may grant a fee increase following a public hearing to determine the necessity of a fee increase. At such public hearing, a franchised collector may present evidence of past, present and projected operating costs, profit margins, overhead costs, and such other evidence as the board of commissioners may, in its discretion, allow or require. The board of commissioners shall grant or deny such request within 60 days of application.

(Ord. No. 15422, § 1, 6-15-76; Ord. No. 16204, § 1, 8-22-78; Ord. No. 16686, § 1, 2-26-80; Ord. No. 17290, § 1, 12-16-81; Ord. No. 17524, § 1, 1-18-83; Ord. No. 18837, § 1, 8-18-87; Ord. No. 18970, § 1, 3-15-88; Ord. No. 19355, § 1, 6-20-89; Ord. No. 19643, § 1, 6-26-90; Ord. No. 19836, § 1, 6-18-91; Ord. No. 20372, § VIII, 1-18-94; Ord. No. 95-1-2, § III, 1-3-95)
Secs. 62-48--62-70. Reserved.

Summary of Changes to Solid Waste Ordinance

There are two divisions of the Solid Waste Ordinance that are involved in the proposed amendment to Chapter 62 of the Code of Ordinances. Division 1 of the ordinance sets for general requirements related to the collection, transportation, and disposal of materials. Division 2 of the ordinance pertains directly to the franchise(s) granted by the Board of Commissioners for the collection of solid waste and recyclables in unincorporated areas of Buncombe County.

The last changes to ordinance were made in 1996. The ordinance needs updating with general changes because:

- There have been changes to the name of the Solid Waste Department (formerly General Services Department), state regulatory agencies (NCDENR), and to positions within the department which need to be updated.
- Definitions contained in the ordinance have changed slightly are needed to be clarified. Other minor corrections to the text were needed as well.

Division 2 of the ordinance pertains to the grant of a franchise for collection of trash and recyclables in unincorporated areas. Changes to this Division were needed for clarity and in order to make the ordinance and franchise process consistent with the guidelines and information in the Request for Proposals for the next ten-year franchise period, January 1, 2010 – December 31, 2019. The proposed amendment includes the following changes related to the process for granting a franchise and to responsibilities of the franchise collector:

- Changes were made to update state regulatory provisions for environmental protections and for local requirements such as insurance coverage and other general and contract provisions associated with services provided on behalf of the County. Clarification also was needed on requirements related to the collector's vehicles, equipment, and personnel.
- Changes were needed to better address and stipulate guidelines related to Buncombe County's Solid Waste Management Program, especially with respect to recyclable materials. Further, more materials that are prohibited from landfills also have been changed due to recycling efforts and environmental protections.
- The most significant change under local guidelines is the requirement for the franchised collector for unincorporated areas of the County to dispose of all solid waste at a county-owned landfill or county-owned transfer station. This change is necessary to support the County's investment in providing adequate disposal facilities for its citizens.
- Another change is that the franchised collector is solely responsible for marketing all recyclable items collected. We also added one new recyclable product, mixed paper, to the next franchise grant because recycling mixed paper can reduce the waste stream by such large amounts (estimated 40% increase in recycling tonnage with mixed paper).
- In response to issues raised by companies that may be interested in the franchise opportunity, a provision was added to allow the collector to apply to the board for a fee increase if legislative actions, other than fuel costs, cause hauling or disposal costs to increase. Provisions for fee increases were already included in the event of tipping fee increases and increases in the Consumer Price Index.