

ORDINANCE NO.

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

- WHEREAS, pursuant to N.C. Gen. Stat. §153A-46 authorizes Buncombe County to enter into franchises with third parties through the passage of an ordinance; and
- WHEREAS, pursuant to N.C. Gen. Stat. §153A-132.1, in exercising its general policy power, the County is authorized to enact ordinances governing the removal, method or manner of disposal, depositing or dumping of any trash, debris, garbage, litter, discarded cans or receptacles or any waste matter whatsoever within the rural areas of the county and outside and beyond the corporate limits of any municipality of said county; and
- WHEREAS, pursuant to N.C. Gen. Stat. §153A-136, in exercising its general police power, the County may by ordinance regulate the storage, collection, transportation, use, disposal and other disposition of solid wastes; and
- WHEREAS, on September 1, 2009, the County adopted a comprehensive Solid Waste Management Ordinance codified as Chapter 62 of the Buncombe County Code of Ordinance; and
- WHEREAS, since September 1, 2009, the County has periodically updated Chapter 62 of the Code of Ordinances as needed; and
- WHEREAS, the Board of Commissioners has determined that it is in the best interest of the citizens and residents of Buncombe County to enact the following revisions to Chapter 62 of the Buncombe County Code of Ordinances.

NOW THEREFORE, BE IT ORDAINED BY THE BUNCOMBE COUNTY BOARD OF COMMISSIONERS THAT:

Section 1. Section 62-26 of the Buncombe County Code of Ordinances is amended with the following changes to the "Definitions":

"Collector means any dumpster container collector, franchised collector, hand collector, or roll-cart container.

Dumpster 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 building materials, business trash, industrial waste, hazardous refuse, refuse or other solid waste. 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

Dumpster is that it is lifted by a specially designed and equipped truck or becomes an integral part of that truck for transporting waste materials to the disposal site.

Dumpster collector means any person who collects or transports solid wastes from residential, commercial, small business or industrial establishments by use of dumpster with a capacity of at least one cubic yard.

Franchised collector means any hand collector or roll-cart container collector authorized by the board of commissioners to collect and transport residential solid waste for hire or compensation.

Hand collector means any person who collects or transports solid wastes from residential property by hand pickup.

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

Person means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

Refuse means solid waste accumulations consisting of household trash, business trash, building materials, and any other items listed in N.C. Gen. Stat. 130A-309.10 not specifically defined in this Chapter.

Residential means building, structure or portion thereof which is designed, arranged, or used for a residential occupancy, but shall not include a motel, hotel, rooming house, or vacation rental complex.

Roll-cart container means a 96-gallon, 64-gallon, 48 gallon or 32-gallon container with cover and wheels, and which is used for collecting, storing, and transporting residential solid waste.”

Section 2. Section 62-28(d) of the Buncombe County Code of Ordinances deleted in its entirety and replaced with the following:

“(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 dumpsters 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.”

Section 3. Section 62-29 of the Buncombe County Code of Ordinances is deleted in its entirety.

Section 4. Section 62-30(a)(1) of the Buncombe County Code of Ordinances is deleted in its entirety and replaced with the following:

“(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 96 gallons, if hand collected, or as specified by the franchise collector, if collected by dumpster 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.

Section 5. Section 62-30(b) of the Buncombe County Code of Ordinances is amended by adding the following subsection to Section 62-30(b):

“(1) No person for compensation may collect residential or household solid waste from a roll-cart container without a franchise awarded by the board of commissioners as set forth in Division II.”

Section 4. Section 62-33 of the Buncombe County Code of Ordinances is deleted in its entirety and replaced with the following:

“Sec. 62-33. Penalties.

(a) Penalties. A violation of this Division shall subject the violator to imposition of a civil penalty. The current civil penalty is on file and available in County offices and included in the County's fee schedule, which is adopted annually. Each day that the violation continues is a separate and distinct violation subject to an additional civil penalty. Unless specified in the fee schedule, the initial civil penalty for a violation of this Division shall be \$50.00.

(b) *Report; notice; summons.* For violations of Sec. 62-28 and Sec. 62-30(a)(1), after receiving a complaint, the director of solid waste shall thereupon investigate the matter and attempt an informal resolution of such violation. If no solution is reached, the director of solid waste or their designee may cause a notice of violation to be issued by U.S First Class Mail to the owner 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 fifteen

(15) days from the issuance of the notice in which to remedy the violation. After the expiration of the fifteen (15) day period, if the violation has not been corrected, the director of solid waste, or their designee, may issue a civil penalty to the property owner in the amount of \$50.00 or as specified in the County's fee schedule. Each day that the violation continues constitutes a separate violation.

- (c) *Failure to remedy; correction by department.* If the owner fails to correct the violation after receiving notice as set forth in Section (b), and based on the determination of the director of solid waste that the violation is a threat to the public health and safety, the director of solid waste may direct that the solid waste department correct the violation and may assess the owner with the cost of remediation."

Section 5. Division 2 of Chapter 62 of the Buncombe County Code of Ordinances is deleted in its entirety and replaced with the following:

"DIVISION 2. FRANCHISED COLLECTORS AND HAULERS

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 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 N.C. Gen. Stat. §§ 153A-45, 153A-46, and 153A-136, (or as amended), 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.

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

The director of solid waste shall administer and enforce the provisions of this division. In the alternative, the county manager may designate an individual or department to administer and enforce this division as may be necessary to carry out the provisions of this article.

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

A violation of this division shall subject the violator to imposition of a civil penalty. The current civil penalty is on file and available in County offices and included in the County's Fee Schedule, which is adopted annually. Each day that the violation continues is a separate and distinct violation subject to an additional civil penalty. Unless specified in the Fee Schedule, the initial civil penalty for a violation of this division shall be \$500.00.

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 the 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 in more than one designated franchise area or may be an exclusive franchise covering all unincorporated areas.

Sec. 62-45. Franchise grants and conditions.

In accordance with N.C. Gen. Stat. §§ 153A-46 and § 153A-136 or as amended, the board of commissioners have the authority to enter into a franchise with one or more persons as follows:

- (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 thirty (30) years.
 - (2) *Notice of solicitation for franchise proposals.* At least six (6) 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 manager to solicit proposals for the collection and disposal of residential solid

waste and collection of recyclables, if applicable. To the extent applicable, the County's Procurement Policy and Procedures shall govern the solicitation of the franchise proposals.

- (3) *Consideration of proposals; basis of franchise grant.* After the receipt of franchise proposals, the county manager 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 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 N.C. Gen. Stat. § 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 new or amended franchise at least 30 days prior to the expiration of the existing franchise.
- (4) *Reservation of Rights.* Buncombe County, through the County Manager or designee, reserves the right to negotiate within or outside of a solicitation in any manner deemed appropriate to serve the best interests of residents in the franchise area and for the development or management of the County's solid waste and recycling program.

Sec. 62-46. Prohibitions and limitations.

- (a) 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 division:
 - a. Provider shall mean any person that is not a franchised collector in the business of providing or desiring to provide to any user residential solid waste collection, pickup, removal, transport, or disposal services, personnel, and/or equipment to roll-cart containers.
 - b. User shall mean a person desiring or needing, or required to have residential solid wastes collected, picked up, removed, transported, or

disposed of from premises owned, leased, controlled, or supervised by such person or business from roll-cart containers.

- (b) *Contract with provider.* No user may enter into a contract, lease, or any other agreement with any provider, other than a franchised collector, in any manner or in any combination provides for collection, pickup, removal, transportation, or disposal of residential solid waste from detachable containers.
- (c) *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 residential solid wastes from roll-cart containers.
- (d) *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 (7) days and may, for good cause shown, be renewed for no more than three consecutive seven (7) day periods in any one year.

Sec. 62-47. Fees.

Fees of franchised collectors shall be set forth in the franchise agreement with the franchise collector.”

Section 6. If any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Commissioners hereby declare that it would have passed this ordinance, and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that anyone or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 7. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 8. This ordinance is effective upon adoption.

Read, approved and adopted this 16th day of January, 2024.

ATTEST

BOARD OF COMMISSIONERS FOR THE
COUNTY OF BUNCOMBE

LAMAR JOYNER, CLERK

BY: _____
BROWNIE NEWMAN, CHAIRMAN

APPROVED AS TO FORM

COUNTY ATTORNEY