

Brinkley

NORTH CAROLINA
ROCKINGHAM COUNTY

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**ORDINANCE RELATING TO THE FRANCHISING OF PRIVATE
SOLID WASTE COLLECTORS WITHIN ROCKINGHAM COUNTY**

~~WHEREAS, a county may by ordinance grant a franchise to one or more persons for the exclusive right to commercially collect or dispose of solid wastes within all or a defined portion of the county and prohibit any other person from commercially collecting or disposing of solid waste in that area (NCGS §153A-136(a)(3)); and,~~

WHEREAS, the Rockingham County Board of Commissioners (hereinafter "the Board") wishes to grant an exclusive franchise or franchises to private firm or firms to provide for solid waste collection within Rockingham County in an attempt to provide the most efficient means of solid waste management available.

NOW, THEREFORE, by virtue of the authority to enact ordinances or to grant, renew, extend, or amend franchises pursuant to North Carolina General Statute §153-45, §153-46 and §153A-136(a)(3), the Board of Commissioners for Rockingham County (hereinafter referred to as "the Board") hereby ordains the following:

I

DEFINITIONS

The following terms used in this ordinance have the meanings indicated in this section unless the context of the ordinance clearly requires otherwise:

- (1) "Person" means an individual, corporation, company, association, partnership, unit of local government, State agency, federal agency or other legal entity.
- (2) "Solid waste" means all material customarily referred to as garbage or refuse, and other discarded material including solid, liquid, semi-solid, or contained gaseous materials resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include hazardous waste or solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act as amended (86 STAT. 880) or source, special nuclear, or by-product materials as defined by the Atomic Energy Act of 1954, as amended (68 STAT. 923).
- (3) "Hand commercial establishment" means any commercial entity receiving solid waste collection service under a solid waste franchise granted pursuant to this ordinance, but not dumpster service; or any multi-unit residential building not receiving dumpster service.
- (4) "Hazardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical or infectious characteristics may:

- a. cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitative reversible illness; or
- b. pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.
- (5) "Residence" means any single family dwelling or household.
- (6) "Dumpster" means stationary solid waste container which requires mechanical pickup by customized loading vehicles.
- (7) "Enhanced services" means services rendered in addition to once-per-week curbside collection. These services may include, but are not limited to, twice-per-week service, driveway cart pickup and return, and recycling.

II

PURPOSE AND INTENT

It is the purpose and intent of this ordinance to protect public health and to promote reasonable cost for citizens by granting an exclusive franchise or franchises for the collection and disposal of solid waste to one or more responsible persons or businesses equipped to render adequate and continuing service throughout Rockingham County. The services rendered are to be under the supervision and regulation of Rockingham County, both as to the means and method of collection, and also as to the sanitary disposition of solid waste.

The Board, pursuant to the authority vested in it under North Carolina General Statute §153A-45 and §153A-46, reserves the right to amend this ordinance from time to time when such amendment would be in the best interest of the citizens and residents of Rockingham County.

Additionally, the Board may, upon the determination that a franchised operation or any or all franchised operations are not serving the needs and best interests of the public, repeal this ordinance in its entirety, or that portion of the ordinance it deems necessary and make provisions for governmental or free enterprise operations of the solid waste collection business.

The Board herein reserves the express right to suspend, revoke, terminate, or otherwise alter, for cause, any franchise granted under the provisions of this ordinance.

III

EFFECT

This ordinance shall govern the collection of solid waste throughout all of Rockingham County pursuant to the provisions of North Carolina General Statute §153A-136. Additionally, this ordinance is made applicable to each municipality within the County under North Carolina General Statute §153A-122, as each municipality within the County, through its governing body, adopts a resolution permitting this ordinance to be extended to the territory within that municipality.

IV

TYPES OF FRANCHISES

In order to assure adequate solid waste collection service in all of Rockingham County, the Board may grant exclusive solid waste collection rights to a Person in designated franchise areas of Rockingham County to collect all solid waste (other than recyclable materials) within all or a specified portion of Rockingham County from all residences and hand commercial establishments.

V

TERMS OF FRANCHISES

Each franchise granted under the provisions of this ordinance shall exist for an initial period of four (4) years from the date of the grant of a franchise as provided for herein unless the franchisee sooner voluntarily surrenders the grant of the franchise, or unless the franchise is suspended, revoked, terminated, or otherwise altered for cause, or renewed as enumerated herein. Upon the termination of the third year of any franchise, the Board will conduct a review of the franchisee's performance to determine the desirability of renewal for a three (3) year period beyond the original four (4) years. Provided, however, in no event is an initial franchise period to exceed seven (7) years duration.

Three (3) months prior to the expiration of a franchise or at any time the Board desires to fill a vacant franchise, the

Board may direct the Solid Waste Management Director for Rockingham County who shall be appointed by the County Manager (hereinafter "the Director") to publish a notice in the newspaper of general circulation throughout Rockingham County. This notice shall state that applications for a franchise are being accepted, to whom the application should be directed, the date the Board will consider the applications, and the general description of the area to be franchised.

Just cause for the termination of the franchise shall be defined as a material breach of the terms of the franchise agreement.

The Board may grant temporary franchises under this ordinance for the collection, transportation, or disposal of solid waste to provide service in the event of abandonment of an existing franchise or for other good cause.

VI

APPLICATION

The application for a franchise shall contain the name, address, and telephone number of the applicant, and if the applicant is a business, the names and addresses of its officers, directors, owners, and partners. In addition, if the applicant is a corporation, a certified copy of its Articles of Incorporation shall be filed with the application.

The application shall set forth with particularity the designated franchise area which is to be served by the applicant.

The application shall set forth the manner and means by which the applicant proposes to service the area.

The application shall be submitted in triplicate, one copy to the Clerk of the Board, one copy to the office of the County Attorney, and one copy to the Solid Waste Management Director for the County.

The application shall set forth information establishing the applicant's ability to satisfactorily perform the services required under the franchise which shall include prior performance, references, financial condition, and ability to furnish financial assurances.

Any portion of the County which is not covered by a franchise may be designated as a franchised area by the Board and a franchise granted according to the provisions of this ordinance.

VII

CONDITIONS OF FRANCHISE

All franchises are and shall be granted upon the following terms and conditions:

1. Each franchised collector shall execute a "certificate of acceptance of franchise" within two (2) weeks following the grant of a franchise. Such certificate shall be executed in triplicate, one copy to be retained by the franchise collector, one copy to be returned to the office of the County Attorney, and the original to be on file

with the Director. Unless the certificate is returned to the above parties within two weeks after the grant of the franchise, such franchise may be terminated by the Board, unless such time is extended for cause.

2. Each franchised collector shall render continuous service on a regular schedule approved by the Director to every residence or hand commercial establishment in the area in which the franchised collector is franchised to do business.
3. All vehicles used for collection shall be cleaned regularly in areas approved by the Director.
4. In the event of equipment breakdown, the franchised collector must have an alternative method of pickup arranged in order that the service will not be interrupted.
5. Solid waste shall be transported in the collection vehicle directly to a disposal area designated by the Director or the Board.
6. The Director shall work with the franchised collectors and shall determine and establish the 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.
7. Each franchised collector shall furnish to the Director, upon request, records related to the operation of his franchise with accurate and current information as requested.

8. Within thirty (30) days of acceptance of a franchise and no later than July 1 of each year during the life of such franchise, the Director shall furnish to the Board a written statement in which the Director verifies that:
- a. The Director 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 collectors method of operation meet the requirements of this ordinance;
 - c. Each vehicle to be used for the collection, pickup, removal, transportation, and disposal of solid wastes by or for the franchised collector: (1) is sufficiently waterproof so as not to spill water or other liquids upon any thoroughfare or road traversed, (2) is covered with a tarpaulin or cover of other material sufficient to prevent wind-blown trash; and (3) is in good working order.
9. The Director 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 the paragraph above. Upon satisfactory inspection, the Director shall furnish the franchised collector an annual permit, which permit shall be displayed on the vehicle in a place to be determined by the Director.

10. Failure to obtain and display said permit described in the paragraph above without good cause shall constitute just cause for termination of a franchise.
11. In the event that the Director finds that any franchised collector has failed to comply with the terms and conditions of this ordinance, the Director shall attempt an informal resolution of the problem with the franchised collector. If the problem is not resolved, the Director shall advise the franchised collector and the Board in writing as to his findings. The Director may make recommendations as to what action should be taken by the Board.
12. In the event the franchised collector is aggrieved by the findings or recommendations of the Director, the franchised collector, upon request, shall be given a hearing by a committee of three (3) members (hereinafter "Committee") having the following composition: One County Commissioner, as appointed by the Board; the Rockingham County Manager or his designee; 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 are incorrect, or why the action recommended by the Director should not be taken by the Board. 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 ordinance, it may recommend to the Board any of the following:

- a. That the franchised collector be placed on probation;
- b. That the franchise of the franchised collector be suspended pending completion of recommended corrective action;
- c. That such changes be made in the franchised territory or area served by the franchised collector as will protect the public interest; or
- d. That the franchise of the franchised collector be revoked.
- e. If the Committee finds that a franchised collector has substantially complied with the duties, obligations, terms, and conditions imposed by this ordinance, the committee may recommend that the Board take no action. The Board must give consideration to the recommendation of the committee, but is not bound by it.

13. A franchised collector may sublease, subcontract, convey, or otherwise transfer his franchise or any portion thereof but only with written approval and consent of the Board, which consent shall not be arbitrarily or unreasonably withheld, and which consent may be given upon motion duly made and passed at any regular meeting of the Board, without the necessity of amending this ordinance. Before any franchise may be subleased, subcontracted, conveyed, or otherwise transferred, the transferee must submit an

application as provided for in this ordinance, and must meet all requirements of this ordinance.

VIII

ADDITIONAL PROVISIONS

1. Franchise customers shall set out containers and carts for collection of solid waste and for enhanced services only on those days designated for pickup pursuant to the franchise applicable to such customer's area. Following each collection, the customer shall, with reasonable promptness, remove said containers and carts to a secure location.
2. It shall be unlawful for any person not franchised by the County to collect solid waste from all residents and hand-commercial establishments in Rockingham County. This provision shall not apply to any person disposing of solid waste from his own residence or property. Further, this provision shall not apply to any person collecting solid waste in Rockingham County prior to September 1st, 1992, unless a franchise has been granted by the Board under this ordinance.

IX

INSURANCE

The franchisee shall carry and keep current workmen's compensation and unemployment insurance as required by the State of North Carolina. General liability and automobile liability

coverage will be maintained with not less than the following limits:

Bodily Injury Liability	\$250,000 each person \$500,000 each occurrence
Property Damage Liability	\$100,000 each occurrence
Comprehensive General Liability	\$500,000 each occurrence
Excess Liability (Bodily Injury and Personal Damage Combined)	\$1,000,000

Each franchisee will agree to furnish proof of existence of such coverage to County at least ten (10) days prior to the effective date of the franchise and from time to time thereafter as County reasonably may request. County shall be designated as an additional insured on all insurance policies providing the required coverages for purposes of this contract. Each such policy shall contain a clause that the insurer will not cancel or modify the insurance coverage without first giving County a minimum of ten (10) days advance written notice.

X

PENALTIES AND REMEDIES

A violation of any of the provisions of this ordinance shall constitute a misdemeanor, punishable by a fine not exceeding fifty dollars (\$50.00) or by imprisonment not to exceed thirty (30) days, or both, in the discretion of the Court.

A violation of any of the provisions of this ordinance shall also subject the offender to a civil penalty of fifty

dollars (\$50.00). If a person fails to pay this civil penalty within ten (10) days after being cited for a violation, the County may seek to recover the penalty by filing a civil action in the nature of debt.

The County may seek to enforce this article through any appropriate legal or equitable action and relief.

Each day that a violation continues after the offender has been notified of the violation shall constitute a separate offense.

The County may seek to enforce this article by using any one or any combination of the foregoing and/or by using any available contractual remedies.

XI

EFFECTIVE DATE

This ordinance is effective upon adoption.

This the 6th day of April, 1992.



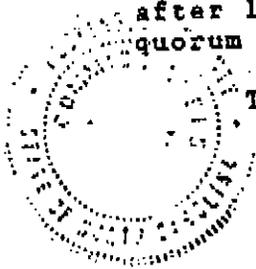
Ossie L. London
OSSIE L. LONDON, CHAIRMAN

ROCKINGHAM COUNTY BOARD OF COMMISSIONERS

ATTEST:

Pamela M. Robertson
PAMELA M. ROBERTSON, CLERK TO THE BOARD

I, Pamela M. Robertson, Clerk to the Rockingham County Board of Commissioners, do hereby certify that the foregoing Ordinance was duly adopted by the Governmental Body of Rockingham County after lawful public notice and at a regular meeting thereof, a quorum deemed present.



This the 6th day of April, 1992.

Pamela M. Robertson

 PAMELA M. ROBERTSON, CLERK TO THE BOARD

This Ordinance was introduced at the February 3rd, 1992, regular meeting of the Rockingham County Board of Commissioners.