

**MECKLENBURG COUNTY
ORDINANCE TO REQUIRE THE SOURCE SEPARATION OF DESIGNATED
MATERIALS FROM THE MUNICIPAL SOLID WASTE STREAM
FOR THE PURPOSE OF PARTICIPATION IN A
RECYCLING PROGRAM**

WHEREAS, North Carolina House Bill 859 established a State goal of 40% per capita reduction in disposal of municipal solid waste by June 30, 2001; and

WHEREAS, the State of North Carolina has banned from disposal in landfills used oil, yard trash, white goods, antifreeze, aluminum cans, whole scrap tires, and lead-acid batteries as part of its regulation of the disposal of municipal solid waste; and

WHEREAS, as part of the triennial revision, on August 15, 2000 the Mecklenburg County Board of Commissioners adopted a Solid Waste Management 10-Year Plan (effective July 1, 2000, which established a 2006 per capita waste reduction goal of 19% from fiscal year 1999 and a 2010 per capita waste reduction goal of 23% from fiscal year 1999); and

WHEREAS, as part of the triennial revision to the Solid Waste Management 10-Year Plan, the implementation of a mandatory source separation program is to be pursued as part of "Commercial Waste Reduction" as described in the Solid Waste Management 10-Year Plan; and

WHEREAS, Mecklenburg County has the authority pursuant to N.C.G.S. §153A-136 to require participation in a recycling program by requiring separation of designated materials by the owner or occupant of improved property prior to disposal; and

WHEREAS, the municipalities in North Carolina have been granted the authority by N.C.G.S. §160A-317 to require participation in a recycling program by requiring separation of designated materials by the owner or occupant of improved property prior to disposal; and

WHEREAS, N.C.G.S. §153A-122 authorizes municipalities by resolution to permit County ordinances to be enforced within the municipality's corporate limits;

NOW, THEREFORE, BE IT ORDAINED by the Mecklenburg County Board of Commissioners, pursuant to the authority cited above, that the following Ordinance to require the source separation of Designated Materials from the municipal solid waste stream for the purpose of participation in a recycling program is hereby adopted:

ORDINANCE TO REQUIRE THE SOURCE SEPARATION OF DESIGNATED MATERIALS FROM THE MUNICIPAL SOLID WASTE STREAM FOR THE PURPOSE OF PARTICIPATION IN A RECYCLING PROGRAM.

Section 1. Definitions.

The following definitions shall apply in the interpretation and enforcement of this Ordinance:

Business Entity – means any business, proprietorship, firm, partnership, person in representative or fiduciary capacity, association, venture, trust, corporation which is organized for financial gain or for profit, or non-profit corporation or entity, including all commercial, governmental, industrial and institutional entities.

Certified Mixed Waste Processor – means a business or Business Entity certified by the Director to collect mixed loads of Designated Materials and municipal solid waste and then separate the Designated Materials from the municipal solid waste for the purpose of recycling.

Collection – means the aggregation of solid waste from the place at which it is generated and includes all activities up to the time when the solid waste is delivered to an approved disposal and/or recycling facility.

Collector – means any person/(s) who owns, operates or leases vehicles for the purpose of collection and transportation of any type of mixed municipal solid waste, and/or recyclables.

Commercial – means any business establishment including, but not limited to, stores, markets, office buildings, restaurants, hotels, motels, shopping centers and theaters, but not including multi-family housing customers.

Corrugated Cardboard – means any structural kraft paper material having smooth exterior liners with an inner core shaped in rigid parallel furrows and ridges (corrugated or rippled core), but excluding boxboard (cereal boxes, shoe boxes), and containers which are contaminated with blood, grease, oil, chemicals, metals, wood, food residue, wax, or any other material which will render the corrugated cardboard not marketable, or which have polyethylene, polystyrene, foil or other non-paper liners. Business Entities are encouraged to include other cardboard as allowed by the recycler which collects the Business Entity's Corrugated Cardboard; however, only the types of cardboard specified above are required by this Ordinance to be separated.

Director – means the Mecklenburg County Director of Solid Waste (or his or her designees).

Disposal – means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

Designated Materials – means Corrugated Cardboard and Office Paper.

Drop-off or Collection Sites – means a municipal solid waste management facility or site designed for the collection of Designated Materials which have been separated from municipal solid waste by the generator. The purpose of the site is to collect, and/or sort, and/or process Designated Materials prior to shipment to others who will use those materials to manufacture new products or process the separated Designated Materials into a marketable product or feedstock.

End-User - means a person that incorporates recyclable materials into products it uses or manufactures. End-user may also serve as its own processor or may process material for distribution to other end-users.

Established Threshold – means having 16 cubic yards or greater of municipal solid waste collection service per week.

Generator – shall include any person that produces municipal solid waste.

Governmental – means the federal government, the State of North Carolina, a county, municipality, local board of education, and any authority, department, agency, board, commission, or institution of either the federal government, State of North Carolina, county, or municipality.

Hazardous Waste – means a solid waste, or combination of solid wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics may:

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

Industrial – means any establishment engaged in manufacturing or processing, but not limited to factories, foundries, mills, processing plants, refineries, mines and slaughterhouses.

Institutional – means any establishment engaged in service, including, but not limited to, hospitals, nursing homes, orphanages, churches, schools and universities.

Items Banned From Landfills - means used oil, yard trash, white goods, antifreeze, aluminum cans, whole scrap tires, and lead-acid batteries, and any other items banned from landfills by State law. These items are banned from disposal by the State of North Carolina (N.C.G.S. 130A-309.10).

Mandatory Source Separation Area - means all unincorporated areas of Mecklenburg County and all areas within the corporate limits of each municipality which has, pursuant to N.C.G.S. 153A-122, adopted a resolution which permits this Ordinance to be applicable within its corporate limits.

Market – means that the local and regional collectors and processors of Designated Materials have an end-user who will use those materials to manufacture new products or process the separated Designated Materials into a marketable product or feedstock. A market is not confined to domestic companies and can also be overseas (export market).

Municipal Solid Waste – means any solid waste resulting from the operation of residential, commercial, industrial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. Municipal solid waste does not include hazardous waste, sludge, industrial waste managed in a solid waste management facility owned and operated by the generator of the industrial waste for management of that waste, or solid waste from mining or agricultural operations.

Municipal Solid Waste Collection - means the collection, transportation and disposal of municipal solid waste.

Municipal Solid Waste Collector – means any person who has been permitted by the Mecklenburg County Health Director to collect or transport municipal solid waste.

Office Paper – means white and colored office paper, computer paper, and copy paper, including those with laser and non-laser printing but excluding groundwood paper (newsprint type), or papers which are contaminated with blood, grease, oil, chemicals, food residue, wax, or any other material which will render the paper not marketable, or which have polyethylene, polystyrene, foil or other non-paper liners. Business Entities are encouraged to include other recyclable paper(s) and paper scrap as allowed by the recycler which collects the Business Entity's paper; however, only the types of paper specified above are required by this Ordinance to be separated.

Person - shall mean and include individuals and Business Entities.

Processor - means a person who uses any technique designed to change the physical, chemical, or biological character or composition of any municipal solid waste so as to render it safe for transport; amenable to recovery, storage, or recycling, safe for disposal, or reduced in volume or concentration, which has a facility located within forty (40) miles of the intersection of Trade and Tryon Streets in the City of Charlotte. A processor may also be an end-user of recyclable materials.

Recovered material – means a material that has known recycling potential, can be feasibly recycled, and has been diverted or removed from the municipal solid waste stream for sale, use, or reuse. In order to qualify as a recovered material, a material must meet the requirements of G.S. 130A-309.05(c).

Recycling – means any process by which solid waste, or materials which would otherwise become solid waste, are collected, separated, or processed, and reused or returned to use in the form of raw materials or products.

Separation System – means a system or process to separate Designated Materials from municipal solid waste for the purpose of recycling. A Separation System includes a method by which users of said system are educated regarding the System and its proper use as well as the Ordinance requiring such a System.

Removal – means to remove, take off, or transfer from the property on which the municipal solid waste and/or Designated Materials are generated.

Solid Waste – means any hazardous or nonhazardous garbage, refuse or sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, domestic sewage and sludges generated by the treatment thereof in sanitary sewage collection, treatment and disposal systems, and other material that is either discarded or is being accumulated, stored or treated prior to being discarded, or has served its original intended use and is generally discarded, including solid, liquid, semisolid or contained gaseous material resulting from industrial, institutional, commercial and agricultural operations, and from community activities. The term does not include:

- a. Fecal waste from fowls and animals other than humans.
- b. Solid or dissolved material in:
 1. Domestic sewage and sludges generated by treatment thereof in sanitary sewage collection, treatment and disposal systems which are designed to discharge effluents to the surface waters.
 2. Irrigation return flows.
 3. Wastewater discharges and the sludges incidental to and generated by treatment which are point sources subject to permits granted under Section 402 of the Water Pollution Control Act, as amended (P. L. 92-500), and permits granted under G. S. 143-215.1 by the Environmental Management Commission. However, any sludges that meet the criteria for hazardous waste under RCRA shall also be solid waste for these purposes.
- c. Oils and other liquid hydrocarbons controlled under Article 21A of Chapter 143 of the General Statutes. However, any oils or other liquid hydrocarbons that meet the criteria for hazardous waste under RCRA shall also be a solid waste for these purposes.

- d. Any source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. Section 2011).
- e. Mining refuse covered by the North Carolina Mining Act, G.S. 74-46 through G.S. 74-68 and regulated by the North Carolina Mining Commission (as defined under G.S. 143B-290). However, any specific mining waste that meets the criteria for hazardous waste under RCRA shall also be a solid waste for these purposes.
- f. Recovered material.

Solid Waste Generation – means the act or process of producing solid waste.

Solid Waste Management 10-Year Plan – the Mecklenburg County Solid Waste Management Plan, as adopted by Mecklenburg County and participating municipalities and accepted by the North Carolina Department of Environment, Health and Natural Resources.

Source Separation - is the process of removing Designated Materials from municipal solid waste and keeping them separated before and while the Designated Materials are being transported for the purpose of participation in a recycling program

Temporary Service Location – means a temporary use of land which generates municipal solid waste such as construction of a building, demolition of a building, turkey shoot, outdoor seasonal sales (as defined in the Mecklenburg County Zoning Ordinance), and any other similar use of land which either does not reoccur on the same site (such as construction of a building on a site) or does reoccur, but only sporadically (such as a turkey shoot).

White Goods - means refrigerators, ranges, water heaters, freezers, unit air conditioners, washing machines, dish washers, clothes dryers, and other similar domestic and commercial large appliances. (N.C.G.S. 130A-290(a)(44))

Section 2. General Provisions.

A. Commencing January 1, 2002, all Business Entities within the Mandatory Source Separation Area which contract for the Established Threshold shall keep Designated Materials separate from all other municipal solid waste for the purpose of participation in a recycling program and shall provide for the collection of Designated Materials. Designated Materials shall be separated before collection, removal, transportation or disposal.

B. Any Business Entity which contracts with a Certified Mixed Waste Processor for collection and recycling of municipal solid waste and Designated Materials and for the collection of other municipal solid waste and recycling of Designated Materials will be allowed to commingle Corrugated Cardboard and Office Paper with

municipal solid waste for so long as such Business Entity continues to use the services of such Certified Mixed Waste Processor.

C. No Business Entity shall be held liable for failure of its tenants and/or customers to comply with the requirements for the source separation of Designated Materials, nor shall any municipal solid waste collector or transporters of recyclable materials be held liable for the failure of its customers to comply with such regulations. However, all Business Entities subject to Section 2.A. of this Ordinance must provide a Separation System for their tenants, employees and/or customers in conformance with this Ordinance and must provide such tenants, employees and/or customers notification regarding the use and participation in such System.

D. The County may establish drop-off or collection sites where any person may deposit Designated Materials at such reasonable times and locations as determined by the County.

E. Nothing in this Ordinance shall (i) abridge the right of any Business Entity to give or sell their Designated Materials to any recycling program lawfully operated for profit, non-profit or charitable purposes or (ii) amend, modify or waive any and all requirements that Business Entities segregate and separately dispose of Hazardous Waste.

F. Prior to disposal, it shall be a violation of this Ordinance for a person knowingly to commingle mixed commercial municipal solid waste with Designated Materials that have been separated for the purpose of participation in a recycling program.

Section 3. Exemptions.

A. Automatic Minimum Weight Exemption. The Source Separation of Corrugated Cardboard by a Business Entity is not required if this material represents less than 500 pounds per month. The Source Separation of Office Paper by a Business Entity is not required if this material represents less than 500 pounds per month. Any Business Entity claiming an automatic minimum weight exemption shall provide adequate documentation to allow the Director to verify such Business Entity's exemption at the Director's written request. The failure of a Business Entity to respond to such a request within thirty (30) days after the date such request is mailed or delivered to the Business Entity shall be deemed to be an admission that such Business Entity is not exempt from the requirements of this Ordinance.

B. Automatic Temporary Service Location Exemption. The Source Separation of Designated Materials generated at a Temporary Service Location is not required.

C. Exemptions Upon Application. Exemptions shall be granted if a Business Entity can demonstrate any of the following:

- (1) Compliance with this Ordinance would require the Business Entity to violate codes or regulations such as the State Building Code or County or municipal zoning regulations;
- (2) No collection or processing system exists for the Designated Material; or
- (3) Physical constraints preclude the Business Entity from complying with this Ordinance.

D. Requests for Exemption. Requests for exemption are to be submitted in writing to the Director. Upon receipt of a written request for exemption, the Director shall arrange a conference with the Business Entity, if needed, to afford it an opportunity to present any evidence or argument it may have regarding the request for exemption. If necessary, the Director will conduct an inspection of the Business Entity's facility to make a determination as to exempt status. (No request for an exemption may be denied without giving the Business Entity the opportunity for a conference.) The Director shall grant an exemption if he concludes the exemption is allowed by the Ordinance. Within fifteen (15) days after the conference, if any, the Director shall give written notice to the Business Entity of his final decision. In cases in which the Director does not grant an exemption, the Business Entity shall have fifteen (15) days from the date the notice is mailed to appeal the Director's decision to the Mecklenburg County Waste Management Advisory Board ("Board") for a final decision in accordance with the rules of procedure established by the Board. The Board shall have the right to appoint a special committee consisting of at least five persons from the Board to hear such appeals.

Section 4. Temporary Market Condition Exemption.

The source separation requirements of this Ordinance shall remain in effect so long as Office Paper and/or Corrugated Cardboard may lawfully be deposited at a drop-off or collection site within Mecklenburg County for a fee no greater than the tipping fee posted for municipal solid waste at the landfill located adjacent to Lowe's Motor Speedway. When such is not the case, the Director, with the concurrence of the County Manager, may suspend the requirements of this Ordinance that Office Paper and/or Corrugated Cardboard, as appropriate, be source separated. Notice of such suspension will be provided by publication of a Legal Notice and by a memorandum to the Board of County Commissioners. Such suspension may be terminated, and the requirements of this Ordinance reinstated, by the Director, with the concurrence of the County Manager, if the Director determines that Office Paper and/or Corrugated Cardboard once again may lawfully be deposited at a drop-off or collection site within Mecklenburg County for a fee no greater than the tipping fee posted for municipal solid waste at the landfill adjacent to Lowe's Motor Speedway. The effective date of such reinstatement will be no sooner than thirty (30) days after the date of the publication of another Legal Notice and the delivery of another memorandum to the Board of County Commissioners stating the effective date for such reinstatement and the material affected by such reinstatement.

Section 5. Administration.

A. The administration and enforcement of this Ordinance shall be the duty of the Director.

B. The Director is authorized and directed to administer and enforce this Ordinance for any municipality that by resolution permits this Ordinance to be applicable within its corporate limits.

C. The Director is hereby authorized and directed to establish, promulgate, administer, and enforce reasonable regulations pertaining to this Ordinance.

D. Procedures for Promulgation of Regulations

1. Upon a determination to promulgate or amend regulations under this Ordinance, the Director shall give at least thirty (30) days notice of a public hearing on such regulations by publishing a notice in a newspaper of general circulation within Mecklenburg County and by mailing a notice to any person who has filed a prior written request with the Director for notice of such a hearing.
2. The Director shall allow a reasonable comment period at the public hearing where persons in attendance shall be allowed the opportunity to participate. Any person making an oral presentation is encouraged to submit a written copy of the presentation to the Director at the hearing.
3. The Director shall have complete control of the hearing proceedings including: extension of any time requirements, recognition of speakers, time allotments for presentations, the right to question speakers, direction of discussion and management of the hearing. The Director, at all times, will take care that each person participating in the hearing is given a fair opportunity to present views, data and comments.
4. Persons have ten (10) days to present written comments to the Director following a hearing.
5. The Director shall not promulgate regulations sooner than fifteen (15) days after the conclusion of the hearing.
6. After promulgation, notice of promulgation of the regulations shall be promptly published in a newspaper of general circulation within Mecklenburg County and copies mailed to any person who has filed a prior written request with the Director for a copy of the

regulations. Such publication shall include the date that the regulation becomes effective.

Section 6. Violation and Penalty.

A. First Violation - Any Business Entity which fails to comply with the provisions of this Ordinance within thirty (30) days after (i) receipt of written notification (First Violation) and (ii) technical assistance has been provided, if the Business Entity requested such, will receive a Notice of Second Violation.

B. Second Violation – Any Business Entity which fails to comply with the provisions of this Ordinance within thirty (30) days after (i) receipt of written notification (Second Violation) and (ii) technical assistance has been provided, if Business Entity requested such, will receive a third Notice of Violation.

C. Third and Subsequent Violations – Any Business Entity which fails to comply with the provisions of this Ordinance within thirty (30) days after (i) receipt of written notification (Third Notice), and (ii) technical assistance has been provided, if the Business Entity requested such, will receive a "Notice of Violation and Civil Penalty" which will specify the amount of the civil penalty. The civil penalty will be assessed and enforced.

D. The Business Entity upon which a civil penalty is levied by the Director shall have the right to file a notice of exception with the Director at any time prior to the date the civil penalty becomes delinquent. Upon receipt of a timely exception, the Director shall arrange a conference with the Business Entity to afford it an opportunity to present any evidence or argument it may have regarding the civil penalty and the Director shall have the authority to authorize a rebate or refund of the civil penalty if he concludes the civil penalty is not owed. Within fifteen (15) days after the conference, the Director shall give written notice to the Business Entity of his final decision. In cases in which no rebate or refund is granted, the Business Entity shall have fifteen (15) days from the date the notice is mailed to appeal the Director's decision to the Mecklenburg County Waste Management Advisory Board ("Board") for a final decision in accordance with the rules of procedure established by the Board. The Board shall have the right to appoint a special committee consisting of at least five persons from the Board to hear such appeals. Notwithstanding any pending requests for exceptions by the Business Entity to the Director, or appeals to the Board, the Business Entity must pay the civil penalty prior to the conference or appeal hearing. If a civil penalty is refunded, the County Director of Finance shall issue a refund from the Solid Waste Enterprise Fund. The Board's decision is subject to review by the Superior Court of Mecklenburg County by proceedings in the nature of certiorari.

Section 7. Civil Penalties.

A. A civil penalty of \$ 50.00 for a Third Violation of this Ordinance shall be assessed by the Director.

B. A civil penalty of \$ 100.00 for a Fourth Violation of this Ordinance shall be assessed by the Director.

C. The civil penalty for a violation subsequent to the Fourth Violation of this Ordinance shall increase by \$50.00 for each subsequent violation. The total civil penalties assessed over a 12-month period shall not exceed \$2,500. Civil penalties for violation of this Ordinance shall be assessed by the Director.

D. Any Business Entity assessed a civil penalty for a third or subsequent violation of this Ordinance shall have fifteen (15) days to come into compliance with this Ordinance before it can be sent another Notice of Violation and be assessed another civil penalty.

E. Failure to pay a civil penalty or file an appeal within thirty (30) days after notification of the violation shall result in an additional penalty of \$50.00. The Director may establish procedures for the collection of the civil penalties and may enforce collection of the penalties by a civil action in the nature of debt.

Section 8. Injunction and Order of Abatement.

The provisions of the Ordinance may also be enforced by injunction and order of abatement. When a violation of this Ordinance occurs, Mecklenburg County, through the County Attorney or other official designated by the Board of County Commissioners, may apply to the appropriate division of the General Court of Justice for a mandatory and prohibitory injunction and order of abatement commanding the defendant to correct the unlawful activity.

Section 9. Other Remedies.

The provisions of this Ordinance may also be enforced in any manner set forth in *N.C.G.S. 153A-123*.

Section 10. Jurisdiction.

This Ordinance shall be applicable within the unincorporated area of Mecklenburg County and within the corporate limits of any municipality that by resolution permits this Ordinance to be applicable within its corporate limits.

Section 11. Conflict With Other Laws.

It is not intended that this Ordinance repeal, abrogate, annul or in any way impair or interfere with any existing ordinances or regulations adopted by the Mecklenburg County Board of County Commissioners or adopted by the Mecklenburg County Board

of Health prior to the time such Board ceased to exist, but to the extent that it does, the provisions of such other Ordinance or regulation shall control.

Section 12. Severability.

Should any section of this Ordinance be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

Effective Date.

This Ordinance shall become effective on January 1, 2006.

Adopted the _____ day of _____, 2005.

Approved as to Form:

Clerk to the Board

County Attorney