

**ORANGE COUNTY
BOARD OF COMMISSIONERS**

ACTION AGENDA ITEM ABSTRACT

Meeting Date: March 7, 2013

**Action Agenda
Item No.** 7-d

SUBJECT: Proposal to Move Toward A Franchise to Privatize Curbside Solid Waste and Recycling Services in Unincorporated Area of Orange County

DEPARTMENT: Solid Waste/Recycling

PUBLIC HEARING: (Y/N)

No

ATTACHMENT(S):

- 1) General Statutes 153A-136 Regulations of Solid Waste
- 2) General Statutes 160A-327 Displacement of Private Solid Waste Collection Services

INFORMATION CONTACT:

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PURPOSE: To discuss a proposal to move toward a county-wide franchise agreement that would privatize curbside Solid Waste and Recycling Services in the unincorporated areas of Orange County.

BACKGROUND: The Solid Waste Mission Statement is to operate public facilities receiving and processing various types of Municipal Solid Waste and Construction and Demolition Waste in such a way as to provide a high quality, reliable, cost effective environmental safe containment of these wastes ensuring the protection of the environment, health and safety of the citizens of Orange County.

The BOCC has authorized a major modernization/upgrade of the Walnut Grove Solid Waste Convenience Center as a first step in eventual improvements to all five solid waste convenience centers. These improvements conceive creating two centrally located District Centers (Walnut Grove and Eubanks) which would have extended hours of operation and a wide range of services to include Household Hazardous Waste, expanded salvage sheds, food waste/cooking oil recycling and various other new and improved recycling opportunities. The other three Neighborhood Centers would have slightly reduced hours of operation and more limited services. All would utilize compaction for more efficient hauling and be paved for a more sanitary and aesthetic resident experience with more user friendly and safer waste/recycling receptacles.

The Orange County Municipal Solid Waste Landfill, located on Eubanks Road, will close on June 30, 2013. The Construction and Demolition landfill will continue to operate for the next 17 to 18 years. White goods, scrap tires, scrap metal, mattresses, and yard waste will become part of the recycling division beginning July 1, 2013. These significant changes in the operation of

the Solid Waste, and recent North Carolina court decisions limiting County authority, caused Orange County to investigate curbside Solid Waste alternatives.

Curbside household solid waste collections in the unincorporated areas of the County are provided by private haulers (without a franchise agreement). The Towns collect household solid waste within their town limits. Curbside recycling, provided by the County, is limited to 13,730 households in the unincorporated area of the County. A rural curbside recycling fee is charged to those households where recycling services are made available. An urban curbside recycling fee is charged to Chapel Hill, Carrboro and Hillsborough residents by the County for urban curbside recycling services.

North Carolina General Statute's 153A-136 (Attachment 1) Regulation of Solid Waste, gives Counties the authority to grant a franchise for the exclusive right to collect or dispose of solid waste within all or a defined portion of the county and prohibit others from collecting or disposing of solid wastes in that area. The County is exploring a franchise agreement process for the unincorporated areas of the County which would include the privatization of curbside household solid waste and recycling. The County may by resolution permit a Solid Waste Ordinance to be adopted by the Towns and applicable within the Town limits. The Towns may negotiate a fee schedule that differs from the fees established by the County for privatized curbside solid waste or recycling services.

North Carolina General Statute's 160A-327 (Attachment 2) provides that a unit of local government may displace a private company that is providing collection services for household solid waste or recovered material. The County will follow the procedure outlined in GS 160A-327. The earliest possible date for the Board to hold a hearing to consider implementing provisions of the statute is April 23, 2013.

An anticipated timeline, if Orange County moves toward the Franchise of Curbside Solid Waste and Recycling Services in Unincorporated Area of Orange County is:

- March 15, 2013 – Notice to existing private solid waste collection services of the April 23, 2013 meeting to discuss Franchise Agreement and displacement of private solid waste collection services
- April 23, 2013 Public Hearing to discuss Franchise Agreement and displacement of private solid waste collection services implementing the 15 month public notice requirement
- April 23, 2013 – June 15, 2013 Create Request for Proposals (RFP) - Franchise Agreement
- June 15, 2013 – August 15, 2013 RFP available for vendors to responses
- August 15, 2013 – September 30, 2013 Staff evaluation of proposals and negotiations with vendors
- October 8, 2013 Work Session discussion of Franchise Agreement
- November 5, 2013 Public Hearing to consider Franchise Agreement
- November 19, 2013 Board Approval of Franchise Agreement
- July 1, 2014 – December 31, 2015 - Phased Implementation of Franchise Agreement

FINANCIAL IMPACT: There is no financial impact to the County in discussing this proposal to move toward a county-wide franchise agreement for privatized curbside Solid Waste and Recycling Services in the unincorporated areas of Orange County.

RECOMMENDATION(S): The Manager recommends that the Board approve the scheduling of a public hearing to discuss a proposal to move toward a county-wide Franchise agreement for curbside Solid Waste and Recycling Services in the unincorporated areas of Orange County for April 23, 2013 and direct staff to proceed with the various steps required in NC General Statutes.

NOTE: There are several elements to this process that will require coordination with Town governments, the existing recycling contractor, existing private waste collection in rural Orange County and others. If the process ends in a decision to move forward to 'privatize ' curbside collection services, the existing fees charged by the County for these services will be eliminated and residents will voluntarily participate in curbside solid waste and recycling services provided by a private contractor on an individual fee basis established via the franchise agreement process.

§ 153A-136. Regulation of solid wastes.

(a) A county may by ordinance regulate the storage, collection, transportation, use, disposal, and other disposition of solid wastes. Such an ordinance may:

- (1) Regulate the activities of persons, firms, and corporations, both public and private.
- (2) Require each person wishing to commercially collect or dispose of solid wastes to secure a license from the county and prohibit any person from commercially collecting or disposing of solid wastes without a license. A fee may be charged for a license.
- (3) 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 wastes in that area. The board of commissioners may set the terms of any franchise, except that no franchise may be granted for a period exceeding 30 years, nor may any franchise by its terms impair the authority of the board of commissioners to regulate fees as authorized by this section.
- (4) Regulate the fees, if any, that may be charged by licensed or franchised persons for collecting or disposing of solid wastes.
- (5) Require the source separation of materials prior to collection of solid waste for disposal.
- (6) Require participation in a recycling program by requiring separation of designated materials by the owner or occupant of the property prior to disposal. An owner of recovered materials as defined by G.S. 130A-290(a)(24) retains ownership of the recovered materials until the owner conveys, sells, donates, or otherwise transfers the recovered materials to a person, firm, company, corporation, or unit of local government. A county may not require an owner to convey, sell, donate, or otherwise transfer recovered materials to the county or its designee. If an owner places recovered materials in receptacles or delivers recovered materials to specific locations, receptacles, and facilities that are owned or operated by the county or its designee, then ownership of these materials is transferred to the county or its designee.
- (6a) Regulate the illegal disposal of solid waste, including littering on public and private property, provide for enforcement by civil penalties as well as other remedies, and provide that such regulations may be enforced by county employees specially appointed as environmental enforcement officers.
- (7) Include any other proper matter.

(b) Any ordinance adopted pursuant to this section shall be consistent with and supplementary to any rules adopted by the Commission for Public Health or the Department of Environment and Natural Resources.

(c) The board of commissioners of a county shall consider alternative sites and socioeconomic and demographic data and shall hold a public hearing prior to selecting or approving a site for a new sanitary landfill that receives residential solid waste that is located within one mile of an existing sanitary landfill within the State. The distance between an existing and a proposed site shall be determined by measurement between the closest points on the outer boundary of each site. The definitions set out in G.S. 130A-290 apply to this subsection. As used in this subsection:

- (1) "Approving a site" refers to prior approval of a site under G.S. 130A-294(a)(4).
- (2) "Existing sanitary landfill" means a sanitary landfill that is in operation or that has been in operation within the five-year period immediately prior to the date on which an application for a permit is submitted.
- (3) "New sanitary landfill" means a sanitary landfill that includes areas not within the

legal description of an existing sanitary landfill as set out in the permit for the existing sanitary landfill.

- (4) "Socioeconomic and demographic data" means the most recent socioeconomic and demographic data compiled by the United States Bureau of the Census and any additional socioeconomic and demographic data submitted at the public hearing.

(d) As used in this section, "solid waste" means nonhazardous solid waste, that is, solid waste as defined in G.S. 130A-290 but not including hazardous waste.

(e) A county that has planning jurisdiction over any portion of the site of a sanitary landfill may employ a local government landfill liaison. No person who is responsible for any aspect of the management or operation of the landfill may serve as a local government landfill liaison. A local government landfill liaison shall have a right to enter public or private lands on which the landfill facility is located at reasonable times to inspect the landfill operation in order to:

- (1) Ensure that the facility meets all local requirements.
- (2) Identify and notify the Department of suspected violations of applicable federal or State laws, regulations, or rules.
- (3) Identify and notify the Department of potentially hazardous conditions at the facility.

(f) Entry pursuant to subsection (e) of this section shall not constitute a trespass or taking of property. (1955, c. 1050; 1957, cc. 120, 376; 1961, c. 40; c. 514, s. 1; cc. 711, 803; c. 806, s. 1; 1965, c. 452; 1967, cc. 34, 90; c. 183, s. 1; cc. 304, 339; c. 495, s. 4; 1969, cc. 79, 155, 176; c. 234, s. 1; c. 452; c. 1003, s. 4; 1973, c. 476, s. 128; c. 822, s. 1; 1989 (Reg. Sess., 1990), c. 1009, s. 1; 1991 (Reg. Sess., 1992), c. 1013, s. 1; 1993, c. 165, s. 1; 1997-443, s. 11A.123; 2001-512

160A-327. Displacement of private solid waste collection services.

(a) A unit of local government shall not displace a private company that is providing collection services for municipal solid waste or recovered materials, or both, except as provided for in this section.

(b) Before a local government may displace a private company that is providing collection services for municipal solid waste or recovered materials, or both, the unit of local government shall publish notice of the first meeting where the proposed change in solid waste collection service will be discussed. Notice shall be published once a week for at least four consecutive weeks in at least one newspaper of general circulation in the area in which the unit of local government and the proposed displacement area are located. The first public notice shall be given no less than 30 days but no more than 60 days prior to the displacement issue being placed on the agenda for discussion or action at an official meeting of the governing body of the unit of local government. The notice shall specify the date and place of the meeting, the geographic location in which solid waste collection services are proposed to be changed, and the types of solid waste collection services that may be affected. In addition, the unit of local government shall send written notice by certified mail, return receipt requested, to all companies that have filed notice with the unit of local government clerk pursuant to the provisions of subsection (f) of this section. The unit of local government shall deposit notice in the U.S. mail at least 30 days prior to the displacement issues being placed on the agenda for discussion or action at an official meeting of the governing body of the unit of local government.

(c) Following the public notice required by subsection (b) of this section, but in no event later than six months after the date of the first meeting pursuant to subsection (b) of this section, the unit of local government may proceed to take formal action to displace a private company. The unit of local government or other public or private entity selected by the unit of local government may not commence the actual provision of these services for a period of 15 months from the date of the first publication of notice, unless the unit of local government provides compensation to the displaced private company as follows:

- (1) Subject to subdivision (3) of this subsection, if the private company has provided collection services in the displacement area prior to announcement of the displacement action, the unit of local government shall provide compensation to the displaced private company in an amount equal to the total gross revenues for collection services provided in the displacement area for the six months prior to the first publication of notice required under subsection (b) of this section.
- (2) Subject to subdivision (3) of this subsection, if the displaced private company has provided collection services in the displacement area for less than six months prior to the first publication of notice required under subsection (b) of this section, the unit of local government shall provide compensation to the displaced private company in an amount equal to the total gross revenues for the period of time that the private company provided such services in the displacement area.
- (3) If the displaced private company purchased an existing operation of another private company providing such services, compensation shall be for six months based on the monthly average total gross revenues for three months the immediate preceding the first publication of notice required under subsection (b) of this section.

(d) If the local government elects to provide compensation pursuant to subsection (c) of this section, the amount due from the unit of local government to the displaced company shall be paid as follows: one-third of the compensation to be paid within 30 days of the displacement and the balance paid in six equal monthly installments during the next succeeding six months.

(e) If the unit of local government fails to change the provision of solid waste services as described in the notices required under subsection (b) of this section within six months of the date of the first meeting pursuant to subsection (b) of this section, the unit of local government shall not take action to displace without complying again with the provisions of subsection (b) of this section.

(f) Notice of the provision of solid waste collection service shall be filed with the unit of local

government clerk of all cities and counties located in the private company's collection area or within five miles thereof.

(g) This section shall not apply when a private company is displaced as the result of an annexation under Article 4A of Chapter 160A of the General Statutes or an annexation by an act of the General Assembly. The provisions of G.S. 160A-37.3, 160-49.3, or 160A-324 shall apply.

(h) If a unit of local government intends to provide compensation under subsection (c) of this section to a private company that has given notice under subsection (f) of this section, the private company shall make available to the unit of local government not later than 30 days following a written request of the unit of local government, sent by certified mail, return receipt requested, all information in its possession or control, including operational, financial, and budgetary information necessary for the unit of local government to determine if the private company qualifies for compensation. The private company forfeits its rights under this section if it fails to make a good faith response within 30 days following receipt of the written request for information from the unit of local government provided that the unit of local government's written request so states by specific reference to this section.

(i) Nothing in this section shall affect the authority of a city or county to establish recycling service where recycling service is not currently being offered.

(j) As used in this section, the following terms mean:

- (1) Collection. – The gathering of municipal solid waste, recovered materials, or recyclables from residential, commercial, industrial, governmental, or institutional customers and transporting it to a sanitary landfill or other disposal facility. Collection does not include transport from a transfer station or processing point to a disposal facility.
- (2) Displacement. – Any formal action by a unit of local government that prohibits a private company from providing all or a portion of the collection services for municipal solid waste, recovered materials, or recyclables that the company is providing in the affected area at least 90 days prior to the date of the first publication of notice required by subsection (b) of this section. Displacement also means an action by a unit of local government to use an availability fee, nonoptional fee, or taxes to fund competing collection services for municipal solid waste, recovered materials, or recyclables that the private company is providing in the affected areas at least 90 days prior to the date of the first publication of notice required under subsection (b) of this section is given. Displacement does not include any of the following actions:
 - a. Failure to renew a franchise agreement or contract with a private company.
 - b. Taking action that results in a change in solid waste collection services because the private company's operations present an imminent and substantial threat to human health or safety or are causing a substantial public nuisance.
 - c. Taking action that results in a change in solid waste collection services because the private company has materially breached its franchise agreement or the terms of a contract with the local government, or the company has notified the local government that it no longer intends to honor the terms of the franchise agreement or contract. Notice of breach must be delivered in writing, delivered by certified mail to the firm in question with 30 days to cure the violation of the contract.
 - d. Terminating an existing contract or franchise in accordance with the provisions of the contract or franchise agreement.
 - e. Providing temporary collection services under a declared state of emergency.
 - f. Taking action that results in a change in solid waste collection services due to the existing providers' felony conviction of a violation in the State of federal or State law governing the solid waste collection or disposal.
 - g. Contracting with a private company to continue its existing services or

provide a different level of service at a negotiated price on terms agreeable to the parties.

- (3) Municipal solid waste. – As defined in G.S. 130A-290(18a).
- (4) Unit of local government. – A county, municipality, authority, or political subdivision that is authorized by law to provide for collection of solid waste or recovered materials, or both. (2006-193, s. 4.)