

Board of Commissioners' Agenda

January 16, 2024

Commission Meetings are held at 200 College Street, Room 326 in downtown Asheville beginning at 5:00 p.m.

Public Comment is taken at the beginning of the meeting.

The meeting will broadcast via Facebook Live @Buncombegov.

Call To Order

[▲top](#)

Discussion / Adjustment / Approval To Follow Agenda

[▲top](#)

Consent Agenda [▲top](#)

- [Approval of January 2, 2023 Regular Meeting Minutes](#)
- [Resolution Appointing Review Officers](#)
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- [Resolution Amending the Mountain Mobility Drug & Alcohol Testing Policy](#)
 - [Resolution](#)
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- [Approval of Solid Waste Ordinance Amendments - 2nd Reading](#)
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Public Comment

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Good News

Presentations [▲top](#)

- [Human Trafficking Awareness & Prevention Month Proclamation](#)
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- [Sheriff's Office Downtown Initiative](#)
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- [Budget Amendment for Public Health Infrastructure - Local Workforce Development Funding](#)
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Board Appointments ▲top

- Library Board
 - Artie Miller

- Nursing Home Community Advisory Committee
 - Christopher Fink

Reports on Boards and Commissions

Announcements ▲top

- February 6 @ 3 p.m. - Commissioners' Briefing at 200 College Street, Room 326 in downtown Asheville.

- February 6 @ 5 p.m. - Commissioners' Regular Meeting at 200 College Street, Room 326 in downtown Asheville.

Closed Session / Open Session ▲top

Adjournment ▲top

**MINUTES OF BUNCOMBE COUNTY BOARD OF COMMISSIONERS’
REGULAR MEETING OF JANUARY 16, 2024 AT 5 P.M.**

BE IT REMEMBERED: That the Board of Commissioners met in regular session on January 16, 2024, in the Commission Chambers, 200 College Street, Room 326 in downtown Asheville, North Carolina at 5 p.m. where and when the following business was transacted:

The Vice Chair called the meeting to order with the following members present:

- Jasmine Beach-Ferrara, Commissioner
- Amanda Edwards, Commissioner
- Martin Moore, Commissioner
- Parker Sloan, Vice Chair
- Terri Wells, Commissioner
- Al Whitesides, Commissioner

Brownie Newman, Chairman, was absent from the meeting.

Staff present: Avril Pinder, County Manager; Sybil Tate, Assistant County Manager; Dakisha Wesley, Assistant County Manager; Melissa Moore, Finance Director; John Hudson, Budget Director; Sharon Burke, Human Resources Director; Sheriff Quentin Miller; Stoney Blevins, Health & Human Services Director; Tim Love, Intergovernmental Relations; Dane Pederson, Solid Waste Director; Lamar Joyner, Clerk to the Board; Michael Frue, Senior Staff Attorney

PLEDGE OF ALLEGIANCE

CONSENT AGENDA

Commissioner Beach-Ferrara motioned to approve the Consent Agenda and the remainder of the agenda. Commissioner Whitesides seconded and the motion passed 6-0.

- Approval of January 2, 2023 Regular Meeting Minutes
- Resolution Appointing Review Officers
 - Resolution
- Resolution Amending the Mountain Mobility Drug & Alcohol Testing Policy
 - Resolution
 - Policy
- Approval of Solid Waste Ordinance Amendments - 2nd Reading
 - Ordinance
 - More Information
- Budget Amendment for State Lottery Projects for BCS - NBHS Softball Field Construction Upgrades
 - Ordinance

PRESENTATIONS

- **Human Trafficking Awareness & Prevention Month Proclamation**

Commissioner Moore read and presented the proclamation to Paulina Mendez from Justice Services. The proclamation was accepted and appreciation was expressed.

OLD BUSINESS

- **Consideration of Board of Elections Director Compensation**

Sharon Burke, Human Resources Director, explained the Board of Elections recommendation for the Director of Elections to receive an additional salary increase (inclusive of the 2023 COLA) moving her annual compensation to \$115,000 per year. Research was conducted on similarly situated Counties for support of the proposed salary in compliance of the NC Gen. Statute § 163-35.

Commissioner Whitesides moved to approve the resolution approving the Director of the Buncombe County Board of Elections salary of \$115,000 (inclusive of the COLA). Commissioner Beach-Ferrara seconded and the motion passed 6-0.

NEW BUSINESS

- **Sheriff’s Office Downtown Initiative**

Sheriff Quentin Miller reviewed the request for funds to cover the cost of providing a higher level of law enforcement presence and engagement in the Downtown Business District. The Sheriff’s Office has been asked to get involved to help abate the problems that are being experienced by the Downtown Business District community. The Board engaged in discussion to understand the commitment proposed by the Sheriff’s office.

Commissioner Edwards moved to approve the funding cost of the Downtown Initiative. Commissioner Moore seconded and the motion passed 6-0.

- **Fiscal Year 2023 Audit Presentation and Audit Contract Amendment**

Mason Scott, Finance, presented that the contract amendment is an extension through January 15, 2024, to allow for any additional administrative processes needed to close the audit. This contract amendment does not change the contract amount. Tim Lyons, Maudlin & Jenkins, present the audit results to the Board based on audit opinion, trends, and compliance. Commissioner Wells moved to accept the audit as presented and approve the final contract amendment for the fiscal year 2023 external audit. Commissioner Whitesides seconded the motion and it passed 6-0.

- **Budget Amendment for Public Health Infrastructure - Local Workforce Development Funding**

John Hudson, Budget Director, and Ellis Matheson, Public Health Director, explained the budget amendment with information on the scope of work and the strategies for the local workforce development funding. Commissioner Wells moved to approve the budget amendment as presented. Commissioner Edwards seconded and the motion passed 6-0.

BOARD APPOINTMENTS

Commissioner Beach-Ferrara moved to appoint **Artie Miller** to the **Library Board**. Commissioner Edwards seconded and the motion passed 6-0.

Commissioner Beach-Ferrara moved to reappoint **Christopher Fink** the **Nursing Home Community Advisory Committee**. Vice Chair Sloan seconded and the motion passed 6-0.

Commissioner Beach-Ferrara moved to reappoint **Commissioner Al Whitesides** to the **Metropolitan Sewerage District**. Commissioner Edwards seconded and the motion passed 6-0.

REPORTS ON BOARDS AND COMMISSIONS

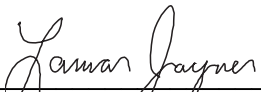
The Commissioners discussed the recent activities of the boards and commissioners that they serve on as members.

ANNOUNCEMENTS

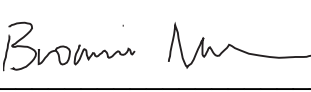
The Chairman made the following announcements:

- *February 6 @ 3 p.m. - Commissioners' Briefing at 200 College Street, Room 326 in downtown Asheville.*
- *February 6 @ 5 p.m. - Commissioners' Regular Meeting at 200 College Street, Room 326 in downtown Asheville.*

Commissioner Whitesides moved to adjourn the meeting. Commissioner Beach-Ferrara seconded and the motion passed 6-0. The meeting was adjourned at 5:51 p.m.



LAMAR JOYNER, CLERK
BOARD OF COMMISSIONERS



BROWNIE NEWMAN, CHAIRMAN
BOARD OF COMMISSIONERS



Buncombe County Board of Commissioners
Request for Board Action
Meeting Date: 1/16/2024

Consent Agenda

Department: Planning

Presenter(s): Michael Frue, Senior Staff Attorney

Contact(s): Nate Pennington/Michael Frue

Subject: Resolution Appointing Review Officers

Brief Summary: Pursuant to GS 47-30.2, the county board of commissioners of each county is required to appoint by resolution one or more persons as review officers to review each map and plat before it is recorded and certify that it meets the statutory requirements for recording. The appointments periodically require an update to reflect staffing changes, and this resolution does so.

Recommended Motion & Requested Action: Approve the Resolution Appointing Review Officers

County Manager's comments and Recommendation: Approve as presented.

Prepared by and Return to: Michael C. Frue, Buncombe County
200 College Street
Asheville NC 28801

RESOLUTION #24-01-04

RESOLUTION APPOINTING REVIEW OFFICERS

WHEREAS, pursuant to GS 47-30.2, the Buncombe County Board of Commissioners is required to appoint by resolution one or more persons as review officers to review a plat before it is recorded and certify that it meets the statutory requirements for recording;

WHEREAS, this Board has previously appointed staff members from the Buncombe County and City of Asheville Planning Departments as review officers, and these appointments periodically require an update to reflect staffing changes; and

WHEREAS, the Buncombe County and City of Asheville Planning Departments have requested that the staff members listed in the attached Exhibit A be appointed.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners for the County of Buncombe as follows:

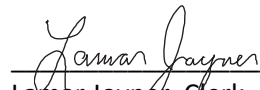
1. That the County employees identified in Exhibit A are hereby appointed to serve as review officers for Buncombe County.
2. That the City employees identified in Exhibit A are hereby appointed to serve as review officers for all plats submitted within the jurisdiction of the City of Asheville.
3. That this Resolution shall be recorded in the Office of the Register of Deeds after adoption and the Register of Deeds Office shall index in the Grantor Index in the name of each review officer shown on Exhibit A.

4. That upon discontinuing employment or otherwise assuming different job responsibilities with the County of Buncombe or the City of Asheville as applicable, the duties of an appointed individual shall cease.
5. That this resolution shall be effective upon its adoption.

This the 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

EXHIBIT A

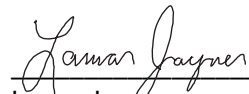
Plat Review Officers for Buncombe County:

Brittain Sluder	County Planning
Haylee Madfis	County Planning
Courtney Savannah Gibson	County Planning
Shannon Capezzali	County Planning
Gillian Phillips	County Planning
Nathan Pennington	County Planning
Matt Card	County Planning
Tiffany Mila White	County Planning
Jason Payne	County Planning
Jacob Compher	County Planning
Griffin Kearns	County Planning
Thana Alley	County Planning

Plat Review Officers for the City of Asheville

Jennifer Blevins	City Planning
Grainne Miser	City Planning
Sam Starr-Baum	City Planning
Haley Mahoney	City Planning
Tyler Kelley	City Planning
Jackson Marks	City Planning
Clayton Mitchell	City Planning
Christopher Collins	City Planning
Nancy Watford	City Planning

I, Lamar Joyner, duly appointed Clerk to the Board of Commissioners for Buncombe County, do hereby certify that the above individuals were duly appointed by the Board of Commissioners to serve as review officers on January 16, 2024.



Lamar Joyner
Clerk to the Board



Buncombe County Board of Commissioners
Request for Board Action
Meeting Date: 1/16/2024

Consent Agenda

Department: Planning & Development, Community Development Division

Presenter(s): Dylan Casper

Contact(s): Dylan Casper, William High

Subject: Resolution Amending the Mountain Mobility Drug and Alcohol Testing Policy

Brief Summary: To remain in compliance with all applicable federal regulations governing and requiring anti-drug and alcohol misuse programs in the workplace, including 49 CFR Parts 40 and 655 as amended, Buncombe County must amend its Drug and Alcohol Testing Policy for Mountain Mobility.

Federal regulations (49 CFR Part 40) were amended in 2023 to allow oral fluid specimen collection in drug testing (existing practice in drug testing is urine specimen collection). The NCDOT Integrated Mobility Division (IMD) issued updated Drug and Alcohol Testing Policy templates in November 2023 to ensure policy modifications to reflect oral fluid specimen regulations remain in compliance with NCDOT requirements and federal regulations. Staff has included a revised Draft Mountain Mobility Drug and Alcohol Testing Policy which will be compliant with all applicable federal regulations and NCDOT requirements.

Staff requests the Board of Commissioners formally resolve to amend the Mountain Mobility Drug and Alcohol Testing Policy.

Recommended Motion & Requested Action: The Board of Commissioners Adopt the Resolution Amending the Mountain Mobility Drug and Alcohol Testing Policy.

County Manager's Comments and Recommendation: Adopt resolution as presented.

RESOLUTION NO.24-01-05

RESOLUTION AMENDING THE MOUNTAIN MOBILITY DRUG AND ALCOHOL TESTING POLICY

WHEREAS, the County of Buncombe is entrusted with the health and safety of its citizens and is dedicated to providing safe, effective, transportation services for citizens through Mountain Mobility, Buncombe County's Community Transportation System; and

WHEREAS, in keeping with this obligation and as a recipient of federal and state funds under the Federal Transit Act, as amended, the County of Buncombe must adopt a drug and alcohol testing policy that complies with all applicable federal regulations governing and requiring anti-drug and alcohol misuse programs in the workplace, including 49 CFR Parts 40 and 655, as amended, as well as 49 CFR Part 29 relating to the Drug-Free Workplace Act of 1988; and

WHEREAS, Buncombe County adopted a Substance Abuse Policy by Resolution 95-11-11 dated November 21, 1995, and has updated it as needed or required in order to comply with federal regulations; and

WHEREAS, the North Carolina Department of Transportation Integrated Mobility Division requires transit systems to revise policies to ensure compliance at the local level; and

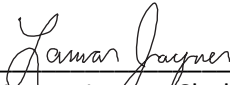
WHEREAS, the Board of Commissioners supports the formal amendment of this Mountain Mobility Drug and Alcohol Testing Policy to assure worker fitness and to protect employees and the public from the risks posed by the use of prohibited drugs and the misuse of alcohol.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners for the County of Buncombe as follows:

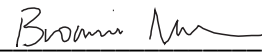
- (1) That the Board of Commissioners hereby amends its Mountain Mobility Drug and Alcohol Testing Policy.
- (2) That the provisions of Buncombe County's Mountain Mobility Drug and Alcohol Testing Policy shall incorporate all rules and regulations that are required by the Federal Transit Administration on the prevention of alcohol misuse and prohibited drug use in transit operations, including those presently in effect or as is or may become effective in the future, whether or not said rules and regulations are expressly set forth in the policy.
- (3) That the Chairman be and he is hereby authorized to execute other documents as may be necessary to verify the adoption, amendment, and/or implementation of the policy.
- (4) That this Resolution shall be effective upon its adoption.

Adopted this 16th day of January, 2024.

ATTEST:


Lamar Joyner, Clerk to the Board

BUNCOMBE COUNTY BOARD OF COMMISSIONERS

By: 
Brownie Newman, Chairman

APPROVED AS TO FORM:


County Attorney

Mountain Mobility Drug and Alcohol Testing Policy

**MOUNTAIN MOBILITY
DRUG AND ALCOHOL TESTING POLICY
Adopted September 21, 2021
Amended January 16, 2024**

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A. PURPOSE

- 1) Buncombe County, through its Community Transportation System, Mountain Mobility, provides public transit and paratransit services for the residents of Buncombe County. Part of our mission is to ensure that this service is delivered safely, efficiently, and effectively by establishing a drug and alcohol-free work environment, and to ensure that the workplace remains free from the effects of drugs and *alcohol* in order to promote the health and safety of employees and the general public. In keeping with this mission, Buncombe County declares that the unlawful manufacture, distribution, dispense, possession, or use of controlled substances or misuse of alcohol is prohibited for all Mountain Mobility employees.
- 2) Additionally, the purpose of this policy is to establish guidelines to maintain a drug and *alcohol*-free workplace in compliance with the Drug-Free Workplace Act of 1988, and the Omnibus Transportation Employee Testing Act of 1991. Covered employees shall abide by the terms of this policy statement as a condition of employment. This policy is intended to comply with all applicable Federal regulations governing workplace anti-drug and *alcohol* programs in the transit industry. Specifically, the Federal Transit Administration (FTA) of the U.S. Department of Transportation has published 49 CFR Part 655, as amended, that mandates ~~urine~~ drug testing and ~~breath~~ *alcohol* testing for safety-sensitive positions, and prohibits performance of *safety-sensitive functions* when there is a positive test result, or a refusal to test. The U. S. Department of Transportation (USDOT) has also published 49 CFR Part 40, as amended, that sets standards for the collection and testing of ~~urine and breath~~ specimens for drug and *alcohol* testing.
- 3) Any provisions set forth in this policy that are included under the sole authority of Mountain Mobility and are not provided under the authority of the above named Federal regulations are underlined. Tests conducted under the sole authority of Mountain Mobility will be performed on non-USDOT forms and will be separate from USDOT testing in all respects.

B. APPLICABILITY

This Drug and Alcohol Testing Policy applies to all safety-sensitive employees (full- or part-time) when *performing safety-sensitive duties*. See Attachment A for a list of employees and the authority under which they are included.

A *safety-sensitive function* is operation of public transit service including the operation of a *revenue service vehicle* (whether or not the *vehicle* is in revenue service), maintenance of a *revenue service vehicle* or equipment used in revenue service, security personnel who carry firearms, ~~dispatchers or~~ persons controlling the dispatch or movement of *revenue service vehicles* and any transit employee who operates a non-*revenue service vehicle* that requires a Commercial Driver's License to operate. Maintenance functions include the repair, overhaul, and rebuild of engines, *vehicles* and/or equipment used in revenue service. A list of safety-sensitive positions who perform one or more of the above mentioned duties is provided in Attachment A. Supervisors are only *safety-sensitive* if they perform one of the above functions. Volunteers are

considered *safety-sensitive* and subject to testing if they are required to hold a CDL, or receive remuneration for service in excess of actual expense.

C. DEFINITIONS

Attachment C includes definitions specific to the Mountain Mobility Drug and Alcohol [Testing Policy](#). All defined terms words are italicized throughout the Mountain Mobility Drug and Alcohol [Testing Policy](#).

D. EDUCATION AND TRAINING

- 1) Every *covered employee* will receive a copy of this policy and will have ready access to the corresponding federal regulations including 49 CFR Parts 655 and 40, as amended. In addition, all *covered employees* will undergo a minimum of 60 minutes of training on the signs and symptoms of drug use including the effects and consequences of drug use on personal health, safety, and the work environment. The training also includes manifestations and behavioral cues that may indicate *prohibited drug* use.
- 2) All supervisory personnel or company officials who are in a position to determine employee fitness for duty will receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable *alcohol* misuse.

E. PROHIBITED SUBSTANCES

- 1) Prohibited substances addressed by this policy include the following.
 - a. Illegally Used Controlled Substance or Drugs Under the Drug-Free Workplace Act of 1988 — any drug or any substance identified in Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1308.11 through 1308.15 is prohibited at all times in the workplace unless a legal prescription has been written for the substance. This includes, but is not limited to: marijuana, amphetamines, opioids, phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. It is important to note that the use of marijuana in any circumstances remains completely prohibited for any safety-sensitive employee subject to drug testing under USDOT regulations. The use of marijuana in any circumstance (including under state recreational and/or medical marijuana laws) by a safety-sensitive employee is a violation of this policy and a violation of the USDOT regulation 49 CFR Part 40, as amended.

Federal Transit Administration drug testing regulations (49 CFR Part 655) require that all employees covered under FTA authority be tested for marijuana, cocaine, amphetamines, opioids, and phencyclidine as described in this policy. Illegal use of

these five drugs is prohibited at all times and thus, *covered employees* may be tested for these drugs anytime that they are on duty.

- b. Legal Drugs: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to a Mountain Mobility supervisor and the employee is required to provide a written release from his/her doctor or pharmacist indicating that the employee can perform his/her safety-sensitive functions.
- c. *Alcohol*: The use of beverages containing *alcohol* (including mouthwash, medication, food, candy) or any other substances containing *alcohol* in a manner which violates the conduct listed in this policy is prohibited.

F. PROHIBITED CONDUCT

- 1) Illegal use of the drugs listed in this policy and as defined in 49 CFR Part 40, as amended is prohibited at all times. All *covered employees* are prohibited from reporting for duty or remaining on duty if they have used a *prohibited drug* as defined in 49 CFR Part 40, as amended.
- 2) Each *covered employee* is prohibited from consuming *alcohol* while *performing* safety-sensitive job functions or while on-call to perform *safety-sensitive job functions*. If an on-call employee has consumed *alcohol*, they must acknowledge the use of *alcohol* at the time that they are called to report for duty. The *covered employee* will subsequently be relieved of his/her on-call responsibilities and subject to discipline for not fulfilling his/her on-call responsibilities.
- 3) ~~The Transit Department~~Mountain Mobility shall not permit any *covered employee* to perform or continue to perform *safety-sensitive functions* if it has actual knowledge that the employee is using *alcohol*.
- 4) Each *covered employee* is prohibited from reporting to work or remaining on duty requiring the performance of *safety-sensitive functions* while having an *alcohol concentration* of 0.04 or greater regardless of when the *alcohol* was consumed.
 - a. An employee with a breath *alcohol concentration* which measures 0.02-0.039 is not considered to have violated the USDOT-FTA drug and *alcohol* regulations, provided the employee hasn't consumed the *alcohol* within four (4) hours of *performing* a safety-sensitive duty. However, if a safety-sensitive employee has a breath *alcohol concentration* of 0.02-0.039, USDOT-FTA regulations require the employee to be removed from the performance of safety-sensitive duties until:
 - i. The employee's *alcohol concentration* measures less than 0.02; or
 - ii. The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

- 5) No *covered employee* shall consume *alcohol* for eight (8) hours following involvement in an *accident* or until he/she submits to the post-*accident* drug/*alcohol* test, whichever occurs first.
- 6) No *covered employee* shall consume *alcohol* within four (4) hours prior to the performance of safety-sensitive job functions.
- 7) Mountain Mobility, under its own authority, also prohibits the consumption of *alcohol* at all times the employee is on duty, or anytime the employee is in uniform.
- 8) Consistent with the Drug-free Workplace Act of 1988, all Mountain Mobility employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the work place including transit system premises and transit *vehicles*.

G. DRUG STATUTE CONVICTION

Consistent with the Drug Free Workplace Act of 1998, all employees are required to notify Mountain Mobility management of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to comply with this provision shall result in disciplinary action as defined in [Section Q of this policy \(see Section Q\)](#).

H. TESTING REQUIREMENTS

- 1) ~~Analytical urine drug testing~~ [Drug](#) and ~~breath testing for~~ [alcohol testing](#) will be conducted as required by 49 CFR Part 40 as amended. All employees covered under FTA authority shall be subject to testing prior to *performing* safety-sensitive duty, for reasonable suspicion, following an *accident*, and random as defined in Section K, L, M, and N of this policy, and return to duty/follow-up.
- 2) A drug test can be performed any time a *covered employee* is on duty. A reasonable suspicion, random, or follow-up *alcohol* test can only be performed just before, during, or after the performance of a safety-sensitive job function. Under Mountain Mobility's authority, a non-DOT *alcohol* test can be performed any time a *covered employee* is on duty.
- 3) All *covered employees* will be subject to ~~urine~~ drug testing and ~~breath~~ *alcohol* testing as a condition of ongoing employment with Mountain Mobility. Any safety-sensitive employee who refuses to comply with a request for testing shall be removed from duty and subject to discipline as defined in [Section Q of this policy \(see Section Q\)](#).

I. DRUG TESTING PROCEDURES

- 1) Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and *laboratory* facilities which have been approved by the U.S. Department of Health and Human Service (HHS). All testing will be conducted consistent with the procedures set forth in 49 CFR Part 40, as amended. The procedures will be performed in a private, confidential manner and every effort will be made to

protect the employee, the integrity of the drug testing procedure, and the validity of the test result.

- 2) The drugs that will be tested for include marijuana, cocaine, opioids, amphetamines, and phencyclidine. After the identity of the donor is checked using picture identification, a urine and/or oral fluid specimen will be collected ~~using the split specimen collection method as~~ described in 49 CFR Part 40, as amended. Each specimen will be accompanied by a DOT Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual. The specimen analysis will be conducted at an HHS certified *laboratory*. An initial drug screen and validity test will be conducted on the primary ~~urine~~ specimen. For those specimens that are not negative, a confirmatory ~~Gas Chromatography/Mass Spectrometry (GC/MS) or Liquid Chromatography/Mass Spectrometry (LC/MS)~~ test will be performed. The test will be considered positive if the amounts of the drug(s) and/or its metabolites identified by the ~~confirmatory GC/MS or LC/MS~~ test are at or above the minimum thresholds established in 49 CFR Part 40, as amended.
- 3) The test results from the HHS certified *laboratory* will be reported to a *Medical Review Officer*. A *Medical Review Officer (MRO)* is a licensed physician with detailed knowledge of substance abuse disorders and drug testing. The MRO will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a confirmed positive, substitute, or adulterated test result. The MRO will attempt to contact the employee to notify the employee of the non-negative *laboratory* result, and provide the employee with an opportunity to explain the confirmed *laboratory* test result. The MRO will subsequently review the employee's medical history/medical records as appropriate to determine whether there is a legitimate medical explanation for a non-negative *laboratory* result. If no legitimate medical explanation is found, the test will be verified positive or refusal to test and reported to Mountain Mobility. If a legitimate explanation is found, the MRO will report the test result as negative.
- 4) If the test is invalid without a medical explanation, a retest will be conducted under direct observation. Employees do not have access to a test of their split specimen following an *invalid result*.
- 5) Any *covered employee* who questions the results of a required drug test may request that the split sample be tested. The split sample test must be conducted at a second HHS-certified *laboratory*. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the *Medical Review Officer* within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. Mountain Mobility will ensure that the cost for the split specimen analysis is covered in

order for a timely analysis of the sample, however Mountain Mobility will seek reimbursement for the split sample test from the employee.

- 6) If the analysis of the split specimen fails to confirm the presence of the drug(s) detected in the primary specimen, if the split specimen is not able to be analyzed, or if the results of the split specimen are not scientifically adequate, the MRO will declare the original test to be canceled.

~~7) The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed. If the primary specimen is negative, the split will be discarded. If the primary specimen is positive, it will be retained in frozen storage for one year and the split specimen will also be retained for one year. If the primary is positive, the primary and the split will be retained for longer than one year for testing if so requested by the employee through the Medical Review Officer, or by the employer, by the MRO, or by the relevant DOT agency.~~

~~8)7)~~ Observed Collections

- a. Consistent with 49 CFR Part 40, as amended, collection under direct observation ~~(by a person of the same gender)~~ with no advance notice will occur if:

- i. The *laboratory* reports to the MRO that a specimen is invalid, and the MRO reports to Mountain Mobility that there was not an adequate medical explanation for the result;
- ii. The MRO reports to Mountain Mobility that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed;
- iii. The *laboratory* reported to the MRO that the urine specimen was negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, and the MRO reported the urine specimen as negative-dilute and that a second collection must take place under direct observation (see §40.197(b)(1)).
- iv. The collector observes materials brought to the *collection site* or the employee's conduct clearly indicates an attempt to tamper with a specimen;
- v. The temperature on the original urine specimen was out of range (See §40.65(b)(5));;
- vi. Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with (See §40.65(c)(1)).
- vii. All follow-up-tests; or
- viii. All return-to-duty tests

b. Urine collections that are required to be directly observed will be conducted by a person of the same gender as the donor as required by 49 CFR Part 40.67.

J. ALCOHOL TESTING PROCEDURES

- 1) Tests for breath *alcohol concentration* will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA)-approved Evidential Breath Testing device (EBT) operated by a trained Breath Alcohol Technician (BAT). A list of approved EBTs can be found on ODAPC's Web page for "Approved Evidential Breath Measurement Devices". *Alcohol* screening tests may be performed using a non-evidential testing device (*alcohol* screening device (ASD)) which is also approved by NHTSA. A list of approved ASDs can be found on ODAPC's Web page for "Approved Screening Devices to Measure Alcohol in Bodily Fluids". If the initial test indicates an *alcohol concentration* of 0.02 or greater, a second test will be performed to confirm the results of the initial test. The confirmatory test must occur on an EBT. The confirmatory test will be conducted no sooner than fifteen minutes after the completion of the initial test. The confirmatory test will be performed using a NHTSA-approved EBT operated by a trained BAT. The EBT will identify each test by a unique sequential identification number. This number, time, and unit identifier will be provided on each EBT printout. The EBT printout, along with an approved *alcohol* testing form, will be used to document the test, the subsequent results, and to attribute the test to the correct employee. The test will be performed in a private, confidential manner as required by 49 CFR Part 40, as amended. The procedure will be followed as prescribed to protect the employee and to maintain the integrity of the *alcohol* testing procedures and validity of the test result.
- 2) A confirmed *alcohol concentration* of 0.04 or greater will be considered a positive *alcohol* test and in violation of this policy. The consequences of a positive *alcohol* test are described in ~~Section Q of~~ this policy (see Section Q). Even though an employee who has a confirmed *alcohol concentration* of 0.02 to 0.039 is not considered positive, the employee shall still be removed from duty for at least eight hours or for the duration of the work day whichever is longer and will be subject to the consequences described in ~~Section Q of~~ this policy (see Section Q). An *alcohol concentration* of less than 0.02 will be considered a negative test.
- 3) Mountain Mobility affirms the need to protect individual dignity, privacy, and confidentiality throughout the testing process. If at any time the integrity of the testing procedures or the validity of the test results is compromised, the test will be canceled. Minor inconsistencies or procedural flaws that do not impact the test result will not result in a cancelled test.
- 4) The *alcohol* testing form (ATF) required by 49 CFR Part 40 as amended, shall be used for all FTA required testing. Failure of an employee to sign step 2 of the ATF will be considered a refusal to submit to testing.

K. PRE-EMPLOYMENT TESTING

- 1) All applicants for covered transit positions shall undergo ~~urine~~-drug testing prior to performance of a *safety-sensitive function*.
 - a. All offers of employment for covered positions shall be extended conditional upon the applicant passing a drug test. An applicant will not be allowed to perform *safety-sensitive functions* unless the applicant takes a drug test with verified *negative results*.
 - b. An employee shall not be placed, transferred or promoted into a position covered under FTA authority or company authority until the employee takes a drug test with verified *negative results*.
 - c. If an applicant fails a pre-employment drug test, the conditional offer of employment shall be rescinded and the applicant will be provided with a list of at least two (2) USDOT qualified Substance Abuse Professionals. Failure of a pre-employment drug test will disqualify an applicant for employment for a period of at least one year. Before being considered for future employment the applicant must provide the employer proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G. The cost for the assessment and any subsequent treatment will be the sole responsibility of the applicant.
 - d. When an employee being placed, transferred, or promoted from a non-covered position to a position covered under FTA authority or company authority submits a drug test with a verified *positive result*, the employee shall be subject to disciplinary action in accordance with [this policy \(see Section Q\)-herein](#).
 - e. If a pre-employment test is canceled, Mountain Mobility will require the applicant to take and pass another pre-employment drug test.
 - f. In instances where a FTA *covered employee* does not perform a *safety-sensitive function* for a period of 90 consecutive days or more regardless of reason, and during that period is not in the random testing pool the employee will be required to take a pre-employment drug test under 49 CFR Part 655 and have negative test results prior to the conduct of safety-sensitive job functions.
 - g. Following a *negative dilute* the employee will be required to undergo another test. Should this second test result in a *negative dilute* result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO.
 - h. Applicants are required (even if ultimately not hired) to provide Mountain Mobility with signed written releases requesting USDOT drug and *alcohol*

records from all previous, USDOT-covered, employers that the applicant has worked for within the last two years. Failure to do so will result in the employment offer being rescinded. Mountain Mobility is required to ask all applicants (even if ultimately not hired) if they have tested positive or refused to test on a pre-employment test for a USDOT covered employer within the last two years. If the applicant has tested positive or refused to test on a pre-employment test for a USDOT covered employer, the applicant must provide Mountain Mobility proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G.

L. REASONABLE SUSPICION TESTING

- 1) All Mountain Mobility FTA *covered employees* will be subject to a reasonable suspicion drug and/or *alcohol* test when the employer has reasonable suspicion to believe that the *covered employee* has used a *prohibited drug* and/or engaged in *alcohol* misuse. Reasonable suspicion shall mean that there is objective evidence, based upon specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odor that are consistent with possible drug use and/or *alcohol* misuse. Reasonable suspicion referrals must be made by one or more supervisors who are trained to detect the signs and symptoms of drug and *alcohol* use, and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to possible prohibited substance abuse or *alcohol* misuse. A reasonable suspicion *alcohol* test can only be conducted just before, during, or just after the performance of a safety-sensitive job function. However, under Mountain Mobility's authority, a non-DOT reasonable suspicion *alcohol* test may be performed any time the *covered employee* is on duty. A reasonable suspicion drug test can be performed any time the *covered employee* is on duty.
- 2) Mountain Mobility shall be responsible for transporting the employee to the testing site. — Supervisors should avoid placing themselves and/or others into a situation which might endanger the physical safety of those present. The employee shall be placed on administrative leave pending disciplinary action described in [Section Q of this policy \(see Section Q\)](#). An employee who refuses an instruction to submit to a drug/*alcohol* test shall not be permitted to finish his or her shift and shall immediately be placed on administrative leave pending disciplinary action as specified in [Section Q of this policy \(see Section Q\)](#).
- 3) A written record of the observations which led to a drug/*alcohol* test based on reasonable suspicion shall be prepared and signed by the supervisor making the observation. This written record shall be submitted to Mountain Mobility.

- 4) When there are no specific, contemporaneous, articulable objective facts that indicate current drug or *alcohol* use, but the employee (who is not already a participant in a treatment program) admits the abuse of *alcohol* or other substances to a supervisor in his/her chain of command, the employee shall be referred for assessment and treatment consistent with [Section Q of this policy \(see Section Q\)](#). Mountain Mobility shall place the employee on administrative leave in accordance with the provisions set forth under [Section Q of this policy \(see Section Q\)](#). Testing in this circumstance would be performed under the direct authority of Mountain Mobility. **Since the employee self-referred to management, testing under this circumstance would not be considered a violation of this policy or a positive test result under Federal authority.** However, self-referral does not exempt the *covered employee* from testing under Federal authority as specified in [Sections L through N of this policy \(see Sections L through N\)](#) or the associated consequences [as specified in this policy \(see Section Q\) as specified in Section Q.](#)

M. POST-ACCIDENT TESTING

- 1) FATAL ACCIDENTS – A *covered employee* will be required to undergo [drug/urine](#) and [alcohol/breath](#) testing if they are involved in an *accident* with a transit *vehicle*, whether or not the *vehicle* is in revenue service at the time of the *accident*, that results in a fatality. This includes all surviving *covered employees* that are operating the *vehicle* at the time of the *accident* and any other whose performance could have contributed to the *accident*, as determined by the employer using the best information available at the time of the decision.
- 2) NON-FATAL ACCIDENTS – A post-*accident* test of the employee operating the public transportation *vehicle* will be conducted if an *accident* occurs and at least one of the following conditions is met:
 - a. The *accident* results in injuries requiring immediate medical treatment away from the scene, unless the *covered employee* can be completely discounted as a contributing factor to the *accident*.
 - b. One or more *vehicles* incurs *disabling damage* as a result of the occurrence and must be transported away from the scene, unless the *covered employee* can be completely discounted as a contributing factor to the *accident*

In addition, any other *covered employee* whose performance could have contributed to the *accident*, as determined by the employer using the best information available at the time of the decision, will be tested.

As soon as practicable following an *accident*, as defined in this policy, the transit supervisor investigating the *accident* will notify the transit employee operating the

transit *vehicle* and all other *covered employees* whose performance could have contributed to the *accident* of the need for the test. The supervisor will make the determination using the best information available at the time of the decision.

The appropriate transit supervisor shall ensure that an employee, required to be tested under this section, is tested as soon as practicable, but no longer than eight (8) hours of the *accident* for *alcohol*, and no longer than 32 hours for drugs. If an *alcohol* test is not performed within two hours of the *accident*, the Supervisor will document the reason(s) for the delay. If the *alcohol* test is not conducted within (8) eight hours, or the drug test within 32 hours, attempts to conduct the test must cease and the reasons for the failure to test documented.

Any *covered employee* involved in an *accident* must refrain from *alcohol* use for eight (8) hours following the *accident*, or until he/she undergoes a post-*accident alcohol* test.

An employee who is subject to post-*accident* testing who fails to remain readily available for such testing, including notifying a supervisor of his or her location if he or she leaves the scene of the *accident* prior to submission to such test, may be deemed to have refused to submit to testing.

Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an *accident*, or to prohibit an employee from leaving the scene of an *accident* for the period necessary to obtain assistance in responding to the *accident*, or to obtain necessary emergency medical care.

In the rare event that Mountain Mobility is unable to perform an FTA drug and *alcohol* test (i.e., employee is unconscious, employee is detained by law enforcement agency), Mountain Mobility may use drug and *alcohol* post-*accident* test results administered by local law enforcement officials in lieu of the FTA test. The local law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with local law.

N. RANDOM TESTING

- 1) All *covered employees* will be subjected to random, unannounced testing. The selection of employees shall be made by a scientifically valid method of randomly generating an employee identifier from the appropriate pool of safety-sensitive employees. IndividualsEmployees who may be covered under company authority will be selected from a pool of non-DOT-covered individualsemployees.
- 2) The dates for administering unannounced testing of randomly selected employees shall be spread reasonably throughout the calendar year, day of the week and hours of the day.
- 3) The number of employees randomly selected for drug/*alcohol* testing during the calendar year shall be not less than the percentage rates set each year by the FTA

administrator. The current year testing rates can be viewed online at <https://www.transportation.gov/odapc/random-testing-rates>.

- 4) Each *covered employee* shall be in a pool from which the random selection is made. Each *covered employee* in the pool shall have an equal chance of selection each time the selections are made. Employees will remain in the pool and subject to selection, whether or not the employee has been previously tested. There is no discretion on the part of management in the selection.
- 5) Covered transit employees that fall under the Federal Transit Administration regulations will be included in one random pool maintained separately from the testing pool of non-safety-sensitive employees that are included solely under Mountain Mobility authority.
- 6) Random tests can be conducted at any time during an employee's shift for drug testing. Random *alcohol* tests can only be performed just before, during, or just after the performance of a *safety-sensitive* duty. However, under Mountain Mobility's authority, a non-DOT random *alcohol* test may be performed any time the *covered employee* is on duty. Testing can occur during the beginning, middle, or end of an employee's shift.
- 7) Employees are required to proceed immediately to the *collection site* upon notification of their random selection.

O. RETURN-TO-DUTY TESTING

Mountain Mobility will terminate the employment of any employee that tests positive or refuses a test as specified in ~~section Q~~ of this policy ([see Section Q](#)). However, in the rare event an employee is reinstated with court order or other action beyond the control of the transit system, the employee must complete the return-to-duty process prior to the performance of *safety-sensitive functions*. All *covered employees* who previously tested positive on a drug or *alcohol* test or refused a test, must test negative for drugs, *alcohol* (below 0.02 for *alcohol*), or both and be evaluated and released by the *Substance Abuse Professional* before returning to work. Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual. The SAP will recommend the return-to-duty test only when the employee has successfully completed the treatment requirement and is known to be drug and *alcohol*-free and there are no undue concerns for public safety. The SAP will determine whether the employee returning to duty will require a return-to-duty drug test, *alcohol* test, or both.

P. FOLLOW-UP TESTING

Covered employees that have returned to duty following a positive or refused test will be required to undergo frequent, unannounced drug and/or *alcohol* testing following their return-to-duty test. The follow-up testing will be performed for a period of one to five years with a minimum of six tests to be performed the first year. The frequency and

duration of the follow-up tests (beyond the minimums) will be determined by the SAP reflecting the SAP's assessment of the employee's unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to the random, post-*accident*, reasonable suspicion and return-to-duty testing.

In the instance of a self-referral or a management referral, the employee will be subject to non-USDOT follow-up tests and follow-up testing plans modeled using the process described in 49 CFR Part 40. However, all non-USDOT follow-up tests and all paperwork associated with an employee's return-to-work agreement that was not precipitated by a positive test result (or refusal to test) does not constitute a violation of the Federal regulations will be conducted under company authority and will be performed using non-DOT testing forms.

Q. RESULT OF DRUG/ALCOHOL TEST

- 1) Any covered employee that has a verified positive drug or *alcohol* test, or *test refusal*, will be immediately removed from his/her safety-sensitive position, informed of educational and rehabilitation programs available, and will be provided with a list of at least two (2) USDOT qualified *Substance Abuse Professionals (SAP)* for assessment, and will be terminated.
- 2) Following a *negative dilute* the employee will be required to undergo another test. Should this second test result in a *negative dilute* result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO.
- 3) Refusal to submit to a drug/*alcohol* test shall be considered equivalent to a positive test result and a direct act of insubordination and shall result in termination and referral to a list of USDOT qualified SAPs. A *test refusal* is defined as any of the following circumstances:
 - a. Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer.
 - b. Fail to remain at the collection~~testing~~ site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test has not refused to test.
 - c. Fail to attempt to provide a ~~breath or urine~~ specimen. An employee who does not provide a ~~urine or breath~~ specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.
 - d. In the case of a directly-observed or monitored urine ~~drug~~ collection in a drug test, fail to permit monitoring or observation of your provision of a specimen.

- e. Fail to provide a sufficient quantity of ~~specimen~~urine or breath without a valid medical explanation.
 - f. Fail or decline to take ~~an additional~~a second test as directed by the collector or the employer for drug testing.
 - g. Fail to undergo a medical evaluation as required by the MRO or the employer's *Designated Employer Representative (DER)*.
 - h. Fail to cooperate with any part of the testing process.
 - i. Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed urine collection~~test~~.
 - j. Possess or wear a prosthetic or other device used to tamper with the collection process.
 - k. Admit to the adulteration or substitution of a specimen to the collector or MRO.
 - l. Refuse to sign the certification at Step 2 of the Alcohol Testing Form (ATF).
 - m. Fail to remain readily available following an *accident*.
 - n. As a *covered employee*, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.
- 4) An *alcohol* test result of ≥ 0.02 to ≤ 0.039 BAC shall result in the removal of the employee from duty for eight hours or the remainder or the work day whichever is longer. The employee will not be allowed to return to safety-sensitive duty for his/her next shift until he/she submits to a non-DOT *alcohol* test with a result of less than 0.02 BAC.
- 5) In the instance of a self-referral or a management referral, disciplinary action against the employee shall include:
- a. Mandatory referral for an assessment by an employer approved counseling professional for assessment, formulation of a treatment plan, and execution of a return-to-work agreement;
 - b. Failure to execute, or remain compliant with the return-to-work agreement shall result in termination from Mountain Mobility employment.
 - i. Compliance with the return-to-work agreement means that the employee has submitted to a drug/*alcohol* test immediately prior to returning to work; the result of that test is negative; the employee is cooperating with his/her recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing as described in ~~Section P~~ of this policy (see

Section P); however, all follow-up testing performed as part of a return-to-work agreement required under section Q of this policy (see Section Q) is under the sole authority of Mountain Mobility and will be performed using non-DOT testing forms.

- c. Refusal to submit to a periodic unannounced follow-up drug/alcohol test shall be considered a direct act of insubordination and shall result in termination. All tests conducted as part of the return-to-work agreement will be conducted under company authority and will be performed using non-DOT testing forms.
 - d. A self-referral or management referral to the employer's counseling professional that was not precipitated by a positive test result does not constitute a violation of the Federal regulations and will not be considered as a positive test result in relation to the progressive discipline defined in Section Q of this policy (see Section Q).
 - e. Periodic unannounced follow-up drug/alcohol testing conducted as a result of a self-referral or management referral which results in a verified positive shall be considered a positive test result in relation to the progressive discipline defined in Section Q of this policy (see Section Q).
 - f. A Voluntary Referral does not shield an employee from disciplinary action or guarantee employment with Mountain Mobility.
 - g. A Voluntary Referral does not shield an employee from the requirement to comply with drug and alcohol testing.
- 6) Failure of an employee to report within five days a criminal drug statute conviction for a violation occurring in the workplace shall result in termination.

R. GRIEVANCE AND APPEAL

The consequences specified by 49 CFR Part 40.149 (c) for a positive test or *test refusal* is not subject to arbitration.

S. PROPER APPLICATION OF THE POLICY

Mountain Mobility is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, supervisors/managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor/manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

T. INFORMATION DISCLOSURE

- 1) Drug/*alcohol* testing records shall be maintained by the Mountain Mobility Drug and Alcohol Program Manager and, except as provided below or by law, the results of any drug/*alcohol* test shall not be disclosed without express written consent of the tested employee.
- 2) The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of *prohibited drugs* or misuse of *alcohol* including any drug or *alcohol* testing records. *Covered employees* have the right to gain access to any pertinent records such as equipment calibration records, and records of *laboratory* certifications. Employees may not have access to SAP follow-up testing plans.
- 3) Records of a verified positive drug/*alcohol* test result shall be released to the Drug and Alcohol Program Manager, and other transit system management personnel on a need-to-know basis.
- 4) Records will be released to a subsequent employer only upon receipt of a written request from the employee.
- 5) Records of an employee's drug/*alcohol* tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/*alcohol* test. The records will be released to the decision maker in the proceeding.
- 6) Records will be released to the National Transportation Safety Board during an *accident* investigation.
- 7) Information will be released in a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or *alcohol* test information is relevant to the case and issues an order to the employer to release the information. The employer will release the information to the decision maker in the proceeding with a binding stipulation that it will only be released to parties of the proceeding.
- 8) Records will be released to the *DOT* or any *DOT agency* with regulatory authority over the employer or any of its employees.
- 9) Records will be released if requested by a Federal, state or local safety agency with regulatory authority over Mountain Mobility or the employee.
- 10) If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of Part 40 as amended, necessary legal steps to contest the issuance of the order will be taken.

- 11) In cases of a contractor or sub-recipient of a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulation to the FTA.

This policy was adopted by the Buncombe County Board of Commissioners on September 21, 2021 [and amended on January 16, 2024](#).

Chairman, Board of Commissioners

MOUNTAIN MOBILITY DRUG AND ALCOHOL TESTING POLICY

ATTACHMENT A

Job Title	Job Duties and Safety- Sensitive Functions	Employer
General Manager	If dispatcher or vehicle operator position/function is performed	RATP Dev DBA Buncombe County Transit Management, Inc.
Operations Manager	If dispatcher or vehicle operator position/function is performed	
Dispatcher	Control, dispatch, and/or movement of a revenue service vehicle	
Vehicle	Operation of a mass transit revenue service vehicle	
Safety/Training Manager	If dispatcher or driver position/function is performed	
Fleet Manager	If dispatcher or driver position/function is performed	
Maintenance Staff	Maintenance, if not contracted out	
Transit Program Manager	No safety-sensitive functions are performed	Land-of-Sky Regional Council
Mobility Specialist	No safety-sensitive functions are performed	
Senior Program Assistant	No safety-sensitive functions are performed	
Planning Director	No safety-sensitive functions are performed	Buncombe County
Community Development Division Manager	No safety-sensitive functions are performed	
Lead Transportation Planner	No safety-sensitive functions are performed	
Planner II	No safety-sensitive functions are performed	
County Garage Staff	No safety-sensitive functions are performed	

¹ This list may be changed as necessary to include all current employment positions and reflect the safety-sensitive status of all positions that may be affected by this policy statement.

MOUNTAIN MOBILITY DRUG AND ALCOHOL TESTING POLICY

ATTACHMENT B

Any questions regarding this policy or any other aspect of the substance abuse policy should be directed to the following individual(s).

Mountain Mobility Drug and Alcohol Program Manager

Name: Elaina Carter

Title: General Manager, Mountain Mobility

Address: 2000 Riverside Drive, Suite 17, Asheville, NC 28804

Telephone Number: 828.250.6750

Medical Review Officer

Name: Charlton Owensby, M.C.

Title: Certified Medical Review Officer

Address: Caromont Occupational Medicine, 3700 Moorland Dr., Charlotte, NC 28226

Telephone Number: 704.834.2000

~~Substance Abuse Professional #1~~

~~Name: Cynthia S. Buff, Ph.D.~~

~~Title: Substance Abuse Professional~~

~~Address: 107 Brevard Rd., Asheville, NC 28806~~

~~Telephone Number: 828.253.0778~~

Substance Abuse Professional #21

Name: Andrea Morris

Title: Substance Abuse Professional

Address: 190 Broadway Street, Suite 204, Asheville, NC 28806

Telephone Number: 828.785.4285

Substance Abuse Professional #2

Name: Deauna Froneberger

Title: Substance Abuse Professional

Address: 15905 Brookway Dr Ste 4202 Huntersville, NC 28078

Telephone Number: 866.262.8810

HHS Certified Laboratory Primary Specimen

Name: Alere Toxicology Services

Address: 450 Southlake Blvd., Richmond, VA, 23236

Telephone Number: 804.378.9130

MOUNTAIN MOBILITY DRUG AND ALCOHOL TESTING POLICY

ATTACHMENT C

Attachment C defined terms in ***italics and bold*** appear in the Mountain Mobility Drug and Alcohol Testing Policy or elsewhere within Attachment C. Attachment C defined terms in *italics only* do not appear in the Mountain Mobility Drug and Alcohol Testing Policy and are provided for reference, clarification, and information.

Accident: An occurrence associated with the operation of a vehicle even when not in revenue service, if as a result:

- a. An individual dies;
- b. An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or,
- c. One or more *vehicles* incur *disabling damage* as the result of the occurrence and is transported away from the scene by a tow truck or other *vehicle*. For purposes of this definition, *disabling damage* means damage which precludes departure of any *vehicle* from the scene of the occurrence in its usual manner in daylight after simple repairs. *Disabling damage* includes damage to *vehicles* that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, or windshield wipers that makes them inoperative.

Adulterated Specimen: A specimen that has been altered, as evidence by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

Alcohol: The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols contained in any beverage, mixture, mouthwash, candy, food, preparation or medication.

Alcohol Concentration: Expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under 49 CFR Part 40.

Aliquot: A fractional part of a specimen used for testing, It is taken as a sample representing the whole specimen.

~~***Alternate specimen:*** An authorized specimen, other than the type of specimen previously collected or attempted to be collected.~~

Canceled Test: A drug or *alcohol* test that has a problem identified that cannot be or has not been corrected, or which is cancelled. A canceled test is neither positive nor negative.

MOUNTAIN MOBILITY DRUG AND ALCOHOL TESTING POLICY

Collection Site: A place selected by the employer where employees present themselves for the purpose of providing a specimen for a drug test.

Confirmatory Drug Test: A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or metabolite.

Confirmatory Validity Test: A second test performed on a different *aliquot* of the original urine specimen to further support a validity test result.

Covered Employee (Under FTA Authority): An employee who performs a safety-sensitive function including an applicant or transferee who is being considered for hire into a safety-sensitive function (See Attachment A for a list of covered employees).

Designated Employer Representative (DER): An employee authorized by the employer to take immediate action to remove employees from safety-sensitive duties and to make required decisions in testing. The DER also receives test results and other communications for the employer, consistent with the requirements of 49 CFR Parts 40 and 655.

DOT, The Department, DOT Agency: These terms encompass all DOT agencies, including, but not limited to, the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the Office of the Secretary (OST). For purposes of 49 CFR Part 40, the United States Coast Guard (USCG), in the Department of Homeland Security, is considered to be a *DOT agency* for drug testing purposes. These terms include any designee of a *DOT agency*.

Dilute Specimen: A urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

Disabling Damage: Damage which precludes departure of any *vehicle* from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to *vehicles* that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, or windshield wipers that makes them inoperative.

Evidentiary Breath Testing Device (EBT): A device approved by the NHTSA for the evidential testing of breath at the 0.02 and the 0.04 *alcohol concentrations*, and appears on ODAPC's Web page for "Approved Evidential Breath Measurement Devices" because it conforms with the model specifications available from NHTSA.

Initial Drug Test: (Screening Drug Test) The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

MOUNTAIN MOBILITY DRUG AND ALCOHOL TESTING POLICY

Initial Specimen Validity Test: The first test used to determine if a urine specimen is adulterated, diluted, substituted, or invalid.

Invalid Result: The result reported by an HHS-certified *laboratory* in accordance with the criteria established by the HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.

Laboratory: Any U.S. laboratory certified by HHS under the National Laboratory Certification program as meeting standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; or, in the case of foreign laboratories, a laboratory approved for participation by *DOT* under this part.

Limit of Detection (LOD): The lowest concentration at which a measurand can be identified, but (for quantitative assays) the concentration cannot be accurately calculated.

Limit of Quantitation: For quantitative assays, the lowest concentration at which the identity and concentration of the measurand can be accurately established.

Medical Review Officer (MRO): A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving *laboratory* results generated by the drug testing program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result, together with his/her medical history, and any other relevant bio-medical information.

Negative Dilute: A drug test result which is negative for the five drug/drug metabolites but has creatinine and specific gravity values that are lower than expected for human urine.

Negative Result: The result reported by an HHS-certified *laboratory* to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen. An *alcohol concentration* of less than 0.02 BAC is a negative test result.

Non-negative Test Result: A urine specimen that is reported as adulterated, substituted, invalid, or positive for drug/drug metabolites.

Oxidizing Adulterant: A substance that acts alone or in combination with other substances to oxidize drugs or drug metabolites to prevent the detection of the drug or metabolites, or affects the reagents in either the initial or *confirmatory drug test*.

Performing (a Safety-sensitive Function): A *covered employee* is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

MOUNTAIN MOBILITY DRUG AND ALCOHOL TESTING POLICY

Positive Result: The result reported by an HHS- Certified *laboratory* when a specimen contains a drug or drug metabolite equal or greater to the cutoff concentrations.

Prohibited Drug: Identified as marijuana, cocaine, opioids, amphetamines, or phencyclidine as specified in 49 CFR Part 40, as amended.

Reconfirmed: The result reported for a split specimen when the second *laboratory* is able to corroborate the original result reported for the primary specimen.

Rejected for Testing: The result reported by an HHS- Certified *laboratory* when no tests are performed for specimen because of a fatal flaw or a correctable flaw that has not been corrected.

Revenue Service Vehicles: All transit *vehicles* that are used for passenger transportation service.

Safety-sensitive Functions: Employee duties identified as:

- (1) The operation of a transit *revenue service vehicle* even when the *vehicle* is not in revenue service.
- (2) The operation of a non-revenue *service vehicle* by an employee when the operation of such a *vehicle* requires the driver to hold a Commercial Drivers License (CDL).
- (3) Maintaining a *revenue service vehicle* or equipment used in revenue service.
- (4) Controlling the movement of a *revenue service vehicle* and
- (5) Carrying a firearm for security purposes.

Split Specimen Collection: A collection in which the urine collected is divided into two separate bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).

Substance Abuse Professional (SAP): A licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, state-licensed or certified marriage and family therapist, or drug and *alcohol* counselor (certified by an organization listed at <https://www.transportation.gov/odapc/sap>) with knowledge of and clinical experience in the diagnosis and treatment of drug and *alcohol* related disorders.

Substituted Specimen: A urine specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine.

Test Refusal: The following are considered a refusal to test if the employee:

- (1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer.

MOUNTAIN MOBILITY DRUG AND ALCOHOL TESTING POLICY

- (2) Fail to remain at the testing-collection site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test has not refused to test.
- (3) Fail to attempt to provide a breath-or-urine specimen. An employee who does not provide a urine-or-breath specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.
- (4) In the case of a directly-observed or monitored urine drug-collection in a drug test, fail to permit monitoring or observation of your provision of a specimen.
- (5) Fail to provide a sufficient quantity of urine-or-breath-specimen without a valid medical explanation.
- (6) Fail or decline to take a an additional-second test as directed by the collector or the employer for drug testing.
- (7) Fail to undergo a medical evaluation as required by the MRO or the employer's *Designated Employer Representative (DER)*.
- (8) Fail to cooperate with any part of the testing process.
- (9) Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed urine collection test.
- (10) Possess or wear a prosthetic or other device used to tamper with the collection process.
- (11) Admit to the adulteration or substitution of a specimen to the collector or MRO.
- (12) Refuse to sign the certification at Step 2 of the *Alcohol* Testing Form (ATF).
- (13) Fail to remain readily available following an *accident*.
- (14) As a *covered employee*, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

Vehicle: A bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel. A public transit *vehicle* is a *vehicle* used for public transportation or for ancillary services.

Verified Negative Test: A drug test result reviewed by a *medical review officer* and determined to have no evidence of *prohibited drug* use at or above the minimum cutoff levels established by the Department of Health and Human Services (HHS).

Verified Positive Test: A drug test result reviewed by a *medical review officer* and determined to have evidence of *prohibited drug* use at or above the minimum cutoff levels specified in 49 CFR Part 40 as revised.

MOUNTAIN MOBILITY DRUG AND ALCOHOL TESTING POLICY

Validity Testing: The evaluation of the specimen to determine if it is consistent with normal human urine. Specimen validity testing will be conducted on all urine specimens provided for testing under DOT authority. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.



Buncombe County Board of Commissioners
Request for Board Action
Meeting Date: 1/16/2024

Consent Agenda

Department: Solid Waste

Presenter(s): Dane Pederson, Solid Waste Director

Contact(s): Dane Pederson and Michael Frue

Subject: Solid Waste Ordinance Amendments - 2nd Reading

Brief Summary: This Board approved amendments to the Solid Waste Ordinance on January 2, 2024. Chair Newman was absent and the amendments passed 6-0. Because all members of the Commission were not present at the January 2nd meeting and this was the first meeting at which these amendments were introduced, these ordinance amendments must be considered a second time.

Recommended Motion & Requested Action: Approve the Ordinance Amending Chapter 62 of the Buncombe County Code of Ordinances.

County Manager's comments and Recommendation: Approve as presented.

ORDINANCE NO. 24-01-10

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.

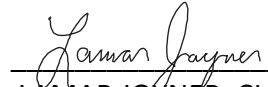
Section 7. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

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

Chapter 62 SOLID WASTE MANAGEMENT

ARTICLE I. IN GENERAL

Secs. 62-1—62-25. Reserved.

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 dumpster container collector, franchised collector, hand collector, or ~~detachable container collector~~ roll-cart container.

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.

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.

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 roll-cart~~ container collector authorized by the board of commissioners to transport ~~refuse and other~~ residential 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~~ residential property by hand pickup.

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

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 ~~rubbish items listed in N.C. Gen. Stat. 130A-309.10~~ not specifically defined in this ~~Chapter~~section.

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

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.

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

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.

Small business, for purposes of this article, shall mean those commercial establishments whose weekly refuse disposal needs do not exceed five 32-gallon size bags or cans of refuse per week, and which bags or cans weigh 50 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. 09-09-03, § 1, Exh. A, 9-1-09)

Cross reference(s)—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. 09-09-03, § 1, Exh. A, 9-1-09)

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 subsection 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 subsection 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~~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.

(Ord. No. 09-09-03, § 1, Exh. A, 9-1-09)

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

- ~~(a) *Report; notice; summons.* 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 may 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 may cause a criminal summons to issue. The owner, occupier, tenant, lessee, or person in control of the property on which the violation exists shall be guilty of a Class 3 misdemeanor punishable by a fine of up to \$500.00 or a maximum 30-day's imprisonment as provided in G.S. 14-4.~~
- ~~(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. 09-09-03, § 1, Exh. A, 9-1-09; Ord. No. 22-05-13, § 22, 5-19-22)

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 ~~32-96~~ gallons, if hand collected, or as specified by the ~~detachable-franchise container~~ collector, if collected by dumpster 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.

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

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

- (3) A violation of this provision 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.
- (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 subsections (d)(3), (d)(4) or (d)(5) of this section shall constitute a Class 3 misdemeanor punishable by a fine of up to \$500.00 or a maximum 30 day's imprisonment as provided in G.S. 14-4.
- (7) *Enforcement.* The director 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. 09-09-03, § 1, Exh. A, 9-1-09; Ord. No. 22-05-13 , § 23, 5-19-22)

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 and included in the County's fee schedule, which is adopted annually.

(Ord. No. 09-09-03, § 1, Exh. A, 9-1-09)

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.

(Ord. No. 09-09-03, § 1, Exh. A, 9-1-09)

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. 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 Class 3 misdemeanor punishable by a fine of up to \$500.00 or a maximum 30 day's imprisonment as provided in G.S. 14-4 or 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.

(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 the owner 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 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.

(Ord. No. 09-09-03, § 1, Exh. A, 9-1-09; Ord. No. 22-05-13 , § 24, 5-19-22)

Secs. 62-34—62-40. Reserved.

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 ~~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.N.C. Gen. Stat. §§ 153A-45, ~~and~~ 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.

(Ord. No. 09-09-03, § 1, Exh. A, 9-1-09)

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~~ 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.

~~(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. 09-09-03, § 1, Exh. A, 9-1-09)

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. 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. 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 Class 3 misdemeanor punishable by a fine of up to \$500.00 or a maximum 30 day's imprisonment as provided in G.S. 14-4.

(Ord. No. 09-09-03, § 1, Exh. A, 9-1-09; Ord. No. 22-05-13 , § 25, 5-19-22)

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 ~~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. 09-09-03, § 1, Exh. A, 9-1-09)

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 ~~ten~~thirty (30) years.

- (2) *Notice of solicitation for franchise proposals.* At least Six-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 purchasing agent and/or county attorney~~ 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. ~~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~~ 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 ~~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) 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.
- ~~(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 60 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 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 the 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 8:00 a.m. to 5:00 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 the 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 the 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 subsections (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 \$1,000,000.00, which shall remain in effect for the first two 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) *Compliance with federal, state and local laws, etc.* 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. 09-09-03, § 1, Exh. A, 9-1-09)

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 residential solid waste collection, pickup, removal, transport, or disposal services, personnel, and/or equipment to roll-cart containers.
 - b. User shall mean a person ~~or business~~ 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.
- (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 residential solid waste from roll-cart containers, ~~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 residential solid wastes from roll-cart containers.
- (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 (7) days and may, for good cause shown, be renewed for no more than three consecutive seven (7)-day periods in any one year.

(Ord. No. 09-09-03, § 1, Exh. A, 9-1-09)

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 as set forth in the franchise agreement with the franchise collector.~~
- ~~(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 subsection (b) above:~~
- ~~(1) The county will not entertain increases in the per month subscriber fee for the first two 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 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.~~
- ~~(2) 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. 09-09-03, § 1, Exh. A, 9-1-09)~~

Secs. 62-48—62-70. Reserved.



Solid Waste Ordinance Updates

Presented by

Dane Pedersen

Solid Waste



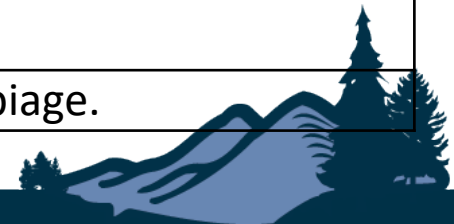
Ordinance Amendment Goals

Solid Waste Ordinance

- Remove process specifics better left for franchise contracts.
- Removes redundancies already existing within General Statute.
- Adjusts verbiage to prevent conflicting language between ordinance and future franchise contracts.
- Allows for flexibility in future franchise contracts based on evolving County/residential needs.
- Allow fee adjustments through franchise agreement rather than Board action to amend the Ordinance.
- Simplifies the ordinance.



CHANGE TYPE	DIFFERENCE	REASONING
Definition clarification	Changing definition for “detachable or roll off container” to “roll cart” – also defines what a roll-cart container is.	Roll cart is correct verbiage moving forward, removing all definitions and references that state otherwise.
Definition clarification	Defining “Dumpster”	Updating document for proper verbiage.
Definition clarification	Changes all references from “Households, commercial establishments or small industries” to “residential property.”	Clarification and simplification.
Definition clarification	Defining “Person”	“Person” now refers to all customer types, bodies, and other legal entities.
Reference to G.S.	“Refuse” definition removes word “rubbish” and directs definition to General Statute.	Clarifies section through G.S. rather than word “rubbish.”
Reference to G.S.	Removes “Sec. 62-29” associated with penalties for violations of article.	Removes redundancies already in G.S. and leaves penalties negotiable per contract to allow for future flexibility without board approval to update ordinance
Definition clarification	Updates all definitions from Sec. 62-26.	Adjusted for conflicting verbiage.



Questions?





Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: January 16, 2024

Consent Agenda

Department: Budget

Presenter(s): John Hudson, Budget

Contact(s): Dr. Robert Jackson, Buncombe County Schools
John Hudson, Budget

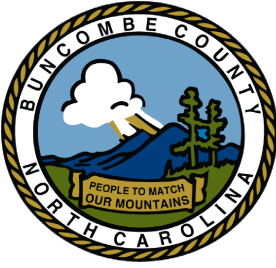
Subject: BCS - NBHS Softball Field Upgrades

Brief Summary: At the last meeting on January 2nd, the Board of Commissioners approved \$725,000 for the NBHS Softball Field Upgrades Construction. However, the \$725,000 total was a DPI error. DPI did not take into account the \$50,000 already provided for design (August 15th). Therefore, construction has been authorized for \$675,000, bringing total project cost to \$725,000. This amendment reduces the previously approved amendment by that \$50,000 error.

Recommended Motion & Requested Action: Support and approve this request

County Manager's Comments & Recommendation: County Manager recommends as presented

ORDINANCE #24-01-06



BUNCOMBE COUNTY, NORTH CAROLINA
Public School ADM Capital Fund Project Ordinance

BOARD MEETING DATE: January 16, 2024

WHEREAS, the Budget Director recommends and the Board now desires to amend the FY2023-2024 Public School ADM Capital Projects outlined below in Exhibit "A" to the budget,

NOW THEREFORE,

BE IT ORDAINED by the Board of Commissioners for the County of Buncombe as follows:

1. That the FY2023-2024 amendments listed in Exhibit A below be hereby adopted.
2. That this ordinance shall be effective upon adoption.

ADOPTED this 16th day of January, 2024

Project Name: BCS - NBHS Softball Field Upgrades - CONSTRUCTION

Description:

At the last meeting on January 2nd, the Board of Commissioners approved \$725,000 for the NBHS Softball Field Upgrades Construction. However, the \$725,000 total was a DPI error. DPI did not take into account the \$50,000 already provided for design (August 15th). Therefore, construction has been authorized for \$675,000, bringing total project cost to \$725,000. This amendment reduces the previously approved amendment by that \$50,000 error.

Funding Source:

NC Education Lottery Funding - Public School Building Capital Fund

Exhibit A: Account Description	Increase (Decrease)	
	Revenues	Expenditures
BCS - NBHS Softball Field Upgrades - CONSTRUCTION	\$ (50,000)	\$ (50,000)
TOTAL	\$ (50,000)	\$ (50,000)

ATTEST:

**BOARD OF COMMISSIONERS FOR
THE COUNTY OF BUNCOMBE:**


Clerk to the Board

By: 
Chairman of the Board



Buncombe County Board of Commissioners
Request for Board Action
Meeting Date: 1/16/2024

Presentations

Department: Justice Services

Presenter(s): Paulina Mendez

Contact(s): Paulina Mendez, Justice Services

Brief Summary: The Buncombe County's Family Justice Center is a safe place where victims of domestic violence, sexual assault, and elder abuse can come for help. The collective recognizes Human Trafficking Awareness and Prevention Month to recognize the strength of individuals who have survived human trafficking and raise awareness to help prevent it. Just as importantly, we are committed to sharing information about the Buncombe County Family Justice Center, which is dedicated to serving as a community-based resource for survivors and advocates.

County of Buncombe

Proclamation

Human Trafficking Awareness & Prevention Month

WHEREAS: by Presidential proclamation each January has been designated National Human Trafficking Prevention month; and

WHEREAS: human trafficking is the exploitative buying and selling of human beings for labor and sex acts;

WHEREAS: the issue of human trafficking is a global, national and local violation of human rights; and

WHEREAS: Buncombe County enjoys the benefits of being a global tourism destination, we also incur the increased risks of human trafficking due to the tourism industry and disposable income associated; and

WHEREAS: Buncombe County is committed to preventing human trafficking and has implemented a coordinated Rapid Response Team partnering with community organizations including the Buncombe County Sheriff's Office, Buncombe County Department of Health and Human Services, the District Attorney's office, Asheville Police Department, Mission Hospital, Our VOICE, Pisgah Legal Services, Mountain Child Advocacy, The 100 Movement and other agencies who are working together toward a community free from human trafficking; and

WHEREAS: Buncombe County is committed to supporting the safety of survivors of human trafficking and opened the Buncombe County Family Justice Center where survivors can access coordinated support from different partner agencies including law enforcement, non-profit service providers and health care services; and

WHEREAS: Buncombe County recognizes the strength of individuals in our community who have survived human trafficking and encourages people to raise awareness, promote education and support initiatives to address human trafficking;

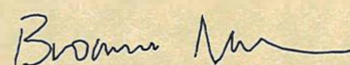
WHEREAS: Human Trafficking Awareness & Prevention Month, is an opportunity to stand with survivors of human trafficking, to celebrate the progress we have made in combating these crimes, and to recommit to preventing human trafficking in Buncombe County.

NOW, THEREFORE IT BE PROCLAIMED: by the Board of Commissioners for the County of Buncombe in the state of North Carolina as follows:

1. That the month of January 2024 be proclaimed

HUMAN TRAFFICKING AWARENESS & PREVENTION MONTH
in Buncombe County.

2. That this Board does hereby urge all citizens to make the commitment to stop human trafficking by speaking out against violence and learning more about the resources available to survivors and their families.



Brownie Newman, Chairman
Buncombe County Board of Commissioners



Buncombe County Board of Commissioners
Request for Board Action
Meeting Date: 1/16/2024

Old Business

Department: Human Resources

Presenter: Sharon Burke

Contact: Sharon Burke, Human Resources Director

Subject: Elections Director Compensation

Brief Summary: The Board of Elections submitted a recommendation in accordance with N.C. Gen. Stat. § 163-35, for the Director of Elections to receive an additional salary increase (inclusive of the 2023 COLA) moving her annual compensation to \$115,000 per year.

Based on research conducted December 2023 of similarly situated counties, current salary appears to comply with N.C. Gen Stat. § 163-35.

Recommended Motion & Requested Action: Provide guidance to staff.

RESOLUTION NO. 24-01-07

A RESOLUTION APPROVING THE DIRECTOR OF THE BUNCOMBE COUNTY BOARD OF ELECTIONS SALARY

WHEREAS, pursuant to N.C. Gen. Stat. § 163-35, compensation paid to directors of elections in all counties maintaining full-time registration (five days per week) shall be in the form of a salary in an amount recommended by the county board of elections and approved by the Board of Commissioners; and

WHEREAS, The Buncombe County Board of Elections received information from the Buncombe County Human Resources Department regarding election directors' salaries in jurisdictions comparable to Buncombe County; and

WHEREAS, on July 18, 2023, the Buncombe County Board of Elections made a recommendation regarding the Buncombe County Election Director's salary to the Board of Commissioners.

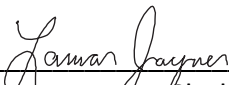
WHEREAS, the Buncombe County Board of Elections' recommendation is commensurate with the salaries paid to election directors in counties similarly situated and similar in population and number of registered voters; and

NOW, THEREFORE, BE IT RESOLVED by the Buncombe County Board of Commissioners as follows:

1. That the Director of the Board of Elections salary be \$115,000 per year.
2. That this resolution shall be retroactive starting July 1, 2023.

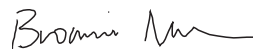
This the 16th day of January, 2024.

ATTEST



Lamar Joyner, Clerk

**BOARD OF COMMISSIONERS FOR THE
COUNTY OF BUNCOMBE**

BY: 

Brownie Newman, Chairman

APPROVED AS TO FORM



County Attorney

RESOLUTION NO. 2023-01

A RESOLUTION RECOMMENDING THE SALARY OF THE DIRECTOR OF BUNCOMBE ELECTION
SERVICES TO THE BUNCOMBE COUNTY COMMISSIONERS

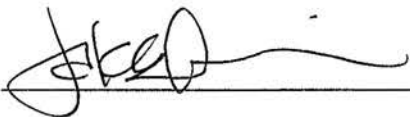
- WHEREAS, pursuant to North Carolina General Statute section 163-35, compensation paid to Directors of Elections in all counties maintaining full-time registration (five days per week) shall be in the form of a salary in an amount recommended by the county Board of Elections; and
- WHEREAS, the Buncombe County Board of Elections has received information from the Buncombe County Human Resources Department, the North Carolina School of Government, and from the human resources departments of Cumberland, Durham, New Hanover and Union counties regarding Election Directors' salaries, as detailed in Exhibit A; and
- WHEREAS, the Board's recommendation is commensurate with the salaries paid to Election Directors in counties similarly situated and similar in population and number of registered voters; and
- WHEREAS, the Board of Elections is prepared to make a salary recommendation for the Director of Buncombe County Election Services for the 2023-24 fiscal year.

NOW, THEREFORE, BE IT RESOLVED by the Buncombe County Board of Elections as follows:

1. That the Board of Elections recommends that the Director's salary be \$107,186.13 per annum prior to the issuance of any cost-of-living adjustment awarded by Buncombe County on July 1, 2023.
2. That this Resolution be forwarded to the Buncombe County Commissioners for final action.
3. That this Resolution shall be effective upon its adoption.

This 13th day of June 2023.

BUNCOMBE COUNTY BOARD OF ELECTIONS

BY: 

Jake Quinn, Chair

Exhibit A

Summary of Findings

	largest		registered	salary			
<u>county</u>	<u>city</u>	<u>population</u>	<u>voters</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>
Buncombe	Asheville	278,791	202,819	\$124,525	\$94,125	\$95,490	\$99,969
peer counties (counties that are within +/- 25% of Buncombe's totals)							
Cumberland	Fayetteville	339,318	207,490	\$105,637	\$105,637	\$108,806	\$85,000
Durham	Durham	342,008	230,016	105,889	109,066	140,423	164,000
New Hanover	Wilmington	232,614	174,664	83,991	87,848	93,357	101,946
Union	Monroe	249,361	171,601	93,082	97,248	101,297	105,420
peer average		290,825	195,943	\$97,150	\$99,950	\$110,971	\$114,092

Notes:

- The population figures were found at www.worldpopulationreview.com.
- The registered voters data are from the NCSBE's voter registration statistics as of the April 8, 2023 reporting period.
- The salary figures for 2020, 2021 and 2022 are from the UNC School of Government's "County Salaries in North Carolina" survey.
- The salary figures for 2023 are from a phone survey of HR departments.
- Cumberland County hired a new Elections Director in September 2022.



REQUESTED DATA FOR COMPENSATION CONSIDERTION

Presented by

Sharon Burke, HR Director



TURNOUT AND VOTER LOCATION DATA

County	2022 General	2022 General	Voter Turnout
	# Election Day voting locations	# Early Voting Locations	
Buncombe	80	12	57.25%
Cumberland	75	7	39.80%
Durham	57	7	53.43%
New Hanover	43	5	52.31%
Union	52	7	53.01%



SUB-COUNTYWISE DISTRICTS THAT CONTRIBUTE TO INCREASING THE NUMBER OF BALLOT STYLES

County	Municipality	Other
Buncombe	6	21
Cumberland	5	23
Durham	5	17
New	6	11
Union	14	15



Looking for guidance on next steps





Buncombe County Board of Commissioners
Request for Board Action
Meeting Date: 1/16/2024

New Business

Department: Buncombe County Sheriff's Office **Presenter(s):** Sheriff Miller

Contact(s): Sheriff Miller, Lynn Smith

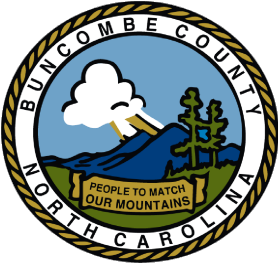
Subject: Buncombe County Sheriff's Office Downtown Initiative

Brief Summary: The Buncombe County Sheriff's Office received a letter from one of the Downtown Business Districts business owners. In the correspondence the writer cited problems and concerns expressed by owners, managers, and employees who are experiencing problems due to the homeless population in the Downtown Business District. The Sheriff's Office held several meetings with the district's owners, managers, and employees. The problems experienced include assaults, robberies, break ins, damage to property, disorderly conduct, and more. The Sheriff's Office agrees with the concerned parties. The environment created by some of the homeless individuals frequenting the business district is unacceptable.

The Buncombe County Sheriff's Office has been asked to get involved to help abate the problems that are being experienced by the Downtown Business District community.

Recommended Motion & Requested Action: The Buncombe County Sheriff's Office is requesting the Board of Commissioners support in addition to include funding the cost of the Downtown Initiative.

ORDINANCE #24-01-08



BUNCOMBE COUNTY, NORTH CAROLINA
General Fund

BOARD MEETING DATE: January 16, 2024

WHEREAS, the Budget Director recommends and the Board now desires to amend the FY2023-2024 General Fund as outlined below in Exhibit "A" to the budget,

NOW THEREFORE,

BE IT ORDAINED by the Board of Commissioners for the County of Buncombe as follows:

1. That the FY2023-2024 amendments listed in Exhibit A below be hereby adopted.
2. That this ordinance shall be effective upon adoption.

ADOPTED this 16th day of January, 2024

Requesting Department: Sheriff's Office
Budget Amendment Item: Downtown Asheville Initiative

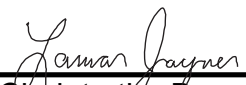
Description: The Sheriff's Office will add hours for Downtown Asheville for patrol on Fridays and Saturdays. Current revenue projections show School Resource Officer (SRO) revenue coming in higher than budgeted. Realizing the SRO revenue will free up the expenditure dollars needed for this initiative.

Funding Source: Intergovernmental Revenue

Exhibit A: Account Description	Increase (Decrease)	
	Revenues	Expenditures
Sheriff's Office	\$ 56,000	\$ 56,000
TOTAL	\$ 56,000	\$ 56,000

ATTEST:

**BOARD OF COMMISSIONERS FOR
THE COUNTY OF BUNCOMBE:**


Clerk to the Board

By: 
Chairman of the Board

Downtown Initiative Cost Computations				
Number of Deputies	Hours Assigned	# of Hours	Rate of Pay	Cost Per Wknd
4	10 pm - 2 am	4	\$75.00	\$2,400.00
R.T.I.C. Monitor				
1	10 pm - 2 am	4	\$75.00	\$600.00
Cost Per Weekend		8		\$3,000.00
Monthly Cost				\$13,000.00
Cost for 26 Weeks				\$78,000.00
NOTE: The above cost analysis is based on the BCSO assigning two (2) 2-person teams for this initiative (absent collaboration with APD). Cost for two deputies and 1 R.T.I.C. monitor will be \$46,800.00 (BCSO and APD working in partnership).				
Cost for Incidentals:	\$10,000.00 (overtime)			
TOTAL COST:	\$88,000.00 (Solo)	\$56,000.00	Collaborative	



Buncombe County Board of Commissioners
Request for Board Action
Meeting Date: 1/16/2024

New Business

Department: Finance **Presenter(s):** Mason Scott & Tim Lyons, Mauldin & Jenkins

Contact(s): Melissa Moore & Mason Scott, Finance

Subject: Fiscal Year 2023 Audit Contract Amendment & Audit Presentation

Brief Summary:

Contract Amendment

The audit has been completed for the fiscal year ending June 30, 2023. An amendment to the audit contract is required to account for the actual audit completion date. Audit review was completed on January 9, 2024. The contract amendment requests extension through January 15, 2024, to allow for any additional administrative processes needed to close the audit. This contract amendment does not change the contract amount.

This is the second and final audit contract amendment. The Board of Commissioners initially approved a first-year contract with Mauldin & Jenkins on April 4, 2023, to conduct the annual audit for the fiscal year ending June 30, 2023. The Board approved the first contract amendment on November 21, 2023, to increase the contract amount and extend the audit completion deadline to December 31, 2023.

Audit presentation

Mauldin & Jenkins will present the audit results to the Board and answer any related questions.

Per North Carolina General Statutes, local governments must have an independent financial audit each year. As a recipient of significant Federal and State grant funding, Buncombe County must also be audited annually for compliance with certain grant guidelines and related regulations.

Recommended Motion & Requested Action: Accept the audit as presented and approve the final contract amendment for the fiscal year 2023 external audit.

County Manager's comments and Recommendation: Accept the audit as presented and approve the final contract amendment for the fiscal year 2023 external audit.

Whereas	Primary Government Unit Buncombe County
and	Discretely Presented Component Unit (DPCU) (if applicable)
and	Auditor Mauldin & Jenkins, LLC

entered into a contract in which the Auditor agreed to audit the accounts of the Primary Government Unit and DPCU (if applicable)

for	Fiscal Year Ending 06/30/23	and originally to be submitted to the LGC on	Date 10/31/23
-----	--------------------------------	--	------------------

hereby agree that it is now necessary that the contract be modified as follows.

☒ Modification to date submitted to LGC

Original date 10/31/23	Modified date 01/15/24
Original fee	Modified fee

☐ Modification to fee

Primary Other
(choose 1)(choose 0-2)

Reason(s) for Contract Amendment

- | | | |
|----------------------------------|--------------------------|--|
| ☐ | ☐ | Change in scope |
| ☐ | ☐ | Issue with unit staff/turnover/workload |
| ☐ | ☐ | Issue with auditor staff/turnover/workload |
| ☐ | ☐ | Third-party financial statements not prepared by agreed-upon date |
| ☐ | ☐ | Unit did not have bank reconciliations complete for the audit period |
| ☐ | ☐ | Unit did not have reconciliations between subsidiary ledgers and general ledger complete |
| ☐ | ☐ | Unit did not post previous years adjusting journal entries resulting in incorrect beginning balances in the general ledger |
| ☐ | ☐ | Unit did not have information required for audit complete by the agreed-upon time |
| ☐ | ☐ | Delay in component unit reports |
| ☐ | ☐ | Software - implementation issue |
| ☐ | ☐ | Software - system failure |
| ☐ | ☐ | Software - ransomware/cyberattack |
| ☐ | ☐ | Natural or other disaster |
| ☒ | ☐ | Other (please explain) |

Plan to Prevent Future Late Submissions

If the amendment is submitted to modify the date the audit will be submitted to the LGC, please indicate the steps the unit and auditor will take to prevent late filing of audits in subsequent years. Audits are due to the LGC four months after fiscal year end. Indicate NA if this is an amendment due to a change in cost only.

The original contract amendment modified the date to 12/31/23 in anticipation of the final OPEB valuation being received from the actuary by the end of November. However, the final report was not received until 12/15 and thus the additional 15 days were needed with year-end holidays, etc.

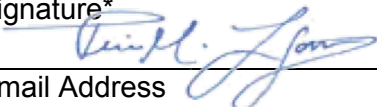
Additional Information

Please provide any additional explanation or details regarding the contract modification.

By their signatures on the following pages, the Auditor, the Primary Government Unit, and the DPCU (if applicable), agree to these modified terms.

SIGNATURE PAGE

AUDIT FIRM

Audit Firm* Mauldin & Jenkins, LLC	
Authorized Firm Representative* (typed or printed) Timothy M. Lyons	Signature* 
Date* 01/05/24	Email Address tlyons@mjcpa.com

GOVERNMENTAL UNIT

Governmental Unit* Buncombe County	
Date Primary Government Unit Governing Board Approved Amended Audit Contract* (If required by governing board policy)	
Mayor/Chairperson* (typed or printed) Brownie Newman	Signature*
Date	Email Address brownie.newman@buncombecounty.org

Chair of Audit Committee (typed or printed, or "NA") Kendra Ferguson	Signature
Date	Email Address kendra@kf-cpa.com

GOVERNMENTAL UNIT – PRE-AUDIT CERTIFICATE

ONLY REQUIRED IF FEES ARE MODIFIED IN THE AMENDED CONTRACT

(Pre-audit certificate not required for hospitals)

Required by G.S. 159-28(a1) or G.S. 115C-441(a1)

This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act or by the School Budget and Fiscal Control Act.

Primary Governmental Unit Finance Officer*	Signature*
Date of Pre-Audit Certificate*	Email Address*

SIGNATURE PAGE – DPCU
(complete only if applicable)

DISCRETELY PRESENTED COMPONENT UNIT

DPCU	
Date DPCU Governing Board Approved Amended Audit Contract (If required by governing board policy)	
DPCU Chairperson (typed or printed)	Signature
Date	Email Address

Chair of Audit Committee (typed or printed, or "NA")	Signature
Date	Email Address

DPCU – PRE-AUDIT CERTIFICATE
ONLY REQUIRED IF FEES ARE MODIFIED IN THE AMENDED CONTRACT
(Pre-audit certificate not required for hospitals)

Required by G.S. 159-28(a1) or G.S. 115C-441(a1)

This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act or by the School Budget and Fiscal Control Act.

DPCU Finance Officer (typed or printed)	Signature
Date of Pre-Audit Certificate	Email Address



***Buncombe County,
North Carolina***



**Presentation of Audit Results
June 30, 2023**



Agenda

- Introduction to M&J and the County's Engagement Team
- Overview of:
 - Audit Opinion
 - Compliance Reports
- Required Communications
- General Fund Trends
- Accounting Recommendations and Related Matters
- Answer Questions



MAULDIN & JENKINS BY THE NUMBERS



CONSISTENTLY RANKED AS A TOP
ACCOUNTING FIRM IN THE U.S.



100+ year
HISTORY
OF QUALITY SERVICE

Serve 700+
GOVERNMENT CLIENTS

GOVERNMENTAL
PARTNERS **18**



140+

TEAM MEMBERS DEDICATED
TO SERVING THE
GOVERNMENTAL INDUSTRY



VISION
*To be a trusted advisor, earning trust and building respect through our
consistent commitment to sustainable excellence, leadership, and integrity.*



300+

SINGLE AUDITS PERFORMED LAST
YEAR COVERING OVER \$5.3
BILLION OF FEDERAL GRANTS



156,000+

HOURS ANNUALLY
PROVIDED TO
GOVERNMENTAL CLIENTS

175+

CURRENT CLIENTS AWARDED
THE GFOA CERTIFICATE OF
EXCELLENCE

6

STATES

14

OFFICES



Engagement Team Leaders

- Tim Lyons, Engagement Partner | Doug Moses, Quality Review Partner | LeAnn Bagasala, Engagement Director



Audit Opinion

- **Our Responsibility Under Auditing Standards Generally Accepted in the United States of America (GAAS) and *Government Auditing Standards* (GAS)**
 - We considered the internal control structure for the purpose of expressing our opinion on **Buncombe County, North Carolina's (the "County")** basic financial statements, but not for the purpose of expressing an opinion on the effectiveness of the County's internal controls over financial reporting.
 - Our audit was performed in accordance with GAAS and *Government Auditing Standards*.
 - Our objective is to provide reasonable—not absolute—assurance that the basic financial statements are free of material misstatement.
 - The basic financial statements are the responsibility of the County's management.
- **Report on Basic Financial Statements**
 - Unmodified ("clean") opinion on basic financial statements.
 - Presented fairly in accordance with accounting principles generally accepted in the United States of America.
 - Our responsibility does not extend beyond financial information contained in our report.



Compliance Report and Audit Scopes & Procedures

- ***Government Auditing Standards (“Yellow Book”) Report***

- The financial report package contains a report on our tests of the County’s internal controls and compliance with laws, regulations, etc. The report is not intended to provide an opinion on internal controls nor is it intended to provide a legal determination on the County’s compliance with applicable laws and regulations.
- This report and the procedures performed are required by *Government Auditing Standards*.
- Our report includes one item (Finding 2023-001) that we consider to be a material weakness in internal controls over financial reporting. The item relates to a prior period adjustment in the County’s Opioid Settlement Fund, a nonmajor governmental fund. As of June 30, 2022, the County had received approximately \$621,000 in opioid settlement funds; however, these funds were reported as an unearned revenue (liability) in the prior year and should have been recorded as revenue and restricted fund balance. As a result, a restatement to beginning fund balance of the fund as well as beginning net position of the County’s governmental activities was required to correct the error.



Compliance Report and Audit Scopes & Procedures

- **Single Audit Reports**

- The financial report package also contains two (2) reports covering the Single Audit: a report in accordance with the Uniform Guidance (federal) and a report in accordance with the State Single Audit Implementation Act (state).
- Current year programs audited include:
 - Medicaid Cluster (Federal and State)
 - Coronavirus State and Local Fiscal Recovery Funds or “ARPA” (Federal)
 - Emergency Rental Assistance Program (Federal)
 - Public School Building Capital Fund or “State Lottery” (State)
 - Justice Involved SUD Grant (State)
 - Foster Care Benefits (State)
- We expressed unmodified or “clean” opinions on compliance and our reports did not include any significant deficiencies or material weaknesses in internal control over compliance.



Required Communications

- **Significant Accounting Policies**

- Management is responsible for the selection and use of appropriate accounting policies.
- The significant accounting policies used by the County are described in Note 1 to the basic financial statements.
- During the current year, the Authority implemented Government Accounting Standards Board (GASB) Statement No. 96, *Subscription-Based Information Technology Arrangements*.
- The policies used by the County are in accordance with generally accepted accounting principles.
- In considering the qualitative aspects of its policies, the County is not involved in any controversial or emerging issues for which guidance is not available.

- **Management Judgment/Accounting Estimates**

- Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events.
- The County uses various estimates as part of its financial reporting process – including actuarial assumptions, fair value of investments, useful lives of capital assets, etc.



Required Communications (Continued)

- **Relationship with Management**

- We received full cooperation from the County's management and staff.
- There were no disagreements with management on accounting issues or financial reporting matters.

- **Management Representation**

- We requested, and received, written representations from management relating to the accuracy of information included in the financial statements and the completeness and accuracy of various information requested by us.

- **Consultation with Other Accountants**

- To the best of our knowledge, management has not consulted with, or obtained opinions from, other independent accountants during the year, nor did we face any issues requiring outside consultation.

- **Significant Issues Discussed with Management**

- There were no significant issues discussed with management related to business conditions, plans, or strategies that may have affected the risk of material misstatement of the financial statements.



Required Communications (Continued)

- **Audit Adjustments**

- During our audit, adjustments to the County's financial statements were proposed and made by management. These entries have been discussed with management and we have received representations that they have been posted to the County's accounts. In addition, we did have one (1) passed audit adjustment related to compensated absences – this item is discussed further in this presentation.

- **Financial Statement Disclosures**

- The footnote disclosures to the financial statements are also an integral part of the financial statements and the process used by management to accumulate the information included in the disclosures was the same process used in accumulating the statements. The overall neutrality, consistency, and clarity of the disclosures was considered as part of our audit.

- **Information in Documents Containing Audited Financial Statements**

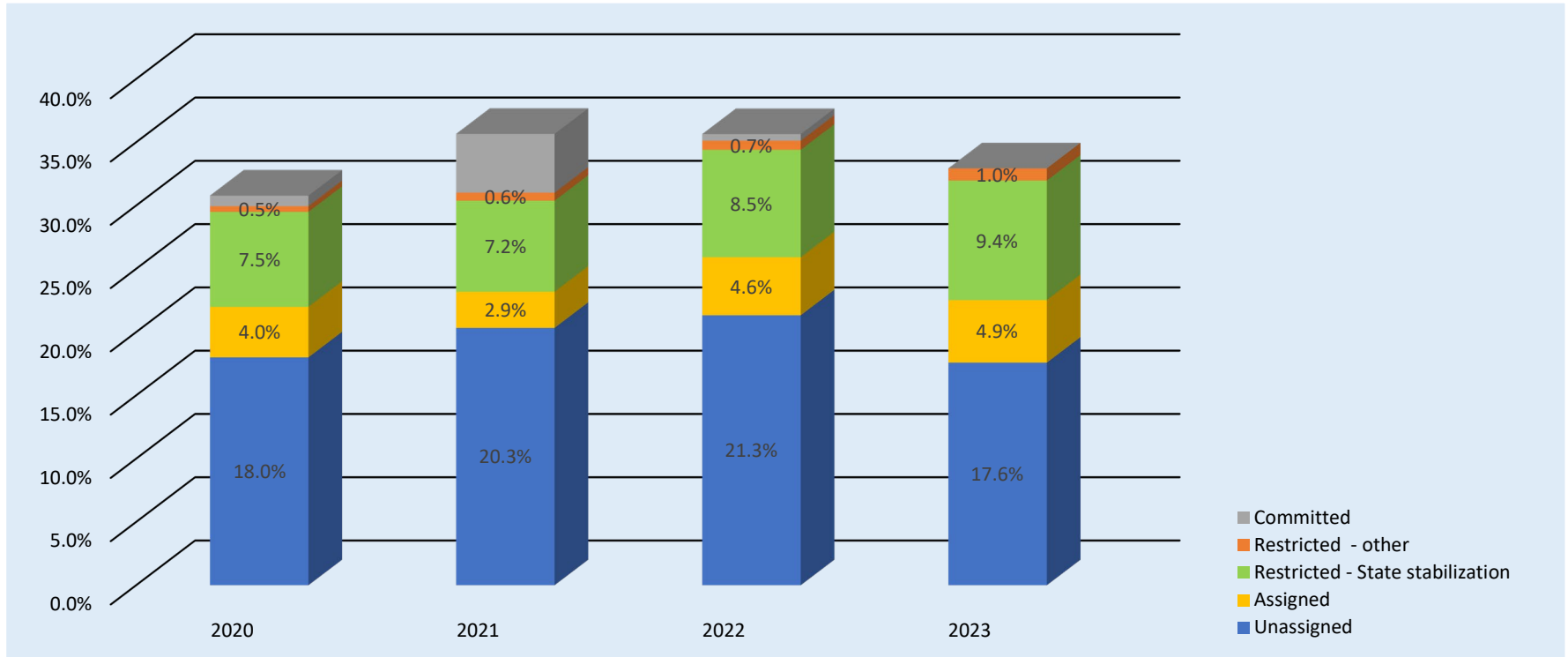
- Our responsibility for other information in documents containing the County's basic financial statements and our report thereon does not extend beyond the information identified in our report. If you intend to publish or otherwise reproduce the financial statements and make reference to our firm, we must be provided with printers' proof for our review and approval before printing. You must also provide us with a copy of the final reproduced material for our approval before it is distributed.

- **Auditor Independence**

- In accordance with AICPA professional standards, M&J is independent with regard to the County and its respective financial reporting processes.

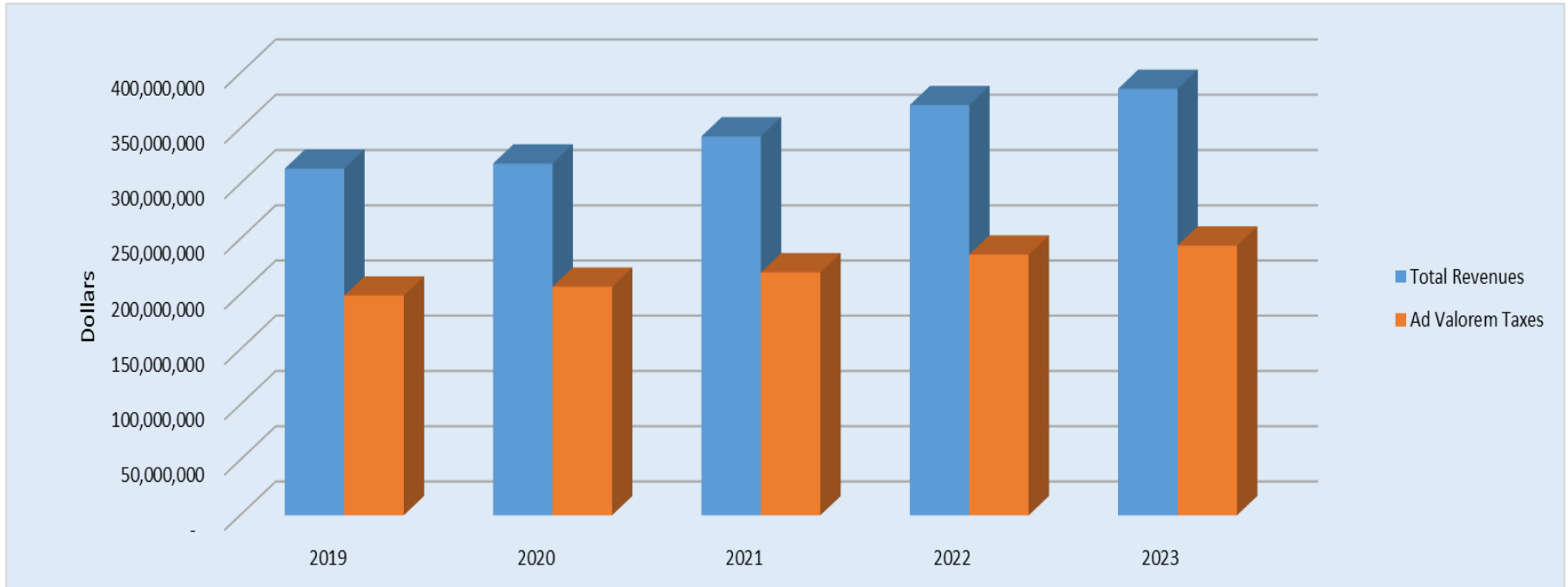


General Fund Financial Trends





General Fund Financial Trends





Accounting Recommendations and Related Matters

- **Management Letter Comment**

Reporting of Accrued Compensated Absences

During our audit, we noted the County included an estimate of the future employer contributions to the retirement plans in which the County's employees participate in its calculation of the year-end balance of accrued compensated absences. Because these contributions are factored into the calculation of the County's pension liabilities for these plans, which is already recorded in the County's financial statements, generally accepted accounting principles (GAAP) state that no additional accrual for this future employer contribution should be made. As a result, we proposed and passed on an audit adjustment of approximately \$950,000 to reduce the County's year-end liability for accrued compensated absences reported as of June 30, 2022.

Management of the County corrected the balances reported in the financial statements as of June 30, 2023. As we discussed with management, the County needs to review its calculation of the balance for accrued compensated absences to ensure these future employer contributions are not included in the balance as required by GAAP.



Accounting Recommendations and Related Matters

- **New GASB Pronouncements for Future Years**

- **Statement No. 100, *Accounting Changes and Error Corrections*** was issued in June 2022 and is effective for accounting changes and error corrections in fiscal years beginning after June 15, 2023, all reporting periods thereafter.
- **Statement No. 101, *Compensated Absences*** was issued in June 2022 and is effective for fiscal years beginning after December 15, 2023, which means the County's fiscal year ended June 30, 2025.

- **Current / Pending Major GASB Projects**

- **Re-Examination of the Financial Reporting Model.** GASB has added this project to its technical agenda to make improvements to the existing financial reporting model (established via GASB issued Statement No. 34). Improvements are meant to enhance the effectiveness of the model in providing information for decision-making and assessing a government's accountability. GASB anticipates a final standard in late 2023 / early 2024.
- **Revenue and Expense Recognition** is another long-term project where the GASB is working to develop a comprehensive application model for recognition of revenues and expenses from non-exchange, exchange, and exchange-like transactions. The final standard is expected in late 2026 / early 2027.
- **Going Concern Uncertainties and Severe Financial Stress** is major project where the goal is to address issues related to disclosures regarding going concern uncertainties and severe financial stress. This technical topic is being examined by the GASB due to a wide diversity in practice regarding required presentation on the face of the financial statements, disclosures, etc. An exposure draft on this topic is expected by mid-2025.



Governmental Advisory Services

Core Offerings

Strategy

Develops and defines the future vision, goals, and objectives

- Innovation
- Long-Term Planning
- Organization Management
- Workforce of the Future Planning
- Internet of Things/Market Disruptors Assessment
- Artificial Intelligence/Robotics
- Service Delivery Model Planning
- Strategy Mapping
- Technology Consulting/ERP
- Technology Solution/Vendor Selection
- Operational Vision
- Business Case

Operational Efficiency and Effectiveness

Ensures business processes and service delivery are provided in a manner maximizing targeted goals

- Cost Containment
- Operations Improvement
- Program Delivery
- Revenue Enhancement
- Staffing Assessments
- Benchmarking
- Technology Utilization
- Governance
- Policy/Procedure Assessments
- Operations/Management Reviews

Transformation

Allows for the successful change from the current state to the desired environment or outcome

- Change Management and Organizational Transformation Strategies
- Customer Service Optimization
- Service Delivery Modeling
- Technology/Workflow Design
- Human Capital Management

Performance Measurement

Ensures outputs and outcomes are producing desired results

- Budget Forecasting & Design
- Cost Accounting
- Data Science
- Grant Strategy
- Risk Assessments
- Internal Controls & Compliance
- KPI Design
- Benchmarking
- Project Management
- Independent Verification & Validation
- Management/Dashboard Reporting



Govt. Clients – Free Quarterly Continuing Education

- **Since March of 2009 – For Over 13 Years !!**

- Mauldin & Jenkins provides free quarterly continuing education for all of our governmental clients. Topics are tailored to be of interest to governmental entities. In an effort to accommodate our entire governmental client base, we offer the sessions several times per quarter at a variety of client provided locations resulting in greater networking and knowledge sharing among our governmental clients. We normally see approximately 180 people per quarter. Examples of subjects addressed in the past few quarters include:
 - Accounting for Debt Issuances
 - Achieving Excellence in Financial Reporting
 - Best Budgeting Practices, Policies and Processes
 - Budget Preparation
 - ACFR Preparation (two (2) day hands-on course)
 - Capital Asset Accounting Processes and Controls
 - Collateralization of Deposits and Investments
 - Component Units
 - Cybersecurity Risk Management
 - Evaluating Financial and Non-Financial Health of a Govt.
 - Financial Report Card – Where Does Your Govt. Stand?
 - Financial Reporting Model Improvements
 - GASB Nos. 74 & 75, OPEB Standards
 - GASB No. 77, Tax Abatement Disclosures
 - GASB No. 84, Fiduciary Activities
 - GASB Projects & Updates (ongoing & several sessions)
 - Human Capital Management
 - Grant Accounting Processes and Controls
 - Internal Controls Over Accounts Payable, Payroll and Cash Disbursements
 - Internal Controls Over Receivables & the Revenue Cycle
 - IRS Issues, Primarily Payroll Matters
 - Legal Considerations for Debt Issuances & Disclosures
 - Policies and Procedures Manuals
 - Segregation of Duties
 - Single Audits for Auditees
 - Special Purpose Local Option Sales Tax (SPLOST)
 - Accounting, Reporting & Compliance
 - Uniform Grant Reporting Requirements and the New Single Audit

» .



Questions & Comments



Thank You for the Opportunity to Serve



Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: January 16, 2024

New Business

Department: Health & Human Services

Presenter(s): John Hudson, Budget

Contact(s): Stoney Blevins, HHS Director
Ellis Matheson, Public Health Director

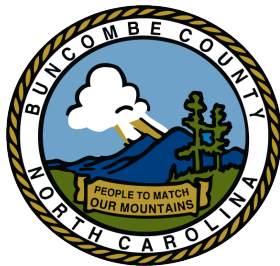
Subject: Public Health Infrastructure - Local Workforce Development Funding

Brief Summary: The state is providing multi-year funding beginning in FY24 for a five year period ending October 31, 2027 of \$684,061 to support and develop public health department workforce. Funds will be used to create a public health workforce pipeline, opportunities for student internship and academic community partnerships. Funding will also be used to create a custom foundational public health course for all BCDHHS public health employees and external training opportunities for employees to stay current on best practices within their public health field of work. Additional funding will be used to increase resiliency and retention efforts.

Recommended Motion & Requested Action: Approve budget amendment

County Manager's Comments & Recommendation: County Manager recommends as presented

ORDINANCE #24-01-09



BUNCOMBE COUNTY, NORTH CAROLINA
Grant Projects Ordinance

BOARD MEETING DATE: January 16, 2024

WHEREAS, the Budget Director recommends and the Board now desires to amend the FY2023-2024 Grants Projects outlined below in Exhibit "A" to the budget,

NOW THEREFORE,

BE IT ORDAINED by the Board of Commissioners for the County of Buncombe as follows:

1. That the FY2023-2024 amendments listed in Exhibit A below be hereby adopted.
2. That this ordinance shall be effective upon adoption.

ADOPTED this 16th day of January, 2024

Granting Agency:	NC Department of Health and Human Services
Grant Name:	Public Health Infrastructure - Local Workforce Development

Description:

The state is providing multi-year funding beginning in FY24 for a five year period ending October 31, 2027 of \$684,061 to support and develop public health department workforce. Funds will be used to create a public health workforce pipeline, opportunities for student internship and academic community partnerships. Funding will also be used to create a custom foundational public health course for all BCDHHS public health employees and external training opportunities for employees to stay current on best practices within their public health field of work. Additional funding will be used to increase resiliency and retention efforts.

<u>Funding Source:</u>	US DHHS, Centers for Disease Control and Prevention Passed through NC DHHS
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Exhibit A: Account Description	Increase (Decrease)	
	Revenues	Expenditures
Restricted Intergovernmental Revenue	\$ 684,061	
Expenditures		\$ 684,061
TOTAL	\$ 684,061	\$ 684,061

ATTEST:

**BOARD OF COMMISSIONERS FOR
THE COUNTY OF BUNCOMBE:**


Clerk to the Board

By: 
Chairman of the Board



Public Health Infrastructure: Local Workforce Development (AA117)

Presented by

Ellis Matheson, Public Health Director

Health & Human Services Department

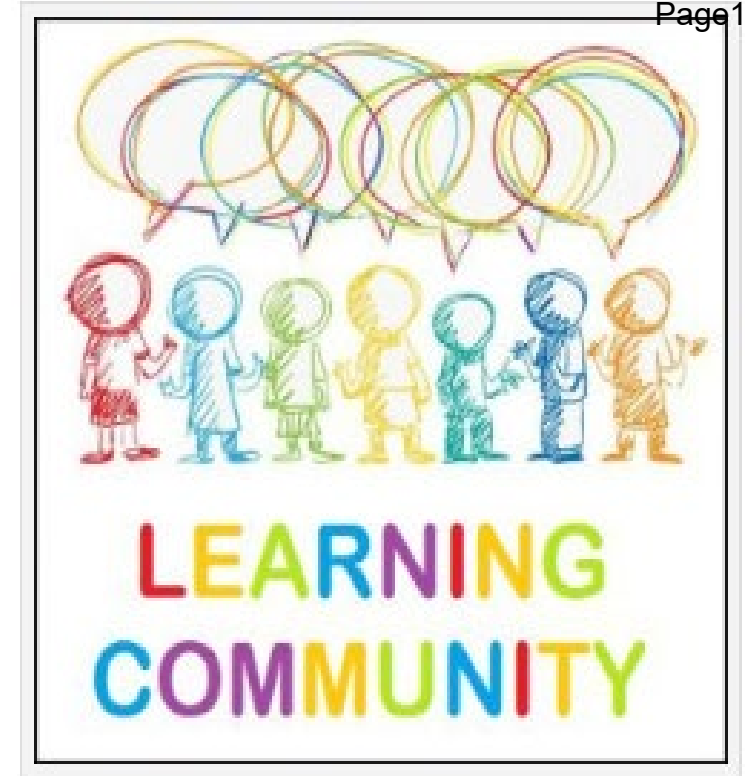


Purpose

- Support the foundational capabilities and the local health department workforce through investments and improvements to better serve and protect the health of communities
- Investments & improvements to help rebuild and modernize local public health departments
- Increase the size of the public health workforce in the long-term



Overview



■ Scope of Work

- Recruit and hire new public health staff
- Support and sustain public health staff
- Train new and existing public health staff
- \$684,060 / 5-year period ending 10/31/27

■ Four Strategies

- Academic Health Department
- Foundational Public Health Course for NC Local Government Public Health Employees
- Professional Development Continuing Education
- Resiliency and Retention



Discussion

