

**ORDINANCE 2024 - \_\_\_\_\_**

**AN ORDINANCE AMENDING ORDINANCE 13-069 TO REQUIRE A NONEXCLUSIVE RESIDENTIAL RECYCLABLE MATERIALS COLLECTION FRANCHISE TO PROVIDE RESIDENTIAL RECYCLING COLLECTION SERVICE TO OWNERS AND OCCUPANTS OF RESIDENTIAL PROPERTY WITHIN UNINCORPORATED POLK COUNTY; STATING A RESIDENTIAL RECYCLABLE MATERIALS COLLECTION FRANCHISE APPLICATION AND APPROVAL PROCESS; STATING RESIDENTIAL RECYCLABLE MATERIALS COLLECTION FRANCHISE HOLDER PERFORMANCE REQUIREMENTS; PROVIDING A PROCESS FOR THE SUSPENSION OR REVOCATION OF RESIDENTIAL RECYCLABLE MATERIALS COLLECTION FRANCHISES; PROVIDING FOR SEVERABILITY OF UNENFORCEABLE PROVISIONS; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, in December, 2013, the Board of County Commissioners adopted Ordinance 13-069 to address within a single ordinance the collection, management, and disposal of Solid Waste within unincorporated Polk County, to include the collection of non-ad valorem assessments for Residential Waste Program Services; and

**WHEREAS**, a sustained decreased demand for Residential Recyclable Materials has led to changes in how Polk County will grant a franchise for the collection of those materials from Residential Property within the unincorporated areas of the county; and

**WHEREAS**, allowing Residential Property Owners and Occupants to divert Recyclable Materials from disposal with other Residential Waste by use of a Residential Recyclable Materials Franchise Holder will permit them to participate in the Recycling process without increasing the annual Residential Waste Program Services Assessment; and

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF POLK COUNTY, FLORIDA THAT:**

**SECTION 1:** Section 1-2 C. of Ordinance 13-069 is revised to reference Residential Recyclable Materials Collection Franchise Agreements and is restated in its entirety, as follows:

- C. Additionally, it is the Board’s intent that Solid Waste shall only be collected by those Persons who have been issued a Commercial Franchise in accordance with Article IV, below; or who have entered into a Residential Waste Collection Franchise Agreement with the County; or who have been issued a Residential Recyclable Materials Collection Franchise in accordance with Article III, below; or who are exempt from these requirements as specifically stated within this Ordinance.

**SECTION 2:** Section 1-2 D. (8) (a) of Ordinance 13-069 is revised to remove a reference to Recyclable Materials and is restated in its entirety, as follows:

- (8) Residential Waste Program Services furnished to Assessment Property possess a logical relationship to the use and enjoyment of the Assessment Property by:
  - (a) providing a safe and cost effective method for Owners and Occupants to properly dispose of the Residential Waste generated on the Assessment Property;

**SECTION 3:** Section 1-2 D. (9) and Section 1-2 D. (10) of Ordinance 13-069 are amended and restated in their entirety, as follows:

- (9) Allowing Owners and Occupants the ability to divert Recyclable Materials from disposal with other Residential Waste by use of a Residential Recyclable Materials Collection Franchise Holder will permit them to participate in the Recycling process without increasing the annual Residential Waste Program Services Assessment for that service.
- (10) The Residential Waste Collection Services and Residential Waste Collection Franchise Agreements authorized pursuant to this Ordinance, as well as the corresponding collection and disposal of Residential Waste, shall constitute a special benefit to Assessment Property that is equal to or greater than the cost of providing such services.

**SECTION 4:** Section 1-3, Definitions, of Ordinance 13-069 is revised to add the following subparagraphs:

- MMM. *Residential Recyclable Materials* means those materials generated by an Occupant of Residential Property which are capable of being recycled and have been separated from Solid Waste for Recycling.
- NNN. *Residential Recyclable Materials Collection Service* means the collection and transportation of Residential Recyclable Materials from Residential Property located within Polk County for Recycling processing pursuant to an agreement between an Owner or Occupant and a Residential Recycling Materials Collection Franchise Holder.
- OOO. *Residential Recyclable Materials Collection Franchise* means a franchise the County has granted a Person pursuant to Section 3-7 below for the collection of Residential Recyclable Materials within the County.
- PPP. *Residential Recyclable Materials Collection Franchise Holder* means a Person who holds a current Residential Recyclable Materials Collection Franchise the County has granted pursuant to Section 3-7 below.

**SECTION 5:** Section 1-3, Definitions, of Ordinance 13-069 is revised to amend and restate the following subparagraphs to incorporate added terms and revised definitions associated with the changes to the Residential Waste Collection Service:

- L. *Collector* means a Person that provides Residential Waste Collection Service, Commercial Collection Service, or Residential Recyclable Materials Collection Service within the County.

- Q. *Commercial Solid Waste* means all types of Solid Waste generated on Commercial Property except Residential Waste, Residential Recyclable Materials, and Exempt Waste. For the purposes of Article IV, Commercial Collection Service, the term Commercial Solid Waste shall include Construction and Demolition Debris.
- UU. *Residential Waste Collection Service* means the collection and transportation of Residential Waste that is generated on Residential Property located within Polk County for disposal at a Disposal Site.
- VV. *Residential Waste Collection Franchise Agreement* means a written agreement with the County that authorizes a Collector to provide Residential Waste Collection Services within a Residential Waste Collection Franchise Area.
- WW. *Residential Waste Collection Franchise Area* means a specified area within Polk County that shall receive Residential Waste Collection Service from a Residential Waste Collection Franchise Holder.
- XX. *Residential Waste Collection Franchise Holder* means a Person that has a current, fully executed Residential Waste Collection Franchise Agreement with the County.
- ZZ. *Residential Waste* means Garbage, Rubbish, Horticultural Trash, and Bulk Waste that are generated by an Occupant of Residential Property. Residential Waste does not include Exempt Waste.
- AAA. *Residential Waste Program Services* means all the Solid Waste collection and disposal services and all facilities and programs that the County furnishes or makes available to the Owners and Occupants of Assessment Property except for the Residential Recyclable Materials Collection Service performed by Residential Recyclable Materials Collection Franchise Holders.

**SECTION 6:** Section 1-5, General Requirements for the Management of Solid Waste, of Ordinance 13-069 is revised to amend and restate Subparagraph G to incorporate revised defined terms, to renumber Subparagraph T as Subparagraph U, and to add a new Subparagraph T, with the revised and affected subparagraphs restated as follows:

- G. No Person may provide Residential Waste Collection Service unless they have entered into a Residential Waste Collection Franchise Agreement with the County in compliance with Article III, below.
- T. No Person may provide Residential Recycling Materials Collection Service unless they have received a Residential Recycling Materials Collection Franchise from the County in compliance with Article III, below.
- U. It shall be unlawful for any Person to violate any of the provisions in this Section 1-5. A violator of any provision of this Section 1-5 shall be subject to the penalties and the County's remedies stated in Sections 6-2 and 6-3, below.

**SECTION 7:** Article III – Residential Collection Service of Ordinance 13-069 is amended and restated in its entirety as follows to incorporate added terms and revised definitions and to provide for Residential Recyclable Materials Collection Service:

Article III.

RESIDENTIAL COLLECTION SERVICE

Section 3-1: MANDATORY RESIDENTIAL WASTE COLLECTION SERVICE

Each Owner and Occupant of Residential Property within an Assessment Area shall utilize the Residential Waste Collection Service provided by the Residential Waste Collection Franchise Holder for the Residential Waste Collection Franchise Area in which their Residential Property is located, unless the Owner or Occupant is granted an exemption from this requirement pursuant to Article V, below, or unless prior to the Effective Date of this Ordinance, the County has previously granted an exemption from the mandatory utilization of the same or substantially similar services that is applicable to the Owner or Occupant’s Residential Property.

Section 3-2: RESIDENTIAL WASTE COLLECTION FRANCHISE AREAS

All of the unincorporated areas of Polk County shall constitute one Residential Waste Collection Franchise Area for the collection of Residential Waste, unless the Board divides Polk County into two (2) or more Residential Waste Collection Franchise Areas by resolution. If the Board adopts such a resolution, the resolution shall contain a legal or other description of each Residential Waste Collection Franchise Area. Each Residential Waste Collection Franchise Area shall be depicted on a map of Polk County. One copy of the map shall be kept in the Division and another copy of the map shall be kept in the office of the Clerk. By resolution, the Board may from time to time amend the boundaries of any Residential Franchise Area, eliminate any Residential Waste Collection Franchise Area, or create new Residential Waste Collection Franchise Areas, as the Board deems appropriate.

Section 3-3: PROCEDURE FOR AWARDING RESIDENTIAL WASTE COLLECTION FRANCHISE

The Board may use any lawful method to select the Person or Persons that shall be awarded a Residential Waste Collection Franchise. Subject to any applicable local, state, or federal laws, the Board may:

- A. issue a request for proposals;
- B. conduct another type of competitive procurement process;
- C. negotiate an extension of an existing Residential Franchise Agreement; or
- D. take such other action as the Board deems appropriate.

By way of example and without limitation, the Board may award a Residential Waste Collection Franchise for a Residential Waste Collection Franchise Area that includes all of the unincorporated area within Polk County, or the Board may create multiple

Residential Waste Collection Franchise Areas and award a separate Residential Waste Collection Franchise for each Residential Waste Collection Franchise Area. The Board also may award more than one Residential Waste Collection Franchise to a single Person.

**Section 3-4: RESIDENTIAL WASTE COLLECTION FRANCHISE AGREEMENTS**

If the Board has awarded a Person a Residential Waste Collection Franchise to provide Residential Waste Collection Service, that Person shall execute and enter into a Residential Waste Collection Franchise Agreement with the County before beginning to provide such services within the Residential Waste Collection Franchise Area. The Residential Waste Collection Franchise Agreement shall contain the specific terms and conditions that shall govern the Residential Waste Collection Franchise Holder when providing Residential Waste Collection Service. At a minimum, the Residential Waste Collection Franchise Agreement shall establish the requirements that are necessary to protect the health, safety and welfare of the County's residents. Each Residential Waste Collection Franchise Agreement shall give the Residential Waste Collection Franchise Holder the exclusive right to perform Residential Waste Collection Service within the designated Residential Waste Collection Franchise Area.

**Section 3-5: RESIDENTIAL WASTE COLLECTION RESPONSIBILITIES OF RESIDENTIAL PROPERTY OWNERS AND OCCUPANTS.**

A. The Owner of Residential Property shall pay to the County the Residential Waste Program Services Assessment imposed on such Residential Property by resolution for the benefits received by such property for the Residential Waste Program Services provided or made available to the property.

B. Any Owner or Occupant of Residential Property that:

(1) denies a Residential Waste Collection Franchise Holder access to their property by prohibiting the use of a private road; or

(2) resides on a road that is inadequate for use by a Residential Waste Collection Franchise Holder's vehicles, as determined by the County;

shall be required to transport the Residential Waste generated on their property to the nearest County approved road for collection.

C. Each Occupant of Residential Property shall place his or her Garbage and Rubbish in Containers designated or supplied by the County and set out those Containers by 6:00 a.m. on the designated service day for the Residential Waste Collection Franchise Holder to collect the waste.

D. Owners and Occupants may only set out for Residential Waste Collection Service Residential Waste that is generated by the Owner or Occupant on the Residential Property where the materials are set out for collection.

**Section 3-6: OPTIONAL RESIDENTIAL RECYCLABLE**

## MATERIALS COLLECTION SERVICE

A. *Collection Service* Each Owner and Occupant of Residential Property within an Assessment Area may obtain Residential Recyclable Materials Collection Service by separately contracting with a Residential Recyclable Materials Collection Franchise Holder who has obtained and maintains a Residential Recyclable Materials Franchise from the County as described in Section 3-7, below. Each Owner and Occupant shall be individually responsible for directly paying its Residential Recyclable Materials Collection Franchise Holders for the services the Owner or Occupant contracts to receive.

B. *Owner and Occupant Responsibilities.* Owners and Occupants of Residential Property shall place Recyclable Materials that have been separated from other Residential Waste in a container designated for Recyclables that the Owner or Occupant sets out for collection by their Residential Recyclable Materials Collection Franchise Holder.

### Section 3-7: NONEXCLUSIVE RESIDENTIAL RECYCLABLE MATERIALS COLLECTION FRANCHISE REQUIRED TO COLLECT RESIDENTIAL RECYCLABLE MATERIALS FROM RESIDENTIAL PROPERTY.

#### A. *General.*

(1) No Person shall collect, remove, and transport any Residential Recyclable Materials from Residential Property within Polk County unless the County has granted the Person a nonexclusive Residential Recyclable Materials Collection Franchise.

(2) The County will only grant a Residential Recyclable Materials Collection Franchise to those Persons who the County determines satisfy all the conditions, standards, qualifications, and other requirements stated in this Article III.

(3) The term of each Residential Recyclable Materials Collection Franchise shall be no longer than one calendar year. The term of a Residential Recyclable Materials Collection Franchise shall commence on January 1<sup>st</sup> of each calendar year and shall expire at 11:59 p.m. on December 31<sup>st</sup> of that year. However, any Residential Recyclable Materials Collection Franchise issued between September 1, 2024 and December 31, 2024 shall expire 11:59 p.m. on December 31, 2025.

(4) A Residential Recyclable Materials Collection Franchise Holder shall not assign, transfer or convey its Residential Recyclable Materials Collection Franchise to any party.

(5) A Residential Recyclable Materials Collection Franchise granted pursuant to this Article III shall be a privilege subject to suspension or revocation and not a property right of the Residential Recyclable Materials Collection Franchise Holder.

(6) The County may suspend or revoke any Residential Recyclable Materials Collection Franchise, or it may change or limit the rights granted, or it may otherwise modify a previously granted Residential Recyclable Materials Collection Franchise whenever the County determines that any such action is appropriate and necessary for the protection of the public health, safety and welfare. The County's suspension or revocation of a Residential Recyclable Materials Collection Franchise shall not be the taking of a property right, an impairment of a Residential Recyclable Materials Collection Franchise Holder's contract to collect, remove or transport Residential Recyclable Materials, or an infringement on any other right of a Residential Recyclable Materials Collection Franchise Holder.

(7) Persons applying to obtain or to renew a Residential Recyclable Materials Collection Franchise shall pay application fees in amounts equal to the comparable fee Commercial Franchise applicants must pay as stated in Section 4-1 C. (5).

(8) If awarded a Residential Recyclable Materials Collection Franchise, the Residential Recyclable Materials Collection Franchise Holder shall pay annual Truck inspection fees in an amount equal to the same fee payable by Commercial Franchise Holders as stated in Section 4-2 C. (5), below.

(9) Upon the expiration or earlier termination of all Residential Recyclable Materials Collection Franchises, the County may discontinue its issuance and renewals of all such franchises and revise its Residential Recyclable Materials collection process. Such revisions may include without limitation the County self-providing or contracting with one or more third parties to exclusively provide the service.

*B. Residential Recyclable Materials Collection Franchise Application and Approval Process; Application and Renewal Fees.* The process to obtain and to renew a nonexclusive Residential Recyclable Materials Collection Franchise shall be the same process described in Section 4-1 C., Section 4-1 D., and Section 4-1 E., below, for Commercial Franchises.

*C. Residential Recyclable Materials Collection Franchise Holder Performance Requirements.* The performance requirements for Residential Recyclable Materials Collection Franchise Holders shall be the performance requirements stated in Section 4-2, below, to include without limitation payment of Truck inspection fees and a Residential Recyclable Materials Collection franchise fee in the amounts stated in Section 4-2 C. (5) and Section 4-2 D., respectively.

*D. Suspension or Revocation of Residential Recyclable Materials Collection Franchise.* The process to suspend and to revoke a nonexclusive Residential Recyclable Materials Collection Franchise shall be the same process described in Section 4-3, below, for the suspension or revocation of a Commercial Franchise.

**SECTION 8: SEVERABILITY.** If any provision of this Ordinance or if this Ordinance as applied is determined to be invalid or unconstitutional by a court of competent jurisdiction, such provision shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity or the remaining portions of the Ordinance.

**SECTION 9: EFFECTIVE DATE.** This Ordinance shall become effective upon filing of a certified copy of this Ordinance with the Department of State.



STATE OF FLORIDA )

COUNTY OF POLK )

I, Stacy M. Butterfield, County Clerk and Comptroller for Polk County, Florida, hereby certifies that the foregoing is a true and correction copy of Ordinance No. 2024 - \_\_\_\_\_ adopted by the Board on September \_\_\_\_\_, 2024.

WITNESS my hand and official seal this \_\_\_\_\_ day of September, 2024.

STACY M. BUTTERFIELD, CLERK

By: \_\_\_\_\_  
Deputy Clerk