



## *Town of Fort Myers Beach*

# Memorandum

To: Mayor, Vice Mayor and Town Council Members  
From: Michelle Mayher, Town Clerk  
Through: Terry Stewart, Town Manager  
Date: April 13, 2010  
Re: Mandatory Recycling

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On January 7, 2008 a draft ordinance for mandatory recycling was introduced on the town council agenda. Attached is the supporting material for this item which gives the background information.

Also attached is the portion of the adopted minutes from the January 7, 2008 meeting which shows the Council discussion, motion and vote.

Town of Fort Myers Beach  
Agenda Item Summary

Blue Sheet Number: 2007-157

**1. Requested Motion:**

**Meeting Date:** January 07 2008

Move the draft ordinance on mandatory recycling and forward to public hearing.

Why the action is necessary:

Furthers the requirements of the Town Interlocal Agreement with Lee County Solid Waste.

What the action accomplishes:

Allows the Town Council to hear public concern regarding the proposed ordinance.

**2. Agenda:**

- Consent
- Administrative
- Appeal

**3. Requirement/Purpose:**

- Resolution
- Ordinance
- Other:

**4. Submitter of Information:**

- Council
- Department: Public Works

**5. Background:**

The attached memo provides the necessary background information on the ordinance.

**6. Alternative Action:**

Disapprove and provide alternative direction to Staff.

**7. Management Recommendations:**

Approve.

**8. Recommended Approval:**

Finance Director	Public Works Director	Comm. Development Director	Town Clerk	Town Attorney	Town Manager
					

**9. Council Action:**

- Approved
- Denied
- Deferred
- Other



# Memo

**To:** Town Council  
**CC:** Town Manager, Town Attorney  
**From:** Public Works Director  
**Date:** December 18, 2007  
**Re:** Mandatory Recycling Ordinance

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On September 11, 2007 the Lee County Board of County Commissioners enacted Lee County Ordinance 07-25 requiring mandatory recycling of non-residential solid waste. In furtherance of the Interlocal Agreement dated August 8, 2000 between the Town and the County it is in the best interests of the Town, the residents, the business community, and the environment to enact a similar ordinance.

The ordinance is attached for your review. At the preparation of this memo the hearing portion of the enforcement process is still under discussion. The issue revolves around whether the Town Magistrate or the County Hearing Examiner hears the case. The concern is who's covering the cost of the process – the Town, the County or the defendant? We expect this issue to be resolved prior to the January 7<sup>th</sup> meeting. If so, staff will provide you with an updated copy of the ordinance.

If you have any questions please feel free to contact me or the Town Attorney.

**DECEMBER 18, 2007 DRAFT**

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH REGARDING MANDATORY RECYCLING OF COMMERCIAL AND MULTI-FAMILY RESIDENTIAL SOLID WASTE AND CONSTRUCTION AND DEMOLITION DEBRIS; PROVIDING FOR PURPOSE AND SCOPE OF ORDINANCE; PROVIDING FOR DEFINITIONS; PROVIDING FOR BUSINESS RECYCLING REQUIREMENTS; PROVIDING FOR MULTI-FAMILY RECYCLING REQUIREMENTS; PROVIDING FOR CONSTRUCTION AND DEMOLITION DEBRIS RECYCLING REQUIREMENTS; PROVIDING FOR CHANGES TO FEES AND PENALTIES; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, AND EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the Constitution of the State of Florida and Chapter 166 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise any power for municipal purposes except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, F.S. 403.706(2)(a) requires counties to implement a recyclable materials recycling program and F.S. 403.706 (2)(b) requires the County to recover a significant portion of at least four of the following materials from the solid waste stream prior to final disposal at a solid waste disposal facility and to offer these materials for recycling: newspaper, aluminum cans, steel cans, glass, plastic bottles, cardboard, office paper, and yard trash; and

WHEREAS, F.S. 403.706 (2)(c) encourages local governments to separate all plastics, metal, and all grades of paper for recycling prior to final disposal and further encourages local governments to recycle yard trash and other mechanically treated solid waste into compost available for agricultural and other acceptable uses; and

WHEREAS, F.S. 403.706(2)(a) encourages counties and municipalities to form cooperative arrangements for implementing recycling programs; and

WHEREAS, F.S. 403.707 addresses the need for management of sold waste generated as a result of a storm event that is the subject of an emergency DEP order, and encourages recycling and reuse of storm-generated vegetative debris to the greatest extent practicable; and

WHEREAS, as used in this Ordinance and as set forth in F.S. 403.706(5), "municipal solid waste" includes any solid waste, except for sludge, resulting from the operation of residential, commercial, governmental, or institutional establishments that would

normally be collected, processed, and disposed of through a public or private solid waste management service. The term includes yard trash but does not include solid waste from industrial, mining, or agricultural operations; and

WHEREAS, collection of recyclables is beneficial to the environment through the reuse and/or recycling of recovered materials; and

WHEREAS, Lee County Ordinance 07-25, approved by the Board of County Commissioners of Lee County, Florida (hereafter "County") on September 11, 2007 established mandatory recycling requirements to ensure that recyclable materials generated and accumulated by multi-family properties, commercial establishments, and construction and demolition activities be source separated and collected from the solid waste so that such recyclable materials are not deposited at a landfill, but are processed and reused; and

WHEREAS, the Town and the County have an Interlocal Agreement dated August 8, 2000 (hereafter "the Interlocal Agreement") for management of the Town's municipal solid waste, pursuant to which the County is responsible for the collection, billing, customer service and disposal of municipal solid waste, vegetative waste and recyclables from within the Town; and

WHEREAS, the measures set forth in this Ordinance are necessary to provide for the protection of public health, safety and welfare of the citizens of the Town and comply with the requirements of Florida Statute.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

**SECTION 1. AUTHORITY.** This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapter 166, Florida Statutes, and other applicable provisions of law as set forth in the "Whereas" clauses which are hereby incorporated herein by reference.

**SECTION 2 PURPOSE.** The purpose of this Ordinance is to establish mandatory recycling to ensure that recyclable materials generated and accumulated by multi-family properties, commercial establishments, and construction and demolition activities be source separated and collected from the solid waste so that such recyclable materials are not deposited at a landfill, but are processed and reused.

**SECTION 3. MANDATORY RECYCLING.** The Town of Fort Myers Beach, Florida (Town) requires that all businesses and multi-family properties within its boundaries must provide sufficient on-site recycling services. Under this requirement, business properties must continue to use the designated franchise hauler for refuse collection for their service area and must choose a service provider and negotiate prices for recycling services. Multi-family properties shall utilize the designated franchise hauler for collection of recycling materials required under this Ordinance. Recycling guidelines contained within this ordinance are intended to articulate the standards and expectations for commercial and multi-family recyclables collection. Commercial businesses on minimum refuse service as defined by the Lee County Solid Waste Division are exempt from the requirements of this Ordinance. Construction and demolition activities may select any service provider and negotiate prices for recycling services.

**SECTION 4. DEFINITIONS.** For purposes of this Ordinance, the definitions contained in this Section shall apply unless otherwise specifically stated. When consistent with the context, words used in the present tense include the future, words in the plural include the singular and words in the singular include the plural. The words "shall" or "will" are mandatory and not discretionary. For further clarification of definitions, refer to Section 403.703, Florida Statutes, and Fla. Admin. Code R. 62-701.200 (both of which are incorporated by reference herein), as either may be amended from time to time.

In the event of conflict between a definition set forth herein and the corresponding one in Section 403.703, Florida Statutes, or Fla. Admin. Code R. 62-701.200, as either may be amended from time to time, the statutory or administrative definition shall control.

- A. Advanced Disposal Fee means a fee imposed upon commercial entities or properties for failure to comply with this Ordinance.
- B. Agreement means the franchise agreements executed by the County and awarded to certain collection contractors.
- C. Council means the Town Council of the Town of Fort Myers Beach, Florida.
- D. Business or Commercial Business means any business, proprietorship, firm, partnership, person in representative or fiduciary capacity, association, venture, trust, governmental office, educational facility, corporation which is organized for financial gain or for profit, or non-profit corporation or entity, including all commercial, governmental, industrial, and institutional entities.
- E. Certified Recycling Facility means a recycling, composting, materials recovery or re-use facility which the Director has identified as compliant with the intent of this Ordinance
- F. Collect or Collection includes accept, accumulate, store, process, transport, market or dispose of as required by Town Ordinance, state and federal law, regulation or other applicable law.
- G. Collection System
  - (1) for business properties means a system which includes the following components: (a) receptacles for individual employees and/or centrally located receptacles expressly for the collection and storage of recyclable materials separated by employees; (b) a contract with a hauler for collection of the recyclable materials and transport to a recycling processor or end-user, or proof of self-haul to a permitted material recycling facility; and (c) educational materials to inform employees of how to properly use collection receptacles; and
  - (2) for multi-family properties means a system including the following components: (a) at-the-unit or centrally located receptacles expressly for the collection and storage of recyclable materials separated by tenants; (b) a contract with a hauler for collection of the recyclable materials and transport to a recycling processor or end-user, or proof of self-haul to a permitted material recycling facility;

and (c) educational materials to inform tenants of how to properly use collection receptacles.

- H. Construction means the building of any facility or structure or any portion thereof including any tenant improvements to a previously unoccupied existing facility or structure. "Construction" does not include a project limited to interior plumbing work, electrical work or mechanical work.
- I. Construction and Demolition Debris or C&D means used or commonly discarded materials removed from premises of a Covered Project during construction, remodeling, repair, demolition, deconstruction or renovation resulting from construction, renovation, remodeling, repair, deconstruction, or demolition operations on or in any pavement, house, commercial building, or other structure, or from landscaping. Such materials include, but are not limited to, dirt, sand, rock, gravel, bricks, plaster, gypsum wallboard, aluminum, glass, asphalt material, plastic pipe, roofing material, carpeting, concrete, wood, masonry, rocks, trees, remnants of new materials, including paper, plastic, carpet scraps, wood scraps, scrap metal, building materials, packaging and rubble resulting from construction, remodeling, renovation, repair and demolition operations on pavements, houses, commercial buildings and other structures
- J. Construction and Demolition Diversion Fee or Diversion Fee means any money order, cash, or certified check submitted to the Town pursuant to this Ordinance.
- K. Conversion Rate means the rate set forth in the tables provided in the County's Construction and Demolition Materials Debris Management Plan (as such may be subsequently amended) for use in estimating the volume or weight of materials identified pursuant to the requirements of the aforesaid Debris Management Plan.
- L. County shall mean the Solid Waste Division personnel who are providing services on behalf of the Town of Fort Myers Beach through the Interlocal Agreement.
- M. Covered Project means a project for which a building, demolition, or other similar permit is required by Town Ordinance or other applicable law, rule or regulation.
- N. Customer means a Business or a Multi-Family Property that has arranged for recycling collection services to be provided by a service provider with or without compensation. Where several businesses share garbage containers and collection service, "Customer" refers only to the entity arranging the collection service for all.
- O. Deconstruction means a process to dismantle or remove useable materials from structures, in a manner which maximizes the recovery of building materials for reuse and recycling and minimizes the amount of waste transported for disposal in landfills and transformation facilities.
- P. Demolition means the destruction, razing, ruining, tearing down or wrecking of any facility, structure, pavement, or building, whether in whole or in part, whether interior or exterior.
- Q. Director means the Director of the Solid Waste Division or as designated in the Interlocal Agreement.

- R. Diversion Requirement means the diversion of at least fifty percent (50%) of the total Construction and Demolition Debris generated by a Covered Project by reuse or recycling, unless the Permittee has been granted an exemption pursuant to this Ordinance. If the Permittee has been granted an exemption, the Diversion Requirement shall be the maximum feasible diversion rate established by the Director for the Project.
- S. Divert or Diversion means activities which reduce or eliminate the amount of C&D Material from disposal in a landfill.
- T. Exempt Project shall have the meaning set forth in elsewhere in this Ordinance.
- U. Franchise Contractor means those firms specifically authorized by a solid waste franchise collection contract with the County to provide solid waste collection services within the Town.
- V. Governmental Property for the purposes of this Ordinance, means property owned by the United States of America or the State of Florida or any of their agencies, a County, the Town, a special district, or an independent statutory district.
- W. Material Recovery Facility (MRF) is any business, organization or facility that receives recyclable materials from residential or business sources and processes those materials by sorting, baling, crushing and/or granulating, for the purpose of marketing such materials.
- X. Multi-Family Property means any multi-family dwelling building or group of buildings that contain(s) five (5) dwelling units or more on a single parcel including apartments, condominiums, mobile home parks, recreational vehicle parks, or similar properties.
- Y. Owner shall mean any persons, corporation, partnership or entity, or its agent (such as a condominium or homeowners association), jointly or severally, having an ownership interest in a multi-family property or business and otherwise responsible for solid waste collection.
- Z. Permittee means any person, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever required to apply for an applicable permit to undertake any Construction, Demolition, or Renovation project within the Town. Permittees must comply with the requirements of this Ordinance.
- AA. Project means any activity for which a permit for a building, demolition, parking area construction or other permit is required. See also "Covered Project".
- BB. Recyclable Material(s) means a material which otherwise would be abandoned or discarded but which can be utilized in a secondary material market. Such materials include, but are not limited to, corrugated cardboard, newspaper, wood, junk mail, paper (all colors), aluminum, steel and tin cans, glass bottles and jars, and #1 - #7 plastic containers.

- CC. Recycling means a series of activities, including collection, separation, and processing, by which products or materials are recovered from or otherwise diverted from the solid waste stream.
- DD. Recycling Program means a recyclable material separation plan and collection system which a business or multi-family property makes a commitment to comply with the Town's recycling requirement, specifying which materials it will recycle and designating a service provider.
- EE. Renovation means any change, addition, or modification to an existing structure that requires a building permit or demolition permit but does not include a project limited to interior plumbing work, electrical work or mechanical work.
- FF. Reuse means further or repeated use of materials.
- GG. Salvage means the controlled removal of Construction or Demolition Debris from a building or Demolition project for the purposes of Recycling, Reuse, or storage for later Recycling or Reuse.
- HH. Self-Haul when used in reference to recyclable materials generated by a business subject to this Ordinance, means the collection and transportation of such material where an owner or employee of the entity hauls the recyclable material to a MRF rather than hiring a service provider to perform this function.
- II. Service Provider means a person, firm or corporation engaged in the removal of Recyclable Material from any location within Lee County and includes Franchise Contractors.
- JJ. Solid Waste means the definition as stated at Section 403.703, Florida Statutes, and Fla. Admin. Code R. 62-701.200 as either may be amended from time to time. Solid waste generally means any garbage, rubbish, industrial waste, horticultural waste, extraordinary waste or other semi-solid material resulting from domestic, commercial, industrial, agricultural, or governmental operations including refuse and bulky waste, but excluding hazardous waste, sludge, septic tank pump age, asphalt, tar, oil and grease, and also excluding any hazardous substances set forth in 40 CFR Part 261.
- KK. Source Separation shall mean a process that separates the Recyclable Material from solid waste into homogeneous, marketable, and separate Recyclable Materials prior to collection for the purpose of Recycling.
- LL. Town Manager means the Town Manager of the Town of Fort Myers Beach, Florida.

## **SECTION 5. BUSINESS RECYCLING REQUIREMENTS**

- A. Program Requirements All Businesses within the Town will establish an on-site recycling program and recycle a minimum of one (1) Recyclable Material that the business generates. This primary Recyclable Material shall be the Recyclable Material that makes up the largest portion of the Business' waste stream. The

business can sell or exchange at fair market value its own Recyclable Materials for Recycling.

1. Each Business shall enter into a written service agreement with a Service Provider. The service agreement must provide at a minimum one (1) collection every two (2) weeks of Recyclable Materials. The on-site Business recycling program shall be initiated within three (3) months of the effective date of this Ordinance.

2. A Service Provider or Business shall be responsible for the collection, intermediate storage or transfer, transportation, and/or sale of Recyclable Materials to a processor, broker, or market engaged in the reuse of materials.

3. All Service Providers who collect recyclable material from businesses in the Town must comply with applicable federal, state, county and Town laws, ordinances, and regulations.

4. All Businesses must maintain a Recycling Program form on-site for review by the Solid Waste Division within thirty (3) days of the effective day of this ordinance or, if the operations are begun subsequent to the effective date of this ordinance, then within fourteen (14) days of beginning operations. Where a Business covers multiple service locations, the Business shall maintain a Recycling Program form for each location. Recycling programs shall be maintained in effect regardless of any change of building ownership or service provider.

5. Recycling collection schedules and pickup locations shall be mutually agreed upon by the business and the Service Provider and shall be indicated in a written service agreement. The Town is not responsible for any problems, unauthorized collections, liabilities, or any other difficulties that arise between the Service Provider and the Business.

6. Each Business shall recycle a minimum of one (1) material listed below or other non-listed materials that are approved by the Director. Materials should be prepared and/or separated in a manner mutually acceptable to the Service Provider and the Business. This paragraph does not limit the recycling of additional materials as desired by the business, nor does it prohibit a business from Self-Hauling material to a Material Recovery Facility, processor, or material broker.

- Fiber Products – which include, at a minimum, mixed office paper (white and colored), newspaper, corrugated cardboard, and paperboard
- Co-mingled containers – which include at a minimum, aluminum cans, tin/steel cans, glass bottles and jars, and #1-#7 plastic containers
- Ferrous metal
- Non-ferrous metal
- Wood

7. The Town reserves the authority to add or delete materials to the above list. Substitutions for items on the list will be considered by the Director on a case by case basis subject.

8 Containers

a. Containers provided by the Service Provider or Business for Recyclable Materials, including compactors, shall be clearly and sufficiently labeled in English (and in other languages if appropriate) and shall indicate the Recyclable Material to be placed in the container, the word "recycling" or "recyclable" or the "chasing arrows" recycling symbol shall be indicated and indicate "No Trash" or other suitable language restricting the use of the container to Recyclables only.

b. Containers used to collect Recyclable Material shall have adequate capacity and durability to function efficiently and meet the spatial constraints of the business. The type of containers used for collection of Recyclable Materials will be established between the Business and the Service Provider.

c. Any recycling containers required for a Recycling program will be provided by the Service Provider or Business.

d. Containers located outdoors shall be covered and otherwise secured to prevent container and material from blowing, leaking or falling out and to protect the materials from vector populations and the elements.

9. Indoor collection/storage areas will be established in accordance with appropriate fire, building and/or safety codes.

10. Exterior Recyclable Materials storage areas will be established in accordance with Solid Waste Division requirements for solid waste enclosures.

11. The Business property owner shall maintain all Recyclable Material storage areas, including the containers, in a clean, sanitary and litter-free manner.

## B. Promotion and Education

1. A Business subject to this ordinance is responsible for notifying and continually educating its employees on recycling practices at the Business through a formal and ongoing education program. Each Business shall distribute to new employees and to all existing employees at least annually, general recycling information and current program recycling guidelines.

2. The Business shall provide recycling service options that enhance convenience for employees/tenants in order to gain and maintain maximum participation in the program, thus reducing the volume of solid waste generated.

3. The Solid Waste Division will provide general promotional material such as posters and introductory letters. If requested the Solid Waste Division will also assist with information for site-specific Recycling programs within the Town.

### C. Recordkeeping

1. All businesses shall maintain records and reports as required herein and promptly respond to periodic requests from the Town for such records and reports that are directly pertinent to its Recycling Program.

2. The Solid Waste Division reserves the right to obtain copies of the service agreement and/or scale receipts, and enter the premises to inspect the recycling program. Information requested by the Solid Waste Division shall be provided or made available to the Solid Waste Division within twenty (20) working days of a written request for any relevant, non-financial information from the Business as may be needed to satisfy the requirements of this Ordinance. If the Solid Waste Division inspects a business pursuant to this Ordinance, Recycling Program information shall be made available during the inspection. Upon inspection of the business premises, the Solid Waste Division may inspect all relevant information related to the Recycling Program as necessary to verify sale or delivery of collected Recyclable Materials. If records are not kept on-site, the business owner will make them available within twenty (20) business days of the Solid Waste Division's written request.

### D. Temporary Exemptions for Recyclable Materials

1. Commercial businesses on minimum refuse service as defined by the Solid Waste Division are exempt from the requirements of this ordinance.

2. Limited exemptions, as set forth below, may be approved by the Director or his/her designee. Applications for an exemption from the requirements of this Ordinance shall be submitted in writing to the Director. An exemption may be allowed where compliance with the Ordinance would result in unnecessary hardship to the Business and the need for an exemption would not be shared generally by other Businesses. All exemption are temporary, for a period not to exceed one (1) year, and shall be considered withdrawn on the first to occur of (a) a change in the condition(s) which prompted the exemption, or (b) the expiration of the time period granted in the exemption. Should an exemption be withdrawn because the time period has expired, an applicant may apply for renewal of the exemption. Applications are evaluated against the following criteria:

a. Incompatibility of compliance with the requirements of this Ordinance and compliance with other Town ordinances or other laws;

b. Unavailability of collectors or acceptors (defined as licensed haulers of Recyclable Materials or intermediate or final processors of Recyclable Materials);

c. Unavailability of on-site space for the separate and temporary storage of one (1) or more of the required recyclable materials;

d. Extreme disparity between the applicant's costs of recycling one (1) or more of the required materials and the costs of disposal of the same material(s);

e. Negligible generation rates of one (1) or more of the required recyclable materials.

f. Other conditions, in the opinion of the Director , that are considered as adequate justification for adaptation consideration.

g. The Director will consider these criteria in evaluating the application and will consider the compliance rate, implementation plans, and recycling programs of similar businesses in the Town. The Director will direct Solid Waste Division staff to make a site visit and prepare a report on the applicant's property.

3. After reviewing the information described in subsection (2) above, the Director may take one (1) of the following actions:

- a. Grant an adaptation that requires the applicant to recycle alternative materials identified by the Director ; or
- b. Grant an adaptation that reduces the number of types of materials required to be recycled; or
- c. Deny the request for an adaptation.

E. *Compliance and Enforcement for Business Recycling Programs*

1. An Advance Disposal Fee (ADF) will be assessed monthly on each commercial location refuse billing statement for non-compliance with this Ordinance. These fees are outlined below. Commencement of billing will occur within thirty (30) days of the effective day of this ordinance or, if operations are begun subsequent to the effective date of this ordinance, then within fourteen (14) days of beginning operations. The solid waste generation rate category is the category that corresponds to the type of business (Florida DOR Classification) as set forth in Lee County Ordinance No. 96-09 (as applicable within the Town pursuant to the Interlocal Agreement) and the applicable waste generation range for such businesses per unit. Upon presentation of the information and materials required, the ADF may be waived for a Business for a period of one year. Continued waiver of this fee is contingent on submittal of an exemption and approval by Solid Waste Division of an updated Recycling Program and appropriate agreements and provisions.

Solid Waste Generation Rate Category	ADF Fee
A, B	\$100
C	\$250
D, E	\$500

2. In evaluating whether a violation of this Ordinance has occurred, Solid Waste Division staff have the right to visit the Business and determine the presence and capacity of recycling containers, the presence and quantities of Recyclable Materials in recycling containers, the presence of signs, flyers, stickers and other

information which promotes recycling, and engage in discussion with employees, tenants and owners, and Service Providers regarding the Business' Recycling Program. Any separation and storage of Recyclable Materials shall be undertaken in a location suitable and adequate for such activity. Separation and storage facilities shall comply with all applicable laws.

3. The owner, unless he or she has otherwise arranged for and received written approval from the Director for more time, will be given twenty (20) business days from the date of the notification to provide the Solid Waste Division with a written explanation of the pertinent events and circumstances relative to the alleged violation.

4. Solid Waste Division staff will be available for assistance in setting up a satisfactory Recycling System and achieving compliance with this Ordinance.

5. Should the owner, after the provided twenty (20) business days, be found to continue to be in violation of this Ordinance, the owner will be assessed the Advance Disposal Fee from the date of the initial violation until such time that the owner can demonstrate, to the satisfaction of the Director that the owner is again in compliance with the Ordinance.

6. Should the owner be found to be in violation of this Ordinance due to a suspension of service due to non-payment of invoices from the service provider, the owner will be assessed \$300 for each violation from the date of the initial violation until such time that the owner can demonstrate, to the satisfaction of the Solid Waste Division staff, that the owner is again in compliance with the Ordinance.

#### F. Enforcement Actions for Business Properties

1. The Solid Waste Division and the Lee County Sheriff's Office have the concurrent authority and jurisdiction to enforce the provisions of this Ordinance. In addition to the procedures and penalties set forth below, the Town also has recourse to any remedies available at law or in equity, including injunctive relief, attorneys fees and costs, and damages.

2. Civil Action: The Division of Solid Waste may take civil action to enforce the provisions of this Ordinance in accordance with the following procedures:

a. (Civil Enforcement Process):

The provisions of this Ordinance are enforceable through the \_\_\_\_\_ process in accordance with the procedures as set forth in Chapter 162, Florida Statutes, the \_\_\_\_\_ Land Development \_\_\_\_\_ as amended from time to time.

b. Citation Process:

The provisions of this Ordinance are enforceable through the citation process in accordance with the requirements as set forth in Chapter 162, Florida Statutes, the Town Land Development Code Section 2-430 and applicable law (each as amended).

3. Criminal Action: The Division of Solid Waste may take criminal action when appropriate to enforce the provisions of this Ordinance in accordance and in conjunction with Florida Statutes.

4. Penalties:

a. Civil: A violation of this Ordinance may subject the property owner to a fine of up to \$500.00 per violation. For purposes of this Ordinance, each day a violation continues to exist constitutes a separate violation.

b. Criminal: A violation of this Ordinance may also constitute a second-degree misdemeanor punishable in accordance with Florida Statutes by:

- (1) A \$500.00 fine,
- (2) Up to ten (10) days imprisonment or community service, or
- (3) Both fine and imprisonment or community service.

**SECTION 4: MULTI-FAMILY RECYCLING REQUIREMENTS**

**A. Program Requirements**

1. All properties in the County identified as Multi-Family shall institute an on-site recycling program, and provide a collection system for collection of mixed paper, office paper, newspaper, paperboard, and corrugated cardboard, glass containers, #1 through #7 plastic containers, metal and aluminum cans, white goods, and electronic devices. Such recycling shall be done in compliance with this Ordinance and other Ordinances as applicable, as may be revised or amended from time to time.

2. All Multi-Family properties must provide a Recycling Program within thirty (30) days of the effective day of this Ordinance or, if operations are begun subsequent to the effective date of this ordinance, then within fourteen (14) days of beginning operations. Where a Multi-Family entity consists of multiple properties the Multi-Family entity shall maintain a Recycling Program for each property.

3. Recycling collection pickup locations shall be mutually agreed upon by the Multi-Family property owner and the Service Provider. The collection schedule shall be at a minimum weekly.

4. Containers:

a. Containers provided by the Service Provider or Multi-Family property for Recyclable Materials, including compactors, shall be clearly and sufficiently labeled in English (and in other languages if appropriate), shall indicate the Material to be placed in the container and the word "recycling" or "recyclable" or the "chasing arrows" recycling symbol shall be indicated and indicate "No Trash" or other suitable language restricting the use of the container to Recyclables only.

b. Containers used to collect Recyclable Material shall have adequate capacity and durability to function efficiently and meet the spatial constraints of the business. The type of containers used for collection of Recyclable Materials will be established between the Business and the Service Provider.

c. Any recycling containers required for a Recycling program will be provided by the Service Provider or Multi-Family property.

d. Containers located outside the Multi-Family properties shall be covered and otherwise secured to prevent container and material from blowing, leaking or falling out and to protect the materials from vector populations and the elements.

e. Indoor collection/storage areas shall be established in accordance with appropriate fire, building and/or safety codes.

f. Exterior Recyclable Materials storage areas shall be established in accordance with Solid Waste Division requirements for solid waste enclosures.

g. The Multi-Family property shall maintain all Recyclable Material storage areas, including the containers, in a clean, sanitary and litter-free manner.

#### B. Promotion and Education

1. A Multi-Family property is responsible for notifying and continually educating its tenants on recycling practices at the Multi-Family property through a formal and ongoing education program. Each Multi-Family property shall distribute to new tenants and to all existing tenants at least annually, general recycling program information and current program recycling guidelines applicable to the Multi-Family property.

2. The Solid Waste Division will provide general promotional material such as posters and introductory letters. If requested the Solid Waste Division will also assist with information for site-specific recycling programs.

#### C. Temporary Exemptions for Materials

1. Limited exemptions, as set forth below, may be approved by the Director . Applications for an exemption from the requirements of this Ordinance shall be submitted to the Director . An exemption may be allowed where compliance with the Ordinance would result in unnecessary hardship to the Multi-Family property and the need for an exemption would not be shared generally by other Multi-Family properties. All exemptions are temporary, for a period not to exceed one (1) year, and shall be considered withdrawn on the first to occur of (a) a change in the condition(s) which prompted the exemption, or (b) the expiration of the time period granted in the exemption. Should an exemption be withdrawn because the time period has expired, an applicant may apply for renewal of the exemption. Application forms are available from the Solid Waste Division. Applications are evaluated against the following criteria:

a. Incompatibility of compliance with the requirements of this Ordinance and compliance with other Lee County ordinances or other laws;

b. Unavailability of on-site space for the separate and temporary storage of one (1) or more of the required recyclable materials; or

c. Such other criteria as the Director determines to be appropriate.

2. The Director will consider the above-mentioned criteria in evaluating the application and will consider the compliance rate, implementation plans, and recycling programs of similar multi-family businesses in the Town. The Director will direct Solid Waste Division staff to make a site visit and prepare a report on the Multi-Family property.

3. After reviewing the information described in subsection (1) above, the Director may take one (1) of the following actions:

- a. Grant an adaptation that requires the applicant to recycle alternative materials identified by the Director ;
- b. Grant an adaptation that reduces the number of types of materials required to be recycled; or
- c. Deny the request for an adaptation.

#### D. Recordkeeping

1. All Multi-Family properties shall maintain records and reports as required herein and promptly respond to periodic requests for such records and reports that are directly pertinent to the recycling guidelines.

2. The Solid Waste Division reserves the right to obtain copies of the service agreement and/or scale receipts, and enter the premises to inspect the recycling program. Information requested by the Solid Waste Division shall be provided or made available to the Solid Waste Division within twenty (20) business days of a written request for any relevant, non-financial information from the Multi-Family property as may be needed to satisfy the requirements of the Ordinance. If the Solid Waste Division inspects a Multi-Family property as provided in the Ordinance, Recycling program records shall be made available during the inspection. Upon inspection of the Multi-Family property, the Solid Waste Division may request other relevant information related to the Recycling Program, including receipts or invoices necessary to verify sale or delivery of collected Recyclable Materials. If records are not kept on-site, the Multi-Family property will make them available within twenty (20) business days of the written request.

#### E. Compliance & Enforcement

1. In evaluating whether a violation of Town Ordinance has occurred, Solid Waste Division staff have the right to visit the premises and determine the presence and capacity of recycling containers, the presence and quantities of Recyclable Materials in recycling containers, the presence of signs, flyers, stickers and other information which promotes recycling, and engage in discussion with employees, tenants and owners, and Contractor regarding their recycling program. Any processing and storage of Recyclable Materials shall be undertaken in a location suitable and adequate for such activity. Processing and storage facilities shall comply with all applicable zoning ordinances and any other applicable local and state statutes, ordinances and regulations.

2. The Solid Waste Division may initiate an enforcement action based on its own observations or a complaint from others for violation of this Ordinance. The

Solid Waste Division will deliver notice of the violation to the property owner describing the nature of the violation and providing a point of contact with Solid Waste Division staff to remedy the problem.

3. The owner, unless he has otherwise arranged for and received approval from the Solid Waste Services Director for more time, will be given twenty (20) business days from the date of the notification to provide the Solid Waste Division with a written explanation of the pertinent events and circumstances relative to the alleged violation.

4. Solid Waste Division staff will be available for assistance in setting up a satisfactory recycling system and achieving compliance with this ordinance.

5. Should the owner, after the provided twenty (20) business days, be found to continue to be in violation of this Ordinance, the owner will be assessed \$300 for each violation from the date of the initial violation until such time that the owner can demonstrate, to the satisfaction of the Solid Waste Division staff that the owner is again in compliance with the Ordinance. This fine shall be reviewable through the \_\_\_\_\_ process.

#### F. Enforcement Actions for Multi-Family Properties

1. The Solid Waste Division and the Lee County Sheriff's Office have the concurrent authority and jurisdiction to enforce the provisions of this Ordinance. In addition to the procedures and penalties set forth below, the Town also has recourse to any remedies available at law or in equity, including injunctive relief, attorneys fees and costs, and damages.

2. Civil Action: The Solid Waste Division may take civil action to enforce the provisions of this Ordinance in accordance with the following procedures:

a. (CIVIL HEARING PROCESS)

The provisions of this Ordinance are enforceable through the \_\_\_\_\_ process in accordance with the procedures as set forth in Chapter \_\_\_\_\_, Florida Statutes, the \_\_\_\_\_ Land Development Code \_\_\_\_\_, and the \_\_\_\_\_ as amended from time to time.

b. Citation Process:

The provisions of this Ordinance are enforceable through the citation process in accordance with the requirements as set forth in Chapter 162, Florida Statutes, the Town Land Development Code Section 2-430 applicable law (each as amended).

3. Criminal Action: The Division of Solid Waste may take criminal action when appropriate to enforce the provisions of this Ordinance in accordance and in conjunction with Florida Statutes.

4. Penalties:

a. Civil: A violation of this Ordinance may subject the property owner to a fine of up to \$500.00 per violation. For purposes of this Ordinance, each day a violation continues to exist constitutes a separate violation.

b. Criminal: A violation of this Ordinance may also constitute a second-degree misdemeanor punishable in accordance with Florida Statutes by:

- (1) A \$500.00 fine,
- (2) Up to ten (10) days imprisonment or community service, or
- (3) Both fine and imprisonment or community service.

**SECTION 5: CONSTRUCTION AND DEMOLITION DEBRIS RECYCLING REQUIREMENTS**

**A. Covered Projects**

1. Effective with the first day of the sixth month following the effective date of this Ordinance, and except as otherwise provided in this Ordinance, each Permittee's Covered Project for which a permit application was submitted subsequent to the effective date of this ordinance shall be required to comply with the provisions of the County's Construction and Demolition Materials Management Plan ("C&DMMP"), as described in this Ordinance, unless the project is exempted, as described below.

2. No Diversion Fee shall be required for any of the following:

- a. Work for which a building permit is not required by applicable Ordinances;
- b. Any new residential construction project less than \$90,000 dollars;
- c. Any new commercial construction project less than \$90,000;
- d. Residential alterations less than \$10,000;
- e. Commercial alterations less than \$10,000;
- f. Projects for which only a plumbing permit, electrical permit or mechanical permit is required;
- g. Roofing projects that do not include removal of the existing roof;
- h. Demolition or Construction required to protect public health or safety in an emergency, as may be amended from time to time.

**B. Construction and Demolition Materials Management Plans**

1. The Solid Waste Division will prepare a standard Construction and Demolition Materials Management Plan ("C&DMMP") for the use of Permittees during the course of the permit period. The C&DMMP will require that the Permittee perform all of the following: (1) estimate the volume or weight of Project C&D Materials, by materials type, to be generated; (2) estimate the maximum volume or weight of C&D Materials that it is feasible to divert, considering cost, energy consumption and delays, via reuse or recycling; (3) designate the vendors or facilities that the Permittee proposes to use to collect, divert, market, reuse and/or receive the C&D Materials; and (4)

estimate the volume or weight of residual C&D Materials that would be transported for disposal.

2. In estimating the volume or weight of materials identified in the C&DMMP, the Applicant shall use the standardized Conversion Rates approved by the Solid Waste Division for this purpose.

3. Permittees for building or demolition permits involving the removal of all or part of an existing structure shall consider Deconstruction, to the maximum extent feasible, and shall consider making the materials generated therefore available for Salvage prior to being transported for disposal in a landfill or transformation facility.

#### C. Diversion of waste

1. For the purposes of this Ordinance, diversion may be accomplished using any of the following methods:

a. Use of new construction methods, as approved by the Director , that reduce the amount of waste generated.

b. On-site reuse of the waste.

c. Delivery of the waste from the site to a Solid Waste Division Approved Recycling Facility as described in this Ordinance.

d. Other methods approved by the Director .

2. All of the waste diversion methods which may qualify for a waiver of the Diversion Fee are subject to restrictions and documentation requirements as set forth by the Director .

#### D. Approved Recycling Facilities

1. The Director shall issue approval only if the owner or operator of the facility submits documentation satisfactory to the Director :

a. That the facility has obtained all applicable Federal, State, and local permits and is in full compliance with all applicable regulations; and

b. The percentage of incoming waste from construction, demolition, and alteration activities that is diverted from landfill disposal meets the required minimum percentage set forth in this Ordinance.

c. The Director will indicate whether a facility approval allows for commingled or source separated materials and which materials are included with the approval.

2. The Solid Waste Division shall make available a current list of Approved Recycling Facilities that may change from time to time.

E. Construction and Demolition Materials Management Plan Diversion Fee

1. Each Permittee for a Covered Project shall be subject to a Diversion Fee per the conditions of Section F below. The amount of the Diversion Fee shall be calculated as indicated below:

- a. Roofing - \$100
- b. Residential home - \$300
- c. Commercial less than 10,000 square feet (sf) - \$500
- d. Commercial between 10,000 sf and 100,000 sf - \$1,000
- e. Commercial greater than 100,000 sf - \$5,000
- f. Residential alterations - \$100
- g. Commercial alterations - \$300
- h. Demolition value less than or equal to \$10,000 - \$300
- i. Demolition value greater than \$10,000 - \$750

F. Assessment of Diversion Fee

1. Prior to issuance of a Certificate of Occupancy or a Certificate of Compliance for any Covered Project, as applicable, the Permittee must submit to the Director documentation that the Permittee has satisfied the Diversion Requirement for the project. This documentation shall include all of the following:

- a. Receipts and gate tickets from the vendor(s) or facility(s) that collected or received C&D Debris from the Covered Project showing the actual weight or volume of that material;
- b. Any additional information the Permittee believes is relevant in determining its efforts to comply with this Ordinance.
- c. A complete C&DMMP applicable to the covered project.
- d. A certified statement using the Solid Waste Division approved form attesting to the validity and accuracy of the supporting information and that the Covered Project was performed in compliance with the requirements of this Ordinance.

If the Permittee fails to submit the required documentation and certification, the Permittee shall submit a Diversion Fee as defined along with all other applicable fees prior to the issuance of the Certificate of Occupancy or Certificate of Compliance.

2. Applicants shall make reasonable efforts to ensure that all C&D Materials diverted, or delivered to disposal facilities for disposal, are measured and recorded using the most accurate method of measurement reasonably available. To the extent practical,

all C&D debris shall be weighed on scales. Such scales shall be in compliance with all regulatory requirements for accuracy and maintenance. For C&D debris for which weighing is not practical due to size or other considerations, a volumetric measurement may be used. For conversion of volumetric measurements to weight, the Applicant shall use the standardized conversion rates approved by the Director for this purpose. Documentation of the foregoing shall consist of photocopies of receipts, weight tickets, gate tickets, and other records from recycling facilities, deconstruction contractors, solid waste enterprises and disposal facilities.

3. The Director shall review the information submitted and determine whether the Permittee has complied with the requirements of this Ordinance for material diversion, as follows:

a. If the Director determines that the documentation and certification provided by the Permittee does not fully comply with the requirements of this Ordinance, the Permittee will be found to be in violation of this Ordinance and issued a citation or the Solid Waste Division may take other actions as set forth in Section 5.H. of this Ordinance.

b. The Director may authorize the refund of any Diversion Fee which was erroneously paid or collected.

c. The Director may authorize the refund of a Diversion Fee if the building or demolition permit application is withdrawn or cancelled before any work has begun.

d. Should the owner be found to be in violation of this Ordinance, the Permittee will be assessed three times (3X) the Diversion Fee as defined for the Covered Project.

4. Permittee must submit a copy of the Director's determination, and all documents submitted by Permittee to Director preceding such determination, as set forth in subparagraph 3 above to the Town Manager or designee prior to issuance of the Certificate of Compliance or Certificate of Occupancy.

#### G. Exemptions from Diversion Requirements

1. If a Permittee for a Covered Project experiences or anticipates unique circumstances that the Permittee believes make it not feasible to comply with the Diversion Requirement, the Permittee may apply in writing for an exemption with the Solid Waste Division prior to submission of the required documentation and certification. The Permittee shall indicate to the Solid Waste Division the maximum rate of diversion the Permittee believes is feasible for each material and the specific circumstances that the Permittee believes make it not feasible to comply with the diversion requirement.

2. The Director shall review the information supplied by the Permittee and may meet with the Permittee to discuss possible ways of meeting the diversion requirement. Based on the information supplied by the Permittee, the Director shall determine whether it is possible for the Permittee to meet the diversion requirement.

3. If the Director determines that it is not feasible for the Permittee to meet the diversion requirement, the Director shall determine the maximum feasible diversion rate for each material. This determination will be used for comparison purposes upon request for Certificate of Occupancy or for refund of the Diversion Fee, as applicable.

4. If the Director determines that it is possible for the Permittee to meet the Diversion Requirement, the Director shall so inform and give reason(s) to the Permittee.

#### H. Enforcement Actions for Covered Projects

1. The Solid Waste Division and the Lee County Sheriff's Office have the concurrent authority and jurisdiction to enforce the provisions of this Ordinance. In addition to the procedures and penalties set forth below, the Town also has recourse to any remedies available at law or in equity, including injunctive relief, attorneys fees and costs, and damages.

2. Civil Action: The Solid Waste Division may take civil action to enforce the provisions of this Ordinance in accordance with the following procedures:

a. (Civil Enforcement Process)

The provisions of this Ordinance are enforceable through the \_\_\_\_\_ process in accordance with the procedures as set forth in Chapter 162, Florida Statutes, the \_\_\_\_\_ Land Development Code \_\_\_\_\_, and the \_\_\_\_\_ as amended from time to time.

b. Citation Process:

The provisions of this Ordinance are enforceable through the citation process in accordance with the requirements as set forth in Chapter 162, Florida Statutes, the Town Land Development Code Section 2-430 applicable law (each as amended).

3. Criminal Action: The Division of Solid Waste may take criminal action when appropriate to enforce the provisions of this Ordinance in accordance and in conjunction with Florida Statutes.

4. Penalties:

a. Civil: A violation of this Ordinance may subject the property owner to a fine of up to \$500.00 per violation. For purposes of this Ordinance, each day a violation continues to exist constitutes a separate violation.

b. Criminal: A violation of this Ordinance may also constitute a second-degree misdemeanor punishable in accordance with Florida Statutes by:

- (1) A \$500.00 fine,
- (2) Up to ten (10) days imprisonment or community service, or
- (3) Both fine and imprisonment or community service.

#### SECTION 6: PROCEDURE FOR ADOPTING CHANGES TO FEES AND PENALTIES

Any future changes or adjustments to Advance Disposal Fees, Diversion Fees, penalties or other fees or charges related to this Ordinance will be made by Town Resolution adopted by a majority of the Town Council at a regular meeting.

**SECTION 7: CONFLICTS OF LAWS**

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted Lee County Ordinance or Florida Statute, the more restrictive shall apply.

**SECTION 8: SEVERABILITY**

The provisions of this Ordinance are severable and it is the intention to confer upon the whole or any part of the powers herein provided for. If any of the provisions of this Ordinance shall be held unconstitutional by any Court or competent jurisdiction, the decision of such Court shall not affect or impair any remaining provisions of this Ordinance. It is hereby declared to be the legislative intent that this Ordinance would have been adopted had such unconstitutional provision not been included therein.

**SECTION 9: EFFECTIVE DATE**

This Ordinance shall be effective thirty (30) days from the date of its adoption by the Town Council of the Town of Fort Myers Beach, Florida.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member \_\_\_\_\_ and seconded by Council Member \_\_\_\_\_ and, upon being put to a vote, the result was as follows:

Dennis C. Boback, Mayor  
Herb Acken,  
William Shenko, Jr.

Larry Kiker, Vice Mayor  
Charles Meador, Jr.

DULY PASSED AND ENACTED this \_\_\_\_ day of \_\_\_\_\_, 2008.

ATTEST:

TOWN OF FORT MYERS BEACH

By: \_\_\_\_\_  
Michelle D. Mayher, Town Clerk

By: \_\_\_\_\_  
Dennis C. Boback, Mayor

Approved as to legal sufficiency by:

\_\_\_\_\_  
Anne Dalton, Town Attorney

- Dan Santomero stated the need for 15 mph speed limit as the streets are not safe.
- Gary Young spoke that the issue is for safety.

**Closed Public Comment**

Public Works Director, Jack Green explained that the 15 mph speed limit signs and the stop signs were installed as a trial for effect, and removed the 30 mph signs.

**MOTION:** Councilmember Acken moved to send both versions of ordinance 08-01 to public hearing, with the modification to allow 20-25 mph speed limit applied to all side streets. Councilmember Meador seconded the motion.

**MOTION:** Councilmember Shenko made a secondary motion that if Council action is necessary, to consider a four-way stop sign at Buccaneer and Lagoon. Vice Mayor Kiker seconded the motion.

Attorney Dalton inquired whether the motion for the 4-way stop sign at Buccaneer and Lagoon was to be part of this ordinance, or if it was something for Public Works to do. Councilmember Shenko responded that his intention was for it to be whatever is necessary to get it done. If the placement of a stop sign does not require an ordinance, then he would like to see it brought before town council for a vote, whether it be this evening, or when the speed limit ordinance is heard. He would like it included as an agenda item at the hearing, and with that understanding, withdrew his secondary motion. Vice Mayor removed his second.

**VOTE:** Motion passed 5-0.

Attorney Dalton indicated that this item will be heard January 23, 2008 at 6:30 PM.

**B. Introduction of Ordinance 08-02, Mandatory Recycle – Commercial and Multi-family**

Attorney Dalton read the title:

**ORDINANCE 08-02**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH REGARDING MANDATORY RECYCLING OF COMMERCIAL AND MULTI-FAMILY RESIDENTIAL SOLID WASTE AND CONSTRUCTION AND DEMOLITION DEBRIS; PROVIDING FOR PURPOSE AND SCOPE OF ORDINANCE; PROVIDING FOR DEFINITIONS; PROVIDING FOR BUSINESS RECYCLING REQUIREMENTS; PROVIDING FOR MULTI-FAMILY RECYCLING REQUIREMENTS; PROVIDING FOR CONSTRUCTION AND DEMOLITION DEBRIS RECYCLING REQUIREMENTS; PROVIDING FOR CHANGES TO FEES AND PENALTIES; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, AND EFFECTIVE DATE.**

**Opened Public Comment**

None

**Closed Public Comment**

**MOTION:** Councilmember Acken moved to institute the recycling program as outlined in the ordinance, however that it be voluntary for the first twelve months.

Attorney Dalton indicated that this is to move forward an ordinance to a hearing.

Councilmember Acken withdrew his motion.

Councilmember Meador inquired as to who brought this forward. Attorney Dalton responded that this ordinance was brought forward from Lee County, that the interlocal agreement between the Town and Lee County states that the Town's municipal solid waste to be directed to the County's solid waste disposal. The County has gone to mandatory recycling, and under the interlocal, the Town has agreed to move to mandatory recycling.

Councilmember Meador filed a conflict of interest, as this ordinance will inure to his specific loss as to the additional cost associated with compliance, and filed form 8B with the clerk.

**MOTION:** Councilmember Shenko moved to have the draft of the ordinance be investigated by town staff with the County to be less onerous on businesses and condos and to get a handle on the cost of enforcement, and to bring this item back for discussion. Councilmember Acken seconded the motion.

**VOTE:** Motion passed 4-0, with Councilmember Meador abstaining.

Recess: 8:07 PM

Reconvene 8:24 PM

C. First Public Hearing Ordinance 07-09, Amendment to the LDC,  
Membership Appointment to the LPA

Attorney Dalton read the title:

**ORDINANCE 07-09**

**AN ORDINANCE AMENDING CHAPTER 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY, AMENDMENTS TO SECTIONS 34.113 AND 34.114, DIVISION 3 LOCAL PLANNING AGENCY, ARTICLE II ZONING PROCEDURES, WHICH ARE TITLED, RESPECTIVELY, "COMPOSITION, APPOINTMENT AND COMPENSATION OF MEMBERS", AND "MEMBERS TERMS AND VACANCIES," PROVIDING FOR CHANGE IN DATE OF APPLICATION FOR LPA MEMBERSHIP, CHANGE IN THE DATE OF APPOINTMENT TO THE LPA AND CHANGE IN THE TERMS OF LPA MEMBERS; SEVERABILITY; EFFECT OF ONRDINANCE AND EFFECTIVE DATE.**

**Opened Public Comment**

# Lee County Contract w/ Veolia

enclosures shall be opened and closed by Contractor personnel at no additional charge. All Containers and Compactors provided by the Contractor shall be in good condition, painted and neatly labeled with the Contractor's name, phone number and size of Container.

The Contractor shall have a written procedure, approved by the contract administrator, for dealing with blocked containers.

The Contractor shall not charge the customer any additional fees for placing an empty, Compactor or open type roll-off Container in the same spot from which a full Container is to be collected. The Contractor shall not charge a customer an additional fee for "round trip" service whereby a roll-off Compactor is removed from the customer's property, emptied at the disposal facility, and returned to the customer's property.

## C. Commercial Vegetative Waste Collection Service

The Contractor shall provide commercial Vegetative Waste Collection services to all commercial entities desiring this service. Collection of Vegetative Waste from commercial entities is optional and shall be established based on the special needs of the commercial customers. Collection of Vegetative Waste from commercial customers shall not be exclusive to the Contractor.

## 5. D. Business and Institution Recycling Collection Service.

- Begin
1. **General Conditions.** The Contractor shall provide Commercial Recycling Collection Service to all commercial Customers requesting such service for service fees as shown in Exhibit II. This service shall be a minimum of once every week or every seven (7) days, unless otherwise specified by the Department, on scheduled route basis. All containers required for these collections shall be provided and maintained by the Contractor. Ninety gallon Recycle Containers are to be a different color to help distinguish from solid waste containers. The Contractor shall provide Commercial Recycling Collection Services for all Recyclable Materials that are accepted and processed at the Lee County Recycling Facility. A "two-stream" collection system will be encouraged by the County.

This Agreement does not exclude other private enterprises from conducting commercial recycling collection service in the service area. The Contractor shall not interfere with other private commercial recycling haulers providing recycling services to customers in the service area.

Containers used by the Contractor for commercial business recycling shall be clearly designated and labeled separately from equipment used for

commercial Solid Waste Collections.

Strike 1st sentence.  
Replace with new text #1

~~Collection of Recyclables from businesses and institutions is an option of the customer and should be established based on the needs of the commercial customer.~~ Within thirty (30) days of establishing a new commercial recycling account, the Contractor will review the Solid Waste Container size and service needed by the Recycling customer. The Department will assist the Contractor and customers in determining the optimum Recycling methods.

(next page)

This Agreement does not require the Contractor to deliver recyclables collected from businesses or institutions to the County's Material Recycling Facility (MRF). This Agreement does require the Contractor to provide Commercial Recycling Collection Service to businesses and institutions. However, if the Contractor elects to collect and/or mix recyclables from businesses and/or institutions with multi-family or residential curbside recyclables, the Contractor shall deliver the recyclables to the Lee County Materials Recycling Facility. This collections service shall include the collection of all of the same types of recyclables that the County accepts at the County's MRF.

- 2. **Ownership.** Notwithstanding any other provisions of this Agreement, a commercial generator of Recyclable Materials retains ownership of those materials until he or she donates or sells, or contracts for the donation or sale of those materials to another person or entity. Nothing in this Agreement shall prevent a person or entity engaged in the business of Recycling, whether for profit or nonprofit, from accepting and transporting commercially generated, source separated Recyclable Materials from such commercial generator. Provided however, that such activities are subject to applicable state and local public health and safety laws, and provided that the transporter must report such information to the County as may be necessary for the documentation of state mandated recycling or reduction goals.

- 3. **Goals.** It is the responsibility of the Contractor to assist the County in reaching a Solid Waste reduction goal through commercial Recycling in the service area. By October 1, 2005, 60% of the businesses in the service area should be participating in commercial Recycling through the Contractor or other approved methods. By September 30, 2006, 70% of the businesses in the service area should be participating. This Recycling rate should be sustained. Fulfillment of this goal will be evaluated by the Department through verifiable reports provided by the Contractor.

- 4. **Reports.** The Contractor shall deliver semi-annual reports to the Department identifying the number of customers, location, types and

Strike this paragraph.  
Replace with New text #2  
(next page)

# Change Order - Mandatory Recycling - for unincorporated Lee County

"Exhibit A"

September 1, 2008

Change Order #2, Contract #3147

Amendment to the Service Agreement

For

Solid Waste and Recycling Collection Franchise Services

## Section 5.A.1, 5<sup>th</sup> paragraph

Add the following sentence after the 3<sup>rd</sup> sentence:

"The Contractor shall provide a monthly report indicating names and addresses of all multifamily entities that do not have a properly executed service agreement as required by County Ordinance 07-25, the Mandatory Business Recycling Ordinance, or have been refused service due to multifamily property non-payment for collection services."

New text

## Section 5.D.1, 4<sup>th</sup> paragraph

# 1

Delete the 1<sup>st</sup> sentence and replace with the following:

"County Ordinance 07-25, the Mandatory Business Recycling Ordinance, requires businesses and institutions to provide a system for the collection of Recyclables. Selection of a Recyclable collection service provider is at the option of the customer. Should the customer select the Contractor for this service, service should be established based on the needs of the commercial customer and the requirements of the Mandatory Business Recycling Ordinance."

#

## Section 5.D.3

Delete this paragraph and replace with the following:

**Goals.** It is the responsibility of the Contractor to reasonably assist the County in promoting and facilitating the provisions of County Ordinance 07-25, the Mandatory Business Recycling Ordinance.

## Section 5.D.5

Add the following after this section:

"6. **Advance Disposal Fees (ADF).** The Contract Administrator will routinely notify the Contractor regarding businesses or institutions that are not in compliance with the Mandatory Business Recycling Ordinance. The identified non-compliant businesses or institutions will be invoiced monthly by the Contractor for the applicable ADF as defined and established by County Ordinance 07-25. The Contractor will discontinue invoicing a customer's ADF when it becomes known to the Contractor that a customer is in compliance with County Ordinance 07-25."

New text

# 2

LEE COUNTY ORDINANCE NO. 07-25

AN ORDINANCE RELATING TO MANDATORY RECYCLING OF COMMERCIAL AND MULTI-FAMILY RESIDENTIAL SOLID WASTE, AND CONSTRUCTION AND DEMOLITION DEBRIS; PROVIDING FOR PURPOSE AND SCOPE OF ORDINANCE; PROVIDING FOR DEFINITIONS; PROVIDING FOR BUSINESS RECYCLING REQUIREMENTS; PROVIDING FOR MULTI-FAMILY RECYCLING REQUIREMENTS; PROVIDING FOR CONSTRUCTION AND DEMOLITION DEBRIS RECYCLING REQUIREMENTS; PROVIDING FOR CHANGES TO FEES AND PENALTIES; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS, AND EFFECTIVE DATE.

**WHEREAS**, the Board of County Commissioners of Lee County is the governing body in and for Lee County, Florida; and

**WHEREAS**, the Board of County Commissioners of Lee County, Florida is authorized pursuant to Chapter 125, Florida Statutes, to enact Ordinances necessary in the exercise of its powers; and

**WHEREAS**, Lee County is responsible pursuant to Chapter 403, Florida Statutes, for the proper disposal of all solid waste generated in the County; and

**WHEREAS**, collection of recyclables is beneficial to the environment through the reuse and/or recycling of recovered materials; and

**WHEREAS**, Lee County finds that mandatory recycling of commercial and multi-family residential solid waste, and construction and demolition debris will extend the life of County operated landfills and waste-to-energy facilities.

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, that:**

**SECTION 1: PURPOSE AND SCOPE OF ORDINANCE**

- A. The purpose of this Ordinance is to establish mandatory recycling to ensure that recyclable materials generated and accumulated by multi-family properties, commercial establishments, and construction and demolition activities be source separated and collected from the solid waste so that such recyclable materials are not deposited at a landfill, but are processed and reused.
  
- B. Lee County requires that all businesses and multi-family properties in unincorporated Lee County must provide sufficient on-site recycling services. Under this requirement, business properties must continue to use the designated franchise hauler for refuse collection for their service area and shall choose a service provider and negotiate prices for recycling services. Multi-family properties shall utilize the designated franchise hauler for collection of recycling materials required under this Ordinance. The Recycling guidelines contained within this document are intended to articulate the standards and expectations for commercial and multi-family recyclables collection. Commercial businesses on minimum refuse service as defined by the Solid Waste Division are exempt from the requirements of this Ordinance. Construction and demolition activities may select any service provider and negotiate prices for recycling services.

and grease, and also excluding any hazardous substances set forth in 40 CFR Part 261.

- KK. **Source Separation** shall mean a process that separates the Recyclable Material from solid waste into homogeneous, marketable, and separate Recyclable Materials prior to collection for the purpose of Recycling.

**SECTION 3: BUSINESS RECYCLING REQUIREMENTS**

A. Program Requirements

All Businesses within unincorporated areas of Lee County shall establish an on-site recycling program and recycle a minimum of one (1) Recyclable Material that the business generates. This primary Recyclable Material shall be the Recyclable Material that makes up the largest portion of the Business' waste stream. The business can sell or exchange at fair market value its own Recyclable Materials for Recycling.

1. Each Business shall enter into a written service agreement, with a Service Provider. The service agreement must provide at a minimum one (1) collection every two (2) weeks of Recyclable Materials. The on-site Business recycling program shall be initiated within three (3) months of the effective date of this Ordinance.
2. A Service Provider or Business shall be responsible for the collection, intermediate storage or transfer, transportation, and/or sale of Recyclable Materials to a processor, broker, or market engaged in the reuse of materials.

3. All Service Providers who collect recyclable material from businesses in unincorporated Lee County must comply with applicable federal, state, and county laws, and regulations.
4. All Businesses must maintain a Recycling Program form on-site for review by the County effective January 1, 2008 or within fourteen (14) days of beginning operations after the effective date of this Ordinance. Where a Business covers multiple service locations, the Business shall maintain a Recycling Program form for each location. Recycling programs shall be maintained in effect regardless of any change of building ownership or service provider.
5. Recycling collection schedules and pickup locations shall be mutually agreed upon by the business and the Service Provider and shall be indicated in a written service agreement. The County is not responsible for any problems, unauthorized collections, liabilities, or any other difficulties that arise between the Service Provider and the Business except when the service provider is the County's Franchise Contractor performing in their service area.
6. Each Business shall recycle a minimum of one (1) material listed below or other non-listed materials that are approved by the Director. Materials should be prepared and/or separated in a manner mutually acceptable to the Service Provider and the Business. This paragraph does not limit the recycling of additional materials as desired by the business, nor does it prohibit a

business from Self-Hauling material to a Material Recovery Facility, processor, or material broker.

- Fiber Products – which include, at a minimum, mixed office paper (white and colored), newspaper, corrugated cardboard, and paperboard
- Co-mingled containers – which include at a minimum, aluminum cans, tin/steel cans, glass bottles and jars, and #1-#7 plastic containers
- Ferrous metal
- Non-ferrous metal
- Wood

7. The County reserves the authority to add or delete materials to the above list. Substitutions for items on the list will be considered by the Solid Waste Division Director on a case by case basis subject.

#### 8 Containers

- a. Containers provided by the Service Provider or Business for Recyclable Materials, including compactors, shall be clearly and sufficiently labeled in English (and in other languages if appropriate) and shall indicate the Recyclable Material to be placed in the container, the word “recycling” or “recyclable” or the “chasing arrows” recycling symbol shall be indicated and indicate “No Trash” or other suitable language restricting the use of the container to Recyclables only..

- b. Containers used to collect Recyclable Material shall have adequate capacity and durability to function efficiently and meet the spatial constraints of the business. The type of containers used for collection of Recyclable Materials will be established between the Business and the Service Provider.
  - c. Any recycling containers required for a Recycling program will be provided by the Service Provider or Business.
  - d. Containers located outdoors shall be covered and otherwise secured to prevent container and material from blowing, leaking or falling out and to protect the materials from vector populations and the elements.
- 9. Indoor collection/storage areas shall be established in accordance with appropriate fire, building and/or safety codes.
  - 10. Exterior Recyclable Materials storage areas shall be established in accordance with County requirements for solid waste enclosures.
  - 11. The Business property owner shall maintain all Recyclable Material storage areas, including the containers, in a clean, sanitary and litter-free manner.

**B. Promotion and Education**

- 1. A Business subject to this ordinance is responsible for notifying and continually educating its employees on recycling practices at the Business through a formal and ongoing education program. Each Business shall distribute to new employees and to all existing

employees at least annually, general recycling information and current program recycling guidelines.

2. The Business shall provide recycling service options that enhance convenience for employees/tenants in order to gain and maintain maximum participation in the program, thus reducing the volume of solid waste generated.
3. The County will provide general promotional material such as posters and introductory letters. If requested the County will also assist with information for site-specific Recycling programs.

C. Recordkeeping

1. All businesses shall maintain records and reports as required herein and promptly respond to periodic requests from the Solid Waste Division for such records and reports that are directly pertinent to its Recycling Program.
2. The County reserves the right to obtain copies of the service agreement and/or scale receipts, and enter the premises to inspect the recycling program. Information requested by the County shall be provided or made available to the County within twenty (20) working days of a written request for any relevant, non-financial information from the Business as may be needed to satisfy the requirements of this Ordinance. If the County inspects a business pursuant to this Ordinance, Recycling Program information shall be made available during the inspection. Upon inspection of the

business premises, the County may inspect all relevant information related to the Recycling Program as necessary to verify sale or delivery of collected Recyclable Materials. If records are not kept on-site, the business owner will make them available within twenty (20) business days of the County's written request.

D. Temporary Exemptions for Recyclable Materials

1. Commercial businesses on minimum refuse service as defined by the Solid Waste Division are exempt from the requirements of this ordinance.
2. Limited exemptions, as set forth below, may be approved by the Director or his/her designee. Applications for an exemption from the requirements of this Ordinance shall be submitted in writing to the Director. An exemption may be allowed where compliance with the Ordinance would result in unnecessary hardship to the Business and the need for an exemption would not be shared generally by other Businesses. All exemptions are to be construed as temporary, for a period not to exceed one (1) year, and shall be considered withdrawn on the first to occur of (a) a change in the condition(s) which prompted the exemption, or (b) the expiration of the time period granted in the exemption. Should an exemption be withdrawn because the time period has expired, an applicant may apply for renewal of the exemption. Applications are evaluated against the following criteria:

- a. Incompatibility of compliance with the requirements of this Ordinance and compliance with other Lee County ordinances or other laws;
- b. Unavailability of collectors or acceptors (defined as licensed haulers of Recyclable Materials or intermediate or final processors of Recyclable Materials);
- c. Unavailability of on-site space for the separate and temporary storage of one (1) or more of the required recyclable materials;
- d. Extreme disparity between the applicant's costs of recycling one (1) or more of the required materials and the costs of disposal of the same material(s);
- e. Negligible generation rates of one (1) or more of the required recyclable materials.
- f. Other conditions, in the opinion of the Director, that are considered as adequate justification for adaptation consideration.
- g. The Director will consider these criteria in evaluating the application and will consider the compliance rate, implementation plans, and recycling programs of similar businesses in Lee County. The Director will direct solid waste division staff to make a site visit and prepare a report on the applicant's property.

2. After reviewing the information described in subsection (1) above, the Director may take one (1) of the following actions:

- a. Grant an adaptation that requires the applicant to recycle alternative materials identified by the Director;
- b. Grant an adaptation that reduces the number of types of materials required to be recycled; or
- c. Deny the request for an adaptation.

E. Compliance and Enforcement for Business Recycling Programs

1. An Advance Disposal Fee (ADF) will be assessed monthly on each commercial location refuse billing statement for non-compliance with this Ordinance. These fees are outlined below. Commencement of billing will occur after the effective date of this Ordinance. The solid waste generation rate category is the category that corresponds to the type of business (Florida DOR Classification) as set forth in Ordinance 96-09 and the applicable waste generation range for such businesses per unit. Upon presentation of the information and materials required, the ADF may be waived for a Business for a period of one year. Continued waiver of this fee is contingent on submittal of an exemption and approval by the Solid Waste Division of an updated Recycling Program and appropriate agreements and provisions.

Solid Waste Generation Rate Category	ADF Fee
A, B	\$100
C	\$250
D, E	\$500

2. In evaluating whether a violation of this Ordinance has occurred, County staff have the right to visit the Business and determine the presence and capacity of recycling containers, the presence and quantities of Recyclable Materials in recycling containers, the presence of signs, flyers, stickers and other information which promotes recycling, and engage in discussion with employees, tenants and owners, and Service Providers regarding the Business' Recycling Program. Any separation and storage of Recyclable Materials shall be undertaken in a location suitable and adequate for such activity. Separation and storage facilities shall comply with all applicable laws.
  
3. The owner, unless he or she has otherwise arranged for and received approval from the Solid Waste Division Director for more time, will be given twenty (20) business days from the date of the notification to provide the County with a written explanation of the pertinent events and circumstances relative to the alleged violation.

4. Lee County Solid Waste Division staff will be available for assistance in setting up a satisfactory Recycling System and achieving compliance with this Ordinance.
5. Should the owner, after the provided twenty (20) business days, be found to continue to be in violation of this Ordinance, the owner will be assessed the Advance Disposal Fee from the date of the initial violation until such time that the owner can demonstrate, to the satisfaction of the Director that the owner is again in compliance with the Ordinance.
6. Should the owner be found to be in violation of this Ordinance due to a suspension of service due to non-payment of invoices from the service provider, the owner will be assessed \$300 for each violation from the date of the initial violation until such time that the owner can demonstrate, to the satisfaction of the Solid Waste Division staff that the owner is again in compliance with the Ordinance.

F. Enforcement Actions for Business Properties

1. The Lee County Solid Waste Division, the Division of Codes and Building Services, and the Lee County Sheriff's Office have the concurrent authority and jurisdiction to enforce the provisions of this Ordinance. In addition to the procedures and penalties set forth below, the County also has recourse to any remedies available at law or in equity, including injunctive relief and damages.

2. Civil Action: The County may take civil action to enforce the provisions of this Ordinance in accordance with the following procedures:
  - a. Hearing Examiner Process:

The provisions of this Ordinance are enforceable through the Hearing Examiner process in accordance with the procedures as set forth in Chapter 162, Florida Statutes, the Lee County Land Development Code Ch. 2., Art. VII, and the Lee County Administrative Code Section 2-14, as amended from time to time.
  - b. Citation Process:

The provisions of this Ordinance are enforceable through the citation process in accordance with the requirements as set forth in Chapter 162, Florida Statutes, the Lee County Land Development Code Section 2-430 and Lee County Administrative Code 12-5 (each as amended).
3. Criminal Action: The County may take criminal action when appropriate to enforce the provisions of this Ordinance in accordance and in conjunction with Florida Statutes.
4. Penalties:
  - a. Civil: A violation of this Ordinance may subject the property owner to a fine of up to \$500.00 per violation. For purposes

of this Ordinance, each day a violation continues to exist constitutes a separate violation.

b. Criminal: A violation of this Ordinance may also constitute a second-degree misdemeanor punishable in accordance with Florida Statutes by:

- (1) A \$500.00 fine,
- (2) Up to ten (10) days imprisonment or community service, or
- (3) Both fine and imprisonment or community service.

**SECTION 4: MULTI-FAMILY RECYCLING REQUIREMENTS**

A. Program Requirements

1. All properties in the County identified as Multi-Family shall institute an on-site recycling program, and provide a collection system for collection of mixed paper, office paper, newspaper, paperboard, and corrugated cardboard, glass containers, #1 through #7 plastic containers, metal and aluminum cans, white goods, and electronic devices. Such recycling shall be done in compliance with this Ordinance and Lee County Ordinance 05-13, as may be revised or amended from time to time.
2. All Multi-Family properties must provide a Recycling Program effective January 1, 2008, or within fourteen (14) days of initial occupancy, after the effective date of this Ordinance. Where a