Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: **2011-019**

1. Requested Motion:

Meeting Date: February 22, 2011

Direct staff to move forward with the preparation of the Non-Residential Mandatory Recycling Ordinance.

Why the action is necessary:

This provides staff with the direction to move this matter forward.

What the action accomplishes:

This begins the process to implement a recycling ordinance associated with business and commercial properties.

2. Agenda:

__ Consent
√ Administrative
__ Public Hearing

3. Requirement/Purpose:

_ Resolution
_ Ordinance
√ Other

4. Submitter of Information:

_ Council
√ Town Staff – Public Works
_ Town Attorney

5. Background:

At its February 7, 2011 workshop, Town Councils discussed the potential of implementing a Non-Residential Recycling program. Council instructed staff to bring this matter forward for discussion at a Town Council Meeting. Attached for reference is a copy of the Ordinance that Lee County enacted associated with this type of program.

6. Alternative Action:

Direct staff to not move forward with this program.

7. Management Recommendations:

Approve moving forward.

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
			Chris			

9. Council Action:

_ Approved _ Denied _Deferred _Other

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.

SECTION 2: **DEFINITIONS**

For the 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 as either may be amended from time to time and is incorporated herein by reference.

In the event of any conflict between a definition as made in this Ordinance and one contained in either 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** shall mean a fee imposed upon commercial entities or properties for failure to comply with the requirements of this Ordinance.

B. **Agreement** shall mean the franchise agreements executed by the County and awarded to certain collection contractors.

C. **Board** shall mean the Board of County Commissioners of Lee County, 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 for 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 County Ordinance, state and federal 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 that includes 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 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 County pursuant to this Ordinance.

K. **Conversion Rate** means the rate set forth in the tables provided in the County's Construction and Demolition Materials Management Plan pursuant to this Ordinance for use in estimating the volume or weight of

materials identified pursuant to the requirements of the County's Construction and Demolition Materials Management Plan.

L. **County** shall mean Lee County, Florida.

M. **Covered Project** means a project for which a building, demolition, or other similar permit is required by County Ordinance.

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 that arranges 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 his/her designated representative.

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 Chapter. 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 Section 5.G. of this Ordinance.

U. **Franchise Contractor** means those firms specifically authorized by a solid waste franchise collection contract with Lee County to provide solid waste collection services within Lee County.

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 special district, and 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, etc.

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 County. A Permittee 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 County'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.

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

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 County 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 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. 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 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. Application forms are available from the County's 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

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 Lee County. 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 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) 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 County 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 County 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 County Ordinance has occurred, County 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 County may initiate an enforcement action based on its own observations or a complaint from others for violation of County Ordinance. The County will deliver notice of the violation to the property owner describing the nature of the violation and providing a point of contact with County 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 County 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.

F. Enforcement Actions for Multi-Family 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 5: CONSTRUCTION AND DEMOLITION DEBRIS RECYCLING REQUIREMENTS

A. Covered Projects

1. Effective June 1, 2008 and except as otherwise provided in this Ordinance, each Permittee's Covered Project for which a permit application was submitted after January 1, 2008 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 this Ordinance;

   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 County 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 County 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 County 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 County 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 may 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 County 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 at the time of 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 County 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.

6. 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.

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 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 Permittee to a fine of up to $15,000 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 County Resolution adopted by a majority of the Board of County Commissioners 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: CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS

It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Lee County Code, and that sections of this Ordinance may be renumbered or relettered and that the word "Ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intention, and regardless of whether such inclusion in the Code is accomplished, sections of this Ordinance may be renumbered or relettered and typographical errors which do not affect the intent may be authorized by the County Manager or the County Manager's designee, without need of public hearing, by filing a corrected or recodified copy of same with the Clerk of Circuit Court.

SECTION 10: **EFFECTIVE DATE**

This Ordinance, if adopted by the Board, shall take effect January 1, 2008 upon its filing with the Office of the Secretary of the Florida Department of State.

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Commissioner Hall made a motion to adopt the foregoing Ordinance, seconded by Commissioner Mann. The vote was as follows:

BOB JANES	Aye
BRIAN BIGELOW	Aye
RAY JUDAH	Aye
TAMMY HALL	Aye
FRANK MANN	Aye

DULY PASSED AND ADOPTED THIS 11th day of September 2007.

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BY: _____
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Chair

BOARD OF COUNTY COMMISSIONERS SEAL LEE COUNTY, FLORIDA

APPROVED AS TO FORM:

BY: _____
Scott S. Coovert
Assistant County Attorney
Office of the County Attorney

S:\GS\ORDINANCE\07-25 Business Recycling Ordinance - SSC.doc

FLORIDA DEPARTMENT of STATE

CHARLIE CRIST
Governor

STATE LIBRARY AND ARCHIVES OF FLORIDA

KURT S. BROWNING
Secretary of State

September 17, 2007

2007 SEP 21 AM 9:21
RECEIVED BY
LEE CO. ATTORNEY

Honorable Charlie Green
Clerk of Court
Lee County
Post Office Box 2469
Fort Myers, Florida 33902-2469

Attention: Patricia Weseman, Deputy Clerk

Dear Mr. Green:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letters dated September 13, 2007 and certified copies of Lee County Ordinance Nos. 07-25 and 07-26, which were filed in this office on September 14, 2007.

Sincerely,

Liz Cloud

Liz Cloud
Program Administrator

2007 SEP 20 AM 10:53
RECEIVED
MINUTES OFFICE

LC/lbh

DIRECTOR'S OFFICE
R.A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250
850.245.6600 • FAX: 850.245.6735 • TDD: 850.922.4085 • http://dlis.dos.state.fl.us

COMMUNITY DEVELOPMENT
850.245.6600 • FAX: 850.245.6643

STATE LIBRARY OF FLORIDA
850.245.6600 • FAX: 850.245.6744

STATE ARCHIVES OF FLORIDA
850.245.6700 • FAX: 850.488.4894

LEGISLATIVE LIBRARY SERVICE
850.488.2812 • FAX: 850.488.9879

RECORDS MANAGEMENT SERVICES
850.245.6750 • FAX: 850.245.6795

ADMINISTRATIVE CODE AND WEEKLY
850.245.6270 • FAX: 850.245.6282