

**Model County Solid Waste Fee Ordinance
For Counties that Bill Solid Waste Fees with Property Taxes**

The following is a model ordinance for counties that bill solid waste collection fees or solid waste disposal availability fees with property taxes. The ordinance is designed to guide counties in drafting a solid waste fee assessment and collection ordinance by addressing many of the common issues that arise. The ordinance does not attempt to define the type of solid waste services to be offered by the county and must be tailored to describe the relevant services for which the fees are levied. A county should consider its particular needs and consult with local legal counsel before adopting any ordinance. For additional questions about the model ordinance or the billing and collection of solid waste fees, please contact Kara Millonzi at 919-962-0051 or millonzi@sog.unc.edu.

I. Purpose and Objective

- The purpose of the Solid Waste Fees is to help fund the cost of the Solid Waste, Recycling, and White Goods program(s) within [COUNTY NAME HERE] (hereinafter, the County) and other costs incidental to the unit's handling and disposal of solid waste.

II. Definitions

- Improved Property – Real property that includes one of more residential, commercial or industrial structures.
- Property Owner: The owner of record of property as of January 1 of the calendar year in which the fiscal year for which the fees are assessed opens. For purposes of the refund and release provisions set forth in Section IV.B., the term property owner includes the owner of record as of January 1 and any current owner of record of property against which solid waste fees are a lien.
- Recycling Services – [DEFINE ACCORDING TO ACTUAL SERVICES PROVIDED.]
- Solid Waste – [DEFINE ACCORDING TO ACTUAL SOLID WASTE COLLECTED OR ACCEPTED AT SOLID WASTE DISPOSAL FACILITIES. NOTE THAT THE DEFINITION MUST BE CONSISTENT WITH G.S. 153A-294.]
- Solid Waste Collection Services – [DEFINE ACCORDING TO ACTUAL SERVICES PROVIDED.]
- Solid Waste Disposal Facility – [DEFINE ACCORDING TO ACTUAL SERVICES PROVIDED AT SOLID WASTE DISPOSAL FACILITY.]

- White Goods – [DEFINE ACCORDING TO ACTUAL WHITE GOODS COLLECTED OR ACCEPTED AT SOLID WASTE DISPOSAL FACILITIES.]

III. Assessment of Fees

A. Collection Fee

- *[NOTE THAT THIS FEE ONLY APPLIES IF THE COUNTY PROVIDES SOLID WASTE COLLECTION SERVICES.]*

1. In accordance with N.C. Gen. Stat. §153A-292(b) (hereinafter G.S.), an annual fee is imposed on all individuals or entities that contract to receive solid waste collection services. The amount of the annual fee may vary based on the class of service provided or area of the County served. The annual fee schedule shall be determined by the Board of Commissioners and adopted as part of its Budget Ordinance. The aggregate proceeds generated by the collection fees shall not exceed the aggregate costs of providing the collection services during the fiscal year. The annual fee shall be prorated based on the number of months of service provided during the fiscal year.

B. Disposal Facility Use Fee

1. In accordance with G.S. 153A-292(b), a fee is imposed on all individuals or entities that dispose of solid waste in one or more of the County's solid waste disposal facilities. The amount of the fee may vary based on the amount, characteristics, and form of recyclable materials present in solid waste brought to the facilities for disposal. The fee schedule shall be determined annually by the Board of Commissioners and adopted as part of its Budget Ordinance. The fee schedule shall apply uniformly throughout the County and the fees shall be assessed per ton or cubic yard of solid waste.
2. County residents may purchase an annual permit based on their estimated solid waste disposal facility needs. The annual permit fee schedule shall be determined by the Board of Commissioners and adopted as part of its Budget Ordinance.

C. Disposal Facility Availability Fee

1. In accordance with G.S. 153A-292(b), except as provided below, an annual fee is imposed on all improved property in the county that benefits from the availability of the County's solid waste disposal facilities. The annual fee schedule shall be determined by the Board of Commissioners

and adopted as a part of its Budget Ordinance. The aggregate proceeds generated by the annual fee shall not exceed the aggregate costs of operating the County's disposal facilities. In determining the amount of the annual fee, however, the County will consider solid waste management costs incidental to the County's handling and disposal of solid waste at its disposal facilities, including the costs of the methods of solid waste management specified in G.S. 130A-309.04(a).

2. The following property is exempt from the annual availability fee:
 - a. Improved property whose solid waste is collected by a county, a municipality, or a private contractor for a fee if the fee imposed by the county, municipality, or private contractor for the collection of solid waste includes a charge for the availability and use of a disposal facility provided by the County, *or*
 - b. Improved property served by a private contractor who disposes of solid waste collected from the property in a disposal facility provided by a private contractor that provides the same services, including recycling services, as those provide by the County's disposal facilities, *or*
 - c. Improved property with no electric service.
 - o *[NOTE THAT G.S. 153A-292 REQUIRES THAT THE AVAILABILITY FEE BE IMPOSED ONLY ON PROPERTIES THAT "BENEFIT" FROM THE AVAILABILITY OF THE LOCAL GOVERNMENT'S DISPOSAL FACILITIES. THE STATUTE AFFORDS LOCAL GOVERNMENTS DISCRETION IN DETERMINING WHAT TYPES OF IMPROVED PROPERTY DO NOT BENEFIT FROM THE AVAILABILITY OF THEIR DISPOSAL FACILITIES. SEVERAL UNITS HAVE ADOPTED LACK OF ELECTRIC SERVICE AS THE STANDARD BENCHMARK, ALTHOUGH LOCAL UNITS ARE FREE TO CHOOSE OTHER BENCHMARKS.]*
3. In order to qualify for one of the exemptions from the annual availability fee a property owner must submit the following documentation to the County Tax Collector.
 - a. A valid contract with a private contractor to collect solid waste from the property that clearly indicates that the fee assessed by the private

contractor includes a charge for the availability and use of a disposal facility provided by the County, *or*

- b. A valid contract with a private contractor to collect solid waste from the property that clearly demonstrates that the private contractor disposes of the solid waste in a facility that provides the same services, including recycling services, as those provided by the County disposal facilities, *or*
 - c. Documentation from the electric power companies normally servicing the area that encompasses the property certifying that there is no electric service to the property for a period of greater than one month during fiscal year for which the fee applies.
4. The County reserves the right to pro-rate the annual availability fee in accordance with the annual fee schedule adopted by the Board of Commissioners as part of the Budget Ordinance if a property qualifies for an exemption for less than the full fiscal year.

IV. Collection of Fees

A. Billing

1. In accordance with G.S. 153A-293, the Collection Fee and Disposal Facility Availability Fee shall be billed with property taxes, and shall be payable in the same manner as property taxes.
 - a. The Collection Fee and Disposal Facility Availability Fee are due September 1 and are payable without interest through the following January 5. Interest accrues against the fees not paid by this date at the rate provided in G.S. 105-360. When January 5 falls on a Saturday, Sunday, or holiday, the property owner may pay the fees without interest on the next business day.
 - b. The Collection Fee and Disposal Facility Availability Fee are a lien on the real property described on the bill that includes the fee. The lien attaches on the date as of which the real property is to be listed under G.S. 105-285. In the event that the fees are billed subsequent to the year for which they are assessed, the lien attaches January 1 of the calendar year in which the bill is issued.
 - c. All persons who have or who may have an interest in any real property that may be or may become subject to a lien for the

Collection Fee and Disposal Facility Availability Fee are hereby charged with notice that the fees may become a lien against the property and that if such fees are not paid the proceedings allowed by law for the collection of such fees may be taken against such property. This notice shall be conclusively presumed regardless of whether such persons have actual notice. The failure to bill for the Collection Fee and Disposal Facility Availability Fee constitutes an immaterial irregularity within the meaning of G.S. 105-394 that does not invalidate the fees owed.

2. In accordance with G.S. 153A-277, the Disposal Facility Use Fee shall be administered and collected according to the procedures in the annual fee schedule adopted by the Board of Commissioners as part of the Budget Ordinance.
 - a. The Disposal Facility Use Fee shall be assessed and paid in full before use of the County's Solid Waste Disposal Facilities is permitted.

B. Refunds and Releases

1. Any property owner asserting a valid defense to the enforcement of the collection of a Collection Fee and Disposal Facility Availability Fee assessed upon his property shall proceed as hereinafter provided.
 - a. For the purpose of this subsection, a valid defense shall include the following:
 - i. The fee was imposed through clerical error;
 - ii. The fee was illegal; or
 - iii. The fee was levied for an illegal purpose.
 - b. If the Collection Fee and Disposal Facility Availability Fee has not been paid, the property owner may make a demand for the release of the fee by submitting to the governing body of the taxing unit a written statement of his defense to payment or enforcement of the fee and a request for release of the fee at any time prior to payment of the fee.
 - c. If the Collection Fee or Disposal Facility Availability Fee has been paid, the property owner, at any time within five years after said fee first became due or within six months from the date of

payment of such fee, whichever is the later date, may make a demand for a refund of the fee paid by submitting to the governing body of the County a written statement of his defense and a request for refund thereof.

- d. Action of Governing Body. Upon receiving a property owner's written statement of defense and request for release or refund, the governing body of the taxing unit shall within 90 days after receipt of such request determine whether the property owner has a valid defense to the fee imposed or any part thereof and shall either release or refund that portion of the amount that is determined to be in excess of the correct fee or notify the property owner in writing that no release or refund will be made.
 - i. If some portion of a fee is due, the fee shall be released or refunded on a pro-rated basis based on the number of full months for which the fee was illegal, levied for an illegal purpose, or imposed through clerical error. The tax collector shall multiply the number of full months for which a refund or release is owed by a fraction, the denominator of which is 12 and the numerator of which is the number of full calendar months for which the fee is deemed illegal or imposed through a clerical error. The product of the multiplication is the amount to be released or refunded.
 - ii. The governing body may, by resolution, delegate its authority to determine requests for a release or refund of a fee of less than one hundred dollars (\$100.00) to the finance officer, manager, or attorney of the County. A finance officer, manager, or attorney to whom this authority is delegated shall monthly report to the governing body the actions taken by him on requests for release or refund. All actions taken by the governing body or finance officer, manager, or attorney on requests for release or refund shall be recorded in the minutes of the governing body.
 - iii. If a release is granted or refund made, the tax collector shall be credited with the amount released or refunded in his annual settlement.
- e. Suit for Recovery of Solid Waste Fees:
 - i. Request for Release before Payment. If within 90 days after receiving a property owner's request for release of an unpaid solid waste under subsection b. above, the

governing body of the County has failed to grant the release, has notified the taxpayer that no release will be granted, or has taken no action on the request, the property owner shall pay the tax. He may then within three years from the date of payment bring a civil action against the taxing unit for the amount claimed.

- ii. Request for Refund. If within 90 days after receiving a property owner's request for refund under subsection c. above, the governing body has failed to refund the full amount requested by the property owner, has notified the property owner that no refund will be made, or has taken no action on the request, the property owner may bring a civil action against the County for the amount claimed. Such action may be brought at any time within three years from the expiration of the period in which the governing body is required to act.
- iii. Civil Actions. Civil actions brought pursuant to subdivisions i. or ii. above shall be brought in the appropriate division of the general court of justice of the county in which the taxing unit is located. If, upon the trial, it is determined that the tax or any part of it was illegal or levied for an illegal purpose, or excessive as the result of a clerical error, judgment shall be rendered therefore with interest thereon at six percent (6%) per annum, plus costs, and the judgment shall be collected as in other civil actions.

C. Remedies for Delinquencies

1. In accordance with G.S. 153A-293, in the case of nonpayment, the Collection Fee and the Disposal Facility Availability Fee may be collected in any manner by which delinquent personal or real property taxes can be collected.
 - a. The Collection Fee and Disposal Facility Availability Fee are a lien on the underlying property described on the bill that includes the fee. The lien has the same priority status as a lien for real or personal property taxes; it is superior to all other liens and rights, except previously recorded liens for state taxes, regardless of whether the other liens were acquired before the lien for the Collection Fee and Disposal Facility Availability Fee. The County may enforce the lien against the real property according to the

procedures set forth in G.S. 105-369, -374, and -375. The County also may employ the remedies of levy and attachment and garnishment against personal property to enforce the collection of the delinquent fee. For purposes of utilizing those remedies to collect the delinquent fees, the “taxpayer” against whom such remedies may be utilized is defined as the owner of the property as of January 1 of the calendar year in which the fiscal year for which the solid waste fee is assessed opens.

2. In accordance with G.S. 153A-277(b), a delinquent Collection Fee, Disposal Facility Availability Fee, and Disposal Facility Use Fee may be collected by any remedy provided by law for collecting and enforcing private debts.
3. In accordance with G.S. 105A, a delinquent account for a Collection Fee, Disposal Facility Availability Fee, and Disposal Facility Use Fee may be submitted to the State’s debt set-off program for collection.

V. Severability

- A.** If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.