



Technical Memorandum

*To: John Roberson, PE
Wake County Solid Waste Division*

From: CDM Smith

Date: April 27, 2017

Subject: Solid Waste and Recycling Collection Franchising Study

Executive Summary

Working with the Wake County Solid Waste Division, CDM Smith conducted a study to characterize the residential waste collection system in the unincorporated portions of Wake County and to identify the potential benefits and drawbacks of implementing some form of franchised waste collection. A windshield survey of 1,275 homes in 11 neighborhoods located in unincorporated Wake County was performed over a two-week period, with the goals of (1) identifying the number of residents using a contracted waste and/or recycling hauler; (2) identifying the number of different haulers serving each neighborhood; and (3) identifying the number of different collection days within each neighborhood. The survey found that:

- 54% of residents have curbside waste collection. Within the 11 neighborhoods surveyed, curbside collection of waste ranged from 23% to 67%.
- 31% of residents have curbside recycling collection. Within the 11 neighborhoods surveyed, curbside collection of recycling ranged from 8% to 56%. Note that these figures may represent slight underestimates of curbside recycling, since some residents may not have placed recyclables at the curb during the two-week survey.
- Nine different waste haulers were identified operating in one or more neighborhoods. Of those nine, eight also collect recycling.
- Of the 11 surveyed neighborhoods, six neighborhoods are serviced by two to four haulers and two neighborhoods receive collection from five different haulers. One neighborhood received collection from six waste haulers and four recycling haulers. Only one neighborhood received service from just one hauler.
- Waste Industries collects waste from 68% and recycling from 70% of residents in the surveyed neighborhoods. Veteran Waste Solutions is the second-most active, at 20% for waste and 23% for recycling. None of the remaining seven waste haulers account for no more than 4% of waste and 3% of recycling, when combining results for all surveyed neighborhoods.

- Within the surveyed neighborhoods, waste is collected from a low of two, to a high of four different weekdays. The neighborhood which is served by six different waste haulers has trash collection on every weekday except Tuesday.

In North Carolina, eighteen counties have some form of residential franchise agreements in place for waste, recycling or both. Residential collection franchise agreements can be structured as voluntary or non-voluntary and exclusive or non-exclusive. Voluntary or non-voluntary agreements refer to whether or not residents have to purchase curbside collection services. Exclusive and non-exclusive refer to the number of haulers that are allowed to operate within the designated service area. Several franchise agreements were reviewed, as summarized below:

- Catawba County has an exclusive 11-year (extendable to 15 years) franchise agreement with Republic Services. Curbside collection is voluntary for residents at a monthly cost of \$24.33 for waste and \$18.88 for recycling. Republic Services pays the county an annual franchise fee that ranges from \$50,000 to \$75,000, depending on the year.
- Buncombe County has an exclusive 10-year franchise agreement with Waste Pro. Curbside collection is voluntary for residents at an approximate monthly cost of \$14.00. After implementing the agreement, the county experienced several years of performance issues by the franchised hauler (e.g., missed collections), which have since been resolved.
- Gwinnett County, Georgia moved to a franchised collection system in 2010; however, litigation ensued which reshaped the systems structure. Initially, the county developed eight service areas and awarded contracts to two haulers. Following litigation, five service areas were established, served by 5 different haulers. Curbside waste and recycling collection is voluntary for residents at a monthly cost of \$18.99. While Gwinnett County cited numerous benefits and drawbacks to their new franchise system, they felt that the benefits outweighed the drawbacks.

In Wake County, there are both potential benefits and drawbacks of moving to a franchise system, as summarized in the following table:

Potential Benefits of Franchising in Wake County	
▪	Fewer collection trucks resulting in a reduction of traffic, road depletion, vehicular emissions and noise pollution in unincorporated neighborhoods.
▪	Improved visual appeal of neighborhoods due to fewer days when waste and recyclables are placed at the curb and consistency in waste and recycling collection carts.
▪	If the recent trend of larger haulers purchasing smaller haulers continues, the number of haulers may decrease, reducing competition, and potentially resulting in increased rates for customers. Franchising could be a means of limiting future rate increasing.
▪	Uniform level and cost of service, including consistency in the types of recyclables collected.

Potential Drawbacks of Franchising
<ul style="list-style-type: none"> For the residents that prefer to pay for curbside service, numerous options are available in Wake County, should they decide that their current level of service is insufficient. Under a franchise system, residents will lose the ability to choose their service provider.
<ul style="list-style-type: none"> Of the nine waste haulers with customers in the surveyed neighborhoods, seven accounted for 4% or less of the residents with curbside service. Under a franchise system it might be expected that some of these haulers, which are small-sized companies, might go out of business if they were not awarded a franchise area, do not have a significant number of customers outside of Wake County, or do not have commercial customers.
<ul style="list-style-type: none"> A franchise system would add new responsibilities to Wake County Solid Waste Division staff. They would be required to manage the franchise agreements and contractor performance. However, the additional cost of this could be recovered through a franchise fee or similar mechanism.
<ul style="list-style-type: none"> Litigation could result from an attempt to move to a franchise system, based on the experience of other counties which made similar transitions.

It is recommended that Wake County government closely review and consider if the benefits outweigh the drawbacks considering the County's specific goals and objectives as they relate to providing sustainable and cost-effective solid waste and recycling services and protecting the environment. The County Attorney's Office should be consulted to evaluate the potential for litigation, should a franchise system be pursued. If a preliminary decision is made to further explore the efficacy of a franchise system, it is recommended that the County then solicit input from the public and waste/recycling haulers. Some questions that should be considered and discussed include:

- Are residents satisfied with the existing level, quality and cost of service? Have they experienced service disruptions? Have rates risen in recent years?
- It is important to residents to maintain the freedom to choose their service provider(s)?
- Are residents experiencing any issues caused by multiple trucks collecting in the same neighborhood such as air pollution, safety hazards excessive noise or concern of diminished visual appeal of their neighborhood?
- How many of the haulers currently operating in Wake County have sufficient resources to offer exclusive services in a franchised area? How many haulers would be economically harmed by the creation of one or several franchised service areas, if they were not awarded an area? How many would potentially go out of business?

1.0 Introduction

Working with the Wake County Solid Waste Division, CDM Smith conducted a study examining the benefits and drawbacks of solid waste and recycling collection franchising in the unincorporated areas of Wake County. This Technical Memorandum (TM) presents the results of the study. The TM is organized into the following major sections:

- 1.0 Introduction
- 2.0 Wake County Waste and Recycling Collection
 - 2.1 Wake County Residential Collection System
 - 2.2 Windshield Survey
- 3.0 Franchising
 - 3.1 What is Solid Waste Franchising?
 - 3.2 Potential Benefits and Drawbacks of Franchising
 - 3.3 Case Studies of Solid Waste Franchising
- 4.0 Summary and Recommendations

2.0 Wake County Waste and Recycling Collection

2.1 Wake County Residential Collection System

In unincorporated Wake County, private haulers offer solid waste and recycling collection directly to single and multi-family residential households and commercial establishments. Single family residential households may contract with one or more licensed haulers for solid waste and recycling collection. All residents of Wake County also may use the County's system of 11 solid waste convenience centers and two multi-material recycling facilities for waste disposal and recycling. Residents living within municipal limits receive solid waste and recycling collection from the municipality or from a private hauler contracted by the municipality.

Wake County's Solid Waste Ordinance requires all persons, firms, and corporations engaged in the collection of solid waste or recyclables to obtain a Solid Waste Hauler's Privilege License. The license and associated hauling requirements specified in the ordinance help ensure that an acceptable level of service is provided to customers. A list of the licensed haulers is included in Attachment A. Of the 63 licensed haulers, it is estimated that between 10 and 15 offer curbside waste or recycling collection to residents in unincorporated Wake County. Nine different haulers were observed providing collection to residents in unincorporated Wake County, based on a windshield survey of 11 neighborhoods, described in the following section.

2.2 Windshield Survey

To characterize waste and recycling collection within unincorporated Wake County, CDM Smith conducted a windshield survey in 11 neighborhoods located in unincorporated Wake County. The primary purpose of the survey was to (1) identify the number of residents using a contracted waste

and/or recycling hauler; (2) identify the number of different haulers serving each neighborhood; and (3) identify the number of different collection days within each neighborhood. This information was used to evaluate the potential benefits and drawbacks of establishing one or more waste and recycling collection franchise areas within unincorporated Wake County.

The windshield survey was conducted on each of the 10 weekdays from February 27 through March 10, 2017, between the hours of 7:00 a.m. and 11:00 a.m. On each day of the survey, CDM Smith staff drove through all 11 neighborhoods and recorded the number of waste carts and recycling carts or bins that were placed at the curb and categorized them according to their respective hauler. Haulers were easily identified by the names and/or logos placed on the side of each cart and/or bin (see **Figure 1** for examples). CDM Smith used geographic information systems (GIS) mapping to ensure every parcel was surveyed. Only carts at the curb were recorded. In instances where carts remained at the curb for multiple days, the carts were tallied each day, then removed when the data was reviewed and finalized, so as not to double count. The following sections discuss the methodology for selecting the 11 neighborhoods and present the results of the survey.

2.2.1 Neighborhood Selection Methodology

Wake County-provided GIS data were used to identify the number of developed, single-family parcels within each unincorporated Wake County neighborhood. Neighborhoods with approximately 50 to 250 parcels were considered for the windshield survey, in order to keep the survey size manageable. These neighborhoods were further analyzed to determine their average assessed home value, which was organized into three categories: low-, mid- and high-priced. Low-priced neighborhoods were assumed to be those with homes valued at less than \$249,999. Mid-priced neighborhoods ranged from \$250,000-\$499,999 per home and neighborhoods with homes valued equal to or greater than \$500,000 were considered high-priced. This classification scheme was used to ensure that a range of neighborhoods was selected with regard to assessed home value.

The locations of Wake County's 11 convenience centers were also taken into consideration with the assumption that neighborhoods located close to the convenience centers are more likely to dispose of their own waste and recycling in lieu of contracting with a waste and recycling hauler. Using these three criteria (number of parcels, home value and proximity to a convenience center), 20 neighborhoods in Wake County (**Figure 2**) were selected for further consideration by Wake County Solid Waste Division Staff. **Table 1** details the 20 selected neighborhoods, including their general location within the County, primary access road, neighborhood name, total number of parcels, and estimated home value.

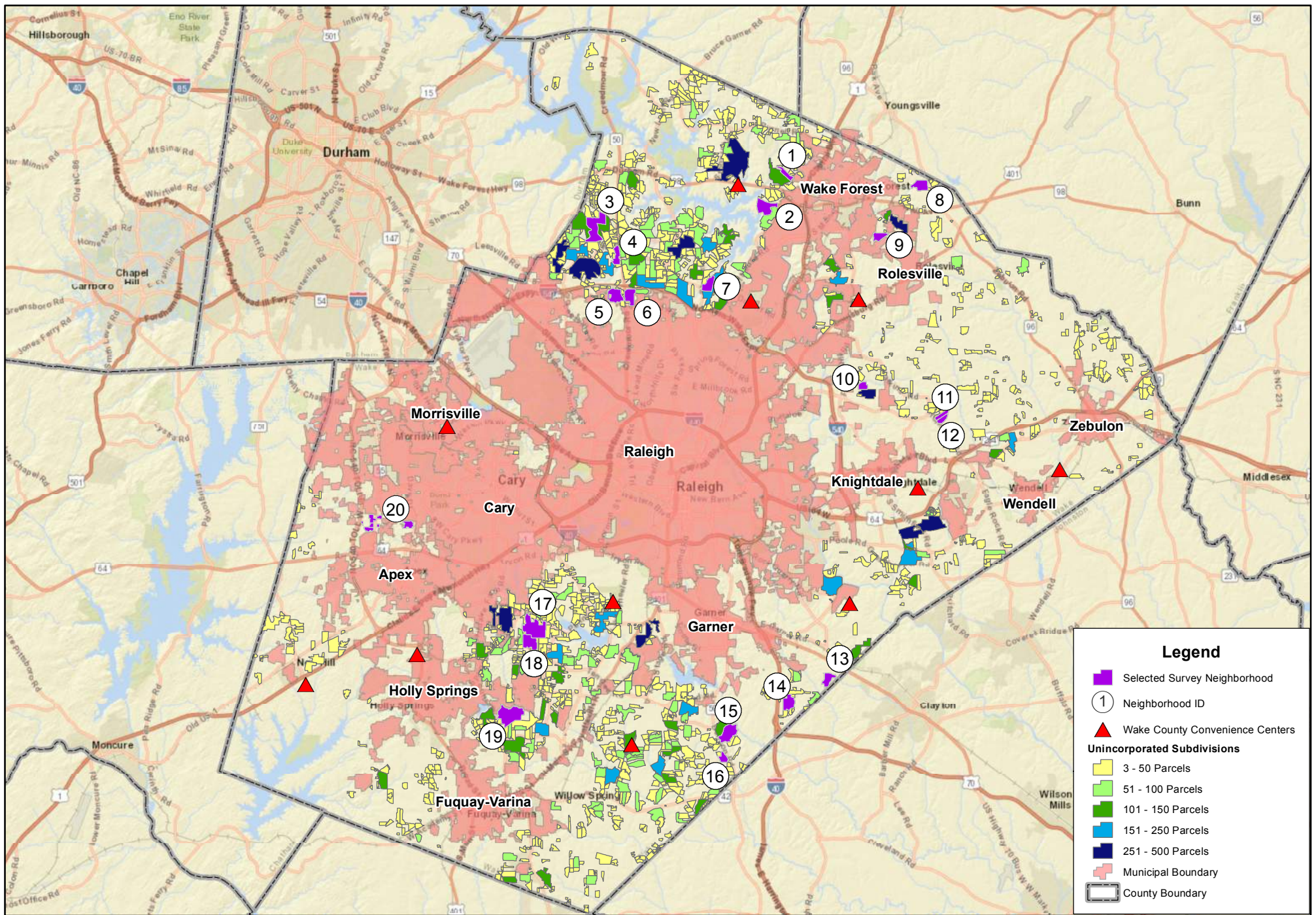
Figure 1. Examples of Waste and Recycling Carts Observed During Windshield Survey



Table 1. Candidate Neighborhoods for the Windshield Survey

Map ID	General Location	Access Road	Neighborhood	Total Parcels	Estimated Home Value ¹
1	Falls Lake Area	Mica Mine Lane	Thompson Mill	67	Mid
2	Falls Lake Area	Wakefalls Drive	Wakefield Estates	99	High
3	Falls Lake Area	Black Horse Run	Black Horse Run	252	Mid
4	Falls Lake Area	Byrum Woods Drive	Byrum Woods	102	Mid
5	Falls Lake Area	Wildwood Links	Wildwood Green	199	Mid
6	Falls Lake Area	Southampton Drive	Heritage Point	118	Mid
7	Falls Lake Area	Tamor Way	Devon	69	High
8	Wake Forest/Rolesville	Mill Dam Road	Millrace	52	High
9	Wake Forest/Rolesville	Clear Springs Drive	Clear Springs	68	Mid
10	Knightdale/Wendell	McGrath Way	Old Milburnie Crossing	104	Mid
11	Knightdale/Wendell	Ridge Haven Drive	Ridge Haven	89	Low
12	Knightdale/Wendell	Candlewick Drive	Candlewick	92	Low
13	Southeast Garner	Golden Nugget Drive	Golden Plantation	56	Low
14	Southeast Garner	Alonzo Road	Hillington West	137	Low
15	Southeast Garner	Turner Farms Road	Turner Farms Sec 4	233	Mid
16	Southeast Garner	Stevens Oaks Drive	Stevens Oaks	70	Low
17	South Cary/Holly Springs	Heatherstone Drive	Heatherstone	165	Mid
18	South Cary/Holly Springs	Lynnhaven Drive	Lynnhaven	126	Mid
19	South Cary/Holly Springs	Brackenridge Lane	Crofts at Brackenridge	93	High
20	Northern Apex	Wood Forest Drive	Page Wood Forest	8	Mid
	Northern Apex	Oak Ridge Drive	Oak Ridge Acres	4	Low
	Northern Apex	Wade Drive	Glover Acres	15	Mid
	Northern Apex	Trelawney Lane	Scott Farm	17	Mid
	Northern Apex	Howell Road	T J Howell	18	High
	Northern Apex	Valley Wood Lane	Jasper C Grimes	6	Low
	Northern Apex	Roberts Road	Jeter Williams	3	Mid

¹ Low: < \$249,999; Mid: \$250,000-\$499,999; High: > \$500,000



CDM Smith met with Wake County Solid Waste Management Division staff to review and discuss the 20 candidate neighborhoods, and select a subset of those neighborhoods for the windshield survey. The 11 neighborhoods that were selected are presented in **Table 2**. The neighborhoods were selected to represent a range of areas, home values, and neighborhood size. Note that Map IDs 11 and 12 were initially surveyed as one neighborhood, but remained as two during analysis. Map ID 20 originally consisted of seven separate neighborhoods all located in adjacent areas. They were also surveyed as one neighborhood. Note that the Jasper C Grimes neighborhood (6 parcels) was removed from the survey as it contained remote, private gravel roads and was determined not to be representative of most other unincorporated neighborhoods.

Table 2. Selected Neighborhoods for Windshield Survey

Map ID	General Location	Access Road	Neighborhood	Total Parcels	Average Assessed Home Value	Estimated Home Value ¹
2	Falls Lake Area	Wakefalls Drive	Wakefield Estates	99	\$1,100,000	High
3	Falls Lake Area	Black Horse Run	Black Horse Run	252	\$360,000	Mid
4	Falls Lake Area	Byrum Woods Drive	Byrum Woods	102	\$340,000	Mid
9	Wake Forest/Rolesville	Clear Springs Drive	Clear Springs	68	\$260,000	Mid
11	Knightdale/Wendell	Ridge Haven Drive	Ridge Haven	89	\$110,000	Low
12	Knightdale/Wendell	Candlewick Drive	Candlewick	92	\$140,000	Low
13	Southeast Garner	Golden Nugget Drive	Golden Plantation	56	\$200,000	Low
15	Southeast Garner	Turner Farms Road	Turner Farms Sec 4	233	\$250,000	Mid
18	South Cary/Holly Springs	Lynnhaven Drive	Lynnhaven	126	\$290,000	Mid
19	South Cary/Holly Springs	Brackenridge Lane	Crofts at Brackenridge	93	\$630,000	High
20	Northern Apex	Wood Forest Drive	Page Wood Forest	8	\$450,000	Mid
	Northern Apex	Oak Ridge Drive	Oak Ridge Acres	4	\$190,000	Low
	Northern Apex	Wade Drive	Glover Acres	15	\$260,000	Mid
	Northern Apex	Trelawney Lane	Scott Farm	17	\$300,000	Mid
	Northern Apex	Howell Road	T J Howell	18	\$600,000	High
	Northern Apex	Roberts Road	Jeter Williams	3	\$300,000	Mid

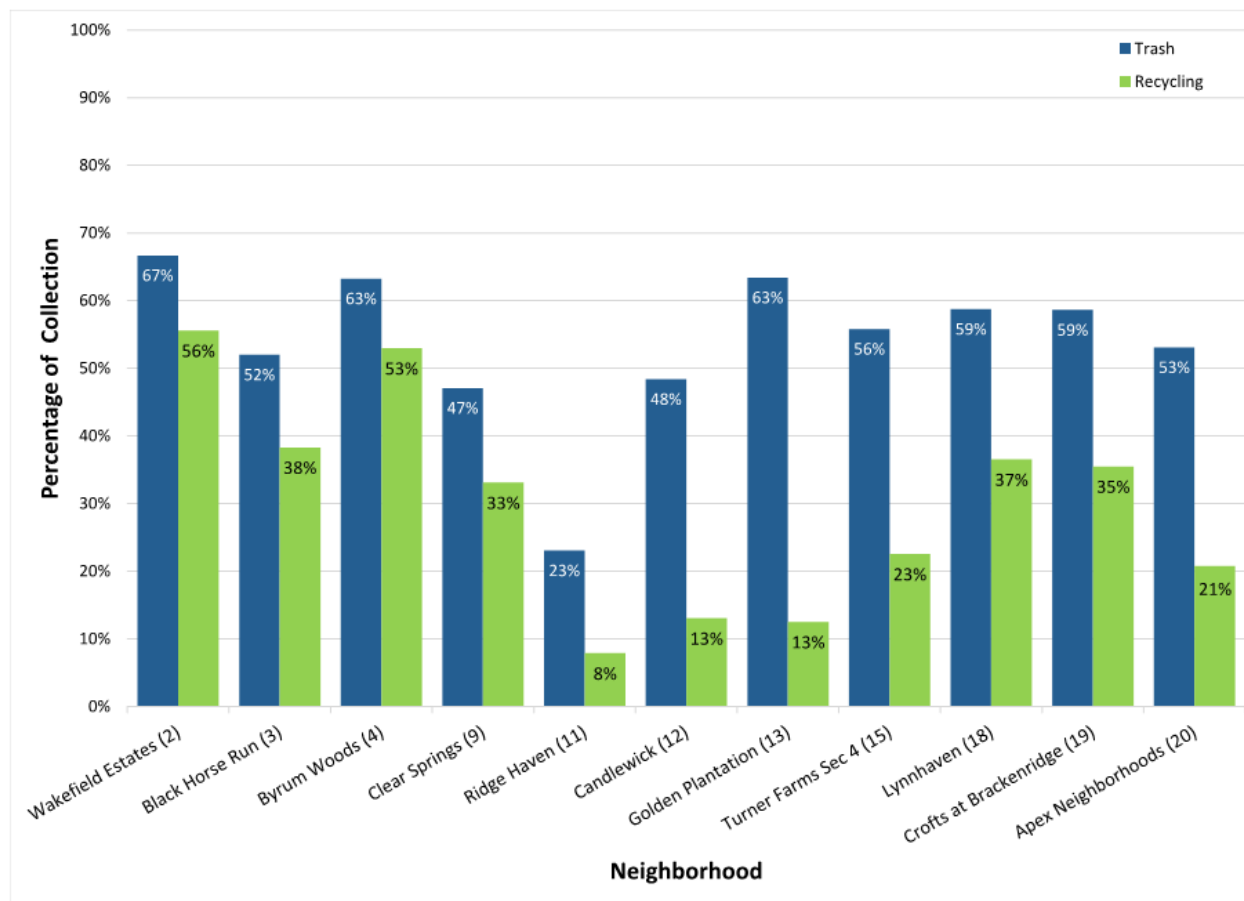
¹ Low: < \$249,999; Mid: \$250,000-\$499,999; High: ≥ \$500,000

2.2.2 Results

A total of 1,275 developed parcels were included in the windshield survey over the two-week period. Of these parcels, at least 54% used a contracted waste hauler and at least 31% used a contracted recycling hauler, as evidenced by the presence of a cart or bin placed at the curb during the two-week survey period. Nine different waste and/or recycling haulers were identified serving one or more of the 11 neighborhoods. Waste Industries was the most commonly observed waste and recycling hauler. All carts and/or bins labelled as ABC Sanitation, Advantage Waste Systems,

Brocks Sanitation, Busy Bee Sanitation, Shaw Waste Management and VF Sanitation were assumed to be serviced by Waste Industries, as they are all recent acquisitions of Waste Industries. **Figure 3** presents the percentage of homes with contracted waste collection and recycling collection, by neighborhood.

Figure 3. Percentage of Homes with Contracted Collection by Neighborhood



Of the 11 surveyed neighborhoods, only those in Apex are serviced by just one hauler (**Table 3**). Six neighborhoods are serviced by two to four haulers, while two neighborhoods receive collection from five different haulers. Lynnhaven is the only neighborhood with six waste haulers and four recycling haulers, including Aardvark Trash, Patriot Sanitation Management, Reliable Sanitation and Recycling, Republic Waste Service, Veteran Waste Solutions and Waste Industries.

A graphical summary of waste and recycling collection by hauler is depicted in **Figures 4 and 5**. Waste Industries, shown in red, constitutes approximately 68% of all waste collection and 70% of all recycling collection in the surveyed neighborhoods. Veteran Waste Solutions, shown in dark blue, is the second-most prevalent by number of customers. Both haulers have numerous

	Aardvark Trash	Anchor Disposal	Patriot Sanitation Management	Reliable Sanitation & Recycling	Republic Waste Service	REZ Waste	Veteran Waste Solutions	Waste Industries	Waste Management
Wakefield Estates (2)	--	--	--	--	--	--	3%	96%	1%
Black Horse Run (3)	--	--	8%	--	--	1%	44%	48%	--
Byrum Woods (4)	--	--	--	--	--	--	48%	48%	4%
Clear Springs (9)	--	--	--	--	--	--	3%	97%	--
Ridge Haven (11)	--	--	--	--	5%	--	--	95%	--
Candlewick (12)	--	--	--	--	3%	--	--	91%	6%
Golden Plantation (13)	6%	--	--	--	15%	--	--	79%	--
Turner Farms Sec 4 (15)	3%	13%	6%	--	10%	--	--	69%	--
Lynnhaven (18)	3%	--	1%	3%	1%	--	50%	43%	--
Crofts at Brackenridge (19)	--	4%		4%	7%	--	16%	70%	--
Apex Neighborhoods (20)	--	--	--	--	--	--	--	100%	--
All Surveyed Neighborhoods	1%	3%	3%	0.6%	4%	0.1%	20%	68%	0.8%

The percentages shown in the table reflect the percentage of customers that use the particular waste hauler, out of the total neighborhood customers using private haulers.

The number in the center of each pie chart is the neighborhood ID.

Solid Waste Haulers in the Surveyed Neighborhoods

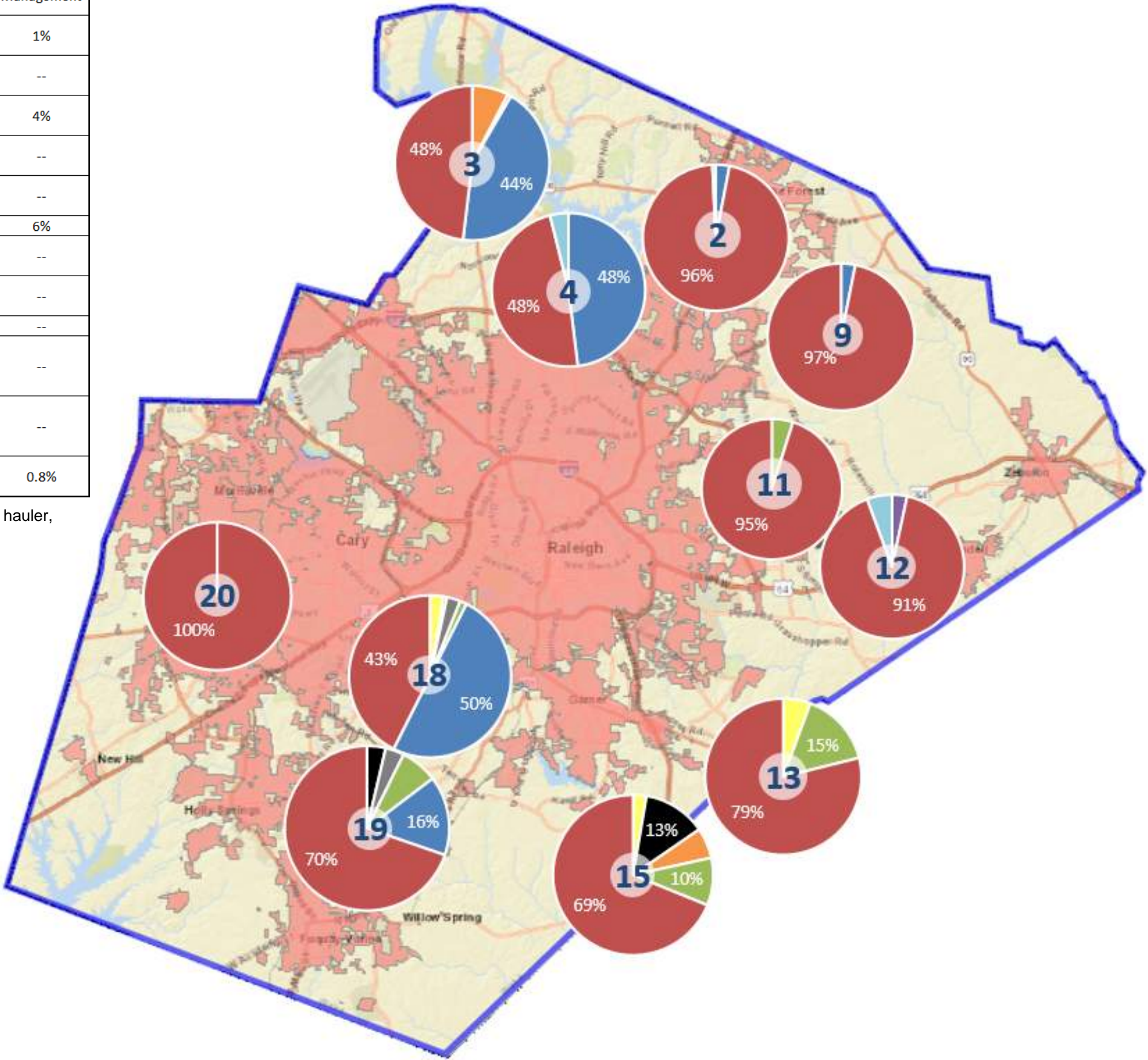
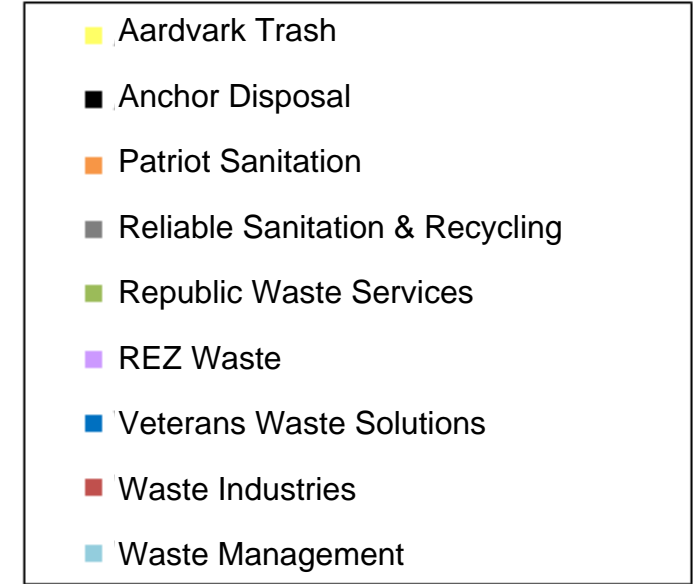


Figure 4
Solid Waste Hauler Characterization, by Neighborhood

	Anchor Disposal	Patriot Sanitation Management	Reliable Sanitation & Recycling	Republic Waste Service	REZ Waste	Veteran Waste Solutions	Waste Industries	Waste Management
Wakefield Estates (2)	--	--	--	--	--	3%	97%	--
Black Horse Run (3)	--	4%	--	--	1%	39%	56%	--
Byrum Woods (4)	--	--	--	--	--	41%	52%	7%
Clear Springs (9)	--	--	--	--	--	4%	96%	--
Ridge Haven (11)	--	--	--	7%	--		93%	--
Candlewick (12)	--	--	--	--	--		100%	--
Golden Plantation (13)	--	--	--	14%	--		86%	--
Turner Farms Sec 4 (15)	16%	10%	--	1%	--		73%	--
Lynnhaven (18)	--	1%	1%	--	--	54%	43%	--
Crofts at Brackenridge (19)	6%		2%	2%	--	15%	76%	--
Apex Neighborhoods (20)	--	--	--	--	--	--	100%	--
All Surveyed Neighborhoods	3%	2%	0.2%	0.6%	0.1%	23%	70%	1%

The percentages shown in the table reflect the percentage of customers that use the particular recycling hauler, out of the total neighborhood customers using private haulers.

The number in the center of each pie chart is the neighborhood ID.

Recycling Haulers in the Surveyed Neighborhoods

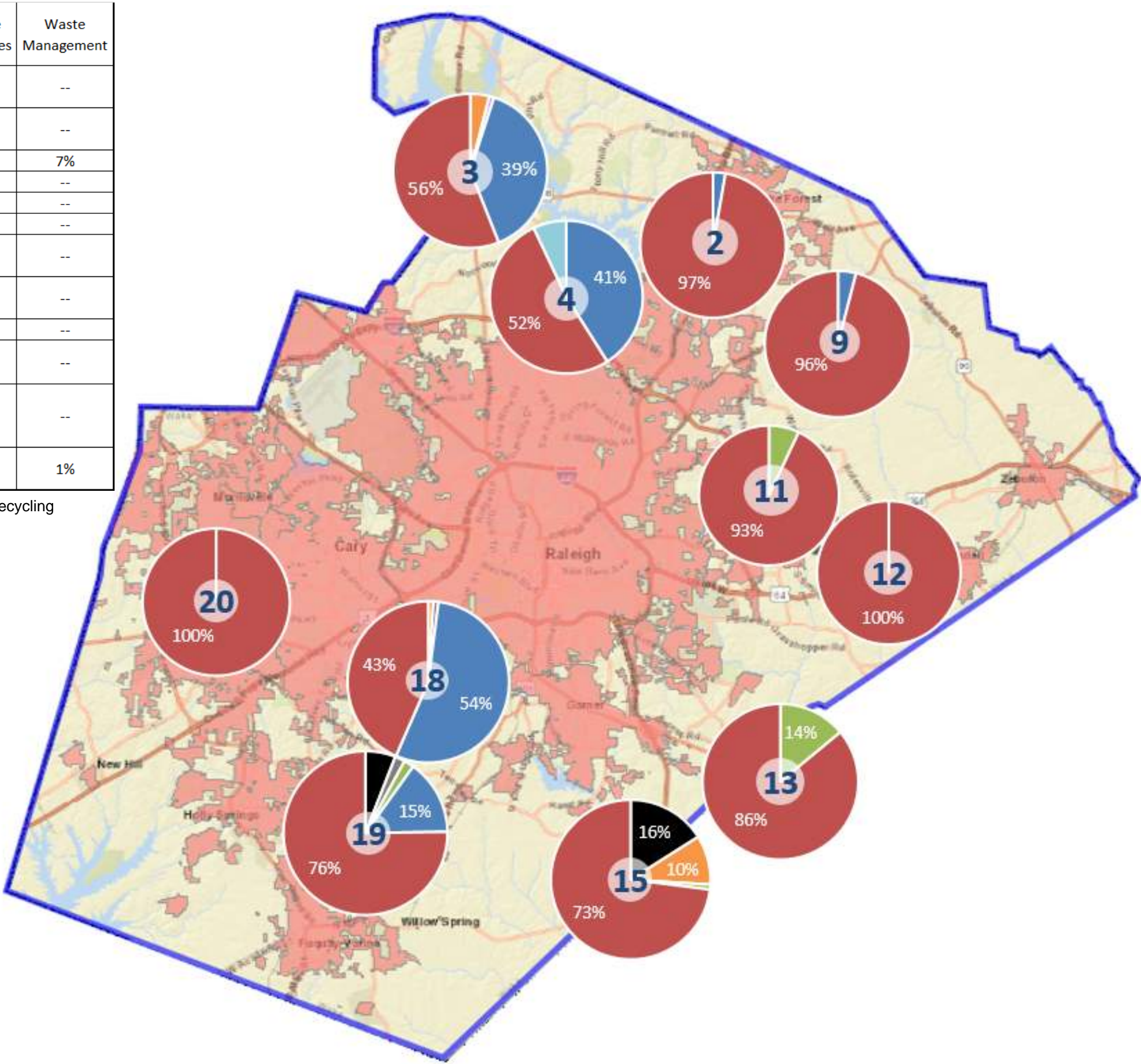
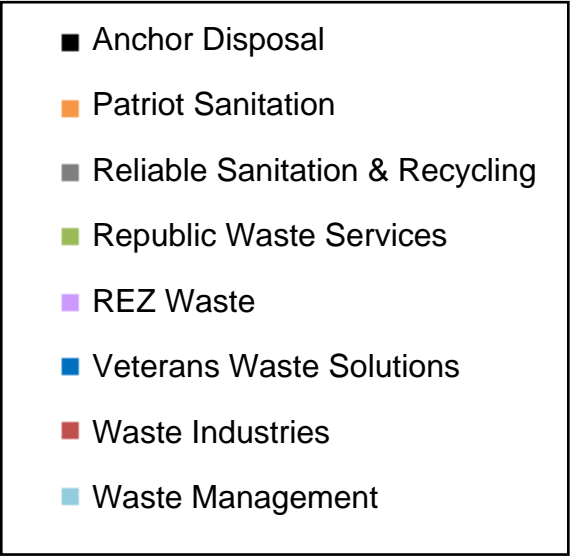


Figure 5
Recycling Waste Hauler Characterization, by Neighborhood

customers throughout north and south Wake County, while companies such as Aardvark Trash and Anchor Disposal were only identified in southern Wake County.

In the surveyed neighborhoods, waste and recycling collection occurs every weekday, with Thursday as the most popular collection day. **Table 3** presents the collection day for each neighborhood and hauler. Two of the 11 surveyed neighborhoods had collection one day a week, while six had collection twice a week. The remaining three neighborhoods receive a waste and/or recycling collection three days a week with five or six hauling companies providing service.

Table 3. Summary of Waste Collection Days by Neighborhood

Map ID	Neighborhood	Hauling Companies	Waste Collection Day	Recycling Collection Day
2	Wakefield Estates	Veteran Waste Solutions	Thursday	Thursday
		Waste Industries ¹	Wednesday	Wednesday
		Waste Management	Wednesday	-
3	Black Horse Run	Patriot Sanitation Management	Tuesday	Tuesday
		REZ-Waste	Tuesday	Tuesday
		Veteran Waste Solutions	Tuesday	Tuesday
		Waste Industries ¹	Friday	Friday
4	Byrum Woods	Veteran Waste Solutions	Wednesday	Wednesday
		Waste Industries ¹	Friday	Friday
		Waste Management	Friday	Friday
9	Clear Springs	Veteran Waste Solutions	Friday	Friday
		Waste Industries	Wednesday	Wednesday
11	Ridge Haven	Republic Waste Service	Thursday	Monday
		Waste Industries ¹	Monday	Monday
12	Candlewick	Republic Waste Service	Thursday	-
		Waste Industries ¹	Monday	Monday
		Waste Management	Monday	Monday
13	Golden Plantation	Aardvark Trash	Wednesday	-
		Republic Waste Service	Thursday	Thursday
		Waste Industries ^{2,3,4}	Wednesday	Wednesday
15	Turner Farms Sec 4	Aardvark Trash	Monday	-
		Anchor Disposal	Monday	Monday
		Patriot Sanitation Management	Thursday	Thursday
		Republic Waste Service	Wednesday	Wednesday
		Waste Industries ^{1,2,4,5,6}	Thursday	Thursday

Table 3. Summary of Waste Collection Days by Neighborhood (continued)

Map ID	Neighborhood	Hauling Companies	Waste Collection Day	Recycling Collection Day
18	Lynnhaven	Aardvark Trash	Monday	-
		Patriot Sanitation Management	Thursday	Thursday
		Reliable Sanitation & Recycling	Wednesday	Wednesday
		Republic Waste Service	Monday	-
		Veteran Waste Solutions	Wednesday	Wednesday
		Waste Industries ^{1,2}	Friday	Friday
19	Crofts at Brackenridge	Anchor Disposal	Monday	Monday
		Reliable Sanitation & Recycling	Monday	Monday
		Republic Waste Service	Monday	Friday
		Veteran Waste Solutions	Thursday	Thursday
		Waste Industries ^{1,2}	Friday	Friday
20	Page Wood Forest	Waste Industries ¹	Thursday	Thursday
	Oak Ridge Acres	Waste Industries ¹	Friday	Friday
	Glover Acres	Waste Industries ¹	Thursday	Thursday
	Scott Farm	Waste Industries ¹	Thursday	Thursday
	TJ Howell	Waste Industries ¹	Friday	Friday
	Jeter Williams	Waste Industries ¹	Thursday	Thursday

¹ Formerly Shaw Waste Management

² Formerly ABC Sanitation

³ Formerly Advantage Waste Solutions

⁴ Formerly Busy Bee Sanitation

⁵ Formerly VF Sanitation

⁶ Formerly Brocks Sanitation

3.0 Franchising

3.1 What is Solid Waste Franchising?

While convenience centers are still the “workhorse” for waste and recycling collection in the rural, unincorporated areas, there is a growing expectation for curbside collection services to be provided in the suburban unincorporated areas. A common means by which curbside collection services are provided to unincorporated areas is through franchise agreements.

Franchise agreements are formal agreements between local governments and private hauler companies to provide a collection services within a defined geographical boundary. For the purposes of this memorandum, franchising is only being considered for residential areas and not commercial accounts.

Franchise agreements are typically procured through a competitive bid process and have specified contract durations with at least one optional renewal period. North Carolina General Statutes limit the issuance of solid waste collection franchise agreements to a maximum term of 30 years. To issue a franchise agreement, North Carolina local government entities are required to adopt a franchise ordinance prior to issuing an agreement. Additionally, North Carolina Senate Bill 951, enacted in the 2006 Session, requires that local governments that wish to implement franchised collection must either compensate private haulers or provide a phased-in period for 15 months. The pertinent sections of Bill 951, as incorporated into Part 1 of Article 16, Chapter 160A-327 are included in Attachment B.

Some of the commonly cited benefits of franchise agreements include the ability to:

- Provide cost-effective collection services while retaining control over the level of service,
- Require private haulers to dispose of waste at a specific facility, and
- Require that private haulers offer recycling services to all customers.

3.1.1 Franchise Agreement Structures

Residential collection franchise agreements can be structured as voluntary or non-voluntary and exclusive or non-exclusive.

- Voluntary or non-voluntary (mandatory) agreements refer to whether or not residents have to purchase curbside collection services.
- Exclusive and non-exclusive refer to the number of haulers that are allowed to operate within the designated service area.

A non-voluntary, exclusive franchise program would mean all residents are required to use and pay for the one selected private hauler for collection services. Voluntary programs do not require residents to obtain curbside collection service; however, residents must use franchised haulers (through a subscription service) if they choose to have curbside collection. Local governments using franchise agreements will often charge residents for collection services on their annual property tax bill or monthly utility bill, which essentially renders the service mandatory because residents pay for the service regardless of whether or not they use the service.

In an exclusive franchise, the right to provide waste collection services in a designated area is granted to a single company or organization. The goal of an exclusive franchise is to obtain the lowest cost by providing bidders the benefit of economy of scale.

In a non-exclusive franchise, the right to provide services in a franchise area is granted to multiple private haulers without assigning defined service areas. A non-exclusive solid waste collection franchise approach is similar to the free market approach, except that levels of service and fees are defined in the franchise license agreement and the haulers are not allowed to operate outside the franchise area.

A hybrid option to the exclusive franchise is establishing semi-exclusive franchises where the service area is subdivided into smaller areas with exclusive franchises issued for each subsection. This option allows multiple haulers (including small local haulers) to participate in the delivery of collection services. This approach requires a rather large service area to ensure that the divided sections are still attractive and profitable enough for a private hauler to sustain a business. The establishment of semi-exclusive franchise services areas for residential waste collection is commonly practiced by local governments.

Traditionally, the governing board establishes a maximum cost and standard level of service for franchised collection services. More recently, local governments have been expanding the scope of franchise agreements to require that private haulers offer recycling services to customers that receive curbside waste collection services. Franchise agreements can also include collection services for the convenience center sites located in unincorporated areas.

Local governments often collaborate with members of the local hauler community to establish franchise conditions that support competition among both independent and major haulers. This approach is used to help build a competitive pricing structure for residents.

3.2 Benefits and Drawbacks of Franchising

Franchising comes with benefits and drawbacks that should be weighed against the public's interest. The benefits of franchise agreements include:

- Increase in convenience yields greater participation in recycling and yard waste programs;
- Lower costs through increased efficiency;
- Less vehicular emissions and noise pollution;
- Reduced wear and tear on roads due to less truck trips;
- Provide higher levels of service;
- Reduce illegal dumping when using non-voluntary collection; and
- Enhance the visual appeal of neighborhoods (i.e.; residents set out uniform carts on the same day instead of an assortment of carts and bins on various days).

One drawback of exclusive franchise agreements is that there is no freedom of choice for residents. Exclusive and sometimes non-exclusive agreements can lead to reduced market share for small, local haulers. Some other potential drawbacks are listed below:

- The transition to franchise collection can be contentious as current haulers may argue that an open market provides lower costs to residents;
- Potential issues with consistent customer service (i.e., missed pick-ups or spilled trash).
- Requires more County staff involvement in managing performance of contractors, and

- In some instances, unincorporated areas are too sparsely populated to make curbside collection economical.

As previously noted, NC General Statute 160A-327 requires that local governments must either compensate private haulers or wait for a period of 15 months after the first notice change before implementing a franchise collection service. Waste collection subscription services are already available to residents in the unincorporated areas of Wake County, and as such, the existing haulers would need to be notified as potential vendors in the agreement. The County should obtain a legal opinion of the potential impact of this requirement on any plans to franchise collection.

3.3 Solid Waste Franchising Case Studies

Per data from the NC DEQ Division of Environmental Assistance and Customer Service (DEACS), 15 counties provide unincorporated residents with waste collection services and 11 provide recycling collection services using franchise agreements. **Table 4** provides a summary of the North Carolina counties that utilize franchise agreements for collection services. The programs are a mix of exclusive and non-exclusive franchises. The effectiveness of curbside recycling programs is evident by the fact that seven of the county programs rank in the top 20 county programs for per capita recycling.

Table 4. Counties in North Carolina using Franchise Agreements for Collection Services

County	Waste Collection	Recycling Collection
Alamance	■	■
Alexander		■
Alleghany	■	
Anson	■	
Buncombe	■	■
Burke	■	
Cabarrus	■	■
Caswell	■	
Catawba	■	■
Cleveland		■
Craven	■	■
Dare		■
Forsythe	■	■
Granville	■	■
Guilford	■	
New Hanover	■	
Pamlico	■	
Rockingham	■	■

Case Study - Catawba County, North Carolina

Catawba County, North Carolina has had an exclusive, voluntary franchise agreement with Republic Services for the collection of residential and commercial waste in the unincorporated areas of the County since 1969. The current franchise agreement is valid through June 30, 2024 with an option to extend the term another four years if mutually agreeable between both parties. Residents who want curbside collection services are required to obtain subscription services with Republic Services.

Chapter 32 of the County Code (Catawba County Solid Waste Ordinance) provides that the Board of Commissioners may grant an exclusive franchise for the provision of municipal solid waste collection in the unincorporated area of Catawba County at a frequency of once per week to each County resident within the unincorporated area. In 2013, the County passed Ordinance No. 2013-01 to update the franchise agreement. The ordinance granted the exclusive franchise to Republic Services of NC, LLC, for Solid Waste Management and Disposal Services. The Board prefers a single franchise for the provision of such services.

The franchise contract with Republic Services requires that they use an automated collection system and offer single-stream recycling collection to its customers. Under the conditions of the agreement, Republic Services is required to deliver all the waste to the County's Blackburn Landfill. Republic Services also operates the County's five convenience centers and is required to own and operate a single-stream materials recovery facility (MRF). Additionally, Republic Services must "promote and sell waste and recycling collection services to all residences by holding a minimum of one marketing event annually which must include a new customer discount."

The franchise agreement requires that Republic Services pay the County an annual franchise fee of \$50,000 for the first five years of the contract (until 2018) at which time the fee increases to \$75,000 per year for the remaining six years of the contract.

Monthly fees included in the franchise agreement for residential service are presented in **Table 5** and include the provision of two 96-gallon carts for waste and recycling. Additional carts may be requested by residential customers for a monthly rental fee. Republic Services also collects bagged yard waste upon request, for an additional fee of \$2.00 per 32-gallon bag, and bulky items, upon request, for a \$35.00 fee.

Table 5. Catawba County Unincorporated Areas Residential Monthly Fees*

	Basic Collection Fee	Excessive Waste Disposal Fee	Landfill Fees	Roll-Out Cart	Total Monthly Fee
Recycling Curbside Collection	\$14.13	N/A	\$3.25	\$1.50	\$18.88
Waste Curbside Collection	\$15.73	\$5.35	\$3.25	\$1.50	\$24.33

*Effective July 1, 2013

The franchise agreement also includes the following requirements:

- The use of fuel efficient and “environmentally sensitive” vehicles;
- providing collection containers and services for County events;
- tracking and reporting of recyclable quantities;
- collection support during FEMA declared emergencies; and
- solid waste and recycling services to County government buildings.

Case Study - Buncombe County, North Carolina

Buncombe County issued a Request for Proposals in July 2009 for an exclusive franchise agreement to provide collection and disposal of solid waste and collection of recyclables in the unincorporated areas of the County. Following the RFP process, Buncombe County entered into a 10-year exclusive franchise agreement with Waste Pro for curbside collection and disposal of residential and small business waste, and collection of commingled recyclables, on a voluntary basis, in the unincorporated areas of the County. The agreement was issued on January 1, 2010 and expires on December 31, 2019.

Residents are not required to participate in the franchise program and they have the option to self-haul their waste to either the transfer station or landfill. Recyclable material is collected utilizing the “blue bag” system. Under the franchise agreement, Waste Pro services approximately 27,000 residential customers who pay approximately \$14 per month for the subscription service. Waste Pro is responsible for the collection of all service fees.

Trash and recycling collection services are provided once per week on the same day. Yard waste collection is not included in the services offered by Waste Pro. Subscribers of weekly collection services can dispose of up to four 32-gallon size bags or four standard 33-gallon cans of refuse. Collection and disposal of any additional bags or cans is provided at an additional cost of \$1.00 each. The agreement includes a recycling educational component that requires Waste Pro to provide information annually to each subscriber entailing the recycling program along with acceptable materials for recycling.

Buncombe County developed the franchise agreement to specifically identify the Buncombe County landfill and transfer station as the only acceptable facilities for the disposal of materials collected under the franchise agreement.

The agreement provides detailed requirements for the collection of recyclables including the specific materials that must be accepted. Under the conditions of the agreement, Waste Pro is not guaranteed any minimum or maximum volume of recyclables. The agreement also allows for the County to expand the list of materials to be recycled. Waste Pro is responsible for the marketing and delivery of all recyclable materials collected within the unincorporated areas.

Yard waste, bulky waste, and white goods are not included in the franchise agreement; however, residents and small businesses can negotiate with Waste Pro or other contractors for the collection and disposal of these materials.

Buncombe County staff indicated that one lesson-learned during the execution of their franchise program is that the agreement needs to have significant enforceable penalties for lack of performance. Significant performance issues occurred within the first several years of the agreement. The County noted that Waste Pro's performance issues stemmed from poor management, improper equipment (e.g., collection vehicles that were too large for some roads), and a lack of familiarity of local conditions¹. Buncombe County indicated that they will include performance penalties in their next franchise agreement.

Case Study - Gwinnett County, Georgia

As a component of Gwinnet County's 2008 Solid Waste Management Plan Update, the County conducted an in-depth evaluation of franchising in the unincorporated areas. In 2009, they began to move toward implementing a franchise system, and began to solicit public input. In 2010, the franchising plan was drafted, sent to bid and awarded to two major haulers for a period of eight years. Together, the two haulers were to be responsible for the eight sub-areas of the county. Shortly after the award, Gwinnett County was sued for claims that it is illegal to require unincorporated residents to be billed in advance through property taxes for a collection service. The result of the litigation was the development of a semi-exclusive, non-voluntary (mandatory) franchise agreement with five separate haulers, each providing service to five sub-areas of the County. The five haulers and five service areas were outlined by the Court, and were not selected by the County.

The franchise contract requires that every unincorporated county resident pay for the weekly collection services through their property tax. For 2017, the monthly rate is \$18.99 for waste and recycling, with an optional \$10/month for a 6-month yard collection service subscription. For no additional charge and upon request, residents can also participate in weekly curbside pick-up of bulk items. The County also offers a 15% discount for senior citizens.

Gwinnet County identified several benefits and drawbacks stemming from their conversion to an unincorporated franchising program. These are listed in **Table 6**.

¹ Personal communication with Jon Creighton, Buncombe County Planning Director

Table 6. Recognized Benefits and Drawbacks of Franchising in Gwinnett County

Benefits	Drawbacks
<ul style="list-style-type: none"> ▪ Increased education about waste and recycling services ▪ Increased recycling participation ▪ Increased customer payment accountability ▪ Reduced greenhouse gas emissions ▪ Energy savings through waste diversion ▪ Reduced air and noise pollution ▪ Less illegal dumping ▪ Less wear and tear on roads ▪ Uniform rates across the County 	<ul style="list-style-type: none"> ▪ Litigation ▪ (Potentially) increased costs for some residents ▪ Increased call volume from residents to the County ▪ Elimination of small collection businesses ▪ Lengthy implementation process

Gwinnett County experienced several setbacks while drafting and implementing their franchising program. Based on their experience, they offered the following advice to on how to best undertake the process²:

- Educate the public about franchising and the positive effects of recycling and waste diversion. This is done best using a marketing coordinator.
- Be very transparent during the bid process.
- Prequalify interested hauling companies, which may eliminate smaller haulers who are unable to provide the desired services. Consider the following prequalification topics:
 - Collection Equipment: Question the age, condition, quantity and capacity of the company's current equipment. Do they have the required equipment outlined in the franchise agreement or do they need to purchase or upgrade equipment?
 - Experience: Do they have adequate experience? How long have they been operating? Does the company receive positive customer reviews?
 - Management: Do they have proven management in place, and can they effectively manage the number of customers in the designated service area?
 - Staff: Are they properly staffed? Is their staff eligible to work with proper documentation and skill sets?
 - Call Center: Does the hauling company have their own adequately sized call center? Customer concerns should be routed through the hauler instead of the County.
 - Insurance: Are they properly insured? Can they afford the change in insurance required under the franchise agreement?

² Personal communication with Silviu Gavriliuc, Gwinnett County Section Manager.

- Provide larger bins with lids to reduce litter and allow for increased waste and recycling amounts.
- Maintain a well-staffed and efficient call center, especially during the transition phase.

Gwinnett County ultimately expressed satisfaction with the franchising program and existing agreements, noting customer payment accountability has had positive effects on the County's revenue. Customer satisfaction has increased over time and Gwinnett County is likely to renew the franchise contracts in 2018.

4.0 Summary and Recommendations

Wake County's system of 11 convenience centers and two multi-material recycling facilities provides residents with convenient and accessible drop-off locations for solid waste and recycling. For residents who prefer curbside service, there are at least nine waste and eight recycling haulers currently serving unincorporated portions of the County. It is expected that between 10 to 15 of the 63 currently licensed haulers provide waste and/or recycling to unincorporated Wake County, or portions thereof. Although just two solid waste haulers accounted for 88% of the residents using private haulers in the 11 surveyed neighborhoods, the number of observed haulers suggests a healthy level of competition. This is one factor in keeping the expected rates offered by private haulers relatively low³. Other perceived benefits of the current system and potential drawbacks of moving to a franchise system include:

- The plentiful drop-off locations and generally affordable curbside options for waste disposal and recycling are factors in keeping the occurrence of illegal dumping in Wake County low. Illegal dumping has been a driver in other counties, where disposal options were not readily available, convenient, or affordable. It is unclear if a franchise system would reduce the already low amount of illegal dumping.
- For the residents that prefer to pay for curbside service, numerous options are available in Wake County, should they decide that their current level of service is insufficient. Under a franchise system, residents will lose the ability to choose their service provider, which may be viewed as a drawback by some.
- Of the nine waste haulers with customers in the surveyed neighborhoods, seven accounted for 4% or less of the residents with curbside service. Under a franchise system it might be expected that some of these haulers, which are small-sized companies, might go out of business if they were not awarded a franchise area, do not have a significant number of customers outside of Wake County, or do not have commercial customers.
- A franchise system would add new responsibilities to Wake County Solid Waste Division staff. They would be required to manage the franchise agreements and contractor performance. However, the additional cost of this could be recovered through a franchise fee or similar mechanism.

³ No private hauler rate information was collected as part of this study.

Potential benefits of instituting franchised waste and recycling collection include:

- In recent years, there has been a trend of smaller haulers being acquired by larger haulers. For example, Waste Industries has purchased at least six small haulers in the past several years. If this trend continues, the number of haulers will decrease, reducing competition, and potentially resulting in increased rates for customers. Franchising may be a means to prevent rates from increasing.
- Fewer collection trucks resulting in a reduction of traffic, road depletion, vehicular emissions and noise pollution in unincorporated neighborhoods. In several of the surveyed neighborhoods, up to 6 waste haulers and 5 recycling haulers visit each neighborhood on a weekly basis. Fewer traffic accidents might also be an outcome, as fewer trucks will be traveling through each neighborhood.
- The visual appeal of neighborhoods would improve due to fewer days when waste and recyclables are placed at the curb.
- There would be a uniform level of service within the franchised areas. For example, in some of the surveyed neighborhoods both recycling bins and carts were in use. Switching to all recycling carts may help increase the level of recycling, especially regarding the types of recyclables collected.

It is recommended that Wake County government closely review and consider if the benefits outweigh the drawbacks considering the County's specific goals and objectives as they relate to providing sustainable and cost-effective solid waste and recycling services and protecting the environment. The County Attorney's Office should be consulted to evaluate the potential for litigation, should a franchise system be pursued. A Q&A document prepared by Richard Whisnant at the UNC School of Government (see Attachment C) contains information and opinion regarding various legal aspects of solid waste franchises in North Carolina. County leaders are also encouraged to seek additional input and advice from Gwinnett County, that recently moved to a franchise system.

If a preliminary decision is made to further explore the efficacy of a franchise system, it is recommended that the County then solicit input from the public and waste/recycling haulers. Questions that should be considered and discussed include:

- Are residents satisfied with the existing level, quality and cost of service? Have they experienced service disruptions? Have rates risen in recent years?
- It is important to residents to maintain the freedom to choose their service provider(s)?
- Are residents experiencing any issues caused by multiple trucks collecting in the same neighborhood such as air pollution, safety hazards excessive noise or concern of diminished visual appeal of their neighborhood?
- Do residents believe that because of the comprehensive system of solid waste and recycling convenience centers, that franchising is unnecessary?

- How many of the haulers currently operating in Wake County have sufficient resources to offer exclusive services in a franchised area?
- How many haulers would be economically harmed by the creation of one or several franchised service areas, if they were not awarded an area? How many would potentially go out of business?
- Would haulers be concerned that if a voluntary system is established, due to the availability and affordability of the convenience centers, they may potentially not have enough customers to meet profit expectations if they were awarded a franchise area?

Attachment A

Licensed Haulers in Wake County (July 2016 – June 2017)

Wake County
Licensed Solid Waste & Recycling Haulers
July 1, 2016 - June 30, 2017

Company Name	Mailing Address	City	ST	Zip
Aardvark Trash	2664 Timber Dr., Ste 309	Garner	NC	27529-2571
Adopt A Highway Maintenance Corp	1211 E. Dyer Road, Suite 110	Santa Ana	CA	92705-5670
All Points Waste Service	PO Box 2458	Indian Trail	NC	28079-2458
All Star Waste Services, LLC	600 Old Roberts Road, Suite 206	Benson	NC	27504-8006
Alliance Careers dba Veterans Waste Solutions	5000 Falls of Neuse Rd Suite	Raleigh	NC	27609-5480
American Recyclers	2025 Castle Pines Dr	Raleigh	NC	27604-8497
Anchor Disposal	PO Box 1058	Clayton	NC	27528-1058
Bobbitt Design Build	600 Germantown Rd.	Raleigh	NC	27607-5144
Brinley's Grading Service	3611 Cessna Drive	Garner	NC	27529-8588
Brooks Contractor	1195 Beal Rd	Goldston	NC	27252-9595
Capital Container	PO Box 99093	Raleigh	NC	27624-9093
Carolina Sweepers, LLC	3520 NC 55 Hwy	Cary	NC	27519-8370
Central Carolina Waste Disposal	PO Box 3300	Roxboro	NC	27573-3300
CLM Services	PO Box 146	Bennett	NC	27208-0146
College Hunks Hauling Junk and Moving	9317 Bramden Court	Wake Forest	NC	27587-5060
CompostNow	PO BOX 12152	Raleigh	NC	27605-2152
Debris Resource	PO Box 980	Garner	NC	27529-0980
Dumpsters on Demand	PO Box 1644	Fuquay Varina	NC	27526-1644
ECOFLO	2750 Patterson St	Greensboro	NC	27407-2317
Elite Waste Services	P.O. Box 2197	Apex	NC	27539-2197
Environmental Products and Services of Vt.,	405 South Rogers Lane	Raleigh	NC	27610-2146
Excel Moving & Storage	2612 Discovery Drive	Raleigh	NC	27616-1817
Food FWD	12 Fox Chase Ln	Durham	NC	27713-9458
Garage Brothers	1205 Collington Drive	Cary	NC	27511-5840
GEEP	PO Box 12533	Research Triangle Park	NC	27709-2533
Grime Control Cleaning and Recycling	PO Box 28404	Raleigh	NC	27611-8404
GSC Specialty Contractors	4501 New Bern Ave	Raleigh	NC	27610-1549
Guardian Angel Thrift	742 N. Main Street	Fuquay-Varina	NC	27526-2029
Hi-Lite Electric dba My Eco Lamp	7960 Chapel Hill Road	Cary	NC	27513-4162
McConnell Waste Systems & Recycling	155 Progress Drive	Fuquay Varina	NC	27526-7677
NC Dumpster	PO Box 215	Holly Springs	NC	27540-0215
NC Rubbish DBA Shamrock Containers	5712 Preakness Place	Youngsville	NC	27596-9521
NCSU Waste Reduction & Recycling	NCSU-WRR Campus Box 7516	Raleigh	NC	27695
Noble Oil Service	5617 Clyde Rhyne Dr	Sanford	NC	27330-9562
Norwake Contractor Service	PO Box 61337	Raleigh	NC	27661-1337
Orange Recycling Service dba Carolina Waste	1010 East Pettigrew St	Durham	NC	27701-4241
Patriot Sanitation Management	109 Sigma Drive	Garner	NC	27529-8543
Pratt Recycling Division	1599 Hwy 138 NE	Conyers	GA	30013-1265
Reliable Sanitation and Recycling	PO Box 916	Holly Springs	NC	27540-0916
Republic Services of NC	5111 Chin Page Rd	Durham	NC	27703-8405
Rez Waste, LLC	PO Box 9563	Chapel Hill	NC	27515-9563
RGL Carolina, LLC d/b/a 1-800-GOT-JUNK?	4050 Wake Forest Rd., #100	Raleigh	NC	27609-6860
Shamrock Environmental Corp	6106 Corporate Park Dr	Browns Summit	NC	27214-9700
Shimar Recycling Inc	PO Box 11219	Durham	NC	27703-1219
Smart Recycling of NC	2528 Schieffelin Rd	Apex	NC	27502-7000
Sonoco Recycling	111 S. Rogers Ln	Raleigh	NC	27610-4385
Stafford Transport of NC	830 Corporation Pkwy	Raleigh	NC	27610-1361
Stand Up Guys Junk Removal	1121 Wedgeland Dr	Raleigh	NC	27615-5924
Stay Clean Solutions, LLC d/b/a McJunk Inc	10501 Neland St	Raleigh	NC	27614-8621
Sweeping Corporation of America, Inc.	PO Box 40348	Nashville	TN	37204-0348
Tin Cans, LLC	510 E Washington St	Lillington	NC	27546-8075
Tousley Waste & Recycling Systems	6340 Dwight Rowland Rd	Fuquay-Varina	NC	27526-9217
Triangle Recycling Service	PO Box 2001	Wendell	NC	27591-2001
Triangle Removal, Inc. d/b/a Junk Doctors	10312 Chapel Hill Road	Morrisville	NC	27502-3924
Triangle Trash dba Bin There Dump That	188 Northbend Drive	Youngsville	NC	27596-9454
Triangle Waste Service	P.O. Box 1736	Wake Forest	NC	27588-1736
Triangle Wildlife Removal, Inc.	PO Box 58027	Raleigh	NC	27658-8027
TT&E Iron & Metal	PO Box 554	Garner	NC	27529-0554
Turbo Haul	11071-A Guilford Road	Annapolis Junction	MD	20701-1127
Veolia Environmental Services	One Eden Lane	Flanders	NJ	07836-8950
Waste Industries Garner	3741 Conquest Dr	Garner	NC	27529-9487
Waste Management	10411 Globe Rd	Morrisville	NC	27560-8546
WasteAway	PO Box 5887	Cary	NC	27512-5887

Attachment B

SB 951, as incorporated into Part 1 of Article 16, Chapter 160A-327

§ 160A-327. Displacement of private solid waste collection services.

(a) A unit of local government shall not displace a private company that is providing collection services for municipal solid waste or recovered materials, or both, except as provided for in this section.

(b) Before a local government may displace a private company that is providing collection services for municipal solid waste or recovered materials, or both, the unit of local government shall publish notice of the first meeting where the proposed change in solid waste collection service will be discussed. Notice shall be published once a week for at least four consecutive weeks in at least one newspaper of general circulation in the area in which the unit of local government and the proposed displacement area are located. The first public notice shall be given no less than 30 days but no more than 60 days prior to the displacement issue being placed on the agenda for discussion or action at an official meeting of the governing body of the unit of local government. The notice shall specify the date and place of the meeting, the geographic location in which solid waste collection services are proposed to be changed, and the types of solid waste collection services that may be affected. In addition, the unit of local government shall send written notice by certified mail, return receipt requested, to all companies that have filed notice with the unit of local government clerk pursuant to the provisions of subsection (f) of this section. The unit of local government shall deposit notice in the U.S. mail at least 30 days prior to the displacement issues being placed on the agenda for discussion or action at an official meeting of the governing body of the unit of local government.

(c) Following the public notice required by subsection (b) of this section, but in no event later than six months after the date of the first meeting pursuant to subsection (b) of this section, the unit of local government may proceed to take formal action to displace a private company. The unit of local government or other public or private entity selected by the unit of local government may not commence the actual provision of these services for a period of 15 months from the date of the first publication of notice, unless the unit of local government provides compensation to the displaced private company as follows:

- (1) Subject to subdivision (3) of this subsection, if the private company has provided collection services in the displacement area prior to announcement of the displacement action, the unit of local government shall provide compensation to the displaced private company in an amount equal to the total gross revenues for collection services provided in the displacement area for the six months prior to the first publication of notice required under subsection (b) of this section.
- (2) Subject to subdivision (3) of this subsection, if the displaced private company has provided collection services in the displacement area for less than six months prior to the first publication of notice required under subsection (b) of this section, the unit of local government shall provide compensation to the displaced private company in an amount equal to the total gross revenues for the period of time that the private company provided such services in the displacement area.
- (3) If the displaced private company purchased an existing operation of another private company providing such services, compensation shall be

for six months based on the monthly average total gross revenues for three months the immediate preceding the first publication of notice required under subsection (b) of this section.

(d) If the local government elects to provide compensation pursuant to subsection (c) of this section, the amount due from the unit of local government to the displaced company shall be paid as follows: one-third of the compensation to be paid within 30 days of the displacement and the balance paid in six equal monthly installments during the next succeeding six months.

(e) If the unit of local government fails to change the provision of solid waste services as described in the notices required under subsection (b) of this section within six months of the date of the first meeting pursuant to subsection (b) of this section, the unit of local government shall not take action to displace without complying again with the provisions of subsection (b) of this section.

(f) Notice of the provision of solid waste collection service shall be filed with the unit of local government clerk of all cities and counties located in the private company's collection area or within five miles thereof.

(g) This section shall not apply when a private company is displaced as the result of an annexation under Article 4A of Chapter 160A of the General Statutes or an annexation by an act of the General Assembly. The provisions of G.S. 160A-37.3, 160-49.3, or 160A-324 shall apply.

(h) If a unit of local government intends to provide compensation under subsection (c) of this section to a private company that has given notice under subsection (f) of this section, the private company shall make available to the unit of local government not later than 30 days following a written request of the unit of local government, sent by certified mail, return receipt requested, all information in its possession or control, including operational, financial, and budgetary information necessary for the unit of local government to determine if the private company qualifies for compensation. The private company forfeits its rights under this section if it fails to make a good faith response within 30 days following receipt of the written request for information from the unit of local government provided that the unit of local government's written request so states by specific reference to this section.

(i) Nothing in this section shall affect the authority of a city or county to establish recycling service where recycling service is not currently being offered.

(j) As used in this section, the following terms mean:

(1) Collection. - The gathering of municipal solid waste, recovered materials, or recyclables from residential, commercial, industrial, governmental, or institutional customers and transporting it to a sanitary landfill or other disposal facility. Collection does not include transport from a transfer station or processing point to a disposal facility.

(2) Displacement. - Any formal action by a unit of local government that prohibits a private company from providing all or a portion of the collection services for municipal solid waste, recovered materials, or recyclables that the company is providing in the affected area at least 90 days prior to the date of the first publication of notice required by subsection (b) of this section. Displacement also means an action by a unit of local government to use an availability fee, nonoptional fee, or taxes to

fund competing collection services for municipal solid waste, recovered materials, or recyclables that the private company is providing in the affected areas at least 90 days prior to the date of the first publication of notice required under subsection (b) of this section is given. Displacement does not include any of the following actions:

- a. Failure to renew a franchise agreement or contract with a private company.
- b. Taking action that results in a change in solid waste collection services because the private company's operations present an imminent and substantial threat to human health or safety or are causing a substantial public nuisance.
- c. Taking action that results in a change in solid waste collection services because the private company has materially breached its franchise agreement or the terms of a contract with the local government, or the company has notified the local government that it no longer intends to honor the terms of the franchise agreement or contract. Notice of breach must be delivered in writing, delivered by certified mail to the firm in question with 30 days to cure the violation of the contract.
- d. Terminating an existing contract or franchise in accordance with the provisions of the contract or franchise agreement.
- e. Providing temporary collection services under a declared state of emergency.
- f. Taking action that results in a change in solid waste collection services due to the existing providers' felony conviction of a violation in the State of federal or State law governing the solid waste collection or disposal.
- g. Contracting with a private company to continue its existing services or provide a different level of service at a negotiated price on terms agreeable to the parties.

(3) Municipal solid waste. - As defined in G.S. 130A-290(18a).

(4) Unit of local government. - A county, municipality, authority, or political subdivision that is authorized by law to provide for collection of solid waste or recovered materials, or both. (2006-193, s. 4.)

Attachment C

Q&A About Solid Waste Franchises in North Carolina

Source: Richard Whisnant, UNC School of Government Environmental Finance Center

Some questions and answers about solid waste franchises in NC

Solid Waste Finance Course

UNC School of Government Environmental Finance Center

By Richard Whisnant, UNC School of Government

919.962.9320 richard_whisnant@unc.edu

- What are the state statutes that enable local governments in North Carolina to establish franchises? What are the various definitions as well as types of franchises that are addressed in these statutes?

A governmental franchise is a contract with an important twist: the twist is that the contract is for carrying out a governmental function, a function involving some responsibility within the power of a governmental unit to control. North Carolina counties are given broad authority to regulate solid waste collection and disposal within the county limits. When the county enters a franchise, it is contracting with another entity (typically a private company) to carry out an important governmental function. The governmental franchise is thus different from a contract for goods or services of a purely private nature. There is an important and significant public interest in the subject of the franchise; it is not solely about making goods or delivering services in a private market. The usefulness of such franchises has long been recognized: there are many things important to the public, such as solid waste collection and disposal, that may be more efficiently or effectively carried out by a private entity than by a governmental unit, under the right circumstances.

Counties are authorized by G.S. 153A-136 to require licenses for collecting waste in the county as a commercial endeavor (outside municipal limits) and to prohibit those without a license from collecting waste as a commercial endeavor, as well as to grant a franchise to one or more persons for the exclusive right to collect or dispose of waste within all or a designated portion of a county. By case law, cities and counties in NC are **required** to pass franchise ordinances for contracts with private entities to operate “public enterprises.”¹

With regard to recyclables: the definition of “waste” of interest for this question (G.S. 130A-290) does **not** include recyclables **unless** those materials are not separated from the

¹ From *County of Wake v. DENR*, 155 N.C.App. 225, 244 (2002): “However, case law interpreting Chapter 160A, and its predecessor, indicates that a franchise is mandatory for the operation of a “public enterprise.” See *Madison Cablevision v. City of Morganton*, 325 N.C. 634, 654, 386 S.E.2d 200, 212 (1989) (“A city needs no grant from itself to own and operate public enterprises, including operating a CATV [cable television] system; it does so in its own right pursuant to the authority granted to it by the legislature under General Statutes chapter 160A, article 16, part 1. It needs no franchise or other grant of authority from itself as do non-municipal suppliers of the same enterprise.”); *Shaw v. Asheville*, 269 N.C. 90, 152 S.E.2d 139 (1967); *Power Co. v. Membership Corp.*, 253 N.C. 596, 604, 117 S.E.2d 812, 817 (1961) Based on this case law, we are constrained to conclude that a city or town is required to pass an ordinance granting a franchise any time a third party, be it a private individual or corporation, another municipality, or a county, seeks to operate a public utility such as a solid waste disposal facility.”

rest of the municipal solid wastestream. This definition of “waste” specifically excludes “recovered material,” defined as:

“a material that has known recycling potential, can be feasibly recycled, and has been diverted or removed from the solid waste stream for sale, use, or reuse. In order to qualify as a recovered material, a material must meet the requirements of G.S. 130A-309.05(c).

G.S. 130A-290(a)(24). Those additional requirements in G.S. 130A-309.05(c) are as follows:

- (1) A majority of the recovered material at a facility shall be sold, used or reused within one year.
- (2) The recovered material or the products or by-products of operations that process recovered material shall not be discharged, deposited, injected, dumped, spilled, leaked or placed into or upon any land or water so that the products or by-products or any constituent thereof may enter other lands or be emitted into the air or discharge into any waters including groundwater, or otherwise enter the environment or pose a threat to public health and safety; and
- (3) The recovered material shall not be a hazardous waste or have been recovered from hazardous waste.

G.S. 130A-309.05.

In essence, a citizen or business in the county is legally authorized to separate anything that meets these tests for “recovered material” from their wastestream and make their own arrangements for sale or reuse of that material.

This does not mean the county has no power with regard to recyclables. The county can require separation of designated materials prior to disposal. Then, if the owner of those materials (citizen or business) places those materials in a specific location, receptacle or facility that is owned by the county or its designee, the ownership of those materials is legally deemed to be transferred to the county or its designee. G.S. 153A-136(a)(5), (6). Thus a county can essentially control (and, in my opinion, can franchise) the collection and use of recyclables once they are placed in county containers, delivered to specific county locations, or otherwise abandoned by their original owner.

Cities are authorized by G.S. 160A-319 to enter solid waste collection or disposal franchises “upon reasonable terms.”

- What types of solid waste services (i.e., residential collection, commercial collection, disposal) can be legally franchised in NC?

Residential collection, commercial collection, and disposal of solid wastes, including construction and demolition wastes, all can legally be franchised in North Carolina. As to recyclables, see above: a franchise agreement is possible, but a city or county cannot

force a commercial or residential customer to give recovered materials over to the county's franchisee.

- In North Carolina, residential solid waste collection in incorporated areas is typically provided under a franchise arrangement. Is there any legal reason why commercial waste and recycling collection cannot be franchised under the same enabling legislation that exists for residential waste collection franchising? If not, what, in your opinion, is the reason between the large discrepancy between the number of residential and commercial waste collection franchises in North Carolina?

There is no per se legal reason why commercial waste collection cannot be franchised. I can only offer conjecture on the reason this is done less frequently than with residential collection.

First, there is the difficulty of working out efficient service arrangements with the large variety of commercial customers in a jurisdiction, at least an urbanized one. Collection times, routes, frequency, customer charges, diversion requirements, collector fees and payment mechanisms, and facility designation are all issues that many commercial enterprises may want to negotiate directly or corporately with a service provider. As a political matter, a local government that wants to structure commercial waste collection under a franchise would have to be prepared to show how the arrangements it offers via the franchise(s) will not markedly degrade the service or raise the price the commercial customer is presently paying for waste collection. Otherwise the commercial part of the franchise system, while legal as a whole, is likely to come under intense political pressure and scrutiny. It is also possible that disgruntled commercial customers could launch a legal attack on an exclusive county commercial franchise arrangement, using some theory such as "takings" or impairment of contracts. There is no doubt that the basic legal authority exists to exclusively franchise commercial waste collection, but there are probably many ways someone could attack such a system as it is actually implemented.

Second, it is conceivable that municipalities do not feel that much responsibility towards commercial customers. They have a history of letting them fend for themselves. There may be a feeling that municipalities can get lower prices for residential customers by using their collective bargaining power through franchises and have gone to the trouble of remaining involved in waste collection because of this bargaining power. Also, the traffic and mayhem repercussions of having three, four or more companies driving around and picking up commercial waste may be less than having four or five companies driving up and down every residential street every week. On the other hand, there is potential local and state air quality benefit in having county or municipal control over all waste collection—both from minimizing trips and requiring less-polluting equipment be used by the franchisee(s).

As to recycling, in my opinion counties have the power to franchise the collection of recovered materials voluntarily turned over to the county or the franchisee, but, as discussed above, they do not have the power to force a citizen or business to turn over

those materials. A citizen or business could recover materials themselves and handle them in any way they handle other valuable property—by themselves or through contracts. Hence I do not believe the county has the power to prohibit anyone operating a suitably licensed business from collecting recovered materials in the county for commercial purposes. Recovered materials are not “waste.”

Process for establishing a franchise (including S-951 provisions)

S.L. 2006-193 (S 951) provided a new process that must be used if a city or county wishes to displace existing solid waste collectors, either by taking over the collection itself (as a public entity) or by franchising solid waste collection. The new process has several mandatory time periods that are triggered either by a notice that the governing board is first scheduled to discuss the change, or by the date of the first board meeting where the change is scheduled to be discussed. The new process also includes provisions for requesting business information from existing collection service providers, if the city or county intends to compensate them for displacing their business. In my opinion, if at the time of the first meeting where a new approach is to be discussed, the city or county does not know whether it will provide compensation or will wait for the 15-month period to elapse before starting the new services, so that the local unit can say in good faith that it intends seriously to consider compensating instead of waiting, it could make the request for business information in order to help make the decision whether to compensate or wait. Here is a diagram of the new process:

Local solid waste collection franchise process - 2006

after S 951, sec 4 (SL 2006-193, codified at GS 160A-327)

Notice of 1st (board) meeting where potential displacement is to be discussed, 1x/

week for 4 consec weeks in newspaper.

The notice shall specify the date and place of the meeting, the geographic location in which solid waste collection services are proposed to be changed, and the types of solid waste collection services that may be affected. In addition, the unit of local government shall send written notice by certified mail, return receipt requested, to all companies that have filed notice with the unit of local government clerk pursuant to the provisions of subsection (f) of this section. The unit of local government shall deposit notice in the U.S. mail at least 30 days prior to the displacement issues being placed on the agenda for discussion or action at an official meeting of the governing body of the unit of local government.

1st notice at least 30 days, no more than 60 days before meeting

First time displacement is on agenda of governing board for discussion

No more than 6 months after 1st meeting

Bd may take action to displace private collection, authorize new collection approach

Timing not specified

Request for service provider data

GS 160A-327(h) " If a unit of local government intends to provide compensation under subsection (c) of this section to a private company that has given notice under subsection (f) of this section, the private company shall make available to the unit of local government not later than 30 days following a written request of the unit of local government, sent by certified mail, return receipt requested, all information in its possession or control, including operational, financial, and budgetary information necessary for the unit of local government to determine if the private company qualifies for compensation. The private company forfeits its rights under this section if it fails to make a good faith response within 30 days following receipt of the written request for information from the unit of local government provided that the unit of local government's written request so states by specific reference to this section."

15 months or more after 1st notice, or shorter period w/ compensation

Provision of services under new collection approach

- What is market participation?

In the solid waste context, “market participation” is an alternative to “regulation” as a way for government to be involved in waste management. The Second Circuit Court of Appeals relied on the idea of market participation to uphold a form of flow control in two cases from Long Island, New York: *SSC Corp. v. Town of Smithtown and USA Recycling Inc. u. Town of Babylon*. The idea in essence is that in some realms, such as solid waste, in which the public sector has longstanding responsibility for a service, the government can directly provide that service or can contract (franchise) with another entity to provide that service, rather than regulating the provision of the service by the private sector. In acting as a “market participant,” the government is held to different standards than as a regulator. In particular, the Second Circuit found that the public interests in protecting and controlling waste directly as a market participant outweighed any incidental detrimental effect on interstate commerce, thus avoiding the need to strike down the towns’ waste plans under the reasoning of the Supreme Court’s decision in *Carbone*. As noted below, further cases have attempted to explain and elaborate the line between permissible market participation and impermissible regulation that affects interstate commerce, but as yet, there has been no explanation of this line from the U.S. Court of Appeals for the Fourth Circuit, which is our controlling federal court of appeals. The U.S. Supreme Court has granted certiorari and will soon hear an appeal from the Second Circuit Court of appeals in a case that directly raises the question whether “market participation” or any other theory justifies a county’s designating a disposal facility for franchisees, despite the incidental negative effects on interstate commerce. This *United Haulers* case may give us more insight into the validity of the Second Circuit’s approach.

- Issue of open (i.e., non-exclusive) vs. exclusive franchise

The North Carolina statutes presently make no distinction between exclusive and non-exclusive franchises for waste collection and disposal. Exclusive franchises are historically justified when there is a large capital investment required to carry out a governmental function, such as building and operating lined solid waste landfills, and there is also a desire by the government body with jurisdiction to attract private investment and expertise to manage the function. There are some services that are so capital-intensive that society recognizes the benefits of a “natural monopoly.” That is, we feel there are economic benefits from private capital investment in these services that make it worthwhile to protect the investment through an exclusive franchise. However, there are special dangers in exclusive franchises. These dangers were recognized very early in this country and they are of equal or greater concern today. As Chief Justice of the United States Supreme Court Roger Taney noted in a very famous 1837 case involving bridges over the Charles River in Boston:

The continued existence of a government would be of no great value if . . . it was disarmed of the powers necessary to accomplish the ends of its creation; and the functions it

was designed to perform transferred to the hands of privileged corporations.²

In other words, exclusive governmental franchises raise the concern that the public's interest will be harmed by private monopolies. Private monopolies necessarily and appropriately care more about ensuring return for their investors than about the public interest. The North Carolina Constitution recognizes this concern by forbidding monopolies.³ When does an exclusive franchise become a monopoly? In my opinion, it is when there is insufficient governmental regulation of the franchisee's activities, especially its prices, that is, the fees charged for waste collection and disposal.⁴

North Carolina's statute authorizing county solid waste franchises provides a way around this problem of monopolies by requiring that a county retain ultimate authority over solid waste collection and disposal fees:

A county may by ordinance:

....

(3) Grant a franchise to one or more persons for the exclusive right to commercially collect or dispose of solid wastes within all or a defined portion of the county and prohibit any other person from commercially collective or disposing of solid wastes in that area...[N]o franchise may be granted for a period exceeding 30 years, nor may any franchise by its terms impair the authority of the board of commissioners to regulate fees as authorized by this section.

(4) Regulate the fees, if any, that may be charged by licensed or franchised persons for collecting or disposing of solid wastes.⁵

The important thing about this language for a franchise agreement is that, no matter what the terms of that agreement, nothing can impair the governing board's ultimate authority to regulate fees for solid waste collection and disposal in the county. The franchise agreement can (and I believe should) set out initial prices and a process for reviewing and adjusting those prices, but it cannot completely delegate price-setting to the discretion of the franchisee. There is great flexibility in the pricing structure. Almost anything goes so

² Charles River Bridge v. Warren Bridge, 36 U.S. 420 (1837).

³ N.C. Const. Art. 1 § 34 ("Perpetuities and monopolies are contrary to the genius of a free state and shall not be allowed").

⁴ Compare Thrift v. Elizabeth City, 122 N.C. 31 (1898) (striking down an exclusive franchise for a water company in Elizabeth City as a monopoly) with American Motors Sales Corp. v. Peters, 311 N.C. 311 (1984) (upholding statute providing for exclusive sales territory and noting that, among other characteristics of a monopoly, the monopolist controls prices).

⁵ N.C. Gen. Stat. § 153A-136(a) (emphasis added).

long as franchisor and franchisee agree on it and it does not discriminate on illegal or arbitrary bases.

- In a franchise situation, are non-profits (boy scouts, etc.) excluded from performing the service?

The county can prohibit anyone from collecting waste “as a commercial endeavor.” I believe this means someone such as the Boy Scouts or, for that matter, a for-profit business, could on occasion and for non-commercial reasons collect waste. I think a court would look more to the frequency and motivation for the collection activity than to the corporate nature of the entity doing the collection.

- Can multiple franchises be established either geographically, by type of service, etc.?

Yes.

- How would a franchise including more than one jurisdiction work?

There are several possible methods. It could work by interlocal agreement. The agreement could either set up a joint agency or have each of the local units involved contract with any other unit to carry out the work. The general statutes give local government units the discretion to carry out any power, function, public enterprise, right, privilege or immunity of local government through a joint agency established by multiple units. G.S. 160A-460 *et seq.* They can also proceed by direct contracts with each other. G.S. 160A-461. It is also possible to set up a separate unit of local government, such as a solid waste authority, to work across jurisdictional boundaries. However, in my opinion the first options to be considered should be a less-complex joint agency or direct contracts among existing jurisdictions, rather than the creation of an entirely new local government unit.

- Do franchise awards have to also establish/endorse a fee or rate schedule?

Yes; see discussion above under “open versus exclusive franchise.”

- Discuss feasibility of charging the franchisee a franchise fee by us and on what such a fee could be based.

There is a cost justification for charging a small fee to cover the management of the franchise – this reinforces the concept that managing a franchisee well costs money and that an efficient way of recouping this is simply to tie it to the franchise. The political feasibility of trying to use the franchise to make additional revenues beyond what it costs to manage the service may be low, and the legal grounds for such a fee are less clear. Thus the ideal fee would be based on recouping the cost of running the franchise system, and would have cover important components of such a system (such as monitoring to ensure the franchise conditions are being met).

- Can local firms be included or offered special “niche” services like handicap, remote locations or other “special” services that might make them whole under another’s franchise so they are not pushed out?

Yes. However, if you decide that facility designation is important to the county, you must balance the desire to award local firms special work against the increased risk that your overall franchise system will be challenged on the grounds that it interferes with interstate commerce. See discussion below under “facility designation.”

- Can the rates vary based on varying levels of service?

Yes. But see the discussion below of the Halifax County case (N.C. Court of Appeals, 2004).

- What happens at the County borders where other haulers might poach those in a voluntary program who opt out of the franchise – apparently there was some of this in Catawba County for a while; what types of penalties or protection are available?

If the county wants to undertake franchising of solid waste collection, it will need to pass a franchise ordinance. The ordinance should have civil enforcement provisions in it aimed at unauthorized provision of services in the county. If the county runs the billing under the franchise system, there are additional enforcement options for persons who violate the ordinance and who reside in the county, assuming you can administratively combine solid waste collection billing with other billing systems.

If the county continues to do the billing and collecting under the franchise agreement, it will be able to take advantage of the enforcement mechanisms under G.S. 153A-293 and 153A-277(b). Under 153A-293, the county can contract with a private entity to collect and dispose of solid waste. A transfer station would count as a “disposal facility.” It also can charge all residents a fee for the collection of solid waste (as long as the aggregate revenue from the fee charged does not exceed the aggregate costs of collection). The fee for collection can be charged even if a property owner disposes of the solid waste himself or attempts to hire an unauthorized hauler. The fee either can be billed with the property taxes, and, in the case of nonpayment, may be collected in any manner by which delinquent personal or real property taxes can be collected (the fee is a lien on the real property described on the bill), or it can be billed with the fees for other enterprise services such as water or sewer. In the latter case, the county can specify the order in which partial payments are to be applied among the various enterprise services.

This is not an availability fee. This is a fee to cover the cost of the collection system. It is treated completely separately in the authorizing legislation (G.S. 153A-292) from either an “availability” or a “use” fee for a disposal facility. The only limit is that “the fee may not exceed the costs of collection.” Thus it could be billed on whatever schedule is most efficient, for example, monthly.

Note that the county can only impose a fee for use of a disposal facility provided by the county if a property owner actually uses the facility, but it can impose an availability fee on all improved property that benefits from the availability of the facility.

- What are the limitations on directing waste or recyclables to a specific landfill, transfer station or MRF?

The main limit on facility designation is that the franchising unit or units not unduly burden interstate commerce. As noted above, the U.S. Supreme Court currently has a case before it, *United Haulers*, that I expect will give us more insight into what is now a conflict on this question between the Second and Sixth United States Circuit Courts of Appeal. In the meantime, here are some principles to keep in mind. Whether the courts who hear designation cases say it or not, it is clear to me they are interested in the motivation behind facility designation. Good motivation includes things like the need to ensure a safe, orderly, clean and environmentally healthy waste collection and disposal system throughout the county; the need to follow the state's directives on waste management, including recycling and reuse; and the need to ensure service delivery on an equitable basis. Those who challenge local government designation of disposal facilities will always be arguing, in essence, that there is a cheaper, more efficient alternative and that the local government is trying to prop up an inefficient system through facility designation.

Thus, the more the county can make it the reality and appearance that a designation system is designed for one or more of the approved purposes noted above, and that the county system's costs are not significantly out of line with private collection and disposal costs (to dispel the idea that the county is trying to prop up an inefficient system), the more likely facility designation will be upheld. To the extent that county collection and disposal system costs do exceed "market" rates, the county would be better off in defending against an attack on facility designation if it can show that the additional costs are generated by services and benefits not provided by the cheaper facilities elsewhere, such as household hazardous waste handling, electronics waste handling, inspection and monitoring above and beyond statutory and permit minimums, and dedication to recycling. In my opinion, it is not necessary to demonstrate a positive cost-benefit ratio in order to get approval for a franchise involving facility designation, but it would help explain why facility designation is a rational governmental choice if and when the question is asked.

- What are other limitations/restrictions/conditions of a franchise from the local govt. perspective?

Courts have long recognized that governmental franchises are awarded subject to the governmental unit's police powers.⁶ This means that, no matter what is in the franchise

⁶ See, e.g., *Atlantic Coast Line Railroad Company v. Goldsboro*, 232 U.S. 548, 558 (1913) (The power to regulate affairs in the county concerning health, safety, good order, comfort or the welfare of the community cannot be bargained away, even by express contract. All contract and property rights are held

agreement, the Board of Commissioners retains the right and the obligation to protect the health, safety and welfare of the county's citizens, and no matter what is in the franchise agreement, the Board can and should pass any ordinances and take any other lawful steps necessary to protect health, safety and public welfare. This is not an excuse to interfere unnecessarily with the contractual rights or business of the franchisee. Actions that the Board takes to regulate solid waste collection and disposal should be (a) consistent with the franchise ordinance and agreement, or if they are not, they should be (b) necessary to protect public health, safety or welfare and reasonably tailored to accomplish that protection. If there is any language in the franchise agreement that conflicts with this basic duty of county government, then either that language is void and legally unimportant or the entire agreement is void.⁷

- Can a non-residential franchise include the rental/lease of bulk containers (dumpsters)?

I believe so. The rental costs would have to be reasonable in light of the cost of the containers to the county or its franchisee, and there must be some legitimate governmental purpose for a requirement to use the county's or city's containers.

- Can a local government compete for a franchise service?

Yes. I am familiar with Charlotte's work along these lines in the water/wastewater area. This is often referred to as "managed competition." There is some discussion of this approach to privatization from the point of view of private sector bidders at http://www.privatization.org/database/practicesandstrategies/managed_competition_quick_guide.html.

- Can franchisee be required to perform billing? Why or why not? Other options?

Yes. However, there are reasons to consider keeping billing within the governmental unit. First, by combining bills with property tax bills, as I believe is done for your current fees, you have a very high collection rate, a very efficient system and additional enforcement options. Second, I believe that retaining the billing helps if you also wish to designate facilities, since it more clearly presents the fact that the county is acting as a market participant, rather than as a regulator. Counties also have the option of combining the billing for solid waste along with other public enterprise services, such as water and sewer. The advantage of this billing arrangement is that the statute authorizes the county to specify by ordinance the order in which partial payments are to be applied among the various enterprise services. Thus, for example, failure to pay the solid waste fee could result in discontinuation of water services.

subject to the lawful exercise of this, the 'police' power, of the state. The uncompensated enforcement of this police power is not a taking requiring compensation or due process.)

⁷ Any franchise agreement will likely contain a severability clause designed to ensure that the entire Agreement would not be voided by problems in a particular provision.

- Can the franchisee bill and the County collect? Can an independent 3rd party accounting contractor be hired by the County to do the billing and collection?

The franchise agreement could specify that the franchise sends out the bills and the county takes care of collection, but the county will not be able to take advantage of the special enforcement options under 153A-293 or 153A-277(b) unless it also bills for the solid waste services. I also think that the county could hire a third party to do the billing and collecting. Again, however, it loses some important enforcement mechanisms.

- Can all improved properties be charged a base fee for collection even if they burn their garbage in the backyard, haul their waste directly to the landfill, or take their garbage to work and put it in the employers dumpster, etc.?

Yes, as long as the aggregate revenue from the fee charged does not exceed the aggregate costs of collection.

- Can the local government subsidize the fees?

Yes. In fact, the use of general tax revenues to pay, in part, for the provision of service, while at odds with many people's preferences for public enterprises, does help reinforce the fact that the local government is acting as a market participant. This is important only if the unit feels the need to designate facilities.

- Can the decision on the award of the franchise be made on factors other than, but including cost?

Yes. A franchise award is not subject to statutory requirements for local government bidding and awarding of purchase contracts. There may be special local requirements in county ordinances or policies that I am not aware of, but as a matter of state law, a franchise award can be made on any rational basis that is not arbitrary, capricious, discriminatory or otherwise violates someone's constitutional rights.

- Can preference be given to local waste firms or small businesses?

Yes, as noted above, under the franchise provisions in state law, a county can award franchises on any basis that is not arbitrary, capricious, or a violation of due process or equal protection rights. However, as noted above, a county improves its arguments for facility designation in the face of a commerce clause attack by retaining as many openly competitive features of the marketplace as possible. Any preferences given to local firms or businesses will make it more likely that the franchise operation can be attacked on commerce clause grounds; the commerce clause was designed in large part to avoid burdens on interstate commerce that were imposed in order to protect local business interests.

- How varied can fees be in an open franchise situation? Can haulers be competitive in a territory or must they be governed by a preset fee, or could that preset contracted fee be a maximum and then they could go lower to get more customers in the service area for which they competed?

Under a recent (2004) Court of Appeals decision, which I do not believe to be well-reasoned, but which is the law as it currently stands, the biggest limitation on the fee is the statutory requirement that the revenue generated from the fees charged for collection not exceed the costs of collection. See G.S. 153A-292(b). It is likely that the board will have to set a fee structure to ensure that the revenue generated throughout the county does not exceed the costs of collection. G.S. 153A-277(a) seems to give the county authority to charge different rates for different classes of service or for the same class of service in different areas of the county – but the North Carolina Court of Appeals appears to have adopted a different interpretation in the case described below. So, it is an open question as to whether the competing franchisers could charge different fees. It could be argued that they would have to charge different fees if their respective costs of providing the services differed, but this is not at all clear from the statutory language or the case law. It is clear, however, that the county would need to establish some mechanism to track revenue and costs to ensure that the revenue was not exceeding the costs.

In *Manning v. County of Halifax*, 166 N.C.App. 279, 603 S.E.2d 168 (2004), the county imposed a \$57 dollar solid waste availability fee on all parcels of land in the county. A group of citizens challenged the fee, claiming, among other things, that it violated G.S. 153A-292(b) because the aggregate amount collected exceeded the costs of providing the disposal facilities in the county. [G.S. 153A-292(b) provides that “[a] fee for availability may not exceed the cost of providing the facility and may be imposed on all improved property in the county that benefits from the availability of the facility.”] The trial court found that during fiscal 2001-2002, the fee generated \$1,933,133 in revenue, and the costs to run the disposal facilities totaled \$1,884,775. The court held that this discrepancy violated the plain language of the statute and invalidated the fee. In doing so, the court noted that “[t]he phrase ‘may not exceed’ in N.C. Gen. Stat. 153A-292(b) does not mean that fees and costs need only be ‘reasonably related’ to one another. . . .”

The county had argued that under the precedent in *Barnhill Sanitation Service v. Gaston County*, 87 N.C.App. 532, 362 S.E.2d 161 (1987), it had broad discretion in setting the fees, absent arbitrary or discriminatory action. The court distinguished *Barnhill*, however, stating that “the statute which this Court was describing in *Barnhill* provided counties with a great deal of flexibility in setting the fees. In relevant part, the statute provided that counties had the authority to ‘establish and revise from time to time . . . fees . . . for the use of or the services furnished by a public enterprise. . . . [F]ees . . . may vary for the same class of service in different areas of the county and may vary according to classes of service. Unlike the statute at issue in the case before us, NC. Gen. Stat. 153A-277(a) provided that the fees could vary based on different factors. In contrast, the statute at issue here, N.C. Gen. Stat. 153A-292(b), plainly states that fees charged for providing the facilities cannot exceed the cost of providing those facilities.”

- Can a performance bond be required as part of franchise award?

I believe the county can require a performance bond under its authority in GS 153A-275 to “adopt adequate and reasonable rules to protect and regulate a public enterprise belonging to or operated by it.” But these rules must be adopted by ordinance.

- Can a franchise incorporate residential Pay As You Throw (PAYT)?

I believe so. I believe a franchise can incorporate any methods of collection or paying for collection that would be permissible for the local unit itself to use, and so far as I am aware, PAYT is such an option.

- Can government include other conditions as part of the franchise e.g. cleanliness or appearance standards, hours of operation, etc.?

Yes. The conditions should just be reasonable and designed to achieve a legitimate governmental purpose and not to unduly burden interstate commerce.

- How could business customers that have corporate or regional contracts with other waste haulers be handled? Can these businesses be compelled to participate?

Legally, yes, but practically this will be difficult. Perhaps the best approach, at least for initial phases, is to allow commercial customers to use their existing waste haulers, so long as those haulers are licensed and franchised by the county. In other words, consider non-exclusive commercial collection franchises. If the desire is to cut down the number of haulers, consider a phase-in time to allow business customers to plan ahead. The 15-month wait provision of S951 may give adequate lead time for this.

- How would allowance for those businesses that already recycle their own cardboard for instance, be addressed under a franchise of recycling collections?

It is the customer’s waste stream until the customer puts it out for collection, by statute. By “put it out,” I mean placing the waste in a receptacle provided by the franchising unit of government or its franchisee, or placing the waste in a public right-of-way or otherwise in a place where by law or custom waste has been collected by a governmental entity.

This question of when a person has abandoned their waste has been examined by courts most carefully in the criminal context, i.e. when can a government agency search someone’s waste without getting a search warrant? Although this context is different from your questions, the basic answer in North Carolina is instructive: a person gives up all expectation of privacy as well as their property interests in waste by placing it in a receptacle for waste that is owned by some other entity, even if the receptacle is itself on private property. For example:

In the present case, defendant left his garbage in a communal dumpster in the apartment complex where he resided. While the dumpster was for the use of certain residents, it was not defendant's private property, was located approximately 125 to 150 feet from his residence and was accessible to other apartment dwellers and passers-by. The dumpster may not have been in public view but defendant has presented no evidence that public access to the dumpster was restricted. It is clear that like the defendant in Hauser, defendant in the case sub judice had the intention to convey the garbage to a third party when he abandoned the trash bags in the communal dumpster. At that point, the waste management service whose name was on the dumpster had effectively "collected" the garbage. Based on the factors outlined in Hauser, we hold that the communal dumpster was not within the curtilage of defendant and he therefore retained no legitimate expectation of privacy in his garbage once he placed it in said dumpster.

State v. Washington, 134 N.C.App. 479, 484 518 S.E.2d 14 (N.C.App. 1999).

If a customer does not want to give up possession of cardboard or other recyclable waste streams to the county or the county's franchisees, that is the customer's option. However, you can by ordinance prohibit any other than franchised collectors from accepting the waste (for commercial purposes) in the county. Recall, however, that "waste" as used here does not include "recovered materials," so you cannot prohibit a person from engaging in the commercial pickup of recovered materials in the county. By way of example, suppose Company A is using company X to service (collect) for recycling their white paper, mostly inside the building from interior storage. Company A cannot be compelled to use the franchisee instead of continuing with their existing vendor as long as Company A is separating their white paper or otherwise not putting it out for collection by the city or county. Similarly, Company B bales and hauls its own cardboard. The cardboard is considered "recovered material" under N.C. law and Company B is thus free to arrange for its collection or haul it itself, as it wishes. Furthermore, Company C is legally free to engage in the commercial collection of the cardboard (and other recovered material) despite the existence of a city or county waste collection franchise.

- What is the typical term for a franchise? Is there a limit?

Both counties and cities are limited to thirty-year terms for solid waste franchises. Until 1991, the limit was sixty years, but only with permission of the state waste regulators. Until 1991, cities and counties could only offer franchises without state approval for up to six years. As for typical terms, I have not surveyed the collection franchises in the state, so I do not know what the average is. Recent disposal franchises have typically been for the full thirty years, which is, of course, the preference of the franchisee, and also may make economic sense given the scale of investment needed for a subtitle D landfill or perhaps even a transfer station. But it is in the discretion of the local government unit, up to the thirty-year maximum.

- Discuss voluntary vs. mandatory participation under a franchise. If voluntary can a fee be assessed anyway for those who opt out? Why would we want to consider voluntary?

I'm not sure that "voluntary" and "mandatory" are useful terms in this discussion; what the county is considering, as I understand it, is a franchise system for waste collection. If the county goes that route, then anyone commercially collecting waste in the county must have a franchise—so no customer can voluntarily choose to use a non-franchised commercial waste hauler. On the other hand, if the customer wants to haul their own waste to a facility outside the county, I think that is their prerogative, so in that limited sense the system is voluntary. However, I believe a collection fee can be imposed on all residents in the areas of the county where service is available. Also, if the county constructs a disposal facility such as a transfer station, the county can impose an availability fee for that station whether or not a customer is using it.

You may wish to consider "nonexclusive" franchises, as noted above, particularly for commercial customers. This may make sense for the long term, and if not, may make sense as a transitional approach for customers who are used to contracting for their own waste hauling services.

- In a recycling franchise do the specific recyclable materials need to be strictly defined or can you simply say all containers or all cans and bottles?

If you wanted to grant franchise authority as broadly as possible, you could say "all recovered and recoverable materials that persons in the county have abandoned or otherwise relinquished their possession of or claims to." For operational purposes and clarity, however, you might be better off also specifying the materials you have in mind.

- Relevant case studies?

I have not canvassed the literature for case studies. I have reviewed the legal documents connected with New Hanover county, which has litigated some of these issues under their old flow control statute and the consent decree they entered in or around 1993. Despite being denied the ability to amend their consent decree to revive their old flow control ordinance, New Hanover is currently using a franchise system with facility designation. To my knowledge, they have not been challenged on this.

- Definitions of residential collection? Multi-family housing (apartments/condo's, etc.) are generally served as non-residential.

You are free to define "residential collection" in whatever way makes sense to you from a legitimate governmental point of view. The North Carolina statutes and rules do not define "residential" collection, but instead tend to lump all forms of collection together in phrases such as the definition of municipal solid waste in G.S. 130A-290:

(18a) “Municipal solid waste” means any solid waste resulting from the operation of residential, commercial, industrial, governmental, or institutional establishments....

- Options for dealing with SW service providers who would be displaced?

S. 951 provides the statutory options: compensation or delay. It is also possible to run some, or all, of a franchise system on a nonexclusive basis.

- To whom (UNC, schools, OWASA, etc.) would the franchise not apply?

The franchise would apply to any and all entities in the county that want to collect waste as a commercial endeavor, outside the corporate limits of municipalities. If OWASA or the University want to self-haul their own waste, I believe they would be entitled to do that. However, I do not believe any entity could contract with another commercial entity to collect its waste outside city limits, unless that entity had obtained a county franchise. If the municipalities and the county entered into a joint arrangement for the waste collection franchise, then the entire area of the county would be controlled by the franchisee(s) as far as the commercial collection of waste goes. I do not know the legal status of the University under such an arrangement; this is a matter that the University counsel’s office and the city and county attorney’s offices will have more experience with and more nuanced opinions about than I do.

- Will local government have to adopt an ordinance asserting ownership of waste/recyclables once placed out for collection?

This is already provided by state statute, but I think it is best to include it in a local ordinance so the rules are all there in one, or a few, relatively easy to find places.

- What level of government oversight is required?

The statute (and, I have argued, the constitution) requires local oversight of fees charged by a franchisee. I think it is also useful to require periodic reports from the franchisee(s) and some small additional level of oversight in terms of staff resources to ensure that collection is operating as required in the franchise award.